

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2020
First Extraordinary Session, 2019
Second Extraordinary Session, 2019

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WEST VIRGINIA HOUSE OF DELEGATES
HONORABLE ROGER HANSHAW
SPEAKER OF THE HOUSE

COMPILED AND PUBLISHED
UNDER THE DIRECTION
OF

STEPHEN J. HARRISON
CLERK OF THE HOUSE



OFFICE OF THE CLERK OF THE HOUSE

212 MAIN UNIT
STATE CAPITOL
CHARLESTON, WEST VIRGINIA

CLERK'S OFFICE LEGISLATIVE GROUP

BO HOOVER
Assistant Clerk/Parliamentarian

Robert Altmann
Bill Status/Engrossing and Enrolling Clerk

Lynn Lewis

Anne Landgrebe

Lori Skull

FOREWORD

These volumes contain the Acts of the Second Regular Session of the 84th Legislature, 2020, and the First and Second Extraordinary Sessions of the 84th Legislature, 2019.

Second Regular Session, 2020

The Second Regular Session of the 84th Legislature convened on January 8, 2020. The Constitutional sixty-day limit on the duration of the session was March 7, 2020. The Governor issued a proclamation on March 4, 2020, 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 midnight on March 7, 2020 and the session ended when the Senate adjourned *sine die* at 12:03 a.m. on March 8, 2020.

Bills totaling 2,389 were introduced in the two houses during the session (1,533 House, of which 557 were carryover bills from the 2019 Regular Session, and 856 Senate). The Legislature passed 356 bills, 188 House and 168 Senate.

The Governor vetoed 6 bills (**Com. Sub. for H. B. 2086**, Uniform Real Property Electronic Recording Act; **H. B. 4159**, Relating to the manufacture and sale of hard cider; **Com. Sub. for H. B. 4395**, Removing the requirement that a veterinarian access and report to the controlled substance monitoring database; **Com. Sub. for H. B. 4573**, Relating to Medicaid subrogation liens of the Department of Health and Human Resources; **Com. Sub. for S. B. 163**, Relating to municipal and county taxation of hotel rooms booked through marketplace facilitator; and **Com. Sub. for S. B. 692**, Clarifying persons indicted or charged jointly for felony offense can move to have separate trial.) Of the vetoed bills, the Legislature amended and again passed **Com. Sub. for H. B. 2086**, Uniform Real Property Electronic Recording Act, leaving a net total of 351 bills, 185 House and 166 Senate, which became law.

There were 210 Concurrent Resolutions introduced during the session, 144 House and 66 Senate, of which 62 House and 19 Senate were adopted. Forty House Joint Resolutions and 9 Senate Joint Resolutions were introduced, proposing

amendments to the State Constitution, none of which were adopted. The House introduced 18 House Resolutions and the Senate introduced 80 Senate Resolutions, of which 8 House and 80 Senate were adopted.

First Extraordinary Session, 2019

The Proclamation calling the Legislature into Extraordinary Session upon adjournment *sine die* of the 2019 Regular Session, contained 2 items for consideration. Subsequent amended proclamations increased the total to 50 items for consideration.

The Legislature introduced 165 bills during the Extraordinary Session, 107 House Bills, and 58 Senate Bills. The Legislature passed 47 bills, 25 House and 22 Senate.

The Governor approved 46 bills and 1 bill, due to action not being taken before the constitutional deadline, is considered as having become law without his signature (**Com. Sub. for H. B. 193**, Relating to a statewide school personnel job bank), leaving a total of 47 bills, 25 House and 22 Senate, which became law.

There were 5 House Concurrent Resolutions introduced and 3 adopted, **H. C. R. 101**, Authorizing adjournments of the Senate and House of Delegates; **H. C. R. 104**, Providing for the issuance of not to exceed \$600 million of bonds pursuant to the Roads to Prosperity Amendment of 2017; and **H. C. R. 105**, Providing for the issuance of not to exceed \$200 million of bonds after July 1, 2020 pursuant to the Roads to Prosperity Amendment of 2017. One House Joint Resolution was introduced, and one Senate Joint Resolution was introduced, proposing amendments to the State Constitution, none of which were adopted. The House introduced 1 House Resolution, and the Senate introduced 8 Senate Resolutions, of which 1 House and 8 Senate were adopted.

The House adjourned *sine die* on July 23, 2019, and the Senate adjourned *sine die*, ending the First Extraordinary Session, on September 23, 2019.

Second Extraordinary Session, 2019

The Proclamation calling the Legislature into Extraordinary Session on November 18, 2019, contained 4 items for consideration.

The Legislature introduced 6 bills during the Extraordinary Session, 3 House Bills and 3 Senate Bills. The Legislature passed 3 Senate bills.

The Governor approved 2 bills (**S. B. 2002**, Limiting ability to expunge DUI offenses to those offenses which expungement complies with federal law; and **S. B. 2003**, Supplementing, amending, decreasing, and increasing existing appropriations to DOH for fiscal year ending June 30, 2020) and 1 bill became law without his signature (**S. B. 2001**, Extending tax credits for certain tourism development projects), leaving a total of 3 Senate bills which became law.

There was 1 House Concurrent Resolution introduced and adopted, **H. C. R. 201**, Authorizing adjournments of the Senate and House of Delegates. The Senate introduced and adopted 4 Senate Resolutions.

The Senate adjourned *sine die* on November 19, 2019, and the House adjourned *sine die*, ending the Second Extraordinary Session, on December 16, 2019.

STEPHEN J. HARRISON

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

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2020

OFFICERS

Speaker: Roger Hanshaw - Wallback

Clerk: Stephen J. Harrison - Cross Lanes

Sergeant-at-Arms: ¹Marshall Clay - Fayetteville

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
² Barnhart, Trenton (R)	7th	St. Marys	Community Banker	Appt. Sept. 17, 2019, 84th
Barrett, Jason (D)	61st	Martinsburg	Restaurant owner	81st; 83rd - 84th
³ Bartlett, T. Kevan (R)	39th	Sissonville	Minister	Appt. Oct. 21, 2019, 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	Public Affairs Manager	81st - 84th
Estep-Burton, Amanda (D)	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
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
Hott II, John Paul (R)	54th	Petersburg	Insurance/Disposal Service	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
⁴ Little, Chuck (R)	9th	Davisville	Investigator	Appt. May 20, 2019, 84th
Longstreth, Linda (D)	50th	Fairmont	Administrator	77th - 84th
Lovejoy, Chad (D)	17th	Huntington	Attorney	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, CPG 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 (Appt. to Senate May 19 and resigned from House May 20, 2010); 81st - 84th (House)
Skaff, Doug Jr. (D)	35th	South Charleston	Business Owner/Commercial Developer	79th - 81st; 84th
Sponagle, 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
Sypolt, Teri 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
⁵ Wilson, S. Marshall (I)	60th	Gerrardstown	Author/Army Officer	83rd - 84th
Worell, Evan (R)	18th	Barboursville	Healthcare Data Analytics	84th
Zukoff, Lisa (D)	4th	Moundsville	Business Owner	84th

¹Sergeant-at-Arms Anne Lieberman resigned March 1, 2019, and Marshall Clay was elected to fill the vacancy on June 18, 2019.

²Jason Harshbarger resigned August 30, 2019. Trenton Barnhart appointed to fill the unexpired term on September 17, 2019.

³Sharon Malcolm died September 30, 2019. T. Kevan Bartlett appointed to fill the unexpired term on October 21, 2019.

⁴Ray Hollen resigned May 12, 2019. Charles F. Little appointed to fill the unexpired term on May 20, 2019.

⁵Delegate S. Marshall Wilson switched from Republican to Independent on December 17, 2019.

MEMBERS OF THE SENATE

REGULAR SESSION, 2020

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. April 24, 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
Carmichael, Mitch (R)	4th	Ripley	Sales Director	75th - 80th (House); 81st - 84th
Clements, Charles H. (R)	2nd	New Martinsville	Retired	77th (House); Appt. Jan. 28, 2017, 83rd; 84th
Cline, Sue (R)	9th	Brenton	Real Estate Agent	Appt. Jan. 22, 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
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
¹ Pitsenbarger, John R. (R)	11th	Mt. Nebo	Farm Owner/Operator	Appt. Oct. 17, 2019, 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		78th - 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

¹Gregory Boso resigned September 26, 2019. John "J. R." Pitsenbarger appointed to fill the vacancy on October 17, 2019.

HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES

(As of January 8, 2020)

STANDING

AGRICULTURE AND NATURAL RESOURCES

Cooper (*Chair, Agriculture*), Atkinson (*Chair, Natural Resources*), Cadle (*Vice Chair, Agriculture*), Sypolt (*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, Little, Paynter, Phillips, 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*), Barnhart, Capito, Espinosa, Graves, Hott, Householder, D. Jeffries, P. Martin, Porterfield, Shott, Waxman, Barrett, Bates, Hartman, Robinson, Rowe and Sponaugle.

EDUCATION

Ellington (*Chair*), Higginbotham (*Vice Chair*), Hornbuckle (*Minority Chair*), Doyle (*Minority Vice Chair*), Atkinson, Bartlett, Bibby, Butler, Cooper, Dean, Espinosa, Hanna, Jennings, J. Kelly, Rohrbach, Toney, Waxman, 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, Graves, Higginbotham, Hott, J. Jeffries, Kessinger, P. Martin, Maynard, Nelson, Porterfield, Westfall, Boggs, Caputo, Diserio, Hansen, Hartman, Hicks, Miley and Tomblin.

HOUSE OF DELEGATES COMMITTEES

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, Pack, Rowan, Storch, 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, Summers, Sypolt, Worrell, Lovejoy and Miller.

GOVERNMENT ORGANIZATION

Howell (*Chair*), C. Martin (*Vice Chair*), Pyles (*Minority Chair*), Diserio (*Minority Vice Chair*), Azinger, Barnhart, Cadle, Hamrick, Hott, D. Jeffries, J. Jeffries, Kump, Little, Porterfield, Sypolt, Wilson, Worrell, Angelucci, Caputo, Hansen, Hicks, Staggers, Swartzmiller, Tomblin and Walker.

HEALTH AND HUMAN RESOURCES

Hill (*Chair*), Pack (*Vice Chair*), Pushkin (*Minority Chair*), Staggers (*Minority Vice Chair*), Atkinson, Barnhart, Butler, Criss, Dean, D. Jeffries, Jennings, 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*), Barnhart, Bartlett, Dean, Foster, Hanna, Hill, Householder, D. Jeffries, Jennings, Kump, Porterfield, Shott, Worrell, N. Brown, S. Brown, Caputo, Diserio, Fluharty, Pushkin, Skaff and C. Thompson.

INTERSTATE COOPERATION

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

JUDICIARY

Shott (*Chair*), Capito (*Vice Chair*), Fleischauer (*Minority Chair*), Fluharty (*Minority Vice Chair*), Bibby, Fast, Foster, D. Kelly, Kessinger, Kump, Mandt, Nelson, Phillips, Queen, Steele, Waxman, Westfall, N. Brown, S. Brown, Byrd, Canestraro, Lovejoy, Miller, Pushkin and Robinson.

PENSIONS AND RETIREMENT

Graves (*Chair*), Nelson (*Vice Chair*), Pethtel (*Minority Chair*), Evans (*Minority Vice Chair*), Anderson, McGeehan 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, C. Martin, Phillips, Wilson, Barrett, Canestraro, Doyle, Longstreth, Miller, Pyles, Walker and Williams.

PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

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

HOUSE OF DELEGATES COMMITTEES

RULE-MAKING REVIEW

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

RULES

Hanshaw (*Chair*), Summers (*Vice Chair*), Anderson, Cowles, Ellington, Espinosa, Foster, Hill, 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*), Bartlett, Graves, Hanna, J. Kelly, Kessinger, Linville, Mandt, C. Martin, P. Martin, Maynard, Queen, Sypolt, Toney, Canestraro, Estep-Burton, Fluharty, Longstreth, Lovejoy, Pethtel, Pyles and Williams.

SMALL BUSINESS, ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT

Queen (*Chair*), Mandt (*Vice Chair*), Skaff (*Minority Chair*), Lavender-Bowe (*Minority Vice Chair*), Atkinson, Cowles, Hardy, Higginbotham, Hill, Linville, C. 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, Rohrbach, Shott, Storch, Angelucci, Boggs, Diserio, Evans, Hansen, Staggers, Walker and Zukoff.

HOUSE OF DELEGATES COMMITTEES

VETERANS' AFFAIRS AND HOMELAND SECURITY

Bibby (*Chair, Veterans' Affairs*), Jennings (*Chair, Homeland Security*), Butler (*Vice Chair, Veterans' Affairs*), Steele (*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*), Bartlett, Cooper, Higginbotham, D. Kelly, J. Kelly, Little, Rowan, Sypolt, Toney, Wilson, Worrell, Angelucci, Campbell, Fleischauer, Pethtel, Pushkin and Staggers.

SENATE COMMITTEES

COMMITTEES OF THE SENATE

(As of January 8, 2020)

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

Sypolt (*Chair*), Mann (*Vice Chair*), Cline, Clements, 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, Rucker, Weld, Palumbo, Plymale, and Prezioso.

ECONOMIC DEVELOPMENT

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

EDUCATION

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

GOVERNMENT ORGANIZATION

Maynard (*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*), Hamilton, Pitsenbarger, Hardesty, Ihlenfeld, and Unger.

JUDICIARY

Trump (*Chair*), Weld (*Vice Chair*), Azinger, Clements, Cline, Maynard, Pitsenbarger, 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

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

PENSIONS

Azinger (*Chair*), Hamilton (*Vice Chair*), Pitsenbarger, 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, Mann, Pitsenbarger, Roberts, Beach, Jeffries, and Plymale.

WORKFORCE

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

SELECT

SELECT COMMITTEE ON CHILDREN AND FAMILIES

Takubo (*Chair*), Weld (*Vice Chair*), Cline, Pitsenbarger, Roberts, Rucker, Hardesty, Prezioso, and Stollings.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 2020

CHAPTER 1

(Com. Sub. for S. B. 670 - By Senator Weld)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §56-3-33 of the Code of West Virginia, 1931, as amended, relating to amending the manner of service of process on nonresident persons or corporate entities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WRITS, PROCESS, AND ORDER OF PUBLICATION.

§56-3-33. Actions by or against nonresident persons having certain contacts with this state; authorizing Secretary of State to receive process; bond and fees; service of process; definitions; retroactive application.

1 (a) The engaging by a nonresident, or by his or her duly
2 authorized agent, in any one or more of the acts specified in
3 subdivisions (1) through (7), inclusive, of this subsection
4 shall be considered equivalent to an appointment by a
5 nonresident of the Secretary of State, or his or her successor
6 in office, to be his or her true and lawful attorney upon
7 whom may be served all lawful process in any action or
8 proceeding against him or her, in any circuit court in this
9 state, including an action or proceeding brought by a

10 nonresident plaintiff or plaintiffs, for a cause of action
11 arising from, or growing out of, such act or acts, and the
12 engaging in such act or acts shall be a signification of such
13 nonresident's agreement that any such process against him
14 or her, which is served in the manner hereinafter provided,
15 shall be of the same legal force and validity as though such
16 nonresident were personally served with a summons and
17 complaint within this state:

18 (1) Transacting any business in this state;

19 (2) Contracting to supply services or things in this state;

20 (3) Causing tortious injury by an act or omission in this
21 state;

22 (4) Causing tortious injury in this state by an act or
23 omission outside this state if he or she regularly does or
24 solicits business, or engages in any other persistent course
25 of conduct, or derives substantial revenue from goods used
26 or consumed or services rendered in this state;

27 (5) Causing injury in this state to any person by breach
28 of warranty expressly or impliedly made in the sale of goods
29 outside this state when he or she might reasonably have
30 expected the person to use, consume, or be affected by the
31 goods in this state: *Provided*, That he or she also regularly
32 does or solicits business, or engages in any other persistent
33 course of conduct, or derives substantial revenue from
34 goods used or consumed or services rendered in this state;

35 (6) Having an interest in, using, or possessing real
36 property in this state; or

37 (7) Contracting to insure any person, property, or risk
38 located within this state at the time of contracting.

39 (b) When jurisdiction over a nonresident is based solely
40 upon the provisions of this section, only a cause of action
41 arising from or growing out of one or more of the acts
42 specified in subdivisions (1) through (7), inclusive,

43 subsection (a) of this section may be asserted against him or
44 her.

45 (c) Service shall be made:

46 By leaving the original and two copies of both the
47 summons and the complaint, and the fee required by §59-1-
48 2 of this code with the Secretary of State, or in his or her
49 office, and this service shall be sufficient upon the
50 nonresident: *Provided*, That notice of the service and a copy
51 of the summons and complaint shall forthwith be sent by
52 registered or certified mail, return receipt requested, by a
53 means which may include electronic issuance and
54 acceptance of electronic return receipts, by the Secretary of
55 State to the defendant at his or her nonresident address and
56 the defendant's return receipt signed by himself or herself
57 or his or her duly authorized agent or the registered or
58 certified mail so sent by the Secretary of State which is
59 refused by the addressee and which registered or certified
60 mail is returned to the Secretary of State, or to his or her
61 office, showing thereon the stamp of the post-office
62 department that delivery has been refused. After receiving
63 verification from the United States Postal Service that
64 acceptance of process, notice, or demand has been signed,
65 the Secretary of State shall notify the clerk's office of the
66 court from which the process, notice, or demand was issued
67 by a means which may include electronic notification. If the
68 process, notice, or demand was refused or undeliverable by
69 the United States Postal Service, the Secretary of State shall
70 create a preservation duplicate from which a reproduction
71 of the stored record may be retrieved which truly and
72 accurately depicts the image of the original record. The
73 Secretary of State may destroy or otherwise dispose of the
74 original returned or undeliverable mail. Written notice of
75 the action by the Secretary of State must then be provided
76 by certified mail, return receipt requested, facsimile, or by
77 electronic mail, to the clerk's office of the court from which
78 the process, notice, or demand was issued. If any defendant
79 served with summons and complaint fails to appear and

80 defend within 30 days of service, judgment by default may
81 be rendered against him or her at any time thereafter. The
82 court may order such continuances as may be reasonable to
83 afford the defendant opportunity to defend the action or
84 proceeding. If the certified mail was returned by the United
85 States Postal Service as unclaimed, unable to forward, or
86 with any other notation other than “accepted” or “refused”,
87 notice may be served as follows:

88 (1) In any manner accepted as service within the
89 domiciled state of the nonresident, or otherwise; or

90 (2) In any manner otherwise permitted by sections
91 4(d)(7) or (8) of the West Virginia Rules of Civil Procedure
92 for corporations and any way permitted by section 4(c) of
93 the West Virginia Rules of Civil Procedure for individuals
94 or noncorporate entities.

95 (d) The fee remitted to the Secretary of State at the time
96 of service shall be taxed in the costs of the action or
97 proceeding. The Secretary of State shall keep a record in his
98 or her office of all such process and the day and hour of
99 service thereof.

100 (e) The following words and phrases, when used in this
101 section, shall for the purpose of this section and unless a
102 different intent be apparent from the context, have the
103 following meanings:

104 (1) “Duly authorized agent” means and includes among
105 others a person who, at the direction of or with the
106 knowledge or acquiescence of a nonresident, engages in
107 such act or acts and includes among others a member of the
108 family of the nonresident or a person who, at the residence,
109 place of business, or post office of the nonresident, usually
110 receives and receipts for mail addressed to the nonresident.

111 (2) “Nonresident” means any person, other than
112 voluntary unincorporated associations, who is not a resident
113 of this state or a resident who has moved from this state

114 subsequent to engaging in such act or acts, and among
115 others includes a nonresident firm, partnership, or
116 corporation or a firm, partnership, or corporation which has
117 moved from this state subsequent to any of said such act or
118 acts.

119 (3) “Nonresident plaintiff or plaintiffs” means a
120 nonresident of this state who institutes an action or
121 proceeding in a circuit court in this state having jurisdiction
122 against a nonresident of this state pursuant to the provisions
123 of this section.

124 (f) The provision for service of process herein is
125 cumulative and nothing herein contained may be construed
126 as a bar to the plaintiff in any action or proceeding from
127 having process in such action served in any other mode or
128 manner provided by the law of this state or by the law of the
129 place in which the service is made for service in that place
130 in an action in any of its courts of general jurisdiction.

131 (g) This section may not be retroactive and the
132 provisions hereof may not be available to a plaintiff in a
133 cause of action arising from or growing out of any of the
134 acts occurring prior to the effective date of this section.



CHAPTER 2

**(H. B. 4559 - By Delegates Shott, Byrd, Pushkin, S.
Brown, Fast, Steele and N. Brown)**

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §55-2-15 of the Code of West Virginia, 1931, as amended, relating to extending the limitation on civil actions against the perpetrator of sexual

assault or sexual abuse upon a minor; adding any person or organization which aided, abetted, or concealed the sexual assault or abuse to the extended statute of limitations; allowing victims to initiate actions for sexual assault or sexual abuse against perpetrators only within four years of discovery regardless of age; and clarifying effect of 2020 amendments as to possible actions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. LIMITATIONS OF ACTIONS AND SUITS.

§55-2-15. Special and general savings as to persons under disability.

1 (a) A personal action for damages resulting from sexual
2 assault or sexual abuse of a person who was an infant at the
3 time of the act or acts alleged, shall be brought against the
4 perpetrator of the sexual assault or sexual abuse, within 18
5 years after reaching the age of majority, or within four years
6 after discovery of the sexual assault or sexual abuse,
7 whichever is longer. A personal action for damages
8 resulting from sexual assault or sexual abuse of a person
9 who was an infant at the time of the act or acts alleged shall
10 be brought against a person or entity which aided, abetted,
11 or concealed the sexual assault or sexual abuse within 18
12 years after reaching the age of majority.

13 (b) If any person to whom the right accrues to bring any
14 personal action other than an action described in subsection
15 (a) of this section, suit, or scire facias, or any bill to repeal a
16 grant, shall be, at the time the same accrues, an infant or
17 insane, the same may be brought within the like number of
18 years after his or her becoming of full age or sane that is
19 allowed to a person having no such impediment to bring the
20 same after the right accrues, or after such acknowledgment
21 as is mentioned in §55-2-8 of this code, except that it shall
22 in no case be brought after 20 years from the time when the
23 right accrues.

24 (c) The amendments to this section enacted during the
25 2020 Regular Session of the Legislature are intended to
26 extend the statute of limitations for all actions whether or
27 not an earlier established period of limitation has expired.

CHAPTER 3

**(Com. Sub. for S. B. 491 - By Senators Sypolt, Smith,
Rucker, Beach, Baldwin, Jeffries and Pitsenbarger)**

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §19-16-1, §19-16-2, §19-16-3, §19-16-4, §19-16-5, and §19-16-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §19-16-3b, §19-16-5a, and §19-16-9, all relating to the Seed Certification Program within the Department of Agriculture; defining terms; adding flower seed requirements; adding labeling requirements for seed; adding labeling requirements for interstate shipping; authorizing legislative rules for penalties; updating certificate of registration requirements; requiring quarterly tonnage fees and reports for seed; requiring monthly reports for seed potatoes; requiring record retention; updating prohibitions for labeling; setting forth label, signage, and other requirements for noncommercial seed sharing; updating duties and authority of commissioner; authorizing inspections of seed conditioning facilities, issuance of permits, and establishment of fees; and providing for penalties for labeling deficiencies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA SEED LAW.

§19-16-1. Definitions.

1 “Advertisement” means all representations, other than
2 those on the label, disseminated in any manner or by any
3 means, relating to seed within the scope of this article.

4 “Agricultural seed” includes forage seeds (grasses and
5 legumes), tobacco, soybeans, cereal, oil, fiber, and other
6 kinds of crop seeds commonly recognized within this state
7 as agricultural seeds, lawn and turf seeds, and combinations
8 of those seeds, and may include noxious weed seeds when
9 the commissioner determines that the seed is being used as
10 agricultural seed.

11 “Blend” means seed consisting of more than one variety
12 of a kind, each in excess of five percent by weight of the
13 whole.

14 “Brand” means word/words, name, symbol, number,
15 mark, design, unique design, or any combination which
16 identifies seed of one entity from seed of another.

17 “Bulk” means seed when loose in vehicles of
18 transportation or in storage, or in retail displays and not in
19 seed bags or other containers.

20 “Certifying agency” means: (1) An agency authorized
21 under the laws of a state, territory, or possession to officially
22 certify seed and which has standards and procedures
23 approved by the United States Secretary of Agriculture to
24 assure the genetic purity and identity of the seed certified;
25 or (2) an agency of a foreign country determined by the
26 United States Secretary of Agriculture to adhere to
27 procedures and standards for seed certification comparable
28 to those adhered to generally by seed certifying agencies
29 under subdivision (1) of this subsection.

30 “Coated” means a seed unit covered with any substance
31 which changes the size, shape, or weight of original seed.
32 Seeds coated with ingredients such as, but not limited to,
33 rhizobia, dyes, and pesticides are not considered coated
34 seeds.

35 “Commissioner” refers to the Commissioner of
36 Agriculture of the State of West Virginia or a duly
37 authorized employee.

38 “Complete record” means any and all information
39 which relates to the origin, treatment, germination, purity,
40 kind, and variety of each lot of agricultural seed sold in this
41 state, or which relates to the treatment, germination, kind,
42 and variety of each lot of vegetable, or tree and shrub seed
43 sold in this state. The information shall include seed
44 samples and records of declarations, labels, purchases,
45 sales, conditioning, bulking, treatment, handling, storage,
46 analyses, tests, and examinations.

47 “Conditioning” means drying, cleaning, scarifying, and
48 other operations which may change the purity or
49 germination of the seed and require the seed lot to be
50 retested to determine the label information.

51 “Dealer” means any person who exclusively sells,
52 exposes for sale, offers for sale, exchanges, or barter seed
53 for sowing purposes within this state to the ultimate
54 consumer.

55 “Distinct” means that the variety can be differentiated
56 by one or more identifiable morphological, physiological,
57 or other characteristics from all other varieties of public
58 knowledge.

59 “Distribute” means to offer for sale, sell, expose for
60 sale, exchange, or barter seed for sowing purposes within
61 the state.

62 “Distributor” means any person who sells, exposes for
63 sale, offers for sale, exchanges, barter, gives, parcels out,
64 allots, shares, or dispenses a seed for sowing purposes
65 within the state.

66 “Dormant” means viable seed, excluding hard seed,
67 which fails to germinate when provided the specified
68 germination conditions for the kind of seed in question.

69 “Flower seeds” includes seeds of herbaceous plants
70 grown for their blooms, ornamental foliage, or other
71 ornamental parts, and commonly known and sold under the
72 name of flower or wildflower seeds in this state.

73 “Genuine growers declaration” means a statement
74 signed by the grower which gives for each lot of seed the lot
75 number, kind, variety (if known), origin, weight, year of
76 production, date of shipment, and to whom the shipment
77 was made.

78 “Germination” means the emergence and development
79 from the seed embryo of those essential structures which,
80 for the kind of seed in question, are indicative of the ability
81 to produce a normal plant under favorable conditions.

82 “Hard seeds” means seeds which remain hard at the end
83 of the prescribed test period because they have not absorbed
84 water due to an impermeable seed coat.

85 “Hermetically sealed” means a container that is
86 designed and intended to be secure against the entry of
87 microorganisms and thereby to maintain the commercial
88 sterility of its contents after processing.

89 “Hybrid” means the first generation seed of a cross
90 produced by controlling the pollination and by combining:
91 (1) Two or more inbred lines; (2) one inbred or a single cross
92 with an open-pollinated variety; or (3) two varieties or
93 species, except open-pollinated varieties of corn (*Zea*
94 *mays*). The second generation of subsequent generations
95 from the crosses shall not be regarded as hybrids. Hybrid
96 designations shall be treated as variety names.

97 “Inert matter” means all matter not seed, which
98 includes, but is not limited to, broken seeds, sterile florets,
99 chaff, fungus bodies, and stones, as determined by methods
100 defined by rule.

101 “Introduced wildflower” means kinds, or the types and
102 varieties derived from those kinds that are not indigenous to
103 North America.

104 “Kind” means one or more related species or subspecies
105 which singly or collectively is known by one common
106 name, for example, corn, oats, alfalfa, and timothy.

107 “Labeling” includes a tag or other device attached to or
108 written, stamped, or printed on any container or
109 accompanying any lot of bulk seeds purporting to set forth
110 the information required on the seed label by this act, and it
111 may include any other information relating to the labeled
112 seed.

113 “Lot” means a definite quantity of seed identified by a
114 lot number, code number, or other mark, every portion or
115 bag of which is uniform within recognized tolerances for the
116 factors which appear on the label.

117 “Mixture”, “mix”, or “mixed” means seed consisting of
118 more than one kind or variety, each present in excess of five
119 percent by weight of the whole. A mixture of varieties of a
120 single kind may be labeled as a blend.

121 “Mulch” means a protective covering of any suitable
122 substance placed with seed which acts to retain sufficient
123 moisture to support seed germination and sustain early
124 seedling growth, and aid in the prevention of the
125 evaporation of soil moisture, the control of weeds, and the
126 prevention of erosion.

127 “Native wildflower” means kinds or the types and
128 varieties derived from those kinds that are indigenous to
129 North America.

130 “Noxious weed seeds” includes prohibited noxious
131 weed seeds, restricted noxious weed seeds, and undesirable
132 grass seed.

133 “Off type” means any seed or plant not a part of the
134 variety in that it deviates in one or more characteristics from
135 the variety as described and may include: A seed or plant of
136 another variety; a seed or plant not necessarily any variety;
137 a seed or plant resulting from cross-pollination by another
138 kind or variety; a seed or plant resulting from uncontrolled
139 self-pollination during production of hybrid seed; or
140 segregates from any of the off types set forth in this
141 subsection.

142 “Official sample” means any sample of seed taken by
143 the commissioner in accordance with the provisions of this
144 article and rules promulgated under this article.

145 “Origin”, for an indigenous stand of trees, means the
146 area on which the trees are growing; for a nonindigenous
147 stand, it is the place from which the seeds or plants were
148 originally introduced.

149 “Other crop seed” means seed of plants grown as crops
150 (other than the kind or variety included in the pure seed) as
151 determined by methods defined by rule.

152 “Person” means an individual, partnership, corporation,
153 company, association, receiver, trustee, agent, fiduciary,
154 firm, or any group of organized persons, whether
155 incorporated or not.

156 “Prohibited noxious weed seeds” means those weed
157 seeds which are prohibited from being present in
158 agricultural, vegetable, or tree and shrub seed, and are the
159 seeds of weeds which are highly destructive and difficult to
160 control by good cultural practices and the use of herbicides.

161 “Pure live seed” means the product of the percent of
162 germination, plus hard or dormant seed, multiplied by the
163 percent of pure seed divided by 100, where the result is
164 expressed as a whole number.

165 “Pure seed” means seed exclusive of inert matter and all
166 other seeds not of the seed being considered as determined
167 by methods defined by rule.

168 “Purity” means the name or names of the kind, type, or
169 variety and the percentage or percentages thereof; the
170 percentage of other agricultural seed or crop seed; the
171 percentage of weed seeds, including noxious weed seeds;
172 the percentage of inert matter; and the names of the noxious
173 weed seeds and the rate of occurrence of each.

174 “Registrant” means any person who registers as a
175 seedsman in order to distribute seed for sowing purposes
176 within the state.

177 “Restricted noxious weed seeds” means those weed
178 seeds which are objectionable in agricultural crops, lawns,
179 and gardens of this state, but which can be controlled by
180 good cultural practices or the use of herbicides.

181 “Seed potato” refers to vegetatively propagated tubers
182 used or intended to be used for potato production which
183 must grade equal to or better than the minimum
184 requirements of U.S. No. 1, from the standpoint of physical
185 defects, size, or disease, and must be certified by an official
186 certifying agency.

187 “Sell-by date” means the last date that the seed may
188 legally be sold in the state.

189 “Seizure” means a legal process carried out by court
190 order against a definite amount of seed.

191 “Stable” means that the variety will remain unchanged
192 in its essential and distinctive characteristics and its
193 uniformity when reproduced or reconstituted as required by
194 the different categories of varieties.

195 “Stop sale or embargo” means an administrative order,
196 provided by this article, restraining the sale, use,
197 disposition, and movement of a definite amount of seed.

198 “Test date” means the month and year in which the
199 germination test was completed.

200 “Total viable” means the sum of percentage germination
201 plus dormant plus hard seeds.

202 “Treated” means that the seed has received an
203 application of a substance, or that it has been subjected to a
204 process for which a claim is made. For label, shall be the
205 commonly accepted coined, chemical (generic), biological,
206 or abbreviated chemical name.

207 “Tree and shrub seeds” includes seeds of woody plants
208 commonly known and sold as tree and shrub seeds in this
209 state.

210 “Tree seed collector’s declaration” means a statement,
211 signed by a grower or person having knowledge of the place
212 of collection, giving, for a lot of seed, the lot number,
213 common or scientific name of the species (and subspecies,
214 if appropriate), origin, elevation, and quantity of tree and
215 shrub seed.

216 “Type” means a group of varieties so nearly similar that
217 the individual varieties cannot be clearly differentiated,
218 except under special conditions.

219 “Undesirable grass seeds” means seeds of grass species
220 declared to be restricted noxious weed seed when found in
221 lawn and turf seed.

222 “Uniform” means that the variations in essential and
223 distinctive characteristics are describable.

224 “Variant” means any seed or plant which: (1) Is distinct
225 within the variety but occurs naturally in the variety; (2) is
226 stable and predictable with a degree of reliability
227 comparable to other varieties of the same kind, within
228 recognized tolerances, when the variety is reproduced or
229 reconstituted; and (3) was originally a part of the variety as
230 released. A variant is not an off-type.

231 “Variety” means a subdivision of a kind which is
232 distinct, uniform, and stable.

233 “Vegetable or herb seeds” includes the seeds of those
234 crops which are grown in gardens or on truck farms and are
235 generally known and sold under the name of vegetable or
236 herb seeds in this state.

237 “Weed seed” means the seeds of all plants generally
238 recognized as weeds within this state, as determined by
239 methods defined by rule, and includes the categories of
240 prohibited noxious weed seeds and restricted noxious weed
241 seeds.

**§19-16-2. Label requirements for agricultural crops, lawn and
turf, vegetable, tree and shrub, flower seeds, and seed
potatoes.**

1 (a) Each container of agricultural, vegetable, or flower
2 seeds which is distributed or transported within this state for
3 sowing purposes shall bear on the container, or have
4 attached to the container in a conspicuous place, a plainly
5 written or printed label or tag in the English language.

6 (b) For all treated agricultural, vegetable, or flower
7 seeds (for which a separate label may be used) the label shall
8 include the following:

9 (1) A word or statement indicating that the seed has
10 been treated;

11 (2) The commonly accepted coined, chemical,
12 biological, or abbreviated chemical (generic) name of the
13 applied substance or description of the process used;

14 (3) A caution statement, such as “do not use for food,
15 feed, or oil purposes”, if the substance in the amount present
16 with the seed is harmful to humans or other vertebrate
17 animals. The caution for toxic substances shall be a poison
18 statement or symbol, or both a poison statement and
19 symbol; and

20 (4) The date beyond which the inoculant is not to be
21 considered effective (date of expiration), if the seed is
22 treated with an inoculant.

23 (c) For agricultural seeds, except for grass seed
24 mixtures, seed sold on a pure live seed basis, or for hybrids
25 which contain less than 95 percent hybrid seed, the label
26 shall include the following:

27 (1) The commonly accepted name of the kind and
28 variety for each agricultural seed component present in
29 excess of five percent of the whole and the percentage by
30 weight of each in order of its predominance. Hybrids shall
31 be labeled as hybrids;

32 (2) The lot number or other lot identification;

33 (3) The origin (state or foreign country), if known, of
34 alfalfa, red clover, and field corn (except hybrid corn). If the
35 origin is unknown, that fact shall be stated;

36 (4) The percentage by weight of all weed seeds;

37 (5) The name and rate of occurrence per pound or ounce
38 of each kind of restricted noxious weed seed or undesirable
39 grass seed present. The name and approximate number of
40 each kind of noxious weed seed: (A) Per ounce in *Agrostis*
41 spp., *Poa* spp., Rhodes grass, Bermuda grass, timothy,
42 orchard grass, fescues, alsike and white clover, reed canary
43 grass, Dallas grass, ryegrass, foxtail millet, alfalfa, red
44 clover, sweet clovers, lespedezas, smooth brome, crimson
45 clover, *Brassica* spp., flax, *Agropyron* spp., and other
46 agricultural seeds of similar size and weight, or mixtures
47 within this group; and (B) per pound in Sudan grass, wheat,
48 oats, rye, barley, buckwheat, sorghums, vetches, and other
49 agricultural seeds of a size and weight similar to or greater
50 than those within this group, or any mixtures within this
51 group;

52 (6) The percentage by weight of agricultural seeds
53 (which may be designated as “crop seeds”) other than those
54 required to be named on the label;

55 (7) The percentage by weight of inert matter;

56 (8) For each named agricultural seed:

57 (A) The percentage of germination, exclusive of hard
58 seed;

59 (B) The percentage of hard seed, if present;

60 (C) The calendar month and year the test was completed
61 to determine the percentages; and

62 (D) If the registrant chooses, the “total germination and
63 hard seed”;

64 (9) The name and address of the person who labeled the
65 seed, or who distributes the seed within this state; and

66 (10) The total of subdivisions (1), (4), (6), and (7) of this
67 subsection must equal 100 percent.

68 (d) For grass seed mixtures for lawn or turf purposes the
69 label shall include the following:

70 (1) The word “mixed”, “mixture”, or “blend” with the
71 name of the mixture or blend;

72 (2) The heading “Pure Seed” and “Germination”, or
73 “Germ” in the proper places;

74 (3) The commonly accepted name of kind, or kind and
75 variety of each agricultural seed component in excess of five
76 percent of the whole, and the percentage by weight of pure
77 seed in order of its predominance and in columnar form;

78 (4) The percentage by weight of agricultural seed other
79 than those required to be named on the label (which shall be
80 designated as “crop seed”);

81 (5) The percentage by weight of inert matter not to
82 exceed 10 percent by weight, except that 15 percent inert
83 matter is permitted in Kentucky Bluegrass labeled without
84 a variety name. Except for coating material, fertilizer, and
85 mulch, as provided by subdivision three, subsection (e) of
86 this section, foreign material not common to grass seed shall
87 not be added;

88 (6) The percentage by weight of all weed seeds.
89 Maximum weed seed content may not exceed one half of
90 one percent by weight;

91 (7) Noxious weed seeds and undesirable grass seed that
92 are required to be labeled by rule and listed under the
93 heading “Noxious Weed Seeds” or “Undesirable Grass
94 Seed”. Undesirable grass seed may not exceed 0.5 percent
95 by weight;

96 (8) For each agricultural seed named under subdivision
97 (3) of this subsection:

98 (A) The percentage of germination, exclusive of hard
99 seed;

100 (B) The percentage of hard seed, if present;

101 (C) The calendar month and year the test was completed
102 to determine the percentages. The most recent available
103 chronological test date shall be used; and

104 (D) When only one test date is listed for the entire
105 mixture, the listed test date shall be the oldest chronological
106 test date of the components;

107 (9) The name and address of the person who labeled the
108 seed, or who distributes the seed within the state.

109 (10) The total of subdivisions (3), (4), (5), and (6) of this
110 subsection must total 100 percent.

111 (e) For agricultural seeds that are coated, the label shall
112 include the following:

113 (1) The percentage by weight of pure seeds with coating
114 material removed;

115 (2) The percentage by weight of coating material;

116 (3) The percentage by weight of inert material exclusive
117 of coating material;

118 (4) Percentage of germination, to be determined on 400
119 pellets with or without seeds; and

120 (5) In addition to the provisions of this subsection, the
121 labeling of coated seed shall comply with the requirements
122 of subsections (b), (c), and (d) of this section.

123 (f) For vegetable seeds in packets as prepared for use in
124 home gardens or household plantings; or in preplanted
125 containers, mats, tapes, or other planting devices, the label
126 shall include the following:

127 (1) The name of kind and variety of seed;

128 (2) The lot number or other lot identification;

129 (3) One of the following:

130 (A) The calendar month and year the germination test
131 was completed and the statement "Sell by", which date may
132 be no more than 12 months from the date of the test,
133 exclusive of the month of the test;

134 (B) The year for which the seed was packed for sale,
135 noted by the statement "Packed for" or "Sell by" which
136 blank shall be filled by the calendar year; or

137 (C) The percentage germination and the calendar month
138 and year the test was completed to determine such
139 percentage, provided that the germination test must have

140 been completed within 12 months exclusive of the month of
141 the test; and

142 (4) The name and address of the person who labeled the
143 seed or who distributes the seed for sale within this state.

144 (g) For seeds which germinate less than the standard as
145 established by rule promulgated under this article, the label
146 shall include the following:

147 (1) The percentage of germination, exclusive of hard
148 seed;

149 (2) The percentage of hard seed, if present; and

150 (3) The words "Germination Below Standard" in not
151 less than eight-point type.

152 (h) For seeds placed in a germination medium, mat,
153 tape, or other device in such a way as to make it difficult to
154 determine the quantity of seed without removing the seeds
155 from the medium, mat, tape, or device, a statement to
156 include the minimum number of seeds in the container.

157 (i) For vegetable seeds in containers other than packets
158 prepared for use in home gardens or household plantings,
159 and other than preplanted containers, mats, tapes, or other
160 planting devices, the label shall include the following:

161 (1) The name of each kind and variety present in excess
162 of five percent and the percentage by weight of each in order
163 of its predominance;

164 (2) The lot number or other lot identification;

165 (3) For each named vegetable seed:

166 (A) The percentage germination exclusive of hard seed;

167 (B) The percentage of hard seed, if present;

168 (C) The calendar month and year the test was completed
169 to determine the percentages; and

170 (D) If the registrant chooses, the “total germination and
171 hard seed”;

172 (4) The name and address of the person who labeled the
173 seed, or who distributes the seed within this state.

174 (j) For flower seeds in packets prepared for use in home
175 gardens or household plantings or flower seeds in
176 preplanted containers, mats, tapes, or other planting
177 devices:

178 (1) For all kinds of flower seeds:

179 (A) The name of the kind and variety, or a statement of
180 type and performance characteristics as prescribed in the
181 rules and regulations promulgated under the provisions of
182 this article;

183 (B) One of the following:

184 (i) The calendar month and year the germination test
185 was completed and the statement “Sell by”, which date may
186 be no more than 12 months from the date of the test,
187 exclusive of the month of the test;

188 (ii) The year for which the seed was packed for sale,
189 noted by the statement “Packed for” or “Sell by”, which
190 blank shall be filled by the calendar year; or

191 (iii) The percentage germination and the calendar month
192 and year the test was completed to determine such
193 percentage, provided that the germination test must have
194 been completed within 12 months exclusive of the month of
195 the test; and

196 (C) The name and address of the person who labeled
197 said seed, or who sells, offers, or exposes said seed for sale
198 within this state.

199 (2) For seeds of those kinds for which standard testing
200 procedures are prescribed and which germinate less than the
201 germination standard last established under the provisions
202 of this article:

203 (A) The percentage of germination exclusive of hard
204 seeds;

205 (B) The percentage of hard or dormant seed, if present;
206 and

207 (C) The words “Below Standard”, in not less than eight-
208 point type.

209 (3) For seeds placed in a germination medium, mat,
210 tape, or other device in such a way as to make it difficult to
211 determine the quantity of seed without removing the seeds
212 from the medium, mat, tape, or device, a statement to
213 indicate the minimum number of seeds in the container.

214 (k) For flower seeds in containers other than those
215 contained in subsection (j) of this section:

216 (1) The name of the kind and variety or a statement of
217 type and performance characteristics as prescribed in rules
218 and regulations promulgated under the provisions of this
219 article, and for wildflowers, the genus, species, and
220 subspecies, if appropriate.

221 (2) The lot number or other lot identification.

222 (3) For wildflower seed only with a pure seed
223 percentage of less than 90 percent:

224 (A) The percentage by weight of each component listed
225 in order of their predominance;

226 (B) The percentage by weight of weed seed, if present;
227 and

228 (C) The percentage by weight of inert matter.

229 (4) For those kinds of seed for which standard testing
230 procedures are prescribed:

231 (A) The percentage germination exclusive of hard or
232 dormant seed;

233 (B) The percentage of hard or dormant seed, if present;
234 and

235 (C) The calendar month and year that the test was
236 completed to determine such percentages.

237 (5) For those kinds of seed for which standard testing
238 procedures are not available, the year of production or
239 collection.

240 (6) The name and address of the person who labeled the
241 seed or who sells, offers, or exposes the seed for sale within
242 this state.

243 (l) For agricultural seeds sold on a pure live seed basis
244 in accordance with the rules promulgated pursuant to this
245 article, each container must bear a label containing the
246 information required by subsection (c) of this section,
247 except that:

248 (1) The label need not show:

249 (A) The percentage by weight of each agricultural seed
250 component, as required by subdivision (1), subsection (c) of
251 this section; or

252 (B) The percentage by weight of inert matter, as
253 required by subdivision (7), subsection (c) of this section;
254 and

255 (2) The label must show for each named agricultural
256 seed, instead of the information required by subdivision (8),
257 section (c) of this section:

258 (A) The percentage of pure live seed determined in
259 accordance with rules; and

260 (B) The calendar month and year in which the test
261 determining the percentage of live seed was completed.

262 (m) For agricultural and vegetable hybrid seed which
263 contain less than 95 percent hybrid seed, the label shall
264 include the following:

265 (1) The kind or variety which must be labeled as
266 “hybrid”;

267 (2) The percent which is hybrid, labeled parenthetically
268 in direct association following named variety, such as,
269 Comet (85 percent Hybrid); and

270 (3) Varieties in which the pure seed contain less than 75
271 percent hybrid seed which shall not be labeled as hybrids.

272 (n) For combination mulch, seed, and fertilizer products
273 the label shall include the following:

274 (1) The word “combination” followed by the words
275 “mulch — seed — fertilizer (if appropriate)” on the upper
276 30 percent of the principal display panel. The word
277 “combination” must be the largest and most conspicuous
278 type on the container, equal to or larger than the product
279 name. The words “mulch — seed — fertilizer” shall be no
280 smaller than one-half the size of the word “combination”
281 and in close proximity to the word “combination”. These
282 products shall contain a minimum of 70 percent mulch; and

283 (2) For agricultural, lawn, and turf seeds placed in a
284 germination medium, mat, tape, or other device or mixed
285 with mulch:

286 (A) The product name;

287 (B) The lot number;

288 (C) The percentage by weight of pure seed of each kind
289 and variety named which may be less than five percent of
290 the whole;

- 291 (D) The percentage by weight of other crop seeds;
- 292 (E) The percentage by weight of inert matter which shall
293 not be less than 70 percent;
- 294 (F) The percentage by weight of weed seeds;
- 295 (G) The name and number of noxious weed seeds per
296 pound or ounce, if present;
- 297 (H) The percentage of germination (and hard seed if
298 appropriate) of each kind or kind and variety named and
299 date of test;
- 300 (I) The name and address of the person who labeled the
301 seed, or who distributes the seed within this state; and
- 302 (J) The totals of paragraphs (C), (D), (E), and (F) of this
303 subdivision must total 100 percent.
- 304 (o) The labeling requirements for agricultural,
305 vegetable, and flower seeds shall be considered to have been
306 met if the seed is weighed from a properly labeled bulk
307 container in the presence of the purchaser.
- 308 (p) Once a dealer has broken the seal on a container of
309 seed for any reason, the dealer is fully responsible for its
310 contents, including the guarantees for purity, germination
311 rate, and anything else pertaining to the integrity of the
312 opened seed container.
- 313 (q) For combination products containing seed and
314 granular fertilizer:
- 315 (1) The word “combination” followed by the words
316 “seed-fertilizer” must appear on the upper 30 percent of the
317 principal display panel. The word “combination” must be
318 the largest and most conspicuous type on the container,
319 equal to or larger than the product name. The word “seed-
320 fertilizer” shall be no smaller than one-half the size of the

321 word “combination” and in close proximity to the word
322 “combination”.

323 (2) On the analysis label, the percentage by weight of
324 the fertilizer in the container shall be listed on a separate line
325 as a component of the inert matter.

326 (r) Label requirements for tree and shrub seeds:

327 Each container of tree and shrub seed which is
328 distributed or transported within this state for sowing
329 purposes shall bear on the container or have attached on the
330 container in a conspicuous place a plainly written or printed
331 statement on the label or tag in the English language, giving
332 the information required under this subsection. The
333 statement may not be modified or denied in the labeling or
334 on another label attached to the container — except that
335 labeling of seed supplied under a contractual agreement
336 may be by invoice accompanying the shipment or by an
337 analysis tag attached to the invoice, if each bag or other
338 container is clearly identified by a lot number stenciled on
339 the container, or if the seed is in bulk. Each bag or container
340 that is not identified shall carry complete labeling.

341 (1) For all treated tree and shrub seeds as defined in this
342 article (for which a separate label may be used):

343 (A) A word or statement indicating that the seed has
344 been treated;

345 (B) The commonly accepted coined, chemical,
346 biological, or abbreviated chemical (generic) name of the
347 applied substance or description of the process used;

348 (C) A caution statement, such as “Do not use for food,
349 feed or oil purposes”, if the substance in the amount present
350 with the seed may be harmful to humans or other vertebrate
351 animals. The caution for mercurials and similarly toxic
352 substances shall be a poison statement and symbol; and

353 (D) The date beyond which the inoculant is not to be
354 considered effective (date of expiration), if the seed has
355 been treated with an inoculant;

356 (2) For all tree and shrub seeds subject to the article:

357 (A) The common name of the species of seed (and
358 subspecies, if appropriate);

359 (B) The scientific name of the genus and species (and
360 subspecies, if appropriate);

361 (C) The lot number or other lot identification; and

362 (D) Their origin:

363 (i) For seed collected from a predominantly indigenous
364 stand, the area of collection given by latitude and longitude,
365 or geographic description, or political subdivision such as
366 state or county;

367 (ii) For seed collected from other than a predominantly
368 indigenous stand, the area of collection and the origin of the
369 stand or the statement "Origin not Indigenous";

370 (E) The elevation or the upper and lower limits of
371 elevations within which the seed was collected;

372 (F) The purity as a percentage of pure seed by weight;

373 (G) For those species for which standard germination
374 testing procedures are prescribed by the commissioner, the
375 following:

376 (i) Percentage germination exclusive of hard seed;

377 (ii) Percentage of hard seed, if present;

378 (iii) The calendar month and year test was completed to
379 determine such percentages; or

380 (iv) In lieu of subparagraphs (i), (ii), and (iii) of this
381 paragraph, the seed may be labeled “Test is in process,
382 results will be supplied upon request”;

383 (H) For those species for which standard germination
384 testing procedures have not been prescribed by the
385 commissioner, the calendar year in which the seed was
386 collected;

387 (I) The name and address of the person who labeled the
388 seed or who distributes the seed within this state.

389 (s) Label requirements for seed potatoes:

390 The following information shall appear on each label
391 attached to a bag or container of certified seed potato:

392 (A) The name of the person or agency certifying such
393 seed potato;

394 (B) The name of the official state or governmental
395 agency making the inspection upon which the certification
396 is made; and

397 (C) The name and address or identification number of
398 the grower of such seed potatoes.

399 (t) *Required labeling for interstate shipping.* – The full
400 name and address of the interstate shipper shall appear upon
401 the label. If the name and address of the interstate shipper
402 are not shown upon the label, an AMS number identifying
403 the interstate shipper shall be shown, along with the full
404 name and address of the consignee.

§19-16-3. Certificate of registration; seed fees; payment of fees; disposition of funds.

1 (a) No person may distribute any agricultural, vegetable,
2 tree and shrub, or flower seeds, or seed potatoes without a
3 valid certificate of registration issued by the commissioner.
4 Application forms shall be provided by the commissioner

5 and the application fee shall be set forth in a legislative rule.
6 Each certificate of registration expires on December 31
7 following the next date of issue. A dealer may not be
8 required to register, if he or she can prove that the person he
9 or she is obtaining the seed from has a valid certificate of
10 registration.

11 (b) A person shall apply for a certificate of registration
12 at least 15 days prior to the expiration of the current
13 registration; or at least 15 days prior to the date that the
14 person intends to engage in business in this state. Each
15 application shall be accompanied by the required
16 application fee. The commissioner shall add a penalty to the
17 fee for each registration, as set forth in legislative rules, that
18 is not applied for or renewed within the time limit.

19 (c) Certificates of registration are not transferable with
20 respect to persons or locations.

21 (d) The commissioner may refuse to grant, or may
22 suspend or revoke, a certificate of registration when it is
23 determined that the applicant or registrant has violated the
24 provisions of this article or any rule promulgated under this
25 article: *Provided*, That the applicant or registrant may
26 request a hearing prior to the denial of the application or
27 suspension or revocation of the registration.

28 (e) Each person who holds a valid certificate of
29 registration is required to pay a tonnage fee on seed sold in
30 this state and shall report to the commissioner the net
31 pounds or kilograms of seeds distributed and sold by kind
32 or variety, except for seed potatoes, on a quarterly basis.
33 Each report shall be filed under oath and is due before the
34 last day of January, April, July, and October of each year
35 for the preceding three-month period. He or she shall pay
36 the tonnage fee according to the fee schedule for agriculture,
37 vegetable, tree and shrub, and flower seeds as set by
38 legislative rules. The commissioner may add a penalty, as
39 set forth in legislative rules, to the tonnage fee for each
40 tonnage report that is not filed on time.

41 (f) Persons distributing vegetable and flower seeds
42 packaged in containers of eight ounces or 226.8 grams or
43 less and sold from display units are exempt from reporting
44 poundage and paying a poundage fee: *Provided*, That a seed
45 stamp be purchased from the commissioner, at the rate set
46 by legislative rules, and placed in a conspicuous place on
47 each display unit.

48 (g) Persons first distributing seed potatoes into West
49 Virginia trade channels shall report to the commissioner the
50 net pounds or kilograms of seed potatoes distributed
51 monthly in arrears: *Provided*, That payments for the
52 previous month shall be made not later than the 15th day of
53 the following month, as set by legislative rules.

54 (h) A person who holds a valid certificate of registration
55 shall keep accurate records, as may be necessary or required
56 by the commissioner, to indicate the pounds of agricultural,
57 vegetable, tree and shrub, or flower seeds, or seed potatoes
58 distributed in this state.

59 (i) All fees and penalties collected under the provisions
60 of this article shall be deposited with the State Treasurer in
61 a special revenue account. These moneys shall be expended
62 by the Commissioner of Agriculture for inspection,
63 sampling, analysis, and other expenses necessary for the
64 administration of this article.

§19-16-3b. Records.

1 Each person whose name appears on the label as
2 handling agricultural, vegetable, tree and shrub, or flower
3 seeds subject to this article shall keep, for a period of two
4 years, complete records of each lot of agricultural,
5 vegetable, tree and shrub, or flower seeds handled, and shall
6 keep for one year a file sample of each lot of seed after final
7 disposition of said lot. All such records and samples shall
8 be accessible for inspection by the commissioner during
9 customary business hours.

§19-16-4. Prohibitions.

1 (a) It is unlawful for any person to distribute or transport
2 for sale any agricultural, vegetable, tree and shrub, or flower
3 seeds, or seed potatoes within this state:

4 (1) Which have not been tested to determine
5 germination rates as required under §19-16-2 of this code;

6 (2) Which is not labeled in accordance with the
7 provisions of this article or has false or misleading labeling;

8 (3) Which has been the subject of false or misleading
9 advertisement;

10 (4) Which consists of or contains prohibited noxious
11 weed seeds, subject to tolerances and methods of
12 determination as prescribed by rules promulgated under this
13 article;

14 (5) Which consists of or contains restricted noxious
15 weed seeds per pound or ounce in excess of the number
16 prescribed by rules promulgated under this article, or in
17 excess of the number declared on the label attached to the
18 container of the seed or associated with seed;

19 (6) Which contains more than two and one-half percent
20 by weight of all weed seeds;

21 (7) If any labeling, advertising, or other representation
22 subject to this article represents the seed to be certified seed
23 or any class thereof unless:

24 (A) It has been determined by a seed certifying agency
25 that the seed conformed to standards of purity and identity
26 as to kind, species (and subspecies, if appropriate), or
27 variety, and also that tree seed was found to be of the origin
28 and elevation claimed, in compliance with the rules of that
29 agency pertaining to the seed; and

30 (B) That the seed bears an official label issued for that
31 seed by a seed certifying agency certifying that the seed is
32 of a specified class and a specified kind, species (and
33 subspecies, if appropriate), or variety;

34 (8) Labeled with a variety name but not certified by an
35 official seed certifying agency when it is a variety for which
36 a U. S. certificate of plant variety protection under the Plant
37 Variety Protection Act specifies sale only as a class of
38 certified seed: *Provided*, That seed from a certified lot may
39 be labeled as to variety name when used in a mixture by, or
40 with the approval of, the owner of the variety.

41 (b) It is unlawful for any person within this state:

42 (1) To detach, alter, deface, or destroy any label
43 provided for in this article or the rules promulgated under
44 this article, or to alter or substitute seed in a manner that
45 may defeat the purpose of this article;

46 (2) To use relabeling stickers without having both the
47 calendar month and year the germination test was
48 completed, the sell-by date, and the lot number that matches
49 the existing, original lot number: *Provided*, That relabeling
50 may not occur more than one time;

51 (3) To disseminate any false or misleading
52 advertisement concerning seeds subject to this article in any
53 manner or by any means;

54 (4) To interfere with the commissioner's official duties;

55 (5) To fail to comply with a "stop sale or embargo"
56 order or to move or otherwise handle or dispose of any lot
57 of seed held under a "stop sale or embargo" order or tags
58 attached to the lot of seed, unless released by the
59 commissioner, and for the purpose specified by the
60 commissioner;

61 (6) To use the word “trace” or the phrase “contains <
62 0.01 percent” as a substitute for any statement which is
63 required;

64 (7) To use the word “type” in any labeling in connection
65 with the name of any agricultural seed variety;

66 (8) To distribute or knowingly use any agricultural,
67 vegetable, tree and shrub, or flower seed that is misbranded;

68 (9) To misbrand any agricultural, vegetable, tree and
69 shrub, or flower seed or seed potato. An agricultural,
70 vegetable, flower, or tree and shrub seed, or seed potato is
71 misbranded:

72 (A) If its label or labeling is false or misleading;

73 (B) If it is not labeled as required by this article;

74 (C) If any word, statement or other information required
75 by this article to appear on the label is not prominently and
76 conspicuously placed so that it can be read and understood
77 by the ordinary individual under customary conditions of
78 purchase and use; and

79 (D) If any damage or inferiority has been concealed;

80 (10) To distribute or knowingly use any agricultural,
81 vegetable, or tree and shrub seed or seed potato that has not
82 had an accurate statement of poundage reported to the
83 commissioner in the previous reporting period;

84 (11) To use or imply the name West Virginia
85 Department of Agriculture, or reference any inspection or
86 sample findings made by the West Virginia Department of
87 Agriculture on labels or labeling of agricultural, vegetable,
88 flower, or tree and shrub seed, or seed potatoes; or

89 (12) To falsify any laboratory reports regarding seed
90 distributed within this state.

§19-16-5. Exemptions.

1 (a) The provisions of §19-16-2, §19-16-3, §19-16-4, and
2 §19-16-8 of this code do not apply:

3 (1) To seed or grain not intended for sowing purposes;

4 (2) To seed in storage, or seed being transported or
5 consigned to a cleaning or conditioning establishment for
6 cleaning or conditioning: *Provided*, That the invoice, label
7 or labeling accompanying any shipment of the seed bears
8 the statement “seeds for conditioning”; and that any label or
9 labeling or other representation which may be made with
10 respect to the uncleaned or unconditioned seed is subject to
11 this article; or

12 (3) To any carrier in respect to any seed transported or
13 delivered for transportation in the ordinary course of its
14 business as a carrier: *Provided*, That the carrier is not
15 engaged in producing, conditioning, or marketing seeds
16 subject to the provisions of this article.

17 (b) No person is subject to the penalties of this article
18 for having sold or offered for sale seeds subject to
19 provisions of this article which were incorrectly labeled or
20 represented as to kind, species (and subspecies, if
21 appropriate), variety, type, or origin, elevation, and year of
22 collection (if required), which cannot be identified by
23 examination, unless he or she has failed to obtain an invoice,
24 genuine grower’s or tree seed collector’s declaration, or
25 other labeling information and to take such other
26 precautions as may be reasonable to ensure the identity to
27 be that which is stated. A genuine grower’s declaration of
28 variety shall affirm that the grower holds records of proof
29 concerning parent seed, such as invoice and labels.

30 (c) The provisions of §19-16-2 and §19-16-3 of this
31 code do not apply to tree seed produced by the consumer.

§19-16-5a. Label, signage, and other requirements for noncommercial seed sharing.

1 (a) Each container of agricultural, vegetable, and flower
2 seeds distributed for sowing purposes in a noncommercial
3 setting shall bear thereon or have attached thereto in a
4 conspicuous place a plainly written or printed label or tag in
5 the English language, conveying the following information:

6 (1) The name of the species or commonly accepted
7 name of kind, or kind and variety of each agricultural seed
8 component present. Hybrids shall be labeled as hybrids;

9 (2) A word or statement indicating if the seed has been
10 treated and, if treated, must be labeled in accordance with
11 applicable state and federal laws;

12 (3) Some form of reference identification that provides
13 traceability. Retention of posterity file samples are not
14 required;

15 (4) Name and city or address of the noncommercial seed
16 sharing entity; and

17 (5) The calendar month and year the seed was donated.

18 (b) The seed shall be free of foreign material, other than
19 coatings or treatments, including germination medium,
20 mulch, fertilizer, preplanted containers, mats, tapes, or other
21 planting devices.

22 (c) No distributed container shall hold more than eight
23 ounces of agricultural seed or four ounces of vegetable or
24 flower seed.

25 (d) Germination and purity analysis is not required,
26 however if a germination or purity percentage is noted on
27 the label, it must be noted whether or not the analysis was
28 performed according to the AOSA rules for testing seed.

29 (e) At each location involved with noncommercial seed
30 sharing a legible and visible sign shall state that the seeds

31 being distributed may not meet germination or varietal
32 purity standards prescribed by the state seed law. The sign
33 must also state that patented seed or varieties protected by
34 the Plant Variety Protection Act will not be accepted or
35 distributed without permission of the certificate holder.

**§19-16-6. Duties and authority of Commissioner of
Agriculture.**

1 The commissioner may:

2 (a) Establish by legislative rule germination standards
3 for agricultural, vegetable, tree and shrub, or flower seeds;

4 (b) Enter and inspect, during reasonable hours, any
5 location where agricultural, vegetable, tree and shrub, or
6 flower seeds, or seed potatoes for sowing purposes are
7 manufactured, distributed, transported, or used, and where
8 records relating to the manufacture, distribution, shipment,
9 labeling, or sale of seed are kept. This inspection shall
10 include, but is not limited to, examining, photographing,
11 verifying, copying, and auditing records as is necessary to
12 determine compliance with this article, labels, consumer
13 complaints, and papers relating to the manufacturing,
14 distribution, sampling, testing, and sale of agricultural,
15 vegetable, tree and shrub seeds or seed potatoes;

16 (c) Open, examine, sample, and test agricultural,
17 vegetable, tree and shrub, or flower seed, or seed potatoes,
18 equipment, containers, transport containers, and packages
19 used or intended to be used in the manufacture and
20 distribution of seeds used for sowing purposes;

21 (d) Issue certificates of registration pursuant to this
22 article;

23 (e) Refuse applications for registration, or suspend or
24 revoke registrations as provided in this article;

25 (f) Issue “stop sale or embargo” orders as provided in
26 this article;

- 27 (g) Condemn and confiscate any agricultural, vegetable,
28 tree and shrub, or flower seed, or seed potato that is not
29 brought into compliance with this article;
- 30 (h) Collect fees and penalties and expend moneys under
31 the terms of this article;
- 32 (i) Conduct sampling in accordance with the official
33 methods as established by the Association of American
34 Seed Control Officials, the United States Department of
35 Agriculture, or the Association of Official Seed Analysts;
- 36 (j) Conduct hearings as provided by this article;
- 37 (k) Assess civil penalties and refer violations to a court
38 of competent jurisdiction;
- 39 (l) Obtain court orders directing any person refusing to
40 submit to inspection, sampling and auditing to submit;
- 41 (m) Establish and maintain seed testing facilities;
42 establish reasonable fees for the tests; incur expenses; and
43 conduct tests in accordance with the Association of Official
44 Seed Analysts;
- 45 (n) Be guided by the analytical results of the official
46 sample when determining whether the agricultural,
47 vegetable, tree and shrub, or flower seed is deficient in any
48 component;
- 49 (o) Report the analytical results on all official deficient
50 samples to the registrant, dealer, purchaser if known and or
51 the distributor;
- 52 (p) Upon request made within 30 days from the date the
53 official sample results are reported, furnish a portion of the
54 official sample to the registrant;
- 55 (q) Publish and distribute annually a composite report
56 containing: (1) The sales of agricultural, vegetable, tree and
57 shrub, or flower seed, and seed potatoes during the
58 preceding period; (2) the results of analysis of official

59 samples as compared with the guarantee on the label; (3) the
60 firms responsible for the product; and (4) such other data the
61 commissioner considers necessary: *Provided*, That the
62 information on production and use provided does not
63 disclose the operations of any person;

64 (r) Cooperate with and enter into agreements with
65 governmental agencies of this state and other states,
66 agencies of the federal government and foreign
67 governments, and private associations in order to carry out
68 the purpose and provisions of this article;

69 (s) Establish fees by legislative rule;

70 (t) Propose rules for promulgation, in accordance with
71 §29A-3-1 *et seq.* of this code;

72 (u) Promulgate emergency rules within 90 days of the
73 passage of this bill into law; and

74 (v) Inspect and approve seed conditioning facilities in
75 the state, issue permits, and establish fees.

§19-16-9. Deficiencies.

1 (a) If the analysis of a sample shows a deviation from
2 the permitted analytical variation, the registrant or other
3 responsible person shall be penalized according to
4 legislative rule. Penalties for multiple deficiencies within a
5 sample shall be incremental: *Provided*, That in no case shall
6 the penalty exceed the retail value of the product.

7 (b) The penalty shall be assessed and collected from the
8 person responsible for the labeling requirements of the seed.
9 If seed is sampled in the hands of a consumer who
10 purchased to plant and not to sell, the penalty shall be
11 assessed to the seedsman or distributor, whichever is
12 applicable. In no case shall the penalty assessed exceed the
13 fair market value of the seed. The total amount of seed in
14 each lot at the time of sampling shall be used to determine
15 the penalty.

16 (c) All penalties assessed under this section shall be paid
17 to the consumer of the lot of regulated product represented
18 by the sample analyzed. If the consumer cannot be found or
19 is unknown, the amount of the penalty shall be paid to the
20 commissioner and deposited in the Department of
21 Agriculture's fees account.

●

CHAPTER 4

**(Com. Sub. for H. B. 4693 - By Delegates Pack, Steele,
Cooper, Paynter, Summers and J. Jeffries)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §19-1-12 of the Code of West Virginia, 1931, as amended, relating to renaming the Veteran and Warriors to Agriculture Program to the Veterans and Heroes to Agriculture Program; renaming Veterans and Warriors to Agriculture fund; eliminating outdated language; and authorizing the Commissioner of Agriculture to expand the scope of the program to additional classes of persons.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-12. Veterans and Heroes to Agriculture Program and fund.

1 (a) *Legislative findings.* — West Virginians have a
2 longstanding tradition of service in the armed forces of the
3 United States. Many veterans suffer from physical and
4 emotional afflictions and are often unable to find gainful
5 employment upon returning from combat. Exploring
6 opportunities to engage West Virginia's veterans in
7 agriculture is beneficial to the health and welfare of

8 veterans, as well as to the future of West Virginia's
9 agricultural economy.

10 (b) *Veterans and Heroes to Agriculture Program.* —
11 The Department of Agriculture shall develop a Veterans and
12 Heroes to Agriculture Program to integrate veterans into the
13 field of agriculture, and support veterans currently working
14 in agriculture. These programs may include, but are not
15 limited to, using post-mine land for agricultural
16 development, promoting high tunnel crops and production,
17 expanding the apiary industry, developing cottage
18 industries, exploring niche crops, raising more livestock,
19 increasing the aquaculture industry and helping veterans
20 promote their agricultural products through farmers markets
21 and cooperatives. The department may call on the
22 Department of Veterans' Assistance and the state's Adjutant
23 General for assistance to recruit and train eligible veterans,
24 and develop and support the program.

25 (c) *Veterans and Heroes to Agriculture Fund.* —The
26 Veterans and Warriors to Agriculture Fund is continued, but
27 is renamed the Veterans and Heroes to Agriculture Fund.
28 The fund shall consist of income from leasing the
29 department's property for the program, surplus funds which
30 may be transferred from the fund created by §19-12A-6a,
31 gifts, grants and donations, and legislative appropriations
32 which may be made to support the program. Expenditures
33 from the fund shall be used exclusively, in accordance with
34 appropriations by the Legislature, to pay costs, fees and
35 expenses necessary to administer the Veterans and Heroes
36 to Agriculture Program.

37 (d) Notwithstanding any provision in this code to the
38 contrary, should the Department of Agriculture deem it
39 necessary to provide land for activities within this program,
40 it is exempt from the purchasing requirements as they relate
41 to the competitive leasing of state property.

42 (e) The commissioner may propose emergency or
43 legislative rules for approval in accordance with the

44 provisions of §29A-3-1 *et seq.* to effectuate the provisions
45 of this section.

46 (f) *Expansion of Veterans and Heroes to Agriculture*
47 *Program.* — The Legislature finds that West Virginians also
48 proudly answers the call to serve domestically in emergency
49 response and law enforcement roles, including as police
50 officers, sheriffs, firefighters, emergency medical
51 technicians, and first responders. The Legislature further
52 finds that farming, including growing corn, is a process that
53 involves more than digging a hole, putting a seed in with
54 dirt on top, and adding water. To that end, the commissioner
55 is hereby authorized to expand the scope of the Veterans and
56 Heroes to Agriculture Program to provide agriculture
57 assistance and training to additional West Virginia heroes
58 that will allow these brave individuals to continue to answer
59 the call of duty by producing and providing fresh, healthy,
60 and local food to their fellow West Virginians.



CHAPTER 5

**(Com. Sub. for H. B. 3098 - By Delegates Williams,
Lavender-Bowe, C. Thompson, Estep-Burton,
Cooper, Campbell, Fluharty, Pushkin and Pyles)**

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §11-16-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-4-2 of said code, all relating to permitting the issuance of multiple licenses for manufacturing alcoholic liquors and nonintoxicating beer; establishing requirements for licenses; and requiring full payment of all fees.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.**ARTICLE 16. NONINTOXICATING BEER.****§11-16-6. License in one capacity only; no connection between different licensees; when brewer may act as distributor; credit and rebates proscribed; brewer, resident brewer, and brewpub requirements.**

1 (a) A person shall not be licensed in more than one
2 capacity under the terms of this article, and there shall be no
3 connection whatsoever between any retailer, distributor,
4 resident brewer, or brewer, and a person shall be interested,
5 directly or indirectly, through the ownership of corporate
6 stock, membership in a partnership, or in any other way in
7 the business of a retailer, if the person is at the same time
8 interested in the business of a brewer, resident brewer or
9 distributor. A resident brewer may act as distributor in a
10 limited capacity for his or her own product from the resident
11 brewery or place of manufacture or bottling, but a resident
12 brewer, is not permitted to act as a distributor as defined in
13 §11-16-3 of this code: *Provided*, That nothing in this article
14 may prevent a resident brewer from using the services of
15 licensed distributors as specified in this article. A resident
16 brewer or distributor may sell to a patron for personal use
17 and not for resale, quantities of draught beer in original
18 containers that are no larger in size than one-half barrel for
19 off-premises consumption. A resident brewer who also has
20 a brewpub license may sell nonintoxicating beer or
21 nonintoxicating craft beer produced by the resident brewer
22 in cans, bottles, or sealed growlers, pursuant to §11-16-6b
23 of this code, for personal consumption off of the brewpub's
24 licensed premises and not for resale.

25 (b) It is unlawful for any brewer, resident brewer,
26 manufacturer, or distributor to assist any retailer or for any
27 retailer to accept assistance from any brewer, manufacturer,
28 or distributor, accept any gifts, loans, forbearance of
29 money or property of any kind, nature, or description, or
30 other thing of value, or give any rebates or discounts of any

31 kind whatsoever, except as permitted by rule, or order
32 promulgated by the commissioner in accordance with this
33 article.

34 (c) Notwithstanding subsections (a) and (b) of this
35 section, a brewpub may offer for retail sale nonintoxicating
36 beer or nonintoxicating craft beer so long as the sale of the
37 nonintoxicating beer or nonintoxicating craft beer is limited
38 to the brewpub's licensed premises, except as provided in
39 §11-16-6b of this code.

40 (d) A brewer or resident brewer licensed under this
41 section may also be licensed under §60-4-1 *et seq.* of this
42 code: *Provided*, That the holder of the license meets all the
43 requirements for the additional licenses required by the
44 commissioner and pays all fees related to the license:
45 *Provided, however*, That the licensee maintains all the rights
46 and privileges associated with the license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 4. LICENSES.

§60-4-2. Licenses for manufacture.

1 (a) The commission may grant licenses for the
2 manufacture of alcoholic liquors. Separate licenses shall be
3 issued to the following classes of manufacturing
4 establishments:

5 (1) Distilleries in which only alcoholic liquors other
6 than wine or beer is manufactured;

7 (2) Wineries in which only wines are manufactured;

8 (3) Breweries in which beer is manufactured;

9 (4) Bottling plants in which beer only is bottled;

10 (5) Industrial plants in which alcohol is distilled,
11 manufactured or otherwise produced for scientific,
12 chemical, mechanical or industrial purposes;

13 (6) Farm wineries in which only wines are
14 manufactured; and

15 (7) Mini-distilleries in which only alcoholic liquors
16 other than wine, beer or nonintoxicating beer are
17 manufactured.

18 (b) The commission may grant multiple licenses for the
19 manufacture of alcoholic liquors or nonintoxicating beer to
20 the same person or entity: *Provided*, That such licensure
21 does not violate other provisions of this code, the licensee
22 meets all requirements for the license established by the
23 commissioner, and licensee submits the full payment of all
24 fees required for licensure: *Provided, however*, That the
25 licensee maintains all the rights and privileges associated
26 with each license not violative of state or federal law.



CHAPTER 6

**(Com. Sub. for H. B. 4388 - By Delegates Hamrick, J.
Jeffries and C. Martin)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §11-16-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-16-18 and §11-16-22 of said code; to amend and reenact §60-2-15 of said code; to amend and reenact §60-8-23 of said code, all relating to removing restrictions on advertising, adding legislative findings; permitting equipment, fixtures, signs, services, and supplies by licensees; establishing furnishing,

selling, installing, or maintaining draught line equipment, supplies, and cleaning services to a licensed retailer; modifying restriction on brewers or distributors from sponsoring athletic events where majority of the athletes are minors; providing for cleaning of draught lines; providing for record keeping for draught line cleaning; modifying restrictions on equipment, fixtures, signs, and supplies; prohibiting for restricting false, misleading, or deceptive advertisement; prohibiting commissioner from restricting advertising media; and clarifying that exterior signs are governed by the Division of Highways.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-2. Declaration of legislative findings, policy and intent; construction.

1 It is hereby found by the Legislature and declared to be
2 the policy of this state that it is in the public interest to
3 regulate and control the manufacture, sale, distribution,
4 transportation, storage, and consumption of the beverages
5 regulated by this article within this state and that, therefore,
6 the provisions of this article are a necessary, proper, and
7 valid exercise of the police powers of this state and are
8 intended for the protection of the public safety, welfare,
9 health, peace and morals and are further intended to
10 eliminate, or to minimize to the extent practicable, the evils
11 attendant to the unregulated, unlicensed, and unlawful
12 manufacture, sale, distribution, transportation, storage, and
13 consumption of such beverages and are further intended to
14 promote temperance in the use and consumption thereof.
15 The Legislature further finds and declares that advertising
16 is essential to the growth of business and job promotion
17 within the state. In order to further these ends, the
18 provisions of this article and of the rules promulgated
19 pursuant thereto, shall be construed so that the
20 accomplishment of these stated purposes may be
21 effectuated.

§11-16-18. Unlawful acts of licensees; criminal penalties.

1 (a) It is 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 to sell
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 a right of action
27 shall not exist to collect any claims for credit extended
28 contrary to the provisions of this subdivision. Nothing
29 herein contained in this section prohibits a licensee from
30 crediting to a purchaser the actual price charged for
31 packages or containers returned by the original purchaser as
32 a credit on any sale, or from refunding to any purchaser the
33 amount paid or deposited for the containers when title is
34 retained by the vendor: *Provided*, That a distributor may

35 accept an electronic transfer of funds if the transfer of funds
36 is 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 to give, furnish, rent,
42 or sell any equipment, fixtures, signs, supplies, or services
43 directly or indirectly or through a subsidiary or affiliate to
44 any licensee engaged in selling products of the brewing
45 industry at retail or to offer any prize, premium, gift, or other
46 similar inducement, except advertising matter, including
47 indoor electronic or mechanical signs, of nominal value up
48 to \$25.00 per stock keeping unit, to either trade or consumer
49 buyers: *Provided*, That a distributor may offer, for sale or
50 rent, tanks of carbonic gas: *Provided however*, That, in the
51 interest of public health and safety, a distributor may,
52 independently or through a subsidiary or affiliate, furnish,
53 sell, install, or maintain draught line equipment, supplies,
54 and cleaning services to a licensed retailer so long as the
55 furnishing or sale of draught line services may be negotiated
56 at no less than direct cost: *Provided further*, That a
57 distributor may furnish, rent, or sell equipment, fixtures,
58 signs, services, or supplies directly or indirectly or through
59 a subsidiary or affiliate to any licensee engaged in selling
60 products of the brewing industry at retail under the
61 conditions and within the limitations as prescribed herein.
62 Nothing contained in this section prohibits a brewer from
63 sponsoring any professional or amateur athletic event or
64 from providing prizes or awards for participants and
65 winners in any events.

66 (6) For any brewer or distributor to sponsor any
67 professional or amateur athletic event or provide prizes or
68 awards for participants and winners when a majority of the
69 athletes participating in the event are minors, unless
70 specifically authorized by the commissioner;

71 (7) For any retail licensee to sell or dispense
72 nonintoxicating beer through draught lines where the
73 draught lines have not been cleaned at least every two weeks
74 in accordance with rules promulgated by the commissioner,
75 and where written records of all cleanings are not
76 maintained and available for inspection;

77 (8) For any licensee to permit in his or her premises any
78 lewd, immoral, or improper entertainment, conduct, or
79 practice;

80 (9) For any licensee except the holder of a license to
81 operate a private club issued under the provisions of §60-7-
82 1 *et seq.* of this code or a holder of a license or a private
83 wine restaurant issued under the provisions of §60-8-1 *et*
84 *seq.* of this code to possess a federal license, tax receipt, or
85 other permit entitling, authorizing, or allowing the licensee
86 to sell liquor or alcoholic drinks other than nonintoxicating
87 beer;

88 (10) For any licensee to obstruct the view of the interior
89 of his or her premises by enclosure, lattice, drapes, or any
90 means which would prevent plain view of the patrons
91 occupying the premises. The interior of all licensed
92 premises shall be adequately lighted at all times: *Provided,*
93 That provisions of this subdivision do not apply to the
94 premises of a Class B retailer, the premises of a private club
95 licensed under the provisions of §60-7-1 *et seq.* of this code,
96 or the premises of a private wine restaurant licensed under
97 the provisions of §60-8-1 *et seq.* of this code;

98 (11) For any licensee to manufacture, import, sell, trade,
99 barter, possess, or acquiesce in the sale, possession, or
100 consumption of any alcoholic liquors on the premises
101 covered by a license or on premises directly or indirectly
102 used in connection with it: *Provided,* That the prohibition
103 contained in this subdivision with respect to the selling or
104 possessing or to the acquiescence in the sale, possession, or
105 consumption of alcoholic liquors is not applicable with
106 respect to the holder of a license to operate a private club

107 issued under the provisions of §60-7-1 *et seq.* of this code
108 nor shall the prohibition be applicable to a private wine
109 restaurant licensed under the provisions of §60-8-1 *et seq.*
110 of this code insofar as the private wine restaurant is
111 authorized to serve wine;

112 (12) For any retail licensee to sell or dispense
113 nonintoxicating beer, as defined in this article, purchased,
114 or acquired from any source other than a distributor, brewer,
115 or manufacturer licensed under the laws of this state;

116 (13) For any licensee to permit loud, boisterous, or
117 disorderly conduct of any kind upon his or her premises or
118 to permit the use of loud musical instruments if either or any
119 of the same may disturb the peace and quietude of the
120 community where the business is located: *Provided*, That a
121 licensee may have speaker systems for outside broadcasting
122 as long as the noise levels do not create a public nuisance or
123 violate local noise ordinances;

124 (14) For any person whose license has been revoked, as
125 provided in this article, to obtain employment with any
126 retailer within the period of one year from the date of the
127 revocation, or for any retailer to knowingly employ that
128 person within the specified time;

129 (15) For any distributor to sell, possess for sale,
130 transport, or distribute nonintoxicating beer except in the
131 original container;

132 (16) For any licensee to knowingly permit any act to be
133 done upon the licensed premises, the commission of which
134 constitutes a crime under the laws of this state;

135 (17) For any Class B retailer to permit the consumption
136 of nonintoxicating beer upon his or her licensed premises;

137 (18) For any Class A licensee, his, her, its, or their
138 servants, agents, or employees, or for any licensee by or
139 through any servants, agents, or employees, to allow, suffer,
140 or permit any person less than 18 years of age to loiter in or

141 upon any licensed premises; except, however, that the
142 provisions of this subdivision do not apply where a person
143 under the age of 18 years is in or upon the premises in the
144 immediate company of his or her parent or parents, or where
145 and while a person under the age of 18 years is in or upon
146 the premises for the purpose of and actually making a lawful
147 purchase of any items or commodities sold, or for the
148 purchase of and actually receiving any lawful service
149 rendered in the licensed premises, including the
150 consumption of any item of food, drink, or soft drink
151 lawfully prepared and served or sold for consumption on the
152 premises;

153 (19) For any distributor to sell, offer for sale, distribute,
154 or deliver any nonintoxicating beer outside the territory
155 assigned to any distributor by the brewer or manufacturer of
156 nonintoxicating beer or to sell, offer for sale, distribute, or
157 deliver nonintoxicating beer to any retailer whose principal
158 place of business or licensed premises is within the assigned
159 territory of another distributor of the nonintoxicating beer:
160 *Provided*, That nothing in this section is considered to
161 prohibit sales of convenience between distributors licensed
162 in this state where one distributor sells, transfers, or delivers
163 to another distributor a particular brand or brands for sale at
164 wholesale; and

165 (20) For any licensee or any agent, servant, or employee
166 of any licensee to knowingly violate any rule lawfully
167 promulgated by the commissioner in accordance with the
168 provisions of chapter 29A of this code.

169 (b) Any person who violates any provision of this
170 article, including, but not limited to, any provision of this
171 section, or any rule, or order lawfully promulgated by the
172 commissioner, or who makes any false statement
173 concerning any material fact in submitting an application
174 for a license or for a renewal of a license or in any hearing
175 concerning the revocation of a license, or who commits any
176 of the acts in this section declared to be unlawful is guilty
177 of a misdemeanor and, upon conviction thereof, shall be

178 punished for each offense by a fine of not less than \$25, nor
179 more than \$500, or confined in the county or regional jail
180 for not less than 30 days nor more than six months, or by
181 both fine and confinement. Magistrates have concurrent
182 jurisdiction with the circuit court and any other courts
183 having criminal jurisdiction in their county for the trial of
184 all misdemeanors arising under this article.

185 (c) (1) A Class B licensee that:

186 (A) Has installed a transaction scan device on its
187 licensed premises; and

188 (B) Can demonstrate that it requires each employee,
189 servant, or agent to verify the age of any individual to whom
190 nonintoxicating beer is sold, furnished, or given away by the
191 use of the transaction device may not be subject to: (i) Any
192 criminal penalties whatsoever, including those set forth in
193 subsection (b) of this section; (ii) any administrative
194 penalties from the commissioner; or (iii) any civil liability
195 whatsoever for the improper sale, furnishing, or giving
196 away of nonintoxicating beer to an individual who is less
197 than 21 years of age by one of his or her employees,
198 servants, or agents. Any agent, servant, or employee who
199 has improperly sold, furnished, or given away
200 nonintoxicating beer to an individual less than 21 years of
201 age is subject to the criminal penalties of subsection (b) of
202 this section. Any agent, servant, or employee who has
203 improperly sold, furnished, or given away nonintoxicating
204 beer to an individual less than 21 years of age is subject to
205 termination from employment, and the employer shall have
206 no civil liability for the termination.

207 (2) For purposes of this section, a Class B licensee can
208 demonstrate that it requires each employee, servant, or
209 agent to verify the age of any individual to whom
210 nonintoxicating beer is sold by providing evidence: (A)
211 That it has developed a written policy which requires each
212 employee, servant, or agent to verify the age of each
213 individual to whom nonintoxicating beer will be sold,

214 furnished, or given away; (B) that it has communicated this
215 policy to each employee, servant, or agent; and (C) that it
216 monitors the actions of its employees, servants, or agents
217 regarding the sale, furnishing, or giving away of
218 nonintoxicating beer and that it has taken corrective action
219 for any discovered noncompliance with this policy.

220 (3) “Transaction scan” means the process by which a
221 person checks, by means of a transaction scan device, the
222 age and identity of the cardholder, and “transaction scan
223 device” means any commercial device or combination of
224 devices used at a point of sale that is capable of deciphering
225 in an electronically readable format the information
226 enclosed on the magnetic strip or bar code of a driver’s
227 license or other governmental identity card.

228 (d) Nothing in this article nor any rule of the
229 commissioner shall prevent or be considered to prohibit any
230 licensee from employing any person who is at least 18 years
231 of age to serve in the licensee’s lawful employ, including
232 the sale or delivery of nonintoxicating beer as defined in this
233 article. With the prior approval of the commissioner, a
234 licensee whose principal business is the sale of food or
235 consumer goods, or the providing of recreational activities,
236 including, but not limited to, nationally franchised fast food
237 outlets, family oriented restaurants, bowling alleys, drug
238 stores, discount stores, grocery stores, and convenience
239 stores, may employ persons who are less than 18 years of
240 age but at least 16 years of age: *Provided*, That the person’s
241 duties may not include the sale or delivery of
242 nonintoxicating beer or alcoholic liquors: *Provided*,
243 *however*, That the authorization to employ persons under
244 the age of 18 years shall be clearly indicated on the
245 licensee’s license.

§11-16-22. Powers of the commissioner; rules, or orders.

1 (a) In addition to all other powers conferred upon the
2 commissioner and in order to effectively carry out the
3 provisions, intent and purposes of this article, the

4 commissioner shall have the power and authority to adopt,
5 promulgate, repeal, rescind and amend, in accordance with
6 the provisions of chapter 29A of this code, rules, standards,
7 requirements and orders, including, but not limited to, the
8 following:

9 (1) Prescribing records and accounts, pertaining to the
10 manufacture, distribution and sales of nonintoxicating beer,
11 to be kept by the licensee and the form thereof;

12 (2) Requiring the reporting of such information by
13 licensees as may be necessary for the effective
14 administration of this article;

15 (3) Regulating the branding and labeling of packages,
16 bottles or other containers in which nonintoxicating beer
17 may be sold; and, in his or her discretion, requiring the
18 collection of all taxes provided for under §11-16-13 of this
19 code;

20 (4) Prohibiting shipment into the state and sale within
21 the state of low grade or under-standard nonintoxicating
22 beer;

23 (5) Referring to licenses and the issuance and revocation
24 of the same;

25 (6) Establishing the suitability of businesses and
26 locations for licensure, and requiring licensees to keep their
27 places of business where nonintoxicating beer is sold at
28 retail, and the equipment used in connection therewith,
29 clean and in a sanitary condition;

30 (7) Restricting the content of advertising so as to
31 prohibit false, misleading, or deceptive claims, depictions
32 or descriptions of nonintoxicating beer being consumed
33 irresponsibly or intemperately, or advertising presentations
34 designed to appeal to persons below the legal drinking age:
35 *Provided*, That the commissioner may not promulgate any
36 rule which prohibits the advertising of a particular brand or

37 brands of nonintoxicating beer and the price thereof, which
38 restricts or prohibits:

39 (A) The advertising medium or equipment used; or

40 (B) Signage except for exterior signage governed by
41 §17-22-1 *et seq.* of this code.

42 (8) Wholesale prices or price changes, including, but not
43 limited to, the regulation and extent, if any, of any
44 temporary price markoff or markdown, temporary
45 wholesale price change downward or price discount,
46 sometimes referred to as “post downs” or as “posting down”
47 or any other price change, the express purpose of which is
48 to put into effect a temporary price reduction, as well as the
49 duration of time during which such temporary price
50 reduction is to remain in effect;

51 (9) Restrictions upon West Virginia distributors or other
52 licensees with respect to the purchase of any
53 nonintoxicating beer or malt coolers from manufacturers or
54 brewers whether within or without the state who have failed
55 to qualify for manufacture or shipment of any such product
56 in the state; and

57 (10) Regulating, restricting or prohibiting a distributor
58 from selling, offering for sale, distributing or delivering
59 nonintoxicating beer to any retailer whose principal place of
60 business, residence or licensed premises is located without
61 or beyond the assigned territory of such distributor of such
62 nonintoxicating beer.

63 (b) Any rule or order heretofore adopted by the
64 commissioner and currently in effect upon the convening of
65 the regular session of the Legislature held in the year one
66 thousand nine hundred eighty-six shall remain in effect until
67 changed by the commissioner in the manner prescribed by
68 article three, chapter twenty-nine-a of this code, irrespective
69 of whether specific authority for such currently effective
70 rule existed prior to such date.

**CHAPTER 60. STATE CONTROL OF ALCOHOLIC
LIQUORS.**

**ARTICLE 2. ALCOHOL BEVERAGE CONTROL
COMMISSIONER.**

§60-2-15. Regulation of advertising.

1 The commission shall prescribe rules governing the
2 advertising of alcoholic liquors in this state. The rules may
3 only prohibit advertising that encourages intemperance,
4 induces minors to purchase, or tends to deceive or
5 misrepresent.

ARTICLE 8. SALE OF WINES.

§60-8-23. Duties and powers of commissioner; rules.

1 (a) The commissioner is authorized:

2 (1) To enforce the provisions of this article.

3 (2) To enter the premises of any licensee at reasonable
4 times for the purpose of inspecting the premises and
5 determining the compliance of the licensee with the
6 provisions of this article and any rules promulgated by the
7 commissioner.

8 (3) In addition to rules relating to the tax imposed by
9 §60-8-4 of this code or otherwise authorized by this article,
10 to promulgate reasonable rules as he or she deems necessary
11 for the execution and enforcement of the provisions of this
12 article, which may include, but shall not be limited to:

13 (A) The transport, use, handling, service and sale of
14 wine;

15 (B) Establishing standards of identity, quality and purity
16 to protect the public against wine containing deleterious,
17 harmful or impure substances or elements and against
18 spurious or imitation wines and wines unfit for human
19 consumption; and

20 (C) Restricting the content of wine advertising so as to
21 prohibit false or misleading claims, or depictions or
22 descriptions of wine being consumed irresponsibly or
23 immoderately, or advertising presentations designed to
24 appeal to persons below the legal drinking age: *Provided*,
25 That the commissioner shall not promulgate any rule which
26 prohibits the advertising of a particular brand or brands of
27 wine and the price thereof, or which prohibits or restricts the
28 advertising medium used: *Provided, however*, That price
29 shall not be advertised in a medium of electronic
30 communication subject to the jurisdiction of the Federal
31 Communications Commission.

32 (4) To issue subpoenas and subpoenas duces tecum for
33 the purpose of conducting hearings under the provisions of
34 §60-8-12 of this code, which subpoenas and subpoenas
35 duces tecum shall be issued in the time, for the fees, and
36 shall be enforced in the manner specified in §29A-5-1 of
37 this code with like effect as if said section was set forth in
38 extenso in this subdivision.

39 (b) The authority granted in this subsection and
40 subsections (a) and (d) of this section may also be exercised
41 by the duly authorized or designated agents of the
42 commissioner.

43 (c) Except as may be in this article to the contrary, the
44 commissioner shall not have authority by rule or otherwise
45 to regulate markups, prices, discounts, allowances or other
46 terms of sale at which wine may be purchased or sold by
47 wine distributors or licensees authorized to sell wine at retail
48 but nothing herein shall be deemed to authorize or permit
49 any discriminatory practice prohibited by §60-8-31(a), of
50 this code or any other discriminatory practice.

51 (d) All rules promulgated by the commissioner pursuant
52 to this article shall be so promulgated in accordance with the
53 provisions of chapter 29A of this code. The rules
54 promulgated pursuant to the prior enactment of this article
55 and not disapproved by the Legislature shall remain in full

56 force and effect to the extent that such rules are not
57 abrogated and made null and void by the reenactment of the
58 sections of this article during the regular session of the
59 Legislature for 1986. Any rule which is inconsistent or
60 contrary in any way to any provision of this article now or
61 hereafter enacted are null and void.



CHAPTER 7

**(H. B. 4524 - By Delegates Westfall, Hartman,
Sponaugle, Barrett, Phillips, Storch, Fluharty and
Steele)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §60-5-1, §60-5-2, §60-5-3, §60-5-4, §60-5-5, §60-5-6, §60-5-7, and §60-5-8, of the Code of West Virginia, 1931, as amended, and to further amend said code by adding thereto a new section, designated §60-5-9, all relating to the off-premises sale of alcoholic liquors generally; allowing the off-premises sale of alcoholic liquors in every county and municipality in the state; creating procedures for counties and municipalities which prohibited off-premises sale of alcoholic liquors prior to January 1, 2020 to hold a local option election to retain the prohibition; authorizing county commissions and governing bodies of municipalities to retain prohibition by a vote to do so without an election; requiring a vote to continue the prohibition or to order an election to occur on or before July 1, 2020; allowing counties and municipalities which prohibit the off premises sale of alcoholic liquors to hold a local option election to reconsider the action; allowing county commissions and governing bodies of municipalities to vote to maintain the prohibition as an alternative to holding a local option election, requiring

notice to commissioner of election results of the vote by July 1, 2020; and updating code language.

Be it enacted by the Legislature of West Virginia:

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 5. LOCAL OPTION ELECTIONS.

§60-5-1. Election in county, magisterial district or municipality.

1 A county or any municipality may in an election held
2 especially for the purpose, determine whether the sale of
3 alcoholic liquors for beverage purposes shall be permitted
4 within that county or municipality.

5 A local option election shall not be held within 60 days
6 of a general or municipal election.

§60-5-2. Election called on petition of five percent of qualified voters.

1 The county commission, or the governing body of the
2 municipality, shall call a special local option election upon
3 the filing of a petition signed by not less than five percent
4 of the qualified voters within the county or municipality.

§60-5-3. Form of petition.

1 The petition shall be in the following form:

2 Petition for Local Option Election

3 We, the undersigned legally qualified voters, resident
4 within the county (municipality) of _____, do
5 hereby petition that a special election be held within the
6 county (city, town) of _____ on the
7 _____ day of _____, 20 ____, upon
8 the following question:

9 Shall the sale of alcoholic beverages under the West
10 Virginia Alcohol Beverage Control Commissioner be
11 (permitted) (prohibited) in _____?

12 Name Address Date

13 (Post office or street and number)

§60-5-4. Notice of election; when held; election officers.

1 The county commission or governing body of the
2 municipality shall give notice of the special local option
3 election by publication thereof as a Class II-0 legal
4 advertisement in compliance with the provisions of §59-3-1
5 *et seq.* of this code, and the publication area for such
6 publication shall be the area in which the election is to be
7 held. Such notice shall be so published within 14
8 consecutive days next preceding the election. The election
9 shall be held not more than 90 nor less than 60 days from
10 the filing of the petition. The regular election officers of the
11 county or municipal corporation shall open the polls and
12 conduct the election in the same manner provided for
13 general elections.

§60-5-5. Form of ballot.

1 On the ballot shall be printed the following:

2 Shall the sale of alcoholic liquors for off-premises
3 consumption under the West Virginia Alcohol Beverage
4 Control Commissioner be permitted in _____?

5 Yes.

6 No.

7 (Place a cross mark in the square opposite your choice.)

§60-5-6. How election conducted and results certified.

1 The ballots shall be counted, returns made and
2 canvassed as in general elections, and the results certified

3 by the commissioners of election to the county commission
4 of the county, or the governing body of the municipality.
5 The county commission or governing body shall without
6 delay certify the result of the election to the commissioner.

§60-5-7. Discontinuance of state stores and agencies in local option territory.

1 Within 30 days after a local option election in which a
2 majority has voted No, the commissioner shall order the
3 closing of all stores selling alcoholic liquor for off-premises
4 consumption within the county, or municipality.

§60-5-8. When another election may be held.

1 When a local option election has been held in a county,
2 or municipality, another such election may not be held for a
3 period of two years.

§60-5-9. Allowing state-wide off premises of alcoholic liquors; exceptions; procedures.

1 (a) Effective July 1, 2020, the sale of alcoholic liquors
2 for off-premises consumption is authorized in all counties
3 and municipalities of the state.

4 (b) Notwithstanding the provisions of subsection (a) of
5 this section, a county or municipality which prior to January
6 1, 2020, prohibited the sale of alcoholic liquors for off-
7 premises consumption may, pursuant to this subsection,
8 hold a local option election to maintain the prohibition
9 against the sale of alcoholic liquors for off-premises
10 consumption without the petition required by the provisions
11 of §60-5-2 of this code, if it enters an order to hold a local
12 option election on the issue on or before July 1, 2020, in
13 which event the election shall be held concurrent with the
14 2020 general election. The county commission or
15 municipality may require the state to reimburse it for the
16 actual cost of conducting the local option election
17 authorized by this subsection: *Provided*, That, as an
18 alternative to the local option election authorized by this

19 subsection, the county commission or governing body of a
20 municipality which prior to January 1, 2020, had prohibited
21 the sale of alcoholic liquors for off-premises consumption
22 may vote to maintain the prohibition and provide
23 certification of the result of the vote to the commissioner on
24 or before July 1, 2020.

25 (c) A county or municipality which prohibits the sale of
26 alcoholic liquors for off-premises consumption pursuant to
27 subsection (b) of this section may later reconsider its action
28 using the procedures set forth in §60-5-1 *et seq.* of this code.



CHAPTER 8

**(Com. Sub. for H. B. 4560 - By Delegates Hansen,
Higginbotham, Skaff, Steele, Fleischauer, Walker,
Pyles, Williams, Barrett, Canestraro and Pushkin)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §60-8-6b of the Code of West Virginia, 1931, as amended, relating to permitting licensed wine specialty shops to sell wine with a gift basket by telephonic, electronic, mobile, or web-based wine ordering; and establishing requirements for lawful delivery.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. SALES OF WINES.

§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 age and 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 may be ordered or purchased by telephonic, electronic,
41 mobile, or web-based wine ordering when the purchaser is
42 verified to be 21 years of age or older, and must be delivered
43 by an officer or employee of the wine specialty shop
44 licensee who is 21 years of age or older. If the person
45 receiving the delivery is not the purchaser, the licensee must
46 verify that the person receiving the wine is 21 years of age
47 or older and not noticeably intoxicated prior to completing
48 the delivery. Nonlicensed third parties may not deliver wine
49 with a gift basket on behalf of a licensed wine specialty
50 shop.

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

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

CHAPTER 9

**(H. B. 4697 - By Delegates Pushkin, Foster, Skaff,
Howell, Pyles and Westfall)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §60-1-5b of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §60-1-5d; to amend and reenact §60-4-3, §60-4-3a, and §60-4-15 of said code; and to

amend and reenact §60-6-1 and §60-6-2 of said code, all relating to distilleries generally and micro-distilleries particularly; defining micro-distillery; establishing a production limit for a micro-distillery; establishing limits on sales of alcoholic liquors manufactured by a micro-distillery; establishing a license fee for micro-distilleries; subjecting micro-distilleries to the same requirements and restrictions applicable to distilleries and mini-distilleries; and correcting an incorrect gallonage limit for mini-distilleries.

Be it enacted by the Legislature of West Virginia:

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5b. Mini-distilleries defined.

1 For the purpose of this chapter: “Mini-distillery” means an
 2 establishment where in any year no more than 50,000 gallons
 3 of alcoholic liquor is manufactured with no less than 25% of
 4 raw agricultural products being produced by the owner of the
 5 mini-distillery on the premises of that establishment, and no
 6 more than 25% of raw agricultural products originating from
 7 any source outside this state: *Provided*, That the maximum
 8 allotted production amounts shall not exceed the annual
 9 incremental production limitations provided for pursuant to
 10 section three-a of this article.

§60-1-5d Micro-distilleries defined.

1 For the purposes of Chapter 60 of this code “Micro-
 2 distillery” means an establishment where in any one year no
 3 more than 10,000 gallons of alcoholic liquor is
 4 manufactured and no more than 25% of raw agricultural
 5 products used in production may originate from outside this
 6 state is used in distillation.

§60-4-3. To whom licensed manufacturer may sell.

1 A person who is licensed to manufacture alcoholic
 2 liquors in this state may sell liquors in this state only to the

3 West Virginia Alcohol Beverage Control Commissioner
4 and to wholesalers and retailers licensed as provided in this
5 chapter: *Provided*, That a holder of a winery or a farm
6 winery license may sell wines and a holder of a distillery,
7 mini-distillery, or micro-distillery license may sell alcoholic
8 liquors manufactured by it in this state in accordance with
9 the provisions of §60-6-2 of this code. Hours of retail sale
10 by a winery or a farm winery or distillery, mini-distillery or
11 micro-distillery are subject to regulation by the
12 commissioner. A winery, distillery, farm winery, or mini-
13 distillery may sell and ship alcoholic liquors outside of the
14 state subject to provisions of this chapter.

§60-4-3a. Distillery and mini-distillery license to manufacture and sell.

1 (a) *Sales of liquor.* — An operator of a distillery, mini-
2 distillery, or micro-distillery may offer liquor for retail sale
3 to customers from the distillery, mini-distillery, or micro-
4 distillery for consumption off premises only. Except for free
5 complimentary samples offered pursuant to §60-6-1 of this
6 code, customers are prohibited from consuming any liquor
7 on the premises of the distillery, mini-distillery, or micro-
8 distillery: *Provided*, That a licensed distillery, mini-
9 distillery, or micro-distillery may offer complimentary
10 samples per this subsection of alcoholic liquors
11 manufactured by that licensed distillery, mini-distillery, or
12 micro-distillery for consumption on the premises only on
13 Sundays beginning at 10:00 a.m. in any county in which the
14 same has been approved as provided for in §7-1-3pp of this
15 code.

16 (b) *Retail sales.* — Every licensed distillery, mini-
17 distillery, or micro-distillery shall comply with the
18 provisions of sections nine, eleven, thirteen, sixteen,
19 seventeen, eighteen, nineteen, twenty-two, twenty-three,
20 twenty-four, twenty-five and twenty-six, article three-a of
21 this chapter and the provisions of articles three and four of
22 this chapter applicable to liquor retailers and distillers.

23 (c) *Payment of taxes and fees.* — The distillery, mini-
24 distillery, or micro-distillery shall pay all taxes and fees
25 required of licensed retailers and meet applicable licensing
26 provisions as required by this chapter and by rule of the
27 commissioner, except for payments of the wholesale
28 markup percentage and the handling fee provided by rule of
29 the commissioner: *Provided*, That all liquor for sale to
30 customers from the distillery, mini-distillery, or micro-
31 distillery for off-premises consumption shall be subject of a
32 five percent wholesale markup fee and an 80 cents per case
33 bailment fee to be paid to the commissioner: *Provided*,
34 *however*, That no liquor sold by the distillery, mini-
35 distillery, or micro-distillery shall be priced less than the
36 price set by the commissioner pursuant §60-3A-17 of this
37 code.

38 (d) *Payments to market zone retailers.* — Each
39 distillery, mini-distillery, or micro-distillery shall submit to
40 the commissioner two percent of the gross sales price of
41 each retail liquor sale for the value of all sales at the
42 distillery, mini-distillery, or micro-distillery each month.
43 This collection shall be distributed by the commissioner, at
44 least quarterly, to each market zone retailer located in the
45 distillery, mini-distillery, or micro-distillery's market zone,
46 proportionate to each market zone retailer's annual gross
47 prior years pretax value sales. The maximum amount of
48 market zone payments that a distillery, mini-distillery, or
49 micro-distillery shall be required to submit to the
50 commissioner is \$15,000 per annum.

51 (e) *Limitations on licensees.* — No distillery, mini-
52 distillery, or micro-distillery may sell more than 3,000
53 gallons of product at the distillery, mini-distillery, or micro-
54 distillery location the initial two years of licensure. The
55 distillery, mini-distillery, or micro-distillery may increase
56 sales at the distillery, mini-distillery, micro-distillery
57 location by 2,000 gallons following the initial 24 month
58 period of licensure and may increase sales at the distillery,
59 mini-distillery, or micro-distillery location each subsequent

60 24 month period by 2,000 gallons, not to exceed 10,000
61 gallons a year of total sales at the distillery, mini-distillery,
62 or micro-distillery location. No licensed mini-distillery may
63 produce more than 50,000 gallons per calendar year at the
64 mini-distillery location. No licensed micro-distillery may
65 produce more than 10,000 gallons per calendar year at the
66 micro-distillery location. No more than one distillery or
67 mini-distillery license may be issued to a single person or
68 entity and no person may hold both a distillery and a mini-
69 distillery license.

§60-4-15. Amount of license fees.

1 A person to whom a license is issued under the
2 provisions of this chapter shall pay annually to the
3 commissioner a license fee as follows, for:

- 4 (1) Distilleries, \$1,500;
- 5 (2) Wineries, \$1,500;
- 6 (3) Breweries, \$1,500;
- 7 (4) Bottling plants, \$100;
- 8 (5) Wholesale druggists, \$50;
- 9 (6) Institutions, \$10;
- 10 (7) Industrial use, \$50;
- 11 (8) Industrial plants producing alcohol, \$250;
- 12 (9) Retail druggists, \$10;
- 13 (10) Farm wineries, \$50;
- 14 (11) Mini-distilleries, \$50;
- 15 (12) Micro-distillers, \$750.

ARTICLE 6. MISCELLANEOUS PROVISIONS.**§60-6-1. When lawful to possess, use or serve alcoholic liquors.**

1 The provisions of this chapter may not prevent:

2 (1) A person from keeping and possessing alcoholic
3 liquors in his or her residence for the personal use of himself
4 or herself, his or her family, his or her employee, or his or
5 her guests if the alcoholic liquors have been lawfully
6 acquired by him or her;

7 (2) A person, his or her family, or employee from giving
8 or serving such alcoholic liquors to guests in the residence,
9 when the gift or service is not for the purpose of evading the
10 provisions of this chapter;

11 (3) The holder of a winery or a farm winery license from
12 serving complimentary samples of its wine in moderate
13 quantities for tasting on the winery or the farm winery
14 premises; and

15 (4) The holder of a distillery, mini-distillery, or a micro-
16 distillery license from serving complimentary samples of its
17 alcoholic liquor in moderate quantities for tasting on the
18 distillery, mini-distillery, or micro-distillery premises.

§60-6-2. When lawful to manufacture and sell wine and cider.

1 The provisions of this chapter may not prevent:

2 (1) A person from manufacturing wine at his or her
3 residence for consumption at his or her residence as
4 permitted by §60-6-1 of this code.

5 (2) A person from manufacturing and selling
6 unfermented cider;

7 (3) A person from manufacturing and selling cider made
8 from apples produced by him or her within this state to persons
9 holding distillery licenses, if the manufacture and sale is under
10 the supervision and regulation of the commissioner;

11 (4) A person from manufacturing and selling wine made
12 from fruit produced by him or her within this state to
13 persons holding winery licenses, if the manufacture and sale
14 is under the supervision and regulation of the commissioner;

15 (5) The holder of a winery or a farm winery license from
16 selling wine for off-premises consumption sold at retail at
17 the winery or the farm winery, as provided in §60-3B-4 of
18 this code, or for any other person who is licensed under this
19 chapter to sell wine as a wine supplier or distributor; and

20 (6) The holder of a distillery, mini-distillery, or micro-
21 distillery license from selling alcoholic liquor for off-
22 premises consumption sold at retail at the distillery, mini-
23 distillery, or micro-distillery, as provided in §60-3A-4 of
24 this code.



CHAPTER 10

**(H. B. 4882 - By Delegates Espinosa, Barrett, Cowles,
Hardy, Sponaugle, Williams and Householder)**

[Passed March 2, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating to unlicensed wineries not currently licensed or located in West Virginia temporarily authorizing limited sampling and temporarily authorizing the limited sale of wine for off-premises consumption at certain fairs and festivals and at certain one-day special licensed nonprofit events in a very limited capacity, per event, per year, in hopes that such wineries would eventually obtain a permanent winery or farm winery license in West Virginia.

Be it enacted by the Legislature of West Virginia:

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 (7) An unlicensed winery temporarily licensed and
184 meeting the requirements set forth in subsection (q) of this
185 section may conduct the same sampling and sales set forth
186 in subsection (q) of this section at a licensed fair and festival
187 upon approval of the licensee holding the fair and festival
188 license and temporary and limited licensure by the
189 commissioner. An unlicensed winery shall be subject to the
190 same limits, fees, requirements, restrictions and penalties
191 set forth in subsection (q) of this section: *Provided,* That the
192 commissioner may by rule or order provide for certain
193 waivers or exceptions with respect to the provisions, rules,
194 or orders as the circumstances of each festival or fair may
195 require, including, without limitation, the right to revoke or
196 suspend any license issued pursuant to this section prior to
197 any notice or hearing notwithstanding the provisions §60-8-
198 27 and §60-8-28 of this code: *Provided, however,* That
199 under no circumstances shall the provisions of §60-8-20(c)
200 or §60-8-20(d) of this code be waived nor shall any
201 exception be granted with respect to those subsections.

202 (i)(1) The commissioner may issue a special license for
203 the retail sale of wine in a professional baseball stadium. A
204 license to sell wine granted pursuant to this subsection
205 entitles the licensee to sell and serve wine, for consumption
206 in a professional baseball stadium. For the purpose of this
207 subsection, “professional baseball stadium” means a facility
208 constructed primarily for the use of a major or minor league
209 baseball franchisee affiliated with the National Association
210 of Professional Baseball Leagues, Inc., or its successor, and
211 used as a major or minor league baseball park. Any special
212 license issued pursuant to this subsection shall be for a term

213 beginning on the date of issuance and ending on the next
214 following June 30, and its fee is \$250 regardless of the
215 length of the term of the license. The application for the
216 special license shall contain information required by the
217 commissioner and must be submitted to the commissioner
218 at least 30 days prior to the first day when wine is to be sold
219 at the professional baseball stadium. The special license
220 may be issued in the name of the baseball franchisee or the
221 name of the primary food and beverage vendor under
222 contract with the baseball franchisee. These sales must take
223 place within the confines of the professional baseball
224 stadium. The exterior of the area where wine sales may
225 occur must be surrounded by a fence or other barrier
226 prohibiting entry except upon the franchisee's express
227 permission, and under the conditions and restrictions
228 established by the franchisee, so that the wine sales area is
229 closed to free and unrestricted entry by the general public.

230 (2) A license issued under this subsection and the
231 licensee holding the license are subject to all other
232 provisions of this article and the rules and orders of the
233 commissioner relating to the special license: *Provided*, That
234 the commissioner may by rule or order grant certain waivers
235 or exceptions to those rules or orders as the circumstances
236 of each professional baseball stadium may require,
237 including, without limitation, the right to revoke or suspend
238 any license issued pursuant to this section prior to any notice
239 or hearing notwithstanding §60-8-27 and §60-8-28 of this
240 code; and *Provided, however*, That under no circumstances
241 may §60-8-20(c) or §60-8-20(d) of this code be waived nor
242 shall any exception be granted concerning those
243 subsections.

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

247 (j) A license to sell wine granted to a private wine bed
248 and breakfast, private wine restaurant, private wine spa, or
249 a private club under the provisions of this article entitles the

250 operator to sell and serve wine, for consumption on the
251 premises of the licensee, when the sale accompanies the
252 serving of food or a meal to its members and their guests in
253 accordance with the provisions of this article: *Provided*,
254 That a licensed private wine bed and breakfast, private wine
255 restaurant, private wine spa, or a private club may permit a
256 person over 21 years of age to purchase wine, consume
257 wine, and recork or reseal, using a tamper resistant cork or
258 seal, up to two separate bottles of unconsumed wine in
259 conjunction with the serving of food or a meal to its
260 members and their guests in accordance with the provisions
261 of this article and in accordance with rules promulgated by
262 the commissioner for the purpose of consumption of said
263 wine off premises; *Provided, however*, That for this article,
264 food or a meal provided by the private licensee means that
265 the total food purchase, excluding beverage purchases,
266 taxes, gratuity, or other fees is at least \$15; and *Provided*
267 *further*, That a licensed private wine restaurant or a private
268 club may offer for sale, for consumption off the premises,
269 sealed bottles of wine to its customers provided that no more
270 than one bottle is sold per each person over 21 years of age,
271 as verified by the private wine restaurant or private club, for
272 consumption off the premises. Such licensees are authorized
273 to keep and maintain on their premises a supply of wine in
274 quantities appropriate for the conduct of operations thereof.
275 Any sale of wine is subject to all restrictions set forth in §60-
276 8-20 of this code. A private wine restaurant may also be
277 licensed as a Class A retail dealer in nonintoxicating beer as
278 provided by §11-16-1 *et seq.* of this code.

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

285 (l) The commissioner shall propose rules for
286 promulgation in accordance with the provisions of §29A-1-

287 1 *et seq.* of this code to allow restaurants to serve wine with
288 meals, and to sell wine by the bottle for off-premises
289 consumption as provided in subsection (j) of this section.
290 Each licensed restaurant shall be charged an additional \$100
291 per year fee.

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

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

296 (o) A wine specialty shop under this article may also
297 hold a wine sampling license authorizing the wine specialty
298 shop to conduct special wine sampling events at a licensed
299 wine specialty shop location during regular hours of
300 business. The wine specialty shop may serve up to three
301 complimentary samples of wine, consisting of no more than
302 two fluid ounces each, to any one consumer in one day.
303 Persons serving the complimentary samples must be 21
304 years of age and an authorized representative of the licensed
305 wine specialty shop, winery, farm winery, or a
306 representative of a distributor or registered supplier.
307 Distributor and supplier representatives attending wine
308 sampling events must be registered with the commissioner.
309 No licensee, employee, or representative may furnish, give,
310 sell, or serve complimentary samples of wine to any person
311 less than 21 years of age or to a person who is physically
312 incapacitated due to the consumption of alcoholic liquor or
313 the use of drugs. The wine specialty shop shall notify and
314 secure permission from the commissioner for all wine
315 sampling events one month prior to the event. Wine
316 sampling events may not exceed six hours per calendar day.
317 Licensees must purchase all wines used during these events
318 from a licensed farm winery or a licensed distributor.

319 (p) The commissioner may issue special one-day
320 licenses to duly organized, nonprofit corporations and
321 associations allowing the sale and serving of wine, and may,
322 if applicable, also allow the charitable auctioning of certain

323 sealed bottles of wine for off-premises consumption only,
324 when raising money for athletic, charitable, educational, or
325 religious purposes. “Auction or auctioning”, for the
326 purposes of this subsection, means any silent, physical act,
327 or verbal bid auction, whether or not such auction requires
328 in-presence bidding or online Internet-based electronic
329 bidding through a secure application or website, but shall
330 not include any action in violation of §47-20-10, §47-20-11,
331 or §61-10-1 *et seq.* of this code. The license application shall
332 contain information required by the commissioner and shall
333 be submitted to the commissioner at least 30 days prior to
334 the event. Wines used during these events may be donated
335 by, or purchased from, a licensed retailer, a distributor,
336 winery, or a farm winery. A licensed winery or farm winery
337 which is authorized in writing by a representative of the duly
338 organized, nonprofit corporation and association which has
339 obtained the one-day license; is in good standing with the
340 state; and obtains the commissioner’s approval prior to the
341 one-day license event may, in conjunction with the one-day
342 licensee, exhibit, conduct complimentary tastings, or sell
343 samples not to exceed three, two-fluid ounce tastings or
344 samples per patron, for consumption on the premises during
345 the operation of the one-day license event; and may sell
346 certain sealed wine bottles manufactured by the licensed
347 winery or farm winery for off-premises consumption:
348 *Provided*, That for a licensed winery or farm winery at a
349 licensed one-day event, the tastings, samples and off-
350 premises sales shall occur under the hours of operation as
351 required in this article, except on Sunday, tastings, samples,
352 and off-premises sales are unlawful between the hours of
353 2:00 a.m. and 10:00 a.m., from the one-day licensee’s
354 submitted floor plan for the event subject to the
355 requirements in the code and rules. Under no circumstances
356 may the provisions of §60-8-20(c) or §60-8-20(f) of this
357 code be waived nor may any exception be granted with
358 respect to those subsections. No more than six licenses may
359 be issued to any single licensee during any calendar year.

360 (q)(1) In addition to the authorization granted to
361 licensed wineries and farm wineries in sub-sections (h) and
362 (p), an unlicensed winery, regardless of its designation in
363 another state, but that is duly licensed in its domicile state,
364 may pay a \$150 nonrefundable and nonprorated fee and
365 submit an application for temporary licensure on a one-day
366 basis for temporary sampling and sale of wine in sealed
367 containers for off-premises consumption at a special one-
368 day license nonprofit event.

369 (2) The application shall include, but is not limited to,
370 the person or entity's name, address, taxpayer identification
371 number, and location; a copy of its licensure in its domicile
372 state; a signed and notarized verification that it produces
373 50,000 gallons or less of wine per year; a signed and
374 notarized verification that it is in good standing with its
375 domicile state; copies of its federal certificate of label
376 approvals and certified lab alcohol analysis for the wines it
377 desires to temporarily provide samples and temporarily sell
378 wine in sealed containers for off-premises consumption at a
379 special one-day license for a nonprofit event issued under
380 sub-section (p); and such other information as the
381 commissioner may reasonably require.

382 (3) The applicant winery shall include a list of all wines
383 proposed to be temporarily sampled and temporarily sold in
384 sealed containers at a special one-day license for a nonprofit
385 event so that the wines may be reviewed in the interest of
386 public health and safety. Once approved, the submitted wine
387 list will create a temporary wine brand registration for up to
388 two special one-day license for a nonprofit event for no
389 additional fee.

390 (4) An applicant winery that receives this temporary
391 special one-day license for a nonprofit event will provide a
392 signed and notarized agreement where the applicant winery
393 agrees to pay all municipal, local, and sales taxes applicable
394 to the sale of wine in West Virginia.

395 (5) An application must be submitted per special one-
396 day license for a nonprofit event the applicant winery
397 desires to attend, and the license fee shall cover up to two
398 special one-day license for nonprofit events before an
399 additional fee would be paid. In no circumstance would
400 such a winery be permitted to attend more than four special
401 one-day license for nonprofit events per year. Any such
402 applicant or unlicensed winery desiring to attend more than
403 four special one-day license for nonprofit events per year or
404 otherwise operate in West Virginia would need to seek
405 appropriate licensure as a winery or a farm winery in this
406 state.

407 (6) Notwithstanding the provisions of this article and
408 requirements for licensure, wine brand registration,
409 payment of wine liter tax, and the winery's appointment of
410 suppliers and distributors, this temporary special one-day
411 license for a nonprofit event, once granted, permits such a
412 winery to operate in this limited capacity only at the
413 approved specific, special one-day license for a nonprofit
414 event subject to the limitations noted in this section.

415 (7) The applicant winery will need to further apply for
416 and receive a transportation permit in order to legally
417 transport wine in the state per §60-6-12 of this code.

418 (8) The applicant winery is subject to all applicable
419 violations and/or penalties under this article and the
420 legislative rules that is not otherwise excepted by this sub-
421 section: *Provided*, That the commissioner may by rule or
422 order provide for certain waivers or exceptions with respect
423 to the provisions, rules, or orders as the circumstances of
424 each festival or fair may require, including, without
425 limitation, the right to revoke or suspend any license issued
426 pursuant to this section prior to any notice or hearing
427 notwithstanding the provisions §60-8-27 and §60-8-28 of
428 this code: *Provided, however*, That under no circumstances
429 shall the provisions of §60-8-20(c) or §60-8-20(d) of this
430 code be waived nor shall any exception be granted with
431 respect to those subsections.

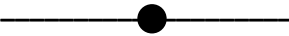
432 (r) The commissioner may issue special licenses to
433 heritage fairs and festivals allowing the sale, serving, and
434 sampling of wine from a licensed farm winery. The license
435 application shall contain information required by the
436 commissioner and shall be submitted to the commissioner
437 at least 30 days prior to the event. Wines used during these
438 events may be donated by or purchased from a licensed farm
439 winery. Under no circumstances may the provision of §60-
440 8-20(c) of this code be waived nor may any exception be
441 granted with respect thereto. The commissioner shall
442 propose rules for legislative approval in accordance with
443 §29A-3-1 *et seq.* of this code to implement the provisions of
444 this subsection.

445 (s)(1) The commissioner may issue a special license for
446 the retail sale of wine in a college stadium. A license to sell
447 wine granted pursuant to this subsection entitles the licensee
448 to sell and serve wine for consumption in a college stadium.
449 For the purpose of this subsection, “college stadium” means
450 a facility constructed primarily for the use of a Division I,
451 II, or III college that is a member of the National Collegiate
452 Athletic Association, or its successor, and used as a football,
453 basketball, baseball, soccer, or other Division I, II, or III
454 sports stadium. A special license issued pursuant to this
455 subsection shall be for a term beginning on the date of its
456 issuance and ending on the next following June 30, and its
457 fee is \$250 regardless of the length of the term of the license.
458 The application for the special license shall contain
459 information required by the commissioner and must be
460 submitted to the commissioner at least 30 days prior to the
461 first day when wine is to be sold. The special license may
462 be issued in the name of the National Collegiate Athletic
463 Association Division I, II, or III college or university or the
464 name of the primary food and beverage vendor under
465 contract with that college or university. These sales must
466 take place within the confines of the college stadium:
467 *Provided*, That the exterior of the area where wine sales may
468 occur must be surrounded by a fence or other barrier
469 prohibiting entry except upon the college or university’s

470 express permission, and under the conditions and
471 restrictions established by the college or university, so that
472 the wine sales area is closed to free and unrestricted entry
473 by the general public.

474 (2) A license issued under this subsection and the
475 licensee are subject to the other requirements of this article
476 and the rules and orders of the commissioner relating to the
477 special license: *Provided*, That the commissioner may by
478 rule or order grant certain waivers or exceptions to those
479 rules or orders as the circumstances of each the college
480 stadium may require, including, without limitation, the right
481 to revoke or immediately suspend any license issued
482 pursuant to this section prior to any notice or hearing
483 notwithstanding §60-8-27 and §60-8-28 of this code; and
484 *Provided, however*, That §60-8-20(c) or §60-8-20(d) of this
485 code may not be waived, nor shall any exception be granted
486 concerning those subsections.

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



CHAPTER 11

**(Com. Sub. for S. B. 150 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

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 2021.

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 2021” shall mean the period from July
10 1, 2020, through June 30, 2021.

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, within any fiscal year the secretary or other
117 appropriate agency head, or in the case of the termination of
118 a spending unit of the state, the Director of the State Budget
119 Office, in the absence of general law providing otherwise,
120 may transfer the funds formerly appropriated to such
121 agency, board or function, allocating items of appropriation
122 as may be necessary if only part of the item may be
123 allocated, in order to implement such consolidation,
124 reorganization or termination. No funds may be transferred
125 from a Special Revenue Account, dedicated account, capital
126 expenditure account or any other account or fund
127 specifically exempted by the Legislature from transfer,
128 except that the use of the appropriations from the State Road
129 Fund for the office of the Secretary of the Department of

130 Transportation is not a use other than the purpose for which
131 such funds were dedicated and is 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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§17. Appropriations for local governments.

§18. Total appropriations.

§19. General school fund.

1 **Section 1. Appropriations from general revenue. –**
 2 From the State Fund, General Revenue, there are hereby
 3 appropriated conditionally upon the fulfillment of the
 4 provisions set forth in Article 2, Chapter 11B the following
 5 amounts, as itemized, for expenditure during the fiscal year
 6 2021.

LEGISLATIVE

1-Senate

Fund 0165 FY 2021 Org 2100

	Appropriation	General Revenue Fund
1 Compensation of Members (R).....	00300	\$ 1,010,000
2 Compensation and Per Diem of		
3 Officers		
4 and Employees (R).....	00500	4,011,332
5 Current Expenses and		
6 Contingent Fund (R).....	02100	276,392
7 Repairs and Alterations (R)	06400	50,000
8 Computer Supplies (R)	10100	20,000
9 Computer Systems (R).....	10200	60,000
10 Printing Blue Book (R).....	10300	125,000
11 Expenses of Members (R).....	39900	370,000
12 BRIM Premium (R)	91300	<u>29,482</u>
13 Total.....		\$ 5,952,206

14 The appropriations for the Senate for the fiscal year
 15 2020 are to remain in full force and effect and are hereby
 16 reappropriated to June 30, 2021. Any balances so
 17 reappropriated may be transferred and credited to the fiscal
 18 year 2020 accounts.

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

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

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

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

58 The distribution of the blue book shall be by the office
59 of the Clerk of the Senate and shall include 75 copies for
60 each member of the Legislature and two copies for each
61 classified and approved high school and junior high or
62 middle school and one copy for each elementary school
63 within the state.

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

*2-House of Delegates*Fund 0170 FY 2021 Org 2200

1	Compensation of Members (R).....	00300	\$ 3,000,000
2	Compensation and Per Diem of		
3	Officers and Employees (R)	00500	575,000
4	Current Expenses and		
5	Contingent Fund (R).....	02100	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 2020 are to remain in full force and effect and
11 are hereby reappropriated to June 30, 2021. Any balances
12 so reappropriated may be transferred and credited to the
13 fiscal year 2020 accounts.

14 Upon the written request of the Clerk of the House of
15 Delegates, the Auditor shall transfer amounts between
16 items of the total appropriation in order to protect or
17 increase the efficiency of the service.

18 The Clerk of the House of Delegates, with the
19 approval of the Speaker, is authorized to draw his or her
20 requisitions upon the Auditor, payable out of the Current
21 Expenses and Contingent Fund of the House of Delegates,
22 for any bills for supplies and services that may have been
23 incurred by the House of Delegates and not included in
24 the appropriation bill, for bills for services and supplies
25 incurred in preparation for the opening of the session and
26 after adjournment, and for the necessary operation of the
27 House of Delegates' offices, the requisitions for which are
28 to be 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
 39 out of the appropriation for the Compensation and Per
 40 Diem of 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
 44 the rolls, the Clerk of the House of Delegates shall be paid
 45 a monthly salary as provided in the House resolution,
 46 unless increased between sessions under the authority of
 47 the Speaker and payable out of the appropriation for
 48 Compensation and Per Diem of Officers and Employees
 49 or 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
 53 not 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 2021 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).....	10701	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 2020 are to remain in full force and effect and are
 12 hereby reappropriated to June 30, 2021. Any balances
 13 reappropriated may be transferred and credited to the fiscal
 14 year 2020 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 2021 Org 2400

1 Personal Services and			
2 Employee Benefits (R)	00100	\$ 111,440,000	
3 Military Service			
4 Members Court (R).....	09002	300,000	
5 Current Expenses (R).....	13000	19,911,000	
6 Repairs and Alterations (R)	06400	40,000	
7 Equipment (R).....	07000	1,950,000	
8 Judges' Retirement System (R)	11000	838,000	
9 Buildings (R).....	25800	10,000	
10 Other Assets (R).....	69000	200,000	
11 BRIM Premium (R)	91300	<u>810,000</u>	
12 Total.....		\$ 135,499,000	

13 The appropriations to the Supreme Court of Appeals for
 14 the fiscal years 2018, 2019 and 2020 are to remain in full
 15 force and effect and are hereby reappropriated to June 30,
 16 2021. Any balances so reappropriated may be transferred
 17 and credited to the fiscal year 2021 accounts.

18 This fund shall be administered by the Administrative
 19 Director of the Supreme Court of Appeals, who shall draw
 20 requisitions for warrants in payment in the form of payrolls,
 21 making deductions there from as required by law for taxes
 22 and other items.

23 The appropriation for the Judges' Retirement System
 24 (fund 0180, appropriation 11000) is to be transferred to the
 25 Consolidated Public Retirement Board, in accordance with
 26 the law relating thereto, upon requisition of the
 27 Administrative Director of the Supreme Court of Appeals.

EXECUTIVE

5-Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2021 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	396,726
8	Community Food Program	18500	1,000,000
9	Office of Resiliency.....	18600	596,157
10	BRIM Premium.....	91300	<u>183,645</u>
11	Total.....		\$ 6,312,986

12 Any unexpended balances remaining in the
 13 appropriations for Unclassified (fund 0101, appropriation
 14 09900), and Current Expenses (fund 0101, appropriation
 15 13000) at the close of the fiscal year 2020 are hereby
 16 reappropriated for expenditure during the fiscal year 2021.

17 The above appropriation for Herbert Henderson Office
 18 of Minority Affairs (fund 0101, appropriation 13400) shall
 19 be transferred to the Minority Affairs Fund (fund 1058).

*6-Governor's Office –**Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 2021 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 appropriation
7 for Current Expenses (fund 0102, appropriation 13000) at
8 the close of the fiscal year 2020 is hereby reappropriated for
9 expenditure during the fiscal year 2021.

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

*7-Governor's Office –**Civil Contingent Fund*

(WV Code Chapter 5)

Fund 0105 FY 2021 Org 0100

1	Milton Flood Wall (R).....	75701	\$	6,000,000
2	Public Health Emergency			
3	Response Fund.....	xxxxx		<u>2,000,000</u>
4	Total.....			8,000,000

5 Any unexpended balances remaining in the
6 appropriations for Business and Economic Development
7 Stimulus – Surplus (fund 0105, appropriation 08400), Civil
8 Contingent Fund – Total (fund 0105, appropriation 11400),
9 2012 Natural Disasters – Surplus (fund 0105, appropriation

10 13500), Civil Contingent Fund – Total – Surplus (fund
 11 0105, appropriation 23800), Civil Contingent Fund –
 12 Surplus (fund 0105, appropriation 26300), Business and
 13 Economic Development Stimulus (fund 0105, appropriation
 14 58600), Civil Contingent Fund (fund 0105, appropriation
 15 61400), Milton Flood Wall (fund 0105, appropriation
 16 75701), and Natural Disasters – Surplus (fund 0105,
 17 appropriation 76400) at the close of the fiscal year 2020 are
 18 hereby reappropriated for expenditure during the fiscal year
 19 2021.

20 From this fund there may be expended, at the discretion
 21 of the Governor, an amount not to exceed \$1,000 as West
 22 Virginia’s contribution to the interstate oil compact
 23 commission.

24 The above fund is intended to provide contingency
 25 funding for accidental, unanticipated, emergency or
 26 unplanned events which may occur during the fiscal year
 27 and is not to be expended for the normal day-to-day
 28 operations of the Governor’s Office.

8-Auditor’s Office –

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2021 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 2020 is
 9 hereby reappropriated for expenditure during the fiscal year
 10 2021.

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 2021 Org 1300

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,570,242
3	Unclassified	09900	31,463
4	Current Expenses (R).....	13000	772,684
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 2020 are
 13 hereby reappropriated for expenditure during the fiscal year
 14 2021.

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 2021 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 6,298,229
3	Animal Identification Program	03900	131,942
4	State Farm Museum.....	05500	87,759
5	Current Expenses (R).....	13000	848,115

6	Gypsy Moth Program (R)	11900	1,003,440
7	WV Farmers Market	12801	150,467
8	Black Fly Control.....	13700	453,698
9	HEMP Program.....	13701	350,000
10	Donated Foods Program	36300	45,000
11	Veterans to Agriculture		
12	Program (R)	36301	255,624
13	Predator Control (R)	47000	176,400
14	Bee Research.....	69100	70,634
15	Microbiology Program.....	78500	99,828
16	Moorefield Agriculture Center	78600	975,284
17	Chesapeake Bay Watershed.....	83000	112,427
18	Livestock Care Standards Board....	84300	8,820
19	BRIM Premium.....	91300	138,905
20	State FFA-FHA Camp		
21	and Conference Center	94101	738,554
22	Threat Preparedness	94200	73,122
23	WV Food Banks.....	96900	426,000
24	Senior's Farmers' Market		
25	Nutrition Coupon Program	97000	<u>55,835</u>
26	Total.....		\$ 12,500,083

27 Any unexpended balances remaining in the
28 appropriations for Gypsy Moth Program (fund 0131,
29 appropriation 11900), Current Expenses (fund 0131,
30 appropriation 13000), Veterans to Agriculture Program
31 (fund 0131, appropriation 36301), Predator Control (fund
32 0131, appropriation 47000), and Agricultural Disaster and
33 Mitigation Needs – Surplus (fund 0131, appropriation
34 85000) at the close of the fiscal year 2020 are hereby
35 reappropriated for expenditure during the fiscal year 2021.

36 Included in the above appropriation to Personal
37 Services and Employee Benefits (fund 0131, appropriation
38 00100), is \$95,000 for the Salary of the Commissioner.

39 The above appropriation for Predator Control (fund
40 0131, appropriation 47000) is to be made available to the
41 United States Department of Agriculture, Wildlife Services
42 to administer the Predator Control Program.

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

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

11-West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2021 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 appropriations
9 for Soil Conservation Projects (fund 0132, appropriation
10 12000), and Current Expenses (fund 0132, appropriation
11 13000) at the close of the fiscal year 2020 are hereby
12 reappropriated for expenditure during the fiscal year 2021.

12-Department of Agriculture –

Meat Inspection Fund

(WV Code Chapter 19)

Fund 0135 FY 2021 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 2021 Org 1400

1	Programs and Awards for 4-H Clubs			
2	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 2021 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 2021 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 2020 are
20 hereby reappropriated for expenditure during the fiscal year
21 2021.

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

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

16-Secretary of State

(WV Code Chapters 3, 5, and 59)

Fund 0155 FY 2021 Org 1600

1	Personal Services and			
2	Employee Benefits.....	00100	\$	118,794
3	Unclassified (R).....	09900		8,352
4	Current Expenses (R).....	13000		795,948
5	BRIM Premium.....	91300		<u>34,500</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 2020 are hereby
11 reappropriated for expenditure during the fiscal year 2021.

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 2021 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 2021 Org 0201

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 606,584
3	Unclassified	09900	9,177
4	Current Expenses	13000	85,009
5	Repairs and Alterations.....	06400	100
6	Equipment.....	07000	1,000
7	Financial Advisor (R)	30400	27,546
8	Lease Rental Payments	51600	15,000,000
9	Design-Build Board.....	54000	4,000
10	Other Assets.....	69000	100
11	BRIM Premium.....	91300	<u>6,736</u>
12	Total.....		\$ 15,740,252

13 Any unexpended balance remaining in the
 14 appropriation for Financial Advisor (fund 0186,
 15 appropriation 30400) at the close of the fiscal year 2020 is
 16 hereby reappropriated for expenditure during the fiscal year
 17 2021.

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

19-Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2021 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 2021 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 2020 is hereby		
11	reappropriated for expenditure during the fiscal year 2021.		

21-Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2021 Org 0211

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,722,499
3	Unclassified	09900	20,000
4	Current Expenses	13000	1,148,349
5	Repairs and Alterations.....	06400	500
6	Equipment.....	07000	5,000
7	Fire Service Fee	12600	14,000
8	Preservation and Maintenance of		
9	Statues and Monuments		
10	on Capitol Grounds.....	37100	68,000
11	Capital Outlay, Repairs		
12	and Equipment (R).....	58900	23,660,888
13	BRIM Premium.....	91300	<u>129,983</u>
14	Total.....		\$ 27,769,219

15 Any unexpended balances remaining in the above
 16 appropriations for Buildings (fund 0230, appropriation
 17 25800), Capital Outlay, Repairs and Equipment (fund 0230,
 18 appropriation 58900), Capital Outlay, Repairs and
 19 Equipment – Surplus (fund 0230, appropriation 67700), and
 20 Land (fund 0230, appropriation 73000) at the close of the
 21 fiscal year 2020 are hereby reappropriated for expenditure
 22 during the fiscal year 2021.

23 From the above appropriation for Preservation and
 24 Maintenance of Statues and Monuments on Capitol
 25 Grounds (fund 0230, appropriation 37100), the Division
 26 shall consult the Division of Culture and History and
 27 Capitol Building Commission in all aspects of planning,
 28 assessment, maintenance and restoration.

29 The above appropriation for Capital Outlay, Repairs
 30 and Equipment (fund 0230, appropriation 58900) shall be
 31 expended for capital improvements, maintenance, repairs
 32 and equipment for state-owned buildings.

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2021 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 2021 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	100
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 2020 is hereby
 13 reappropriated for expenditure during the fiscal year 2021.

24-Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2021 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 2021 Org 0219

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 969,627
3	Unclassified	09900	1,000
4	Current Expenses	13000	145,295

5	Equipment.....	07000	50
6	BRIM Premium.....	91300	<u>8,740</u>
7	Total.....		\$ 1,124,712

26-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2021 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 2021 Org 0221

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,899,483
3	Unclassified	09900	333,300
4	Current Expenses	13000	12,740
5	Public Defender Corporations	35200	19,538,435
6	Appointed Counsel Fees (R).....	78800	12,691,113
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 2020 is
12 hereby reappropriated for expenditure during the fiscal year
13 2021.

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 2021 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 2021 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 2021 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 2020 are hereby reappropriated for expenditure during		
10	the fiscal year 2021.		

31-Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2021 Org 0233

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 681,101
3	Unclassified	09900	1,000
4	Current Expenses	13000	137,381
5	Repairs and Alterations.....	06400	100
6	Equipment.....	07000	2,500
7	BRIM Premium.....	91300	<u>9,784</u>
8	Total.....		\$ 831,866

DEPARTMENT OF COMMERCE*32-West Virginia Tourism Office*

(WV Code Chapter 5B)

Fund 0246 FY 2021 Org 0304

1	Tourism – Brand Promotion (R)....	61803	\$ 10,000,000
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2	Tourism – Public Relations (R)	61804	1,500,000
3	Tourism –Events		
4	and Sponsorships (R).....	61805	500,000
5	Tourism –		
6	Industry Development (R).....	61806	500,000
7	State Parks and		
8	Recreation Advertising (R).....	61900	<u>1,500,000</u>
9	Total.....		\$ 14,000,000

10 Any unexpended balances remaining in the
 11 appropriations for Tourism – Brand Promotion (fund 0246,
 12 appropriation 61803), Tourism – Public Relations (fund
 13 0246, appropriation 61804), Tourism – Events and
 14 Sponsorships (fund 0246, appropriation 61805), Tourism –
 15 Industry Development (fund 0246, appropriation 61806),
 16 and State Parks and Recreation Advertising (fund 0246,
 17 appropriation 61900) at the close of the fiscal year 2020 are
 18 hereby reappropriated for expenditure during the fiscal year
 19 2021.

20 The Executive Director of the West Virginia Tourism
 21 Office, with approval from the Secretary of Commerce,
 22 shall have the authority to transfer between the above items
 23 of appropriation.

33-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2021 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 2020 is hereby
 12 reappropriated for expenditure during the fiscal year 2021.

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 2021 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 2020 is
 12 hereby reappropriated for expenditure during the fiscal year
 13 2021.

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 2021 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 4,500,420
3	Unclassified	09900	108,055
4	Current Expenses	13000	5,815,277
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	Local Economic		
13	Development Assistance (R) ...	81900	1,750,000
14	BRIM Premium.....	91300	3,157
15	Hatfield McCoy		
16	Recreational Trail	96000	<u>198,415</u>
17	Total.....		\$ 15,163,525

18 Any unexpended balances remaining in the
19 appropriations for Sales and Marketing Enhancement –
20 Surplus (fund 0256, appropriation 05099), Unclassified –
21 Surplus (fund 0256, appropriation 09700), Partnership
22 Grants (fund 0256, appropriation 13100), Local Economic
23 Development Partnerships (fund 0256, appropriation
24 13300), Guaranteed Work Force Grant (fund 0256,
25 appropriation 24200), Industrial Park Assistance (fund
26 0256, appropriation 48000), and Local Economic
27 Development Assistance (fund 0256, appropriation 81900)
28 at the close of the fiscal year 2020 are hereby reappropriated
29 for expenditure during the fiscal year 2021.

30 From the above appropriation for Current Expenses
31 (fund 0256, appropriation 13000), \$1,800,000 shall be used
32 for the Eastern West Virginia Regional Airport; \$50,000
33 shall be used for the Western Potomac Economic
34 Partnership; \$100,000 shall be used for Techconnect West
35 Virginia and \$100,000 shall be used for Advantage Valley.

36 The above appropriation to Local Economic
37 Development Partnerships (fund 0256, appropriation

38 13300) shall be used by the West Virginia Development
 39 Office for the award of funding assistance to county and
 40 regional economic development corporations or authorities
 41 participating in the Certified Development Community
 42 Program developed under the provisions of W.Va. Code
 43 §5B-2-14. The West Virginia Development Office shall
 44 award the funding assistance through a matching grant
 45 program, based upon a formula whereby funding assistance
 46 may not exceed \$34,000 per county served by an economic
 47 development or redevelopment corporation or authority.

36-Division of Labor

(WV Code Chapters 21, and 47)

Fund 0260 FY 2021 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 2021 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 (R).....	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 2020 are hereby
 23 reappropriated for expenditure during the fiscal year 2021.

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 2021 Org 0314

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 9,450,243
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.....		\$ 11,525,820

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 2021 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 2021 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 2021 Org 0327

1	Personal Services and			
2	Employee Benefits.....	00100	\$	588,872
3	Unclassified	09900		1,490
4	Current Expenses	13000		17,099
5	Directed Transfer	70000		<u>500,000</u>

6 Total..... \$ 1,107,461

7 The above appropriation for Directed Transfer (fund
8 0606, appropriation 70000) shall be transferred to the
9 Broadband Enhancement Fund (fund 3013).

42-Office of Energy

(WV Code Chapter 5B)

Fund 0612 FY 2021 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 2021 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 2021 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 2021 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 4,598,523
3	Teachers' Retirement		
4	Savings Realized.....	09500	33,028,000
5	Unclassified (R).....	09900	500,000

6	Current Expenses (R).....	13000	5,330,000
7	Center for Professional		
8	Development (R).....	11500	150,000
9	Increased Enrollment.....	14000	5,090,000
10	Safe Schools.....	14300	5,104,544
11	Attendance Incentive Bonus.....	15001	2,056,717
12	National Teacher		
13	Certification (R).....	16100	300,000
14	Jobs & Hope – Childhood		
15	Drug Prevention Education	21901	5,000,000
16	Allowance for County Transfer.....	26400	238,174
17	Technology Repair		
18	and Modernization.....	29800	951,003
19	HVAC Technicians.....	35500	516,791
20	Early Retirement		
21	Notification Incentive.....	36600	300,000
22	MATH Program.....	36800	336,532
23	Assessment Programs.....	39600	1,339,588
24	Benedum Professional Development		
25	Collaborative (R).....	42700	429,775
26	Governor’s Honors Academy (R)....	47800	1,059,270
27	21st Century Fellows.....	50700	274,899
28	English as a Second Language	52800	96,000
29	Teacher Reimbursement.....	57300	297,188
30	Hospitality Training.....	60000	272,775
31	Youth in Government.....	61600	100,000
32	High Acuity Special Needs (R)	63400	1,500,000
33	Foreign Student Education	63600	100,294
34	State Board of Education		
35	Administrative Costs	68400	277,403
36	IT Academy (R).....	72100	500,000
37	Early Literacy Program.....	75600	5,705,624
38	School Based		
39	Truancy Prevention (R).....	78101	2,032,238
40	Mastery Based Education.....	78104	125,000
41	Communities in Schools (R).....	78103	4,900,000
42	21st Century Learners (R)	88600	1,756,470
43	BRIM Premium	91300	342,859

44	21st Century Assessment and		
45	Professional Development.....	93100	2,006,978
46	21st Century Technology		
47	Infrastructure Network		
48	Tools and Support.....	93300	7,636,586
49	Mountain State Digital		
50	Literacy Program	xxxxx	415,500
51	Special Olympic Games.....	96600	25,000
52	Educational Program Allowance ...	99600	<u>516,250</u>
53	Total.....		\$ 95,209,981

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

56 From the above appropriation for Unclassified (fund
57 0313, appropriation 09900) \$80,000 shall be used for
58 creating a career exploration tool for students.

59 From the above appropriation for Current Expenses
60 (fund 0313, appropriation 13000), \$2,000,000 shall be used
61 for the Department of Education Child Nutrition Program –
62 Non-traditional Child Hunger Solutions, \$750,000 shall be
63 used for Local Education Projects.

64 Any unexpended balances remaining in the
65 appropriations for Unclassified (fund 0313, appropriation
66 09900), Current Expenses (fund 0313, appropriation
67 13000), Center for Professional Development (fund 0313,
68 appropriation 11500), National Teacher Certification (fund
69 0313, appropriation 16100), Benedum Professional
70 Development Collaborative (fund 0313, appropriation
71 42700), Governor's Honors Academy (fund 0313,
72 appropriation 47800), High Acuity Special Needs (fund
73 0313, appropriation 63400), IT Academy (fund 0313,
74 appropriation 72100), School Based Truancy Prevention
75 (fund 0313, appropriation 78101), Communities in Schools
76 (fund 0313, appropriation 78103), and 21st Century
77 Learners (fund 0313, appropriation 88600) at the close of
78 the fiscal year 2020 are hereby reappropriated for
79 expenditure during the fiscal year 2021.

80 The above appropriation for Teachers' Retirement
 81 Savings Realized (fund 0313, appropriation 09500) shall be
 82 transferred to the Employee Pension and Health Care
 83 Benefit Fund (fund 2044).

84 From the above appropriation for Unclassified (fund
 85 0313, appropriation 09900), \$120,000 shall be for assisting
 86 low income students with AP exam fees.

87 The above appropriation for Hospitality Training (fund
 88 0313, appropriation 60000), shall be allocated only to
 89 entities that have a plan approved for funding by the
 90 Department of Education, at the funding level determined
 91 by the State Superintendent of Schools. Plans shall be
 92 submitted to the State Superintendent of Schools to be
 93 considered for funding.

94 From the above appropriation for Educational Program
 95 Allowance (fund 0313, appropriation 99600), \$100,000
 96 shall be expended for the Morgan County Board of
 97 Education for Paw Paw Schools; \$150,000 shall be for the
 98 Randolph County Board of Education for Pickens School;
 99 \$100,000 shall be for the Preston County Board of
 100 Education for the Aurora School; \$100,000 shall be for the
 101 Fayette County Board of Education for Meadow Bridge and
 102 \$66,250 is for Project Based Learning in STEM fields.

46-State Board of Education –

Aid for Exceptional Children

(WV Code Chapters 18, and 18A)

Fund 0314 FY 2021 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		657,858

6	Education of Institutionalized		
7	Juveniles and Adults (R).....	47200	<u>20,325,353</u>
8	Total.....		\$ 32,223,599

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 2020 is hereby reappropriated for expenditure
13 during the fiscal year 2021.

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 2021 Org 0402

1	Other Current Expenses	02200	\$ 170,216,073
2	Advanced Placement.....	05300	734,729
3	Professional Educators	15100	897,576,715
4	Service Personnel.....	15200	301,789,240
5	Fixed Charges	15300	106,219,537
6	Transportation.....	15400	78,177,730
7	Professional Student		
8	Support Services.....	65500	62,148,699
9	Improved Instructional Programs	15600	51,956,792
10	21st Century Strategic		
11	Technology Learning Growth	93600	26,408,349
12	Teacher and Leader Induction	93601	<u>5,443,468</u>
13	Basic Foundation Allowances		1,700,671,332
14	Less Local Share.....		(476,083,702)
15	Adjustments		<u>(2,716,826)</u>
16	Total Basic State Aid.....		1,221,870,804
17	Public Employees'		
18	Insurance Matching.....	01200	222,461,499

19	Teachers' Retirement System.....	01900	66,511,000
20	School Building Authority.....	45300	24,000,000
21	Retirement Systems –		
22	Unfunded Liability	77500	<u>304,728,000</u>
23	Total.....		\$ 1,839,571,303

48-State Board of Education –

Vocational Division

(WV Code Chapters 18, and 18A)

Fund 0390 FY 2021 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	79,873
7	Albert Yanni Vocational Program .	14700	132,123
8	Vocational Aid.....	14800	24,229,691
9	Adult Basic Education	14900	5,271,228
10	Jobs & Hope.....	14902	3,100,000
11	Program Modernization	30500	884,313
12	High School Equivalency		
13	Diploma Testing (R).....	72600	803,397
14	FFA Grant Awards.....	83900	11,496
15	Pre-Engineering		
16	Academy Program	84000	<u>265,294</u>
17	Total.....		\$ 37,269,034

18 Any unexpended balances remaining in the
 19 appropriations for Jim's Dream (fund 0390, appropriation
 20 14901) and High School Equivalency Diploma Testing
 21 (fund 0390, appropriation 72600) at the close of the fiscal
 22 year 2020 are hereby reappropriated for expenditure during
 23 the fiscal year 2021.

*49-State Board of Education –
West Virginia Schools for the Deaf and the Blind*

(WV Code Chapters 18, and 18A)

Fund 0320 FY 2021 Org 0403

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 11,379,675
3	Unclassified	09900	110,000
4	Current Expenses	13000	2,250,696
5	Repairs and Alterations.....	06400	164,675
6	Equipment.....	07000	77,000
7	Buildings (R).....	25800	45,000
8	Capital Outlay		
9	and Maintenance (R)	75500	520,000
10	BRIM Premium.....	91300	<u>130,842</u>
11	Total.....		\$ 14,677,888

12 Any unexpended balances remaining in the
13 appropriations for Buildings (fund 0320, appropriation
14 25800) and Capital Outlay and Maintenance (fund 0320,
15 appropriation 75500) at the close of the fiscal year 2020 are
16 hereby reappropriated for expenditure during the fiscal year
17 2021.

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

50-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2021 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		
13	Programming.....	73200	231,573
14	Capital Outlay		
15	and Maintenance (R).....	75500	19,600
16	Historical Highway		
17	Marker Program.....	84400	57,548
18	BRIM Premium.....	91300	<u>39,337</u>
19	Total.....		\$ 5,275,381

20 Any unexpended balances remaining in the
 21 appropriations for Unclassified (fund 0293, appropriation
 22 09900), Buildings (fund 0293, appropriation 25800),
 23 Capital Outlay, Repairs and Equipment (fund 0293,
 24 appropriation 58900), Capital Improvements – Surplus
 25 (fund 0293, appropriation 66100), Capital Outlay, Repairs
 26 and Equipment – Surplus (fund 0293, appropriation 67700),
 27 Land (fund 0293, appropriation 73000), and Capital Outlay
 28 and Maintenance (fund 0293, appropriation 75500) at the
 29 close of the fiscal year 2020 are hereby reappropriated for
 30 expenditure during the fiscal year 2021.

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

37 From the above appropriation for Educational
 38 Enhancements (fund 0293, appropriation 69500), \$500,000
 39 shall be used for Save the Children and \$73,500 shall be
 40 used for the Clay Center.

51-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2021 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 Blind & Handicapped	18100	161,717
6	BRIM Premium.....	91300	<u>18,205</u>
7	Total.....		\$ 1,640,790

52-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2021 Org 0439

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,312,092
3	Current Expenses	13000	120,146
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 2020 is hereby reappropriated for expenditure during the
13 fiscal year 2021.

**DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

53-Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2021 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 2021 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 4,207,200
3	Water Resources Protection		
4	and Management.....	06800	576,278
5	Current Expenses	13000	86,116
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 to		
13	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

55-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2021 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 2021 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 2020 is
11 hereby reappropriated for expenditure during the fiscal year
12 2021.

57-Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2021 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 12,544,773
3	Chief Medical Examiner.....	04500	8,714,647

4	Unclassified	09900	671,795
5	Current Expenses	13000	5,588,459
6	State Aid for Local and		
7	Basic Public Health Services...	18400	14,160,490
8	Safe Drinking Water Program (R) ...	18700	1,891,323
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	545,153
13	Statewide EMS		
14	Program Support (R)	38300	1,695,271
15	Office of Medical Cannabis (R).....	42001	1,459,989
16	Black Lung Clinics	46700	170,885
17	Vaccine for Children.....	55100	338,235
18	Tuberculosis Control.....	55300	329,256
19	Maternal and Child Health Clinics,		
20	Clinicians Medical Contracts		
21	and Fees (R).....	57500	5,892,707
22	Epidemiology Support	62600	1,497,192
23	Primary Care Support	62800	4,263,706
24	Sexual Assault Intervention		
25	and Prevention	72300	250,000
26	Health Right Free Clinics	72700	3,750,000
27	Capital Outlay		
28	and Maintenance (R)	75500	70,000
29	Healthy Lifestyles	77800	890,000
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 Emergency		
35	Care System.....	91800	1,921,322
36	WVU Charleston		
37	Poison Control Hotline	94400	<u>712,942</u>
38	Total.....		\$ 76,053,981

39 Any unexpended balances remaining in the
40 appropriations for Safe Drinking Water Program (fund 0407,
41 appropriation 18700), Office of Drug Control Policy (fund

42 0407, appropriation 35401), Office of Drug Control Policy –
 43 Surplus (fund 0407, appropriation 35402), Statewide EMS
 44 Program Support (fund 0407, appropriation 38300), Office
 45 of Medical Cannabis (fund 0407, appropriation 42001),
 46 Maternal and Child Health Clinics, Clinicians and Medical
 47 Contracts and Fees (fund 0407, appropriation 57500), Capital
 48 Outlay and Maintenance (fund 0407, appropriation 75500),
 49 Emergency Response Entities – Special Projects (fund 0407,
 50 appropriation 82200), and Tobacco Education Program (fund
 51 0407, appropriation 90600) at the close of the fiscal year
 52 2020 are hereby reappropriated for expenditure during the
 53 fiscal year 2021.

54 From the above appropriation for Current Expenses
 55 (fund 0407, appropriation 13000), an amount not less than
 56 \$100,000 is for the West Virginia Cancer Coalition;
 57 \$50,000 shall be expended for the West Virginia Aids
 58 Coalition; \$100,000 is for Adolescent Immunization
 59 Education; \$73,065 is for informal dispute resolution
 60 relating to nursing home administrative appeals; \$50,000 is
 61 for Hospital Hospitality House of Huntington; \$200,000 is
 62 for Potomac Center Inc. of Romney, West Virginia; and
 63 \$1,000,000 shall be used for the administration of the
 64 Telestroke program.

65 From the above appropriation for Maternal and Child
 66 Health Clinics, Clinicians and Medical Contracts and Fees
 67 (fund 0407, appropriation 57500) up to \$400,000 may be
 68 transferred to the Breast and Cervical Cancer Diagnostic
 69 Treatment Fund (fund 5197) and \$11,000 is for the Marshall
 70 County Health Department for dental services.

58-Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2021 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	68,613,953
5	Jobs & Hope.....	14902	200,000
6	Family Support Act.....	22100	251,226
7	Institutional Facilities		
8	Operations (R)	33500	147,729,180
9	Substance Abuse		
10	Continuum of Care (R)	35400	1,840,000
11	Capital Outlay		
12	and Maintenance (R)	75500	2,875,000
13	Renaissance Program.....	80400	165,996
14	BRIM Premium.....	91300	<u>1,296,098</u>
15	Total.....		\$224,618,154

16 Any unexpended balances remaining in the
17 appropriations for Jim's Dream (fund 0525, appropriation
18 14901), Behavioral Health Program (fund 0525,
19 appropriation 21900), Institutional Facilities Operations
20 (fund 0525, appropriation 33500), Substance Abuse
21 Continuum of Care (fund 0525, appropriation 35400), and
22 Capital Outlay and Maintenance (fund 0525, appropriation
23 75500) at the close of the fiscal year 2020 are hereby
24 reappropriated for expenditure during the fiscal year 2021.

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

34 Included in the above appropriation for Behavioral
35 Health Program (fund 0525, appropriation 21900) is
36 \$100,000 for the Healing Place of Huntington.

37 The above appropriation for Institutional Facilities
38 Operations (fund 0525, appropriation 33500) contains prior

39 year salary increases due to the Hartley court order in the
40 amount of \$2,202,013 for William R. Sharpe Jr. Hospital,
41 and \$2,067,984 for Mildred Mitchel-Bateman Hospital.

42 From the above appropriation for Substance Abuse
43 Continuum of Care (fund 0525, appropriation 35400), the
44 funding will be consistent with the goal areas outlined in the
45 Comprehensive Substance Abuse Strategic Action Plan.

46 Additional funds have been appropriated in fund 5156,
47 fiscal year 2021, organization 0506, for the operation of the
48 institutional facilities. The secretary of the Department of
49 Health and Human Resources is authorized to utilize up to
50 ten percent of the funds from the Institutional Facilities
51 Operations appropriation to facilitate cost effective and cost
52 saving services at the community level.

59-Division of Health –

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2021 Org 0506

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

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

60-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2021 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 2021 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 50,356,249
3	Unclassified	09900	5,688,944
4	Current Expenses	13000	11,708,336
5	Child Care Development	14400	3,102,718
6	Medical Services.....	18900	297,855,264
7	Social Services.....	19500	226,476,781
8	Family Preservation Program	19600	1,565,000
9	Family Resource Networks.....	27400	1,762,464
10	Domestic Violence		
11	Legal Services Fund	38400	400,000
12	James “Tiger” Morton		
13	Catastrophic Illness Fund	45500	105,695
14	I/DD Waiver	46600	108,541,736
15	Child Protective Services		
16	Case Workers.....	46800	27,843,073
17	Title XIX Waiver for Seniors	53300	13,593,620
18	WV Teaching Hospitals		
19	Tertiary/Safety Net	54700	6,356,000
20	In-Home Family Education	68800	1,000,000
21	WV Works		
22	SeparateState Program.....	69800	135,000
23	Child Support Enforcement	70500	6,458,806
24	Temporary Assistance for		
25	Needy Families/Maintenance		
26	of Effort	70700	25,819,096
27	Child Care –		
28	Maintenance of Effort Match ...	70800	5,693,743

29	Grants for Licensed		
30	Domestic Violence Programs		
31	and Statewide Prevention	75000	2,500,000
32	Capital Outlay		
33	and Maintenance (R)	75500	11,875
34	Community Based Services		
35	and Pilot Programs for Youth...	75900	1,000,000
36	Medical Services		
37	Administrative Costs	78900	38,234,761
38	Traumatic Brain Injury Waiver.....	83500	800,000
39	Indigent Burials (R)	85100	1,550,000
40	CHIP Administrative Costs	85601	700,000
41	CHIP Services.....	85602	6,390,665
42	BRIM Premium.....	91300	892,642
43	Rural Hospitals Under 150 Beds ...	94000	2,596,000
44	Children's Trust Fund – Transfer ..	95100	220,000
45	PATH.....	95400	<u>7,162,452</u>
46	Total.....		\$ 856,520,920

47 Any unexpended balances remaining in the
48 appropriations for Capital Outlay and Maintenance (fund
49 0403, appropriation 75500) and Indigent Burials (fund
50 0403, appropriation 85100) at the close of the fiscal year
51 2020 are hereby reappropriated for expenditure during the
52 fiscal year 2021.

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

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

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

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

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

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

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

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

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

102 The above appropriation for Children's Trust Fund –
103 Transfer (fund 0403, appropriation 95100) shall be
104 transferred to the Children's Trust Fund (fund 5469, org
105 0511).

DEPARTMENT OF HOMELAND SECURITY

62-Department of Homeland Security –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2021 Org 0601

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 684,426
3	Unclassified (R).....	09900	16,386
4	Current Expenses.....	13000	168,968
5	Repairs and Alterations.....	06400	1,500
6	Equipment.....	07000	1,500
7	Fusion Center (R).....	46900	2,724,000
8	Other Assets.....	69000	2,500
9	Directed Transfer.....	70000	32,000
10	BRIM Premium.....	91300	22,563
11	WV Fire and EMS		
12	Survivor Benefit (R).....	93900	<u>200,000</u>
13	Total.....		\$ 3,853,843

14 Any unexpended balances remaining in the
15 appropriations for Unclassified (fund 0430, appropriation
16 09900), Fusion Center (fund 0430, appropriation 46900),
17 Justice Reinvestment Training – Surplus (fund 0430,
18 appropriation 69900), WV Fire and EMS Survivor Benefit
19 (fund 0430, appropriation 93900), and Homeland State
20 Security Administrative Agency (fund 0430, appropriation
21 95300) at the close of the fiscal year 2020 are hereby
22 reappropriated for expenditure during the fiscal year 2021.

23 The above appropriation for Directed Transfer (fund
24 0430, appropriation 70000) shall be transferred to the Law-
25 Enforcement, Safety and Emergency Worker Funeral
26 Expense Payment Fund (fund 6003).

63-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2021 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.

64-Division of Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2021 Org 0606

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,189,894
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	1,409,145

10	Mine and Industrial Accident		
11	Rapid Response Call Center	78100	469,911
12	Early Warning Flood System (R) ..	87700	1,284,448
13	BRIM Premium.....	91300	<u>96,529</u>
14	Total.....		\$ 6,149,915

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 2020 are hereby reappropriated for expenditure during the
 21 fiscal year 2021.

65-Division of Corrections and Rehabilitation –

Central Office

(WV Code Chapter 15A)

Fund 0446 FY 2021 Org 0608

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 576,577
3	Current Expenses	13000	<u>2,400</u>
4	Total.....		\$ 578,977

66-Division of Corrections and Rehabilitation –

Correctional Units

(WV Code Chapter 15A)

Fund 0450 FY 2021 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	3,400,402

8	Beckley Correctional Center.....	49000	2,518,874
9	Anthony Correctional Center.....	50400	6,096,779
10	Huttonsville Correctional Center ...	51400	21,920,001
11	Northern Correctional Center	53400	8,018,685
12	Inmate Medical Expenses (R).....	53500	21,226,064
13	Pruntytown Correctional Center ...	54300	8,597,911
14	Corrections Academy	56900	1,925,980
15	Information Technology Services....	59901	2,759,052
16	Martinsburg Correctional Center ...	66300	4,348,990
17	Parole Services.....	68600	5,850,564
18	Special Services	68700	6,477,777
19	Investigative Services	71600	3,394,070
20	Capital Outlay		
21	and Maintenance (R)	75500	2,000,000
22	Salem Correctional Center.....	77400	11,455,381
23	McDowell County		
24	Correctional Center.....	79000	2,542,590
25	Stevens Correctional Center	79100	7,863,195
26	Parkersburg Correctional Center....	82800	3,927,845
27	St. Mary's Correctional Center.....	88100	14,497,534
28	Denmar Correctional Center.....	88200	5,189,043
29	Ohio County Correctional Center ..	88300	2,147,492
30	Mt. Olive Correctional Complex ...	88800	22,357,432
31	Lakin Correctional Center	89600	10,711,864
32	BRIM Premium.....	91300	<u>2,527,657</u>
33	Total.....		\$238,721,691

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 2020 are hereby reappropriated for
 49 expenditure during the fiscal year 2021.

50 The Commissioner of Corrections and Rehabilitation
 51 shall have the authority to transfer between individual
 52 correctional unit appropriations as specified above and may
 53 transfer funds from the individual correctional unit
 54 appropriations as specified above to Current Expenses (fund
 55 0450, appropriation 13000) or Inmate Medical Expenses
 56 (fund 0450, appropriation 53500).

57 From the above appropriation to Current Expenses
 58 (fund 0450, appropriation 13000) payment shall be made to
 59 house Division of Corrections and Rehabilitation inmates in
 60 federal, county, and /or regional jails.

61 Any realized savings from Energy Savings Contract
 62 may be transferred to Facilities Planning and
 63 Administration (fund 0450, appropriation 38600).

67-Division of Corrections and Rehabilitation –

Bureau of Juvenile Services

(WV Code Chapter 15A)

Fund 0570 FY 2021 Org 0608

1	Statewide Reporting Centers	26200	\$	7,358,529
2	Robert L. Shell Juvenile Center	26700		2,519,068
3	Resident Medical Expenses (R)	53501		3,604,999
4	Central Office	70100		2,167,320
5	Capital Outlay			
6	and Maintenance (R)	75500		250,000
7	Gene Spadaro Juvenile Center	79300		2,692,984
8	BRIM Premium	91300		115,967
9	Kenneth Honey Rubenstein			
10	Juvenile Center (R)	98000		5,808,523
11	Vicki Douglas Juvenile Center	98100		2,389,494

12	Northern Regional Juvenile Center	98200	2,876,302
13	Lorrie Yeager Jr. Juvenile Center..	98300	2,422,880
14	Sam Perdue Juvenile Center	98400	2,614,497
15	Tiger Morton Center	98500	2,633,060
16	Donald R. Kuhn Juvenile Center ...	98600	5,060,657
17	J.M. "Chick" Buckbee		
18	Juvenile Center	98700	<u>2,527,617</u>
19	Total.....		\$ 45,041,897

20 Any unexpended balances remaining in the
 21 appropriations for Resident Medical Expenses (fund 0570,
 22 appropriation 53501), Capital Outlay and Maintenance
 23 (fund 0570, appropriation 75500), Roof Repairs and
 24 Mechanical System Upgrades (fund 0570, appropriation
 25 75502), and Kenneth Honey Rubenstein Juvenile Center
 26 (fund 0570, appropriation 98000) at the close of the fiscal
 27 year 2020 are hereby reappropriated for expenditure during
 28 the fiscal year 2021.

29 The Director of Juvenile Services shall have the
 30 authority to transfer between appropriations to the
 31 individual juvenile centers above including statewide
 32 reporting centers and central office and may transfer funds
 33 from the individual juvenile centers to Resident Medical
 34 Expenses (fund 0570, appropriation 53501).

68-West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2021 Org 0612

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 62,255,235
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.....	52100	3,207,832
7	Barracks Lease Payments	55600	237,898

8	Communications and		
9	Other Equipment (R)	55800	1,070,968
10	Trooper Retirement Fund.....	60500	11,487,590
11	Handgun Administration Expense ...	74700	77,892
12	Capital Outlay		
13	and Maintenance (R)	75500	250,000
14	Retirement Systems –		
15	Unfunded Liability	77500	16,648,000
16	Automated Fingerprint		
17	Identification System.....	89800	2,211,693
18	BRIM Premium.....	91300	<u>5,743,921</u>
19	Total.....		\$115,035,475

20 Any unexpended balances remaining in the
 21 appropriations for Communications and Other Equipment
 22 (fund 0453, appropriation 55800), and Capital Outlay and
 23 Maintenance (fund 0453, appropriation 75500) at the close
 24 of the fiscal year 2020 are hereby reappropriated for
 25 expenditure during the fiscal year 2021.

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

69-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2021 Org 0619

1	Current Expenses	13000	\$	64,021
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70-Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2021 Org 0622

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,029,459

3	Unclassified (R).....	09900	21,991
4	Current Expenses.....	13000	422,981
5	Repairs and Alterations.....	06400	8,500
6	Equipment (R).....	07000	64,171
7	BRIM Premium.....	91300	<u>32,602</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 09900)
 12 at the close of the fiscal year 2020 are hereby reappropriated
 13 for expenditure during the fiscal year 2021.

71-Division of Administrative Services

(WV Code Chapter 15A)

Fund 0619 FY 2021 Org 0623

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,306,255
3	Current Expenses.....	13000	<u>305,000</u>
4	Total.....		\$ 2,611,255

72-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 0546 FY 2021 Org 0623

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	4,595,222
7	Justice Reinvestment Initiative.....	89501	2,332,101
8	Statistical Analysis Program.....	59700	49,819
9	Sexual Assault Forensic		
10	Examination Commission (R)...	71400	77,525

11	Qualitative Analysis and Training		
12	for Youth Services (R).....	76200	332,446
13	Law Enforcement		
14	Professional Standards.....	83800	164,272
15	BRIM Premium.....	91300	<u>2,123</u>
16	Total.....		\$ 10,466,605

17 Any unexpended balances remaining in the
 18 appropriations for Child Advocacy Centers (fund 0546,
 19 appropriation 45800), Community Corrections (fund 0546,
 20 appropriation 56100), Sexual Assault Forensic Examination
 21 Commission (fund 0546 appropriation 71400), Qualitative
 22 Analysis and Training for Youth Services (fund 0546,
 23 appropriation 76200), and Law Enforcement Training –
 24 Surplus (fund 0546, appropriation 83899) at the close of the
 25 fiscal year 2020 are hereby reappropriated for expenditure
 26 during the fiscal year 2021.

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

DEPARTMENT OF REVENUE

73-Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2021 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 09600) at the close of the fiscal year 2020 is
 12 hereby reappropriated for expenditure during the fiscal year
 13 2021.

74-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2021 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	5,873,635
5	Repairs and Alterations.....	06400	10,150
6	Equipment.....	07000	54,850
7	Tax Technology Upgrade	09400	3,700,000
8	Integrated Tax		
9	Assessment System (R)	29200	1,100,000
10	Multi State Tax Commission	65300	77,958
11	Other Assets.....	69000	10,000
12	BRIM Premium.....	91300	<u>15,579</u>
13	Total.....		\$ 30,339,291

14 Any unexpended balances remaining in the
 15 appropriations for Personal Services and Employee Benefits
 16 (fund 0470, appropriation 00100), Unclassified (fund 0470,
 17 appropriation 09900), Current Expenses (fund 0470,
 18 appropriation 13000), and Integrated Tax Assessment
 19 System (fund 0470, appropriation 29200) at the close of the
 20 fiscal year 2020 are hereby reappropriated for expenditure
 21 during the fiscal year 2021.

75-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2021 Org 0703

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 794,942
3	Unclassified (R).....	09900	1,199
4	Current Expenses	13000	<u>127,450</u>
5	Total.....		\$ 923,591

6 Any unexpended balance remaining in the
7 appropriation for Unclassified (fund 0595, appropriation
8 09900) at the close of the fiscal year 2020 is hereby
9 reappropriated for expenditure during the fiscal year 2021.

76-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2021 Org 0709

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 452,106
3	Current Expenses (R).....	13000	97,622
4	Unclassified	09900	5,255
5	BRIM Premium.....	91300	<u>3,062</u>
6	Total.....		\$ 558,045

7 Any unexpended balance remaining in the
8 appropriation for Current Expenses (fund 0593,
9 appropriation 13000) at the close of the fiscal year 2020 is
10 hereby reappropriated for expenditure during the fiscal year
11 2021.

77-Division of Professional and Occupational Licenses –

State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2021 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*78-State Rail Authority*

(WV Code Chapter 29)

Fund 0506 FY 2021 Org 0804

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 361,627
3	Current Expenses	13000	3,087,707
4	Other Assets (R).....	69000	1,270,019
5	BRIM Premium.....	91300	<u>201,541</u>
6	Total.....		\$ 4,920,894

7 From the above appropriation for Current Expenses
 8 (fund 0506, appropriation 13000), \$2,800,000 shall be
 9 transferred to the State Rail Authority – Commuter Rail
 10 Access Fund (fund 8402).

11 Any unexpended balance remaining in the
 12 appropriation Other Assets (fund 0506, appropriation
 13 69000) at the close of the fiscal year 2020 is hereby
 14 reappropriated for expenditure during the fiscal year 2021.

79-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2021 Org 0805

1	Equipment (R).....	07000	\$ 25,000
2	Current Expenses (R).....	13000	<u>2,237,989</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 2020 are hereby reappropriated for
 10 expenditure during the fiscal year 2021.

80-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2021 Org 0807

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 223,740
3	Current Expenses (R).....	13000	591,839
4	Repairs and Alterations.....	06400	100
5	BRIM Premium.....	91300	<u>4,438</u>
6	Total.....		\$ 820,117
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 2020 are hereby		
11	reappropriated for expenditure during the fiscal year 2021.		

DEPARTMENT OF VETERANS' ASSISTANCE*81-Department of Veterans' Assistance*

(WV Code Chapter 9A)

Fund 0456 FY 2021 Org 0613

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,987,212
3	Unclassified	09900	20,000
4	Current Expenses	13000	161,450
5	Repairs and Alterations.....	06400	5,000
6	Veterans' Field Offices.....	22800	405,550
7	Veterans' Nursing Home (R).....	28600	6,916,912
8	Veterans' Toll Free		
9	Assistance Line.....	32800	2,015
10	Veterans' Reeducation		
11	Assistance (R).....	32900	40,000
12	Veterans' Grant Program (R).....	34200	560,000
13	Veterans' Grave Markers.....	47300	10,000
14	Veterans' Outreach Programs.....	61700	200,740

15	Veterans Cemetery.....	80800	389,215
16	BRIM Premium.....	91300	<u>50,000</u>
17	Total.....		\$ 10,748,094

18 Any unexpended balances remaining in the
 19 appropriations for Veterans' Nursing Home (fund 0456,
 20 appropriation 28600), Veterans' Reeducation Assistance
 21 (fund 0456, appropriation 32900), Veterans' Grant Program
 22 (fund 0456, appropriation 34200), Veterans' Bonus –
 23 Surplus (fund 0456, appropriation 34400), and Educational
 24 Opportunities for Children of Deceased Veterans (fund
 25 0456, appropriation 85400) at the close of the fiscal year
 26 2020 are hereby reappropriated for expenditure during the
 27 fiscal year 2021.

82-Department of Veterans' Assistance –

Veterans' Home

(WV Code Chapter 9A)

Fund 0460 FY 2021 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

83-Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2021 Org 0508

1	Current Expenses	13000	\$ 500,000
2	Transfer to Division of Human Services		
3	for Health Care and Title XIX		
4	Waiver for Senior Citizens	53900	<u>29,950,955</u>
5	Total.....		\$ 30,450,955

6 From the above appropriation for Current Expenses
 7 (fund 0420, appropriation 13000), \$500,000 shall be used
 8 for Local Senior Citizens Projects.

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

14 The above appropriation is in addition to funding
 15 provided in fund 5405 for this program.

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

84-West Virginia Council for

Community and Technical College Education –

Control Account

(WV Code Chapter 18B)

Fund 0596 FY 2021 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 Workforce		
5	Development (R)	87800	2,786,925
6	College Transition Program.....	88700	278,222
7	West Virginia Advance Workforce		
8	Development (R)	89300	3,118,960
9	Technical Program		
10	Development (R)	89400	1,800,735
11	WV Invests Grant Program.....	89401	<u>7,034,748</u>
12	Total.....		\$ 15,792,838

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 2020 are
 22 hereby reappropriated for expenditure during the fiscal year
 23 2021.

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.

85-Mountwest Community and Technical College

(WV Code Chapter 18B)

Fund 0599 FY 2021 Org 0444

1	Mountwest Community		
2	and Technical College	48700	\$ 6,489,307

86-New River Community and Technical College

(WV Code Chapter 18B)

Fund 0600 FY 2021 Org 0445

1	New River Community		
2	and Technical College	35800	\$ 5,864,886

87-Pierpont Community and Technical College

(WV Code Chapter 18B)

Fund 0597 FY 2021 Org 0446

- 1 Pierpont Community
- 2 and Technical College 93000 \$ 7,820,129

88-Blue Ridge Community and Technical College

(WV Code Chapter 18B)

Fund 0601 FY 2021 Org 0447

- 1 Blue Ridge Community
- 2 and Technical College 88500 \$ 7,830,842

89-West Virginia University at Parkersburg

(WV Code Chapter 18B)

Fund 0351 FY 2021 Org 0464

- 1 West Virginia University –
- 2 Parkersburg 47100 \$ 10,319,284

90-Southern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0380 FY 2021 Org 0487

- 1 Southern West Virginia Community
- 2 and Technical College 44600 \$ 8,241,823

91-West Virginia Northern Community and Technical College

(WV Code Chapter 18B)

Fund 0383 FY 2021 Org 0489

- 1 West Virginia Northern Community
- 2 and Technical College 44700 \$ 7,285,825

92-Eastern West Virginia Community and Technical College
(WV Code Chapter 18B)

Fund 0587 FY 2021 Org 0492

1	Eastern West Virginia Community		
2	and Technical College	41200	\$ 2,179,912

93-BridgeValley Community and Technical College

(WV Code Chapter 18B)

Fund 0618 FY 2021 Org 0493

1	BridgeValley Community		
2	and Technical College	71700	\$ 8,098,811

HIGHER EDUCATION POLICY COMMISSION

94-Higher Education Policy Commission –

Administration –

Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2021 Org 0441

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,710,154
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	628,349
8	Facilities Planning		
9	and Administration	38600	1,760,254
10	Higher Education		
11	System Initiatives	48801	1,630,000

12	PROMISE Scholarship		
13	– Transfer.....	80000	18,500,000
14	HEAPS Grant Program (R).....	86700	5,014,728
15	Mental Health Provider		
16	Loan Repayment.....	XXXXXX	330,000
17	RHI Program and Site Support –		
18	RHEP Program Administration	03700	80,000
19	Health Professionals’		
20	Student Loan Program.....	86701	400,000
21	BRIM Premium.....	91300	<u>17,817</u>
22	Total.....		\$ 74,029,892

23 Any unexpended balances remaining in the
 24 appropriations for Tuition Contract Program (fund 0589,
 25 appropriation 16500), Capital Improvements – Surplus
 26 (fund 0589, appropriation 66100), and HEAPS Grant
 27 Program (fund 0589, appropriation 86700) at the close of
 28 the fiscal year 2020 are hereby reappropriated for
 29 expenditure during the fiscal year 2021.

30 The above appropriation for Facilities Planning and
 31 Administration (fund 0589, appropriation 38600) is for
 32 operational expenses of the West Virginia Education,
 33 Research and Technology Park between construction and
 34 full occupancy.

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

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

45 The above appropriation for PROMISE Scholarship –
 46 Transfer (fund 0589, appropriation 80000) shall be

47 transferred to the PROMISE Scholarship Fund (fund 4296,
48 org 0441) established by W.Va. Code §18C-7-7.

95-Higher Education Policy Commission –

Administration -

*West Virginia Network for Educational Telecomputing
(WVNET)*

(WV Code Chapter 18B)

Fund 0551 FY 2021 Org 0495

1 WVNET..... 16900 \$ 1,747,826

96-West Virginia University –

School of Medicine

Medical School Fund

(WV Code Chapter 18B)

Fund 0343 FY 2021 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.

97-West Virginia University –

General Administrative Fund

(WV Code Chapter 18B)

Fund 0344 FY 2021 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.

98-Marshall University –

School of Medicine

(WV Code Chapter 18B)

Fund 0347 FY 2021 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 2020 is hereby reappropriated for expenditure during the
13 fiscal year 2021.

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.

99-Marshall University –

General Administration Fund

(WV Code Chapter 18B)

Fund 0348 FY 2021 Org 0471

1	Marshall University	44800	\$ 46,761,199
2	Luke Lee Listening		
3	Language and Learning Lab	44801	149,015
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.....		\$ 49,282,632

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 2020 are hereby reappropriated for
 19 expenditure during the fiscal year 2021.

100-West Virginia School of Osteopathic Medicine

(WV Code Chapter 18B)

Fund 0336 FY 2021 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 2020
 14 is hereby reappropriated for expenditure during the fiscal
 15 year 2021.

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.

101-Bluefield State College

(WV Code Chapter 18B)

Fund 0354 FY 2021 Org 0482

1 Bluefield State College..... 40800 \$ 6,383,221

102-Concord University

(WV Code Chapter 18B)

Fund 0357 FY 2021 Org 0483

1 Concord University..... 41000 \$ 10,476,415

103-Fairmont State University

(WV Code Chapter 18B)

Fund 0360 FY 2021 Org 0484

1 Fairmont State University..... 41400 \$ 18,600,341

104-Glenville State College

(WV Code Chapter 18B)

Fund 0363 FY 2021 Org 0485

1 Glenville State College..... 42800 \$ 6,446,942

105-Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2021 Org 0486

1 Shepherd University 43200 \$ 12,683,829

106-West Liberty University

(WV Code Chapter 18B)

Fund 0370 FY 2021 Org 0488

1	West Liberty University	43900	\$	9,102,662
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107-West Virginia State University

(WV Code Chapter 18B)

Fund 0373 FY 2021 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.

MISCELLANEOUS BOARDS AND COMMISSIONS*108-Adjutant General –**State Militia*

(WV Code Chapter 15)

Fund 0433 FY 2021 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			
5	Academy.....	70900		4,800,000
6	Armory Board Transfer	70015		2,317,555
7	Military Authority (R)	74800		6,260,251
8	Drug Enforcement and Support	74801		<u>1,500,000</u>
9	Total.....		\$	19,234,268

10 Any unexpended balances remaining in the appropriations
 11 for Unclassified (fund 0433, appropriation 09900), Military
 12 Authority (fund 0433, appropriation 74800), and Military
 13 Authority – Surplus (fund 0433, appropriation 74899) at the
 14 close of the fiscal year 2020 is hereby reappropriated for
 15 expenditure during the fiscal year 2021.

16 From the above appropriations an amount approved by
 17 the Adjutant General may be transferred to the State
 18 Armory Board for operation and maintenance of National
 19 Guard 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 \$4,800,000 to the Mountaineer
 25 ChalleNGe Academy to meet anticipated program demand.

109-Adjutant General –

Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2021 Org 0603

1	Personal Services and			
2	Employee Benefits.....	00100	\$	100,000
3	Current Expenses	13000		<u>57,775</u>
4	Total.....		\$	157,775
5	Total TITLE II, Section 1 – General Revenue			
6	(Including claims against the state)			<u>\$ 4,574,513,367</u>

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 amounts,
 5 as itemized, for expenditure during the fiscal year 2021.

DEPARTMENT OF TRANSPORTATION*110-Division of Motor Vehicles*

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

Fund 9007 FY 2021 Org 0802

	Appro- piation	State Road Fund
1 Personal Services and		
2 Employee Benefits.....	00100	\$ 25,977,939
3 Current Expenses	13000	16,175,840
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>89,940</u>
9 Total.....		\$ 46,077,719

111-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2021 Org 0803

1 Debt Service.....	04000	\$ 150,000,000
2 Maintenance.....	23700	489,932,854
3 Inventory Revolving	27500	4,000,000
4 Equipment Revolving	27600	18,000,000
5 General Operations	27700	80,000,000
6 Interstate Construction.....	27800	90,000,000
7 Other Federal Aid Programs	27900	370,000,000
8 Appalachian Programs.....	28000	100,000,000
9 Highway Litter Control.....	28200	1,650,000
10 Courtesy Patrol	28201	<u>5,000,000</u>
11 Total.....		\$ 1,308,582,854

12 The above appropriations are to be expended in
13 accordance with the provisions of Chapters 17 and 17C of
14 the code.

15 The Commissioner of Highways shall have the
16 authority to operate revolving funds within the State Road
17 Fund for the operation and purchase of various types of
18 equipment used directly and indirectly in the construction
19 and maintenance of roads and for the purchase of
20 inventories and materials and supplies.

21 There is hereby appropriated in addition to the above
22 appropriations, sufficient money for the payment of claims,
23 accrued or arising during this budgetary period, to be paid
24 in accordance with Sections 17 and 18, Article 2, Chapter
25 14 of the code.

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

112-Office of Administrative Hearings

(WV Code Chapter 17C)

Fund 9027 FY 2021 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 against the state)		<u>\$1,357,570,267</u>

1 **Sec. 3. Appropriations from other funds.** — From the
 2 funds designated 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 2021.

LEGISLATIVE

113-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2021 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 Claim		
6	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 2021 Org 2400

1	Current Expenses.....	13000	\$	1,150,000
2	From the above appropriation for Current Expenses			
3	(fund 1763, appropriation 13000), \$100,000 shall be used			
4	for the West Virginia CASA Association.			

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

(WV Code Chapter 51)

Fund 1704 FY 2021 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 2021 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 2021 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 2021 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>1,841,168</u>
8	Total.....		\$ 3,800,150

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 2021 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 2021 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 2021 Org 1200

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

4 Fifty percent of the deposits made into this fund shall be
 5 transferred to the Treasurer’s Office – Technology Support
 6 and Acquisition Fund (fund 1329, org 1300) for expenditure
 7 for the purposes described in W.Va. Code §12-3-10c.

*122-Auditor's Office –
Purchasing Card Administration Fund*

(WV Code Chapter 12)

Fund 1234 FY 2021 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 2021 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 2021 Org 1200

1	Volunteer Fire Department		
2	Workers' Compensation		
3	Subsidy	83200	\$ 2,500,000

*125-Treasurer's Office**College Prepaid Tuition and Savings Program**Administrative Account*

(WV Code Chapter 18)

Fund 1301 FY 2021 Org 1300

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 810,372
3	Unclassified	09900	14,000
4	Current Expenses	13000	<u>897,559</u>
5	Total.....		\$ 1,721,931

*126-Department of Agriculture –**Agriculture Fees Fund*

(WV Code Chapter 19)

Fund 1401 FY 2021 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 2021 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 2021 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 2021 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 –**Capital Improvements Fund*

(WV Code Chapter 19)

Fund 1413 FY 2021 Org 1400

1	Unclassified	09900	10,000
2	Current Expenses	13000	10,000
3	Repairs and Alterations.....	06400	250,000
4	Equipment.....	07000	350,000
5	Building Improvements	25800	370,000
6	Other Assets.....	69000	<u>10,000</u>
7	Total.....		\$ 1,000,000

*131-Department of Agriculture –**Donated Food Fund*

(WV Code Chapter 19)

Fund 1446 FY 2021 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

132-Department of Agriculture –

Integrated Predation Management Fund

(WV Code Chapter 7)

Fund 1465 FY 2021 Org 1400

1	Current Expenses.....	13000	\$	112,500
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133-Department of Agriculture –

West Virginia Spay Neuter Assistance Fund

(WV Code Chapter 19)

Fund 1481 FY 2021 Org 1400

1	Current Expenses.....	13000	\$	500,000
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134-Department of Agriculture –

Veterans and Warriors to Agriculture Fund

(WV Code Chapter 19)

Fund 1483 FY 2021 Org 1400

1	Current Expenses.....	13000	\$	7,500
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135-Department of Agriculture –

State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 1484 FY 2021 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

136-Attorney General –

Antitrust Enforcement Fund

(WV Code Chapter 47)

Fund 1507 FY 2021 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

137-Attorney General –

Preneed Burial Contract Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2021 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

138-Attorney General –

Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2021 Org 1500

1	Current Expenses	13000	\$	901,135
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139-Secretary of State –

Service Fees and Collection Account

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2021 Org 1600

1	Personal Services and			
2	Employee Benefits.....	00100	\$	1,065,106
3	Unclassified	09900		4,524
4	Current Expenses	13000		8,036
5	Total.....		\$	1,077,666

140-Secretary of State –

General Administrative Fees Account

(WV Code Chapters 3, 5, and 59)

Fund 1617 FY 2021 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		570,000
6	Total.....		\$	4,519,875

DEPARTMENT OF ADMINISTRATION

141-Department of Administration –

Office of the Secretary –

Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 2041 FY 2021 Org 0201

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

142-Department of Administration –

Office of the Secretary –

Employee Pension and Health Care Benefit Fund

(WV Code Chapter 18)

Fund 2044 FY 2021 Org 0201

1	Current Expenses	13000	\$ 33,028,000
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).		

143-Department of Administration –

Division of Finance –

Shared Services Section Fund

(WV Code Chapter 5A)

Fund 2020 FY 2021 Org 0209

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

3	Current Expenses	13000	<u>500,000</u>
4	Total.....		\$ 2,000,000

144-Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2021 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	<u>1,045,000</u>
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
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.

145-Division of Purchasing –

Vendor Fee Fund

(WV Code Chapter 5A)

Fund 2263 FY 2021 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		810
9	Total.....		\$	962,896

146-Division of Purchasing –

Purchasing Improvement Fund

(WV Code Chapter 5A)

Fund 2264 FY 2021 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		850
9	Total.....		\$	1,179,154

147-Travel Management –

Aviation Fund

(WV Code Chapter 5A)

Fund 2302 FY 2021 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		100
8	Total.....		\$	1,327,237

148-Fleet Management Division Fund

(WV Code Chapter 5A)

Fund 2301 FY 2021 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

149-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2021 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.

150-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2021 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

151-Office of Technology –

Chief Technology Officer Administration Fund

(WV Code Chapter 5A)

Fund 2531 FY 2021 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

152-Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2021 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

*153-Division of Forestry –**Timbering Operations Enforcement Fund*

(WV Code Chapter 19)

Fund 3082 FY 2021 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

*154-Division of Forestry –**Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 2021 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

*155-Geological and Economic Survey –**Geological and Analytical Services Fund*

(WV Code Chapter 29)

Fund 3100 FY 2021 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.

156-West Virginia Development Office –

Department of Commerce –

Marketing and Communications Operating Fund

(WV Code Chapter 5B)

Fund 3002 FY 2021 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,724,082
3	Equipment.....	07000	36,000
4	Unclassified	09900	30,000
5	Current Expenses	13000	<u>1,315,078</u>
6	Total.....		\$ 3,105,160

157-West Virginia Development Office –

Office of Coalfield Community Development

(WV Code Chapter 5B)

Fund 3162 FY 2021 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

158-West Virginia Development Office

Entrepreneurship and Innovation Investment Fund

(WV Code Chapter 5B)

Fund 3014 FY 2021 Org 0307

1	Entrepreneurship and Innovation		
2	Investment Fund.....	70301	\$ 500,000

*159-Division of Labor –**West Virginia Jobs Act Fund*

(WV Code Chapter 21)

Fund 3176 FY 2021 Org 0308

1	Current Expenses	13000		75,000
2	Equipment.....	07000		<u>25,5000</u>
3	Total.....		\$	100,000

*160-Division of Labor –**HVAC Fund*

(WV Code Chapter 21)

Fund 3186 FY 2021 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

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

(WV Code Chapter 21)

Fund 3187 FY 2021 Org 0308

1	Personal Services and			
2	Employee Benefits.....	00100	\$	2,532,000
3	Unclassified	09900		21,000
4	Current Expenses	13000		500,000
5	Repairs and Alterations.....	06400		5,000

6	Buildings.....	25800	5,000
7	BRIM Premium.....	91300	<u>8,500</u>
8	Total.....		\$ 3,071,500

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

(WV Code Chapter 21)

Fund 3188 FY 2021 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

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

(WV Code Chapter 21)

Fund 3189 FY 2021 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

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

(WV Code Chapter 21)

Fund 3191 FY 2021 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

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

(WV Code Chapter 21)

Fund 3192 FY 2021 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

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

(WV Code Chapter 21)

Fund 3195 FY 2021 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

167-Division of Labor –

Weights and Measures Fund

(WV Code Chapter 47)

Fund 3196 FY 2021 Org 0308

1	Personal Services and			
2	Employee Benefits.....	00100	\$	0
3	Current Expenses	13000		100,000
4	Unclassified	09900		1,200
5	Repairs and Alterations.....	06400		10,000
6	Equipment.....	07000		10,000
7	BRIM Premium.....	91300		<u>0</u>
8	Total.....		\$	121,200

168-Division of Labor –

Bedding and Upholstery Fund

(WV Code Chapter 21)

Fund 3198 FY 2021 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

169-Division of Labor –

Psychophysiological Examiners Fund

(WV Code Chapter 21)

Fund 3199 FY 2021 Org 0308

1	Current Expenses	13000	\$	4,000
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*170-Division of Natural Resources –
License Fund – Wildlife Resources*

(WV Code Chapter 20)

Fund 3200 FY 2021 Org 0310

1	Wildlife Resources.....	02300	\$	5,200,996
2	Administration	15500		1,300,249
3	Capital Improvements			
4	and Land Purchase (R)	24800		1,300,248
5	Law Enforcement.....	80600		<u>5,200,996</u>
6	Total.....			\$ 13,002,489

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 2020 is hereby reappropriated for expenditure during
14 the fiscal year 2021.

*171-Division of Natural Resources –
Natural Resources Game Fish and Aquatic Life Fund*

(WV Code Chapter 22)

Fund 3202 FY 2021 Org 0310

1	Current Expenses	13000	\$	125,000
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*172-Division of Natural Resources –**Nongame Fund*

(WV Code Chapter 20)

Fund 3203 FY 2021 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

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

(WV Code Chapter 20)

Fund 3205 FY 2021 Org 0310

1	Personal Services and			
2	Employee Benefits.....	00100	\$	457,738
3	Current Expenses	13000		257,864
4	Repairs and Alterations.....	06400		15,016
5	Equipment.....	07000		8,300
6	Buildings.....	25800		8,300
7	Other Assets.....	69000		1,900,000
8	Land.....	73000		<u>31,700</u>
9	Total.....		\$	2,678,918

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

(WV Code Chapter 20)

Fund 3253 FY 2021 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

175-Division of Natural Resources –

Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Fund 3256 FY 2021 Org 0310

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

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

Special Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2021 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	2,481,358
7	Land	73000	<u>1,000,000</u>
8	Total.....		\$ 6,128,128

177-Department of Commerce –

Office of the Secretary –

Broadband Enhancement Fund

Fund 3013 FY 2021 Org 0327

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 131,682
3	Current Expenses	13000	<u>\$ 1,648,318</u>
4	Total.....		1,780,000

178-Office of Energy –

Energy Assistance

(WV Code Chapter 5B)

Fund 3010 FY 2021 Org 0328

1	Energy Assistance – Total	64700	\$ 7,211
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179-State Board of Rehabilitation –

Division of Rehabilitation Services –

West Virginia Rehabilitation Center Special Account

(WV Code Chapter 18)

Fund 8664 FY 2021 Org 0932

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 119,738
3	Current Expenses	13000	1,180,122
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.....		\$ 1,905,360

DEPARTMENT OF EDUCATION

180-State Board of Education –

Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2021 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

181-State Board of Education –

School Construction Fund

(WV Code Chapters 18 and 18A)

Fund 3952 FY 2021 Org 0404

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 3952, appropriation 70000) shall be transferred to the
6 School Building Authority Fund (fund 3959) for the
7 administrative expenses of the School Building Authority.

182-School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2021 Org 0404

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**

183-Division of Culture and History –

Public Records and Preservation Revenue Account

(WV Code Chapter 5A)

Fund 3542 FY 2021 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**

184-Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2021 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

*185-Division of Environmental Protection –**Hazardous Waste Management Fund*

(WV Code Chapter 22)

Fund 3023 FY 2021 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

186-Division of Environmental Protection –

Air Pollution Education and Environment Fund

(WV Code Chapter 22)

Fund 3024 FY 2021 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

187-Division of Environmental Protection –

Special Reclamation Fund

(WV Code Chapter 22)

Fund 3321 FY 2021 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

188-Division of Environmental Protection –

Oil and Gas Reclamation Fund

(WV Code Chapter 22)

Fund 3322 FY 2021 Org 0313

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

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

(WV Code Chapter 22)

Fund 3323 FY 2021 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,486,896
3	Current Expenses	13000	1,249,758
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

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

(WV Code Chapter 22)

Fund 3324 FY 2021 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

*191-Division of Environmental Protection –**Underground Storage Tank**Administrative Fund*

(WV Code Chapter 22)

Fund 3325 FY 2021 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

*192-Division of Environmental Protection –**Hazardous Waste Emergency Response Fund*

(WV Code Chapter 22)

Fund 3331 FY 2021 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

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

(WV Code Chapter 22)

Fund 3332 FY 2021 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

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

(WV Code Chapter 22)

Fund 3333 FY 2021 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,274,054
3	Current Expenses	13000	940,229
4	Repairs and Alterations.....	06400	30,930
5	Equipment.....	07000	23,356
6	Unclassified	09900	31,145
7	Other Assets.....	69000	<u>25,554</u>
8	Total.....		\$ 4,325,268

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

(WV Code Chapter 22)

Fund 3336 FY 2021 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

196-Division of Environmental Protection –

Environmental Laboratory

Certification Fund

(WV Code Chapter 22)

Fund 3340 FY 2021 Org 0313

1	Personal Services and			
2	Employee Benefits.....	00100	\$	352,834
3	Current Expenses	13000		201,146
4	Repairs and Alterations.....	06400		1,000
5	Unclassified	09900		1,120
6	Other Assets.....	69000		<u>163,000</u>
7	Total.....		\$	719,100

197-Division of Environmental Protection –

Stream Restoration Fund

(WV Code Chapter 22)

Fund 3349 FY 2021 Org 0313

1	Current Expenses.....	13000	\$	5,182,076
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198-Division of Environmental Protection –

Litter Control Fund

(WV Code Chapter 22)

Fund 3486 FY 2021 Org 0313

1	Current Expenses.....	13000	\$	60,000
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*199-Division of Environmental Protection –**Recycling Assistance Fund*

(WV Code Chapter 22)

Fund 3487 FY 2021 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 660,575
3	Current Expenses	13000	2,754,258
4	Repairs and Alterations.....	06400	800
5	Equipment.....	07000	500
6	Unclassified	09900	400
7	Other Assets.....	69000	<u>2,500</u>
8	Total.....		\$ 3,419,033

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

(WV Code Chapter 22)

Fund 3490 FY 2021 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

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

(WV Code Chapter 22C)

Fund 3371 FY 2021 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**

202-Division of Health –

Ryan Brown Addiction Prevention and Recovery Fund

(WV Code Chapter 19)

Fund 5111 FY 2021 Org 0506

1	Current Expenses	13000	\$ 10,667,392
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203-Division of Health –

The Vital Statistics Account

(WV Code Chapter 16)

Fund 5144 FY 2021 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

204-Division of Health –

Hospital Services Revenue Account

Special Fund

Capital Improvement, Renovation and Operations

(WV Code Chapter 16)

Fund 5156 FY 2021 Org 0506

1	Institutional Facilities Operations..	33500	\$ 35,555,221
2	Medical Services Trust Fund –		
3	Transfer.....	51200	27,800,000
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 2021, 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).

205-Division of Health –

Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2021 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

*206-Division of Health –**The Health Facility Licensing Account*

(WV Code Chapter 16)

Fund 5172 FY 2021 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

*207-Division of Health –**Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 2021 Org 0506

1	Current Expenses	13000	\$	9,740
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*208-Division of Health –**Lead Abatement Account*

(WV Code Chapter 16)

Fund 5204 FY 2021 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

*209-Division of Health –**West Virginia Birth-to-Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2021 Org 0506

1	Personal Services and			
2	Employee Benefits.....	00100	\$	691,978
3	Unclassified	09900		223,999
4	Current Expenses	13000		<u>30,134,400</u>
5	Total.....		\$	31,050,377

210-Division of Health –

Tobacco Control Special Fund

(WV Code Chapter 16)

Fund 5218 FY 2021 Org 0506

1	Current Expenses.....	13000	\$	7,579
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211-Division of Health –

Medical Cannabis Program Fund

(WV Code Chapter 16A)

Fund 5420 FY 2021 Org 0506

1	Personal Services and			
2	Employee Benefits.....	00100	\$	509,658
3	Current Expenses	13000		<u>2,046,040</u>
4	Total.....		\$	2,555,698

212-West Virginia Health Care Authority –

Health Care Cost Review Fund

(WV Code Chapter 16)

Fund 5375 FY 2021 Org 0507

1	Personal Services and			
2	Employee Benefits.....	00100	\$	1,345,380

3	Unclassified	09900	20,100
4	Current Expenses	13000	<u>785,445</u>
5	Total.....		\$ 2,150,925

6 The above appropriation is to be expended in
 7 accordance with and pursuant to the provisions of W.Va.
 8 Code §16-29B and from the special revolving fund
 9 designated Health Care Cost Review Fund.

213-West Virginia Health Care Authority –

Certificate of Need Program Fund

(WV Code Chapter 16)

Fund 5377 FY 2021 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

214-Division of Human Services –

Health Care Provider Tax –

Medicaid State Share Fund

(WV Code Chapter 11)

Fund 5090 FY 2021 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 Medical Services Program Fund (fund 5084).

215-Division of Human Services –

Child Support Enforcement Fund

(WV Code Chapter 48A)

Fund 5094 FY 2021 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

216-Division of Human Services –

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2021 Org 0511

1	Medical Services.....	18900	\$ 83,168,707
2	Medical Services		
3	Administrative Costs	78900	<u>602,486</u>
4	Total.....		\$ 83,771,193

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.

217-Division of Human Services –

James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2021 Org 0511

1	Unclassified	09900	\$	7,000
2	Current Expenses	13000		<u>393,000</u>
3	Total.....		\$	400,000

218-Division of Human Services –

Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2021 Org 0511

1	Current Expenses	13000	\$	900,000
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219-Division of Human Services –

West Virginia Works Separate State College Program Fund

(WV Code Chapter 9)

Fund 5467 FY 2021 Org 0511

1	Current Expenses	13000	\$	500,000
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220-Division of Human Services –

West Virginia Works Separate State Two-Parent Program Fund

(WV Code Chapter 9)

Fund 5468 FY 2021 Org 0511

1	Current Expenses	13000	\$	1,500,000
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*221-Division of Human Services –**Marriage Education Fund*

(WV Code Chapter 9)

Fund 5490 FY 2021 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 HOMELAND SECURITY*222-Department of Homeland Security –**Office of the Secretary –**Law-Enforcement, Safety and Emergency Worker**Funeral Expense Payment Fund*

(WV Code Chapter 15)

Fund 6003 FY 2021 Org 0601

1	Current Expenses	13000	\$	32,000
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*223-Division of Emergency Management –**Statewide Interoperable Radio Network Account*

(WV Code Chapter 15)

Fund 6208 FY 2021 Org 0606

1	Current Expenses	13000	\$	80,000
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*224-Division Emergency Management –**West Virginia Interoperable Radio Project*

(WV Code Chapter 24)

Fund 6295 FY 2021 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 2020 is		
5	hereby reappropriated for expenditure during the fiscal year		
6	2021.		

*225-Division of Corrections and Rehabilitation –**Parolee Supervision Fees*

(WV Code Chapter 15A)

Fund 6362 FY 2021 Org 0608

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,118,697
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.....		\$ 1,957,110

*226-Division of Corrections and Rehabilitation –**Regional Jail and Correctional Facility Authority*

(WV Code Chapter 15A)

Fund 6675 FY 2021 Org 0608

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 544,798
3	Debt Service.....	04000	9,000,000
4	Current Expenses	13000	<u>245,472</u>
5	Total.....		\$ 9,790,270

*227-West Virginia State Police –**Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Fund 6501 FY 2021 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.

*228-West Virginia State Police –**Forensic Laboratory Fund*

(WV Code Chapter 15)

Fund 6511 FY 2021 Org 0612

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,600,000
3	Current Expenses	13000	90,000
4	Repairs and Alterations.....	06400	5,000
5	Equipment.....	07000	<u>545,000</u>
6	Total.....		\$ 2,240,000

*229-West Virginia State Police –**Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Fund 6513 FY 2021 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.

230-West Virginia State Police –

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2021 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

231-West Virginia State Police –

Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2021 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

*232-West Virginia State Police –**Central Abuse Registry Fund*

(WV Code Chapter 15)

Fund 6527 FY 2021 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

*233-West Virginia State Police –**Bail Bond Enforcer Account*

(WV Code Chapter 15)

Fund 6532 FY 2021 Org 0612

1	Current Expenses.....	13000	\$	8,300
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*234-West Virginia State Police –**State Police Academy Post Exchange*

(WV Code Chapter 15)

Fund 6544 FY 2021 Org 0612

1	Current Expenses.....	13000	\$	160,000
2	Repairs and Alterations.....	06400		<u>40,000</u>
3	Total.....		\$	200,000

*235-Fire Commission –**Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 2021 Org 0619

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,480,533
3	Unclassified	09900	3,800
4	Current Expenses	13000	1,246,550
5	Repairs and Alterations.....	06400	58,500
6	Equipment.....	07000	140,800
7	BRIM Premium.....	91300	<u>65,000</u>
8	Total.....		\$ 4,995,183

*236-Division of Administrative Services –**WV Community Corrections Fund*

(WV Code Chapter 62)

Fund 6386 FY 2021 Org 0623

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

*237-Division of Administrative Services –**Court Security Fund*

(WV Code Chapter 51)

Fund 6804 FY 2021 Org 0623

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 23,840
3	Current Expenses	13000	<u>1,478,135</u>
4	Total.....		\$ 1,501,975

*238-Division of Administrative Services –
Second Chance Driver's License Program Account*

(WV Code Chapter 17B)

Fund 6810 FY 2021 Org 0623

1	Current Expenses	13000	\$	125,000
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DEPARTMENT OF REVENUE

239-Division of Financial Institutions

(WV Code Chapter 31A)

Fund 3041 FY 2021 Org 0303

1	Personal Services and			
2	Employee Benefits.....	00100	\$	2,703,057
3	Current Expenses	13000		650,475
4	Equipment.....	07000		<u>8,500</u>
5	Total.....		\$	3,362,032

240-Office of the Secretary –

State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2021 Org 0701

1	Retirement Systems –			
2	Unfunded Liability	77500	\$	20,000,000

3 The above appropriation for Retirement System –
4 Unfunded Liability shall be transferred to the Consolidated
5 Public Retirement Board – West Virginia Teachers
6 Retirement System Employers School Aid Formula Funds
7 Holding Account Fund (fund 2606).

241-Home Rule Board Operations

(WV Code Chapter 8)

Fund 7010 FY 2021 Org 0701

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 25,000
3	Unclassified	09900	680
4	Current Expenses	13000	42,000
5	Repairs and Alterations.....	06400	120
6	Equipment.....	07000	<u>200</u>
7	Total.....		\$ 68,000

*242-Tax Division –**Cemetery Company Account*

(WV Code Chapter 35)

Fund 7071 FY 2021 Org 0702

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 25,928
3	Current Expenses	13000	<u>7,717</u>
4	Total.....		\$ 33,645

*243-Tax Division –**Special Audit and Investigative Unit*

(WV Code Chapter 11)

Fund 7073 FY 2021 Org 0702

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 696,428
3	Unclassified	09900	8,500
4	Current Expenses	13000	273,297
5	Repairs and Alterations.....	06400	7,000
6	Equipment.....	07000	<u>5,000</u>
7	Total.....		\$ 990,225

*244-Tax Division –**Wine Tax Administration Fund*

(WV Code Chapter 60)

Fund 7087 FY 2021 Org 0702

1	Personal Services and			
2	Employee Benefits.....	00100	\$	268,973
3	Current Expenses	13000		<u>5,406</u>
4	Total.....		\$	274,379

*245-Tax Division –**Reduced Cigarette Ignition Propensity**Standard and Fire Prevention Act Fund*

(WV Code Chapter 47)

Fund 7092 FY 2021 Org 0702

1	Current Expenses	13000	\$	35,000
2	Equipment.....	07000		<u>15,000</u>
3	Total.....		\$	50,000

*246-Tax Division –**Local Sales Tax and Excise Tax**Administration Fund*

(WV Code Chapter 11)

Fund 7099 FY 2021 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

*247-State Budget Office –**Public Employees Insurance Reserve Fund*

(WV Code Chapter 11B)

Fund 7400 FY 2021 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.

*248-State Budget Office –**Public Employees Insurance Agency Financial Stability
Fund*

(WV Code Chapter 11B)

Fund 7401 FY 2021 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.

*249-Insurance Commissioner –**Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 2021 Org 0704

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 748,764
3	Current Expenses	13000	1,357,201
4	Repairs and Alterations.....	06400	3,000
5	Equipment.....	07000	81,374
6	Buildings.....	25800	8,289
7	Other Assets.....	69000	<u>11,426</u>
8	Total.....		\$ 2,210,054

*250-Insurance Commissioner –**Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 2021 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

*251-Insurance Commissioner –**Insurance Commission Fund*

(WV Code Chapter 33)

Fund 7152 FY 2021 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

252-Insurance Commissioner –

Workers' Compensation Old Fund

(WV Code Chapter 23)

Fund 7162 FY 2021 Org 0704

1	Employee Benefits.....	01000	\$ 50,000
2	Current Expenses.....	13000	<u>250,500,000</u>
3	Total.....		\$250,550,000

253-Insurance Commissioner –

Workers' Compensation Uninsured Employers' Fund

(WV Code Chapter 23)

Fund 7163 FY 2021 Org 0704

1	Current Expenses.....	13000	\$ 15,000,000
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254-Insurance Commissioner –

Self-Insured Employer Guaranty Risk Pool

(WV Code Chapter 23)

Fund 7164 FY 2021 Org 0704

1	Current Expenses.....	13000	\$ 9,000,000
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255-Insurance Commissioner –

Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)

Fund 7165 FY 2021 Org 0704

1 Current Expenses..... 13000 \$ 14,000,000

256-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2021 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

257-Racing Commission –

Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2021 Org 0707

1 Medical Expenses – Total..... 24500 \$ 57,000

2 The total amount of this appropriation shall be paid
 3 from the special revenue fund out of collections of license
 4 fees and fines as provided by law.

5 No expenditures shall be made from this fund except for
 6 hospitalization, medical care and/or funeral expenses for
 7 persons contributing to this fund.

258-Racing Commission –

Administration and Promotion Account

(WV Code Chapter 19)

Fund 7304 FY 2021 Org 0707

1	Personal Services and			
2	Employee Benefits.....	00100	\$	264,564
3	Current Expenses	13000		85,433

4	Other Assets.....	69000		<u>5,000</u>
5	Total.....		\$	354,997

*259-Racing Commission –**General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2021 Org 0707

1	Personal Services and			
2	Employee Benefits.....	00100	\$	2,352,306
3	Current Expenses.....	13000		497,284
4	Repairs and Alterations.....	06400		5,000
5	Other Assets.....	69000		<u>40,000</u>
6	Total.....		\$	2,894,590

*260-Racing Commission –**Administration, Promotion, Education, Capital Improvement
and Greyhound Adoption Programs**to include Spaying and Neutering Account*

(WV Code Chapter 19)

Fund 7307 FY 2021 Org 0707

1	Personal Services and			
2	Employee Benefits.....	00100	\$	918,781
3	Current Expenses.....	13000		160,099
4	Other Assets.....	69000		<u>200,000</u>
5	Total.....		\$	1,278,880

*261-Alcohol Beverage Control Administration –**Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2021 Org 0708

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 147,213
3	Unclassified	09900	30,750
4	Current Expenses	13000	54,186
5	Repairs and Alterations.....	06400	7,263
6	Equipment.....	07000	10,000
7	Buildings.....	25800	100,000
8	Other Assets.....	69000	<u>100</u>
9	Total.....		\$ 349,512

10 To the extent permitted by law, four classified exempt
 11 positions shall be provided from Personal Services and
 12 Employee Benefits appropriation for field auditors.

262-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2021 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	76,500,000
8	Transfer Liquor Profits and Taxes .	42500	21,200,000
9	Other Assets.....	69000	125,100
10	Land	73000	<u>100</u>
11	Total.....		\$107,080,451

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.

263-State Athletic Commission Fund

(WV Code Chapter 29)

Fund 7009 FY 2021 Org 0933

1	Personal Services and			
2	Employee Benefits.....	00100	\$	10,500
3	Current Expenses	13000		<u>29,500</u>
4	Total.....		\$	40,000

DEPARTMENT OF TRANSPORTATION

264-Division of Motor Vehicles –

Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2021 Org 0802

1	Current Expenses	13000	\$	189,000
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265-Division of Motor Vehicles –

Motor Vehicle Fees Fund

(WV Code Chapter 17B)

Fund 8223 FY 2021 Org 0802

1	Personal Services and			
2	Employee Benefits.....	00100	\$	3,733,074
3	Current Expenses	13000		4,357,773

4	Repairs and Alterations.....	06400	16,000
5	Equipment.....	07000	75,000
6	Other Assets.....	69000	10,000
7	BRIM Premium.....	91300	<u>89,939</u>
8	Total.....		\$ 8,281,786

266-Division of Highways –

A. James Manchin Fund

(WV Code Chapter 22)

Fund 8319 FY 2021 Org 0803

1	Current Expenses.....	13000	\$ 2,500,000
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267-State Rail Authority -

West Virginia Commuter Rail Access Fund

(WV Code Chapter 29)

Fund 8402 FY 2021 Org 0804

1	Current Expenses.....	13000	\$ 2,800,000
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DEPARTMENT OF VETERANS' ASSISTANCE

268-Veterans' Facilities Support Fund

(WV Code Chapter 9A)

Fund 6703 FY 2021 Org 0613

1	Current Expenses.....	13000	\$ 1,654,234
2	Other Assets.....	69000	<u>10,000</u>
3	Total.....		\$ 1,664,234

269-Department of Veterans' Assistance –

WV Veterans' Home –

Special Revenue Operating Fund

(WV Code Chapter 9A)

Fund 6754 FY 2021 Org 0618

1	Current Expenses	13000	\$	289,400
2	Repairs and Alterations.....	06400		<u>10,600</u>
3	Total.....		\$	300,000

BUREAU OF SENIOR SERVICES*270-Bureau of Senior Services –**Community Based Service Fund*

(WV Code Chapter 29)

Fund 5409 FY 2021 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*271-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 2021 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.

272-Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2021 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 2020 is hereby
4 reappropriated for expenditure during the fiscal year 2021.

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.

273-Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2021 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 2020 is
 4 hereby reappropriated for expenditure during the fiscal year
 5 2021.

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.

274-West Virginia University –

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2021 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

275-Board of Barbers and Cosmetologists –

Barbers and Beauticians Special Fund

(WV Code Chapters 16 and 30)

Fund 5425 FY 2021 Org 0505

1	Personal Services and			
2	Employee Benefits.....	00100	\$	543,993
3	Current Expenses	13000		234,969
4	Repairs and Alterations.....	06400		<u>5,000</u>
5	Total.....		\$	783,962

6 The total amount of these appropriations shall be paid
 7 from a special revenue fund out of collections made by the
 8 Board of Barbers and Cosmetologists as provided by law.

276-Hospital Finance Authority –

Hospital Finance Authority Fund

(WV Code Chapter 16)

Fund 5475 FY 2021 Org 0509

1	Personal Services and			
2	Employee Benefits.....	00100	\$	93,279
3	Unclassified	09900		1,501
4	Current Expenses	13000		<u>55,328</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.

*277-WV State Board of Examiners for Licensed Practical
 Nurses –*

Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2021 Org 0906

1	Personal Services and			
2	Employee Benefits.....	00100	\$	495,505

3	Current Expenses	13000	<u>107,700</u>
4	Total.....		\$ 603,205

278-WV Board of Examiners for Registered Professional Nurses –

Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2021 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

279-Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2021 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 from
 14 a special revenue fund out of collections for special license fees
 15 from public service corporations as provided by law.

16 The Public Service Commission is authorized to
 17 transfer up to \$500,000 from this fund to meet the expected
 18 deficiencies in the Motor Carrier Division (fund 8625, org
 19 0926) due to the amendment and reenactment of W.Va.
 20 Code §24A-3-1 by Enrolled House Bill Number 2715,
 21 Regular Session, 1997.

280-Public Service Commission –

Gas Pipeline Division –

Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

Fund 8624 FY 2021 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.

281-Public Service Commission –

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2021 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.

282-Public Service Commission –

Consumer Advocate Fund

(WV Code Chapter 24)

Fund 8627 FY 2021 Org 0926

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 876,994
3	Current Expenses.....	13000	386,472
4	Equipment.....	07000	9,872
5	BRIM Premium.....	91300	<u>4,660</u>
6	Total.....		\$ 1,277,998

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.

283-Real Estate Commission –

Real Estate License Fund

(WV Code Chapter 30)

Fund 8635 FY 2021 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.

284-WV Board of Examiners for Speech-Language

Pathology and Audiology –

Speech-Language Pathology and Audiology Operating Fund

(WV Code Chapter 30)

Fund 8646 FY 2021 Org 0930

1	Personal Services and			
2	Employee Benefits.....	00100	\$	91,513
3	Current Expenses	13000		<u>63,499</u>
4	Total.....		\$	155,012

285-WV Board of Respiratory Care –

Board of Respiratory Care Fund

(WV Code Chapter 30)

Fund 8676 FY 2021 Org 0935

1	Personal Services and			
2	Employee Benefits.....	00100	\$	94,050
3	Current Expenses	13000		54,137
4	Repairs and Alterations.....	06400		<u>400</u>
5	Total.....		\$	148,587

286-WV Board of Licensed Dietitians –

Dietitians Licensure Board Fund

(WV Code Chapter 30)

Fund 8680 FY 2021 Org 0936

1	Personal Services and			
2	Employee Benefits.....	00100	\$	20,219
3	Current Expenses	13000		<u>20,250</u>
4	Total.....		\$	40,469

*287- Massage Therapy Licensure Board –**Massage Therapist Board Fund*

(WV Code Chapter 30)

Fund 8671 FY 2021 Org 0938

1	Personal Services and			
2	Employee Benefits.....	00100	\$	109,555
3	Current Expenses	13000		<u>42,448</u>
4	Total.....		\$	152,003

*288-Board of Medicine –**Medical Licensing Board Fund*

(WV Code Chapter 30)

Fund 9070 FY 2021 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

*289-West Virginia Enterprise Resource Planning Board –**Enterprise Resource Planning System Fund*

(WV Code Chapter 12)

Fund 9080 FY 2021 Org 0947

1	Personal Services and			
2	Employee Benefits.....	00100	\$	6,856,239
3	Unclassified	09900		232,000
4	Current Expenses	13000		13,662,210
5	Repairs and Alterations.....	06400		300
6	Equipment.....	07000		302,000
7	Buildings.....	25800		2,000

8	Other Assets.....	69000		<u>203,500</u>
9	Total.....			\$ 21,258,249

290-Board of Treasury Investments –

Board of Treasury Investments Fee Fund

(WV Code Chapter 12)

Fund 9152 FY 2021 Org 0950

1	Personal Services and			
2	Employee Benefits.....	00100	\$	832,889
3	Unclassified	09900		14,850
4	Current Expenses	13000		605,714
5	BRIM Premium.....	91300		31,547
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.

291-State Armory Board –

General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2021 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	520,820
7	Other Assets.....	69000	350,000
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).

17 Total TITLE II, Section 3 – Other Funds
 18 (Including claims against the state)..... \$1,513,410,079

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.

*292-Education, Arts, Sciences and Tourism –**Debt Service Fund*

(WV Code Chapter 5)

Fund 2252 FY 2021 Org 0211

	Appro- priation	Lottery Funds
1 Debt Service – Total	31000	\$ 10,000,000

*293-West Virginia Development Office –**West Virginia Tourism Office*

(WV Code Chapter 5B)

Fund 3067 FY 2021 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 2020 are hereby reappropriated for expenditure during the
10 fiscal year 2021.

294-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2021 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 2020 are hereby reappropriated for expenditure during the
 16 fiscal year 2021.

295-State Board of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2021 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 2020 are hereby
 16 reappropriated for expenditure during the fiscal year
 17 2021.

296-State Department of Education –

School Building Authority –

Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2021 Org 0404

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.

7 The above appropriation for Directed Transfer (fund
 8 3963, appropriation 70000) may be transferred to the
 9 Department of Education, State Board of Education, School
 10 Building Authority, School Construction Fund, fund 3952,
 11 organization 0404 to be used for school construction and
 12 maintenance projects.

297-Division of Culture and History –

Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2021 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 (R).....	19300	374,980
6	Archeological Curation/Capital		
7	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, Arts Monongahela
29 (Monongalia) \$11,881, Barbour County Arts and
30 Humanities Council \$891, Beckley Main Street (Raleigh)
31 \$2,970, Buffalo Creek Memorial (Logan) \$2,970, Carnegie
32 Hall (Greenbrier) \$46,899, Ceredo Historical Society
33 (Wayne) \$1,188, Ceredo Kenova Railroad Museum
34 (Wayne) \$1,188, Ceredo Museum (Wayne) \$720,
35 Children's Theatre of Charleston (Kanawha) \$3,127,
36 Chuck Mathena Center (Mercer) \$62,532, Collis P.
37 Huntington Railroad Historical Society (Cabell) \$5,941,
38 Country Music Hall of Fame and Museum (Marion)
39 \$4,159, First Stage Children's Theater Company \$1,188,
40 Flannigan Murrell House (Summers) \$3,781, Fort Ashby
41 Fort (Mineral) \$891, Fort New Salem (Harrison) \$2,198,
42 Fort Randolph (Mason) \$2,970, General Adam Stephen
43 Memorial Foundation (Berkeley) \$11,006, Grafton
44 Mother's Day Shrine Committee (Taylor) \$8,749, 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, Memorial Day
 54 Patriotic Exercise (Taylor) \$20,000, Morgantown Theater
 55 Company (Monongalia) \$11,881, Mountaineer Boys' State
 56 (Lewis) \$5,941, Nicholas Old Main Foundation (Nicholas)
 57 \$1,188, Norman Dillon Farm Museum (Berkeley) \$5,941,
 58 Old Opera House Theater Company (Jefferson) \$8,911,
 59 Parkersburg Arts Center (Wood) \$11,881, Pocahontas
 60 Historic Opera House \$3,564, Raleigh County All Wars
 61 Museum \$5,941, Rhododendron Girl's State (Ohio)
 62 \$5,941, Roane County 4-H and FFA Youth Livestock
 63 Program \$2,970, Society for the Preservation of McGrew
 64 House (Preston) \$2,079, Southern West Virginia Veterans'
 65 Museum \$3,393, Summers County Historic Landmark
 66 Commission \$2,970, Those Who Served War Museum
 67 (Mercer) \$2,376, Three Rivers Avian Center (Summers)
 68 \$5,311, Veterans Committee for Civic Improvement of
 69 Huntington (Wayne) \$2,970, West Virginia Museum of
 70 Glass (Lewis) \$2,970, West Virginia Music Hall of Fame
 71 (Kanawha) \$20,792, Camp Horseshoe (Tucker) \$59,406,
 72 Youth Museum of Southern West Virginia (Raleigh)
 73 \$7,129, Z.D. Ramsdell House (Wayne) \$720.

74 From the above appropriation for Fairs and Festivals
 75 (fund 3534, appropriation 12200) funding shall be provided
 76 to the A Princeton 4th (Mercer) \$1,800, African-American
 77 Cultural Heritage Festival (Jefferson) \$2,970, Alderson 4th
 78 of July Celebration (Greenbrier) \$2,970, Allegheny Echo
 79 (Pocahontas) \$4,456, Alpine Festival/Leaf Peepers Festival
 80 (Tucker) \$6,683, American Civil War (Grant) \$3,127,
 81 American Legion Post 8 Veterans Day Parade (McDowell)
 82 \$1,250, Angus Beef and Cattle Show (Lewis) \$891, Annual
 83 Don Redman Heritage Concert & Awards (Jefferson) \$938,
 84 Annual Ruddle Park Jamboree (Pendleton) \$4,690, Antique
 85 Market Fair (Lewis) \$1,188, Apple Butter Festival

86 (Morgan) \$3,564, Arkansaw Homemaker's Heritage
87 Weekend (Hardy) \$2,079, Armed Forces Day-South
88 Charleston (Kanawha) \$1,782, Arthurdale Heritage New
89 Deal Festival (Preston) \$2,970, Athens Town Fair (Mercer)
90 \$1,188, Augusta Fair (Randolph) \$2,970, Autumn Harvest
91 Fest (Monroe) \$2,448, Barbour County Fair \$14,851,
92 Barboursville Octoberfest (Cabell) \$2,970, Battelle District
93 Fair (Monongalia) \$2,970, Battle of Dry Creek
94 (Greenbrier) \$891, Battle of Point Pleasant Memorial
95 Committee (Mason) \$2,970, Belle Town Fair (Kanawha)
96 \$2,673, Belleville Homecoming (Wood) \$11,881, Bergoo
97 Down Home Days (Webster) \$1,485, Berkeley County
98 Youth Fair \$10,990, Black Bear 4K Mountain Bike Race
99 (Kanawha) \$684, Black Heritage Festival (Harrison)
100 \$3,564, Black Walnut Festival (Roane) \$5,940, Blast from
101 the Past (Upshur) \$1,440, Blue-Gray Reunion (Barbour)
102 \$2,079, Boone County Fair \$5,940, Boone County Labor
103 Day Celebration \$2,376, Bradshaw Fall Festival
104 (McDowell) \$1,188, Brandonville Heritage Day (Preston)
105 \$1,048, Braxton County Fair \$6,832, Braxton County
106 Monster Fest / West Virginia Autumn Festival \$1,485,
107 Brooke County Fair \$2,079, Bruceton Mills Good
108 Neighbor Days (Preston) \$1,188, Buckwheat Festival
109 (Preston) \$5,050, Buffalo 4th of July Celebration (Putnam)
110 \$400, Buffalo October Fest (Putnam) \$3,240, Burlington
111 Apple Harvest Festival (Mineral) \$17,821, Burlington
112 Pumpkin Harvest Festival (Raleigh) \$2,970, Burnsville
113 Freedom Festival (Braxton) \$1,407, Cabell County Fair
114 \$5,940, Calhoun County Wood Festival \$1,188,
115 Campbell's Creek Community Fair (Kanawha) \$1,485,
116 Cape Coalwood Festival Association (McDowell) \$1,485,
117 Capon Bridge Founders Day Festival (Hampshire) \$1,188,
118 Capon Springs Ruritan 4th of July (Hampshire) \$684, Cass
119 Homecoming (Pocahontas) \$1,188, Cedarville Town
120 Festival (Gilmer) \$684, Celebration of America
121 (Monongalia) \$3,564, Chapmanville Apple Butter Festival
122 (Logan) \$684, Chapmanville Fire Department 4th of July
123 (Logan) \$1,782, Charles Town Christmas Festival
124 (Jefferson) \$2,970, Charles Town Heritage Festival

125 (Jefferson) \$2,970, Cherry River Festival (Nicholas)
126 \$3,861, Chester Fireworks (Hancock) \$891, Chester 4th of
127 July Festivities (Hancock) \$2,970, Chief Logan State Park-
128 Civil War Celebration (Logan) \$4,752, Chilifest West
129 Virginia State Chili Championship (Cabell) \$1,563,
130 Christmas In Our Town (Marion) \$3,127, Christmas in
131 Shepherdstown (Jefferson) \$2,376, Christmas in the Park
132 (Brooke) \$2,970, Christmas in the Park (Logan) \$14,851,
133 City of Dunbar Critter Dinner (Kanawha) \$5,940, City of
134 Logan Polar Express (Logan) \$4,456, City of New
135 Martinsville Festival of Memories (Wetzel) \$6,534, Clay
136 County Golden Delicious Apple Festival \$4,158, Clay
137 District Fair (Monongalia) \$1,080, Coal Field Jamboree
138 (Logan) \$20,792, Coalton Days Fair (Randolph) \$4,158,
139 Craigsville Fall Festival (Nicholas) \$2,079, Cruise into
140 Princeton (Mercer) \$2,160, Culturefest World Music & Arts
141 Festival (Mercer) \$4,690, Delbarton Homecoming (Mingo)
142 \$2,079, Doddridge County Fair \$4,158, Durbin Days
143 (Pocahontas) \$2,970, Elbert/Filbert Reunion Festival
144 (McDowell) \$891, Fairview 4th of July Celebration
145 (Marion) \$684, Farm Safety Day (Preston) \$1,188,
146 Farmer's Day Festival (Monroe) \$2,330, Fenwick
147 Mountain Old Time Community Festival (Nicholas)
148 \$2,880, FestivALL Charleston (Kanawha) \$11,881,
149 Flemington Day Fair and Festival (Taylor) \$2,379,
150 Follansbee Community Days (Brooke) \$4,900, Fort Gay
151 Mountain Heritage Days (Wayne) \$2,970, Fort Henry Days
152 (Ohio) \$3,148, Fort Henry Living History (Ohio) \$1,563,
153 Fort New Salem Spirit of Christmas Festival (Harrison)
154 \$2,432, Frankford Autumnfest (Greenbrier) \$2,970,
155 Franklin Fishing Derby (Pendleton) \$4,456, Freshwater
156 Folk Festival (Greenbrier) \$2,970, Friends Auxiliary of
157 W.R. Sharpe Hospital (Lewis) \$2,970, Frontier Days
158 (Harrison) \$1,782, Fund for the Arts-Wine & All that Jazz
159 Festival (Kanawha) \$1,485, Gassaway Days Celebration
160 (Braxton) \$2,970, Gilbert Elementary Fall Blast (Mingo)
161 \$2,188, Gilbert Spring Fling (Mingo) \$3,595, Gilmer
162 County Farm Show \$2,376, Grant County Arts Council
163 \$1,188, Great Greenbrier River Race (Pocahontas) \$5,940,

164 Greater Quinwood Days (Greenbrier) \$781, Guyandotte
165 Civil War Days (Cabell) \$5,941, Hamlin 4th of July
166 Celebration (Lincoln) \$2,970, Hampshire Civil War
167 Celebration Days (Hampshire) \$684, Hampshire County
168 4th of July Celebration \$11,881, Hampshire County Fair
169 \$5,002, Hancock County Oldtime Fair \$2,970, Hardy
170 County Commission - 4th of July \$5,940, Hatfield McCoy
171 Matewan Reunion Festival (Mingo) \$12,330, Hatfield
172 McCoy Trail National ATV and Dirt Bike Weekend
173 (Wyoming) \$2,970, Heat'n the Hills Chilifest (Lincoln)
174 \$2,970, Heritage Craft Festival (Monroe) \$1,044, Heritage
175 Days Festival (Roane) \$891, Hilltop Festival (Cabell)
176 \$684, Hilltop Festival of Lights (McDowell) \$1,188,
177 Hinton Railroad Days (Summers) \$4,347, Holly River
178 Festival (Webster) \$891, Hometown Mountain Heritage
179 Festival (Fayette) \$2,432, Hundred 4th of July (Wetzel)
180 \$4,307, Hurricane 4th of July Celebration (Putnam) \$2,970,
181 Jaeger Town Fair (McDowell) \$891, Irish Heritage Festival
182 of West Virginia (Raleigh) \$2,970, Irish Spring Festival
183 (Lewis) \$684, Italian Heritage Festival-Clarksburg
184 (Harrison) \$17,821, Jackson County Fair \$2,970, Jamboree
185 (Pocahontas) \$2,970, Jane Lew Arts and Crafts Fair
186 (Lewis) \$684, Jefferson County Fair Association \$14,851,
187 Jersey Mountain Ruritan Pioneer Days (Hampshire) \$684,
188 John Henry Days Festival (Monroe) \$4,698, Johnnie
189 Johnson Blues and Jazz Festival (Marion) \$2,970,
190 Johnstown Community Fair (Harrison) \$1,485, Junior
191 Heifer Preview Show (Lewis) \$1,188, Kanawha Coal
192 Riverfest-St. Albans 4th of July Festival (Kanawha)
193 \$2,970, Keeper of the Mountains-Kayford (Kanawha)
194 \$1,485, Kenova Autumn Festival (Wayne) \$4,377, Kermit
195 Fall Festival (Mingo) \$1,782, Keystone Reunion Gala
196 (McDowell) \$1,563, King Coal Festival (Mingo) \$2,970,
197 Kingwood Downtown Street Fair and Heritage Days
198 (Preston) \$1,188, L.Z. Rainelle West Virginia Veterans
199 Reunion (Greenbrier) \$2,970, Lady of Agriculture
200 (Preston) \$684, Larry Joe Harless Center Octoberfest
201 Hatfield McCoy Trail (Mingo) \$5,940, Larry Joe Harless
202 Community Center Spring Middle School Event (Mingo)

203 \$2,970, Last Blast of Summer (McDowell) \$2,970,
204 Lewisburg Shanghai (Greenbrier) \$1,188, Lincoln County
205 Fall Festival \$4,752, Lincoln County Winterfest \$2,970,
206 Lindside Veterans' Day Parade (Monroe) \$720, Little
207 Levels Heritage Festival (Pocahontas) \$1,188, Lost Creek
208 Community Festival (Harrison) \$4,158, Main Street Arts
209 Festival (Upshur) \$3,127, Main Street Martinsburg
210 Chocolate Fest and Book Fair (Berkeley) \$2,813,
211 Mannington District Fair (Marion) \$3,564, Maple Syrup
212 Festival (Randolph) \$684, Marion County FFA Farm Fest
213 \$1,485, Marmet Labor Day Celebration (Kanawha) \$3,078,
214 Marshall County Antique Power Show \$1,485, Mason
215 County Fair \$2,970, , Matewan Massacre Reenactment
216 (Mingo) \$5,004, Matewan-Magnolia Fair (Mingo)
217 \$15,932, McARTS-McDowell County \$11,881, McGrew
218 House History Day (Preston) \$1,188, McNeill's Rangers
219 (Mineral) \$4,752, Meadow Bridge Hometown Festival
220 (Fayette) \$743, Meadow River Days Festival (Greenbrier)
221 \$1,782, Mercer Bluestone Valley Fair (Mercer) \$1,188,
222 Mercer County Fair \$1,188, Mercer County Heritage
223 Festival \$3,474, Milton Christmas in the Park (Cabell)
224 \$1,485, Milton Old Timey Days (Cabell) \$1,485, Mineral
225 County Veterans Day Parade \$891, Molasses Festival
226 (Calhoun) \$1,188, Monongahfest (Marion) \$3,752, Moon
227 Over Mountwood Fishing Festival (Wood) \$1,782, Morgan
228 County Fair-History Wagon \$891, Moundsville Bass
229 Festival (Marshall) \$2,376, Moundsville July 4th
230 Celebration (Marshall) \$2,970, Mount Liberty Fall Festival
231 (Barbour) \$1,485, Mountain Fest (Monongalia) \$11,881,
232 Mountain Festival (Mercer) \$2,747, Mountain Heritage
233 Arts and Crafts Festival (Jefferson) \$2,970, Mountain
234 Music Festival (McDowell) \$1,485, Mountain State Apple
235 Harvest Festival (Berkeley) \$4,456, Mountain State Arts &
236 Crafts Fair Cedar Lakes (Jackson) \$26,732, Mullens
237 Dogwood Festival (Wyoming) \$4,158, Multi-Cultural
238 Festival of West Virginia (Kanawha) \$11,881, Music and
239 Barbecue - Banks District VFD (Upshur) \$1,278, New
240 Cumberland Christmas Parade (Hancock) \$1,782, New
241 Cumberland 4th of July (Hancock) \$2,970, New River

242 Bridge Day Festival (Fayette) \$23,762, Nicholas County
243 Fair \$2,970, Nicholas County Potato Festival \$2,079, Oak
244 Leaf Festival (Fayette) \$6,253, Oceana Heritage Festival
245 (Wyoming) \$3,564, Oglebay City Park - Festival of Lights
246 (Ohio) \$47,524, Oglebay Festival (Ohio) \$5,940, Ohio
247 County Country Fair \$5,346, Ohio River Fest (Jackson)
248 \$4,320, Ohio Valley Beef Association (Wood) \$1,485,
249 Ohio Valley Black Heritage Festival (Ohio) \$3,267, Old
250 Central City Fair (Cabell) \$2,970, Old Tyme Christmas
251 (Jefferson) \$1,425, Paden City Labor Day Festival (Wetzel)
252 \$3,861, Parkersburg Homecoming (Wood) \$8,754, Patty
253 Fest (Monongalia) \$1,188, Paw Paw District Fair (Marion)
254 \$2,079, Pax Reunion Committee (Fayette) \$2,970,
255 Pendleton County 4-H Weekend \$1,188, Pendleton County
256 Committee for Arts \$8,910, Pendleton County Fair \$6,253,
257 Pennsboro Country Road Festival (Ritchie) \$1,188,
258 Petersburg 4th of July Celebration (Grant) \$11,881,
259 Petersburg HS Celebration (Grant) \$5,940, Piedmont-
260 Annual Back Street Festival (Mineral) \$2,376, Pinch
261 Reunion (Kanawha) \$891, Pine Bluff Fall Festival
262 (Harrison) \$2,376, Pine Grove 4th of July Festival (Wetzel)
263 \$4,158, Pineville Festival (Wyoming) \$3,564, Pleasants
264 County Agriculture Youth Fair \$2,970, Poca Heritage Days
265 (Putnam) \$1,782, Pocahontas County Pioneer Days
266 \$4,159, Point Pleasant Stern Wheel Regatta (Mason)
267 \$2,970, Pratt Fall Festival (Kanawha) \$1,485, Princeton
268 Autumnfest (Mercer) \$1,563, Princeton Street Fair
269 (Mercer) \$2,970, Putnam County Fair \$2,970, Quartets on
270 Parade (Hardy) \$2,376, Rainelle Fall Festival (Greenbrier)
271 \$3,127, Rand Community Center Festival (Kanawha)
272 \$1,485, Randolph County Community Arts Council
273 \$1,782, Randolph County Fair \$4,158, Randolph County
274 Ramp and Rails \$1,188, Ranson Christmas Festival
275 (Jefferson) \$2,970, Ranson Festival (Jefferson) \$2,970,
276 Renick Liberty Festival (Greenbrier) \$684, Ripley 4th of
277 July (Jackson) \$8,910, Ritchie County Fair and Exposition
278 \$2,970, Ritchie County Pioneer Days \$684, River City
279 Festival (Preston) \$684, Roane County Agriculture Field
280 Day \$1,782, Rock the Park (Kanawha) \$3,240, Rocket

281 Boys Festival (Raleigh) \$1,710, Romney Heritage Days
282 (Hampshire) \$1,876, Ronceverte River Festival
283 (Greenbrier) \$2,970, Rowlesburg Labor Day Festival
284 (Preston) \$684, Rupert Country Fling (Greenbrier) \$1,876,
285 Saint Spyridon Greek Festival (Harrison) \$1,485, Salem
286 Apple Butter Festival (Harrison) \$2,376, Sistersville 4th of
287 July (Tyler) \$3,267, Skirmish on the River (Mingo)
288 \$1,250, Smoke on the Water (Wetzel) \$1,782, South
289 Charleston Summerfest (Kanawha) \$5,940, Southern
290 Wayne County Fall Festival \$684, Spirit of Grafton
291 Celebration (Taylor) \$6,240, St. Albans City of Lights -
292 December (Kanawha) \$2,970, Sternwheel Festival (Wood)
293 \$1,782, Stoco Reunion (Raleigh) \$1,485, Stonewall
294 Jackson Heritage Arts & Crafts Jubilee (Lewis) \$6,534,
295 Stonewall Jackson's Roundhouse Raid (Berkeley) \$7,200,
296 Strawberry Festival (Upshur) \$17,821, Sylvester Big Coal
297 River Festival (Boone) \$1,944, Tacy Fair (Barbour) \$684,
298 Taste of Parkersburg (Wood) \$2,970, Taylor County Fair
299 \$3,567, The Gathering at Sweet Creek (Wood) \$1,782,
300 Three Rivers Coal Festival (Marion) \$4,604, Thunder on
301 the Tygart - Mothers' Day Celebration (Taylor) \$7,300,
302 Town of Delbarton 4th of July Celebration (Mingo) \$1,782,
303 Town of Fayetteville Heritage Festival (Fayette) \$4,456,
304 Town of Rivesville 4th of July Festival (Marion) \$3,127,
305 Town of Winfield - Putnam County Homecoming \$3,240,
306 St. Albans Train Fest (Kanawha) \$6,120, Treasure
307 Mountain Festival (Pendleton) \$14,851, Tri-County Fair
308 (Grant) \$22,548, Tucker County Arts Festival and
309 Celebration \$10,692, Tucker County Fair \$2,821, Tucker
310 County Health Fair \$1,188, Turkey Festival (Hardy)
311 \$1,782, Tyler County Fair \$3,088, Union Community Irish
312 Festival (Barbour) \$648, Upper Kanawha Valley
313 Oktoberfest (Kanawha) \$1,485, Upper Ohio Valley Italian
314 Festival (Ohio) \$7,128, Valley District Fair (Preston)
315 \$2,079, Veterans Welcome Home Celebration (Cabell)
316 \$938, Vietnam Veterans of America # 949 Christmas Party
317 (Cabell) \$684, Volcano Days at Mountwood Park (Wood)
318 \$2,970, War Homecoming Fall Festival (McDowell) \$891,
319 Wardensville Fall Festival (Hardy) \$2,970, Wayne County

320 Fair \$2,970, Wayne County Fall Festival \$2,970, Webster
321 County Fair \$3,600, Webster County Wood Chopping
322 Festival \$8,910, Webster Wild Water Weekend (Webster)
323 \$1,188, Weirton July 4th Celebration (Hancock) \$11,881,
324 Welcome Home Family Day (Wayne) \$1,900, Wellsburg
325 4th of July Celebration (Brooke) \$4,456, Wellsburg Apple
326 Festival of Brooke County \$2,970, West Virginia
327 Blackberry Festival (Harrison) \$2,970, West Virginia
328 Chestnut Festival (Preston) \$684, West Virginia Coal
329 Festival (Boone) \$5,940, West Virginia Coal Show
330 (Mercer) \$1,563, West Virginia Dairy Cattle Show (Lewis)
331 \$5,940, West Virginia Dandelion Festival (Greenbrier)
332 \$2,970, West Virginia Day at the Railroad Museum
333 (Mercer) \$1,800, West Virginia Fair and Exposition
334 (Wood) \$4,812, West Virginia Fireman's Rodeo (Fayette)
335 \$1,485, West Virginia Oil and Gas Festival (Tyler) \$6,534,
336 West Virginia Peach Festival (Hampshire) \$3,240, West
337 Virginia Polled Hereford Association (Braxton) \$891, West
338 Virginia Pumpkin Festival (Cabell) \$5,940, West Virginia
339 Water Festival - City of Hinton (Summers) \$9,144, Weston
340 VFD 4th of July Firemen Festival (Lewis) \$1,188, Wetzel
341 County Autumnfest \$3,267, Wetzel County Town and
342 Country Days \$10,098, Wheeling Celtic Festival (Ohio)
343 \$1,166, Wheeling City of Lights (Ohio) \$4,752, Wheeling
344 Sternwheel Regatta (Ohio) \$5,940, Wheeling Vintage
345 Raceboat Regatta (Ohio) \$11,881, Whipple Community
346 Action (Fayette) \$1,485, Wine Festival and Mountain
347 Music Event (Harrison) \$2,970, Wirt County Fair \$1,485,
348 Wirt County Pioneer Days \$1,188, Wyoming County Civil
349 War Days \$1,296, Youth Stockman Beef Expo (Lewis)
350 \$1,188.

351 Any unexpended balances remaining in the
352 appropriations for Commission for National and
353 Community Service (fund 3534, appropriation 19300),
354 Archeological Curation/Capital Improvements (fund 3534,
355 appropriation 24600), Historic Preservation Grants (fund
356 3534, appropriation 31100), Grants for Competitive Arts
357 Program (fund 3534, appropriation 62400), and Project

358 ACCESS (fund 3534, appropriation 86500) at the close of
359 the fiscal year 2020 are hereby reappropriated for
360 expenditure during the fiscal year 2021.

298-Library Commission –

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2021 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 2020 is
10 hereby reappropriated for expenditure during the fiscal year
11 2021.

299-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 3587 FY 2021 Org 0439

1 Any unexpended balance remaining in the
2 appropriation for Capital Outlay and Maintenance (fund
3 3587, appropriation 75500) at the close of fiscal year 2020
4 is hereby reappropriated for expenditure during the fiscal
5 year 2021.

300-Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2021 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 Waiver		
10	for Senior Citizens	53900	4,615,503
11	Roger Tompkins Alzheimer's		
12	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		
17	Medicaid Transfer.....	87100	16,400,070
18	Legislative Initiatives		
19	for the Elderly	90400	9,671,239
20	Long Term Care Ombudsman	90500	297,226
21	BRIM Premium.....	91300	7,718
22	In-Home Services and Nutrition		
23	for Senior Citizens	91700	<u>6,095,941</u>
24	Total.....		\$ 42,856,387

25 Any unexpended balance remaining in the
26 appropriation for Senior Citizen Centers and Programs
27 (fund 5405, appropriation 46200) at the close of the fiscal
28 year 2020 is hereby reappropriated for expenditure during
29 the fiscal year 2021.

30 Included in the above appropriation for Current
31 Expenses (fund 5405, appropriation 13000), is funding to
32 support an in-home direct care workforce registry.

33 The above appropriation for Transfer to Division of
34 Human Services for Health Care and Title XIX Waiver for
35 Senior Citizens (appropriation 53900) along with the

36 federal moneys generated thereby shall be used for
 37 reimbursement for services provided under the program.

301-Higher Education Policy Commission –

Lottery Education –

Higher Education Policy Commission –

Control Account

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2021 Org 0441

1	RHI Program and Site Support (R)	03600	\$	1,912,491
2	RHI Program and Site Support –			
3	RHEP Program Administration....	03700		146,653
4	RHI Program and Site Support –			
5	Grad Med Ed			
6	And Fiscal Oversight (R).....	03800		88,913
7	Minority Doctoral Fellowship (R) ...	16600		129,604
8	Health Sciences Scholarship (R)....	17600		225,527
9	Vice Chancellor for Health Sciences –			
10	Rural Health			
11	Residency Program (R)	60100		62,725
12	WV Engineering, Science, and			
13	Technology Scholarship Program....	86800		<u>452,831</u>
14	Total.....		\$	3,018,744

15 Any unexpended balances remaining in the
 16 appropriations for RHI Program and Site Support (fund
 17 4925, appropriation 03600), RHI Program and Site Support
 18 – Grad Med Ed and Fiscal Oversight (fund 4925,
 19 appropriation 03800), Minority Doctoral Fellowship (fund
 20 4925, appropriation 16600), Health Sciences Scholarship
 21 (fund 4925, appropriation 17600), and Vice Chancellor for
 22 Health Sciences – Rural Health Residency Program (fund
 23 4925, appropriation 60100) at the close of fiscal year 2020
 24 are hereby reappropriated for expenditure during the fiscal
 25 year 2021.

26 The above appropriation for WV Engineering, Science,
 27 and Technology Scholarship Program (fund 4925,
 28 appropriation 86800) shall be transferred to the West
 29 Virginia Engineering, Science and Technology Scholarship
 30 Fund (fund 4928, org 0441) established by W.Va. Code
 31 §18C-6-1.

302-Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2021 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 2020 is hereby reappropriated for expenditure during the
 6 fiscal year 2021.

303-Higher Education Policy Commission –

Lottery Education –

West Virginia University – School of Medicine

(WV Code Chapter 18B)

Fund 4185 FY 2021 Org 0463

1 WVU Health Sciences –
 2 RHI Program
 3 and Site Support (R)..... 03500 \$ 1,181,728
 4 MA Public Health Program and Health
 5 Science Technology (R) 62300 52,445
 6 Health Sciences Career
 7 Opportunities Program (R) 86900 336,987
 8 HSTA Program (R)..... 87000 1,761,948

9	Center for Excellence		
10	in Disabilities (R).....	96700	<u>313,517</u>
11	Total.....		\$ 3,646,625

12 Any unexpended balances remaining in the
 13 appropriations for WVU Health Sciences – RHI Program
 14 and Site Support (fund 4185, appropriation 03500), MA
 15 Public Health Program and Health Science Technology
 16 (fund 4185, appropriation 62300), Health Sciences Career
 17 Opportunities Program (fund 4185, appropriation 86900),
 18 HSTA Program (fund 4185, appropriation 87000), and
 19 Center for Excellence in Disabilities (fund 4185,
 20 appropriation 96700) at the close of fiscal year 2020 are
 21 hereby reappropriated for expenditure during the fiscal year
 22 2021.

304-Higher Education Policy Commission –

Lottery Education –

Marshall University – School of Medicine

(WV Code Chapter 18B)

Fund 4896 FY 2021 Org 0471

1	Marshall Medical School –		
2	RHI Program and		
3	Site Support (R).....	03300	\$ 427,075
4	Vice Chancellor for Health Sciences –		
5	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 2020 are hereby reappropriated for expenditure
 14 during the fiscal year 2021.

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.

305-Lottery Commission –

Refundable Credit

Fund 7207 FY 2021 Org 0705

	Appro- piation	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.

*306-Lottery Commission –**General Purpose Account*Fund 7206 FY 2021 Org 0705

1 General Revenue Fund – Transfer... 70011 \$ 65,000,000

2 The above appropriation shall be transferred to the
3 General Revenue Fund as determined by the Director of the
4 Lottery in accordance with W.Va. Code §29-22-18a.

*307-Higher Education Policy Commission –**Education Improvement Fund*Fund 4295 FY 2021 Org 0441

1 PROMISE Scholarship – Transfer... 80000 \$ 29,000,000

2 The above appropriation shall be transferred to the
3 PROMISE Scholarship Fund (fund 4296, org 0441)
4 established by W.Va. Code §18C-7-7.

5 The Legislature has explicitly set a finite amount of
6 available appropriations and directed the administrators of
7 the Program to provide for the award of scholarships within
8 the limits of available appropriations.

*308-Economic Development Authority –**Economic Development Project Fund*Fund 9065 FY 2021 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).

309-Department of Education –

School Building Authority

Fund 3514 FY 2021 Org 0404

1	Debt Service – Total	31000	\$ 18,999,900
2	Direct Transfer	70000	<u>100</u>
3	Total.....		\$ 19,000,000

4 The School Building Authority shall have the authority
 5 to transfer between the above appropriations in accordance
 6 with W. Va. Code §29-22-18a

7 The above appropriation for Directed Transfer (fund
 8 3514, appropriation 70000) may be transferred to the
 9 Department of Education, State Board of Education, School
 10 Building Authority, School Construction Fund, fund 3952,
 11 organization 0404 to be used for school construction and
 12 maintenance projects.

310-West Virginia Infrastructure Council –

West Virginia Infrastructure Transfer Fund

Fund 3390 FY 2021 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.

311-Higher Education Policy Commission –

Higher Education Improvement Fund

Fund 4297 FY 2021 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.

312-Division of Natural Resources –

State Park Improvement Fund

Fund 3277 FY 2021 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 2020 are hereby reappropriated for expenditure
 16 during the fiscal year 2021.

313-Economic Development Authority –

Cacapon and Beech Fork State Parks –

Lottery Revenue Debt Service

Fund 9067 FY 2021 Org 0944

1	Debt Service.....	04000	\$	2,032,000
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314-Economic Development Authority –

State Parks Lottery Revenue Debt Service Fund

Fund 9068 FY 2021 Org 0944

1	Debt Service.....	04000	\$	4,395,000
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*315-Racing Commission –*Fund 7308 FY 2021 Org 0707

1	Special Breeders Compensation		
2	(WVC §29-22-18a,		
3	subsection (l)).....	21800	\$ 2,000,000

*316-Lottery Commission –**Distributions to Statutory Funds and Purposes*Fund 7213 FY 2021 Org 0705

1	Parking Garage Fund – Transfer....	70001	\$ 500,000
2	2004 Capitol Complex Parking Garage		
3	Fund – Transfer	70002	216,478
4	Capitol Dome and Improvements		
5	Fund – Transfer	70003	1,796,256
6	Capitol Renovation and Improvement		
7	Fund – Transfer	70004	2,381,252
8	Development Office Promotion		
9	Fund – Transfer	70005	1,298,864
10	Research Challenge Fund –		
11	Transfer.....	70006	1,731,820
12	Tourism Promotion Fund –		
13	Transfer.....	70007	4,808,142
14	Cultural Facilities and Capitol		
15	Resources Matching		
16	Grant Program 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

317-Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2021 Org 0100

1 Any unexpended balance remaining in the
2 appropriation for Publication of Papers and Transition
3 Expenses – Lottery Surplus (fund 1046, appropriation
4 06600) at the close of the fiscal year 2020 is hereby
5 reappropriated for expenditure during the fiscal year 2021.

318-Office of Technology

(WV Code Chapter 5A)

Fund 2532 FY 2021 Org 0231

1 Any unexpended balances remaining in the
2 appropriations for Cyber Security (fund 2532, appropriation
3 99001), Enterprise Data Center (fund 2532, appropriation
4 99002), and Enterprise Telephony Modernization (fund
5 2532, appropriation 99003) at the close of the fiscal year
6 2020 is hereby reappropriated for expenditure during the
7 fiscal year 2021.

319-West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2021 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 2020 are hereby reappropriated for expenditure during
8 the fiscal year 2021.

320-Higher Education Policy Commission –

Administration –

Control Account

(WV Code Chapter 18B)

Fund 4932 FY 2021 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 2020 is hereby reappropriated for expenditure during the
5 fiscal year 2021.

321-Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 5365 FY 2021 Org 0511

1 Medical Services..... 18900 \$ 66,302,960

322-Division of Corrections and Rehabilitation –

Correctional Units

(WV Code Chapters 15A)

Fund 6283 FY 2021 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 2020 is hereby reappropriated for expenditure during the
5 fiscal year 2021.

6 Total TITLE II, Section 5 –

7 Excess Lottery Funds \$ 340,257,000

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 2021.

LEGISLATIVE

323-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2021 Org 2300

	Appro- riation	Federal Funds
1 Economic Loss Claim		
2 Payment Fund.....	33400	\$ 1,400,000

JUDICIAL

324-Supreme Court

Fund 8867 FY 2021 Org 2400

1 Personal Services and		
2 Employee Benefits.....	00100	\$ 1,813,000
3 Current Expenses	13000	1,557,000
4 Repairs and Alterations.....	06400	100,000
5 Equipment.....	07000	250,000
6 Other Assets.....	69000	<u>280,000</u>
7 Total.....		\$ 4,000,000

EXECUTIVE

325-Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2021 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

326-Department of Agriculture –

Meat Inspection Fund

(WV Code Chapter 19)

Fund 8737 FY 2021 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

327-Department of Agriculture –

State Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2021 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

328-Department of Agriculture –

Land Protection Authority

Fund 8896 FY 2021 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 46,526
3	Unclassified	09900	5,004
4	Current Expenses	13000	<u>448,920</u>
5	Total.....		\$ 500,450

*329-Attorney General –**Medicaid Fraud Unit*Fund 8882 FY 2021 Org 1500

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,038,458
3	Unclassified	09900	15,336
4	Current Expenses	13000	456,638
5	Repairs and Alterations.....	06400	4,313
6	Equipment.....	07000	7,500
7	Other Assets.....	69000	<u>11,336</u>
8	Total.....		\$ 1,533,581

*330-Secretary of State –**State Election Fund*

(WV Code Chapter 3)

Fund 8854 FY 2021 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*331-Division of Forestry*

(WV Code Chapter 19)

Fund 8703 FY 2021 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

332-Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2021 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

333-West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2021 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,039,921
3	Unclassified	09900	50,000
4	Current Expenses	13000	<u>4,504,019</u>
5	Total.....		\$ 5,593,940

*334-West Virginia Development Office –**Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8901 FY 2021 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

335-Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2021 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

336-Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2021 Org 0310

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 10,064,006
3	Unclassified	09900	107,693
4	Current Expenses	13000	7,887,660
5	Repairs and Alterations.....	06400	566,250
6	Equipment.....	07000	2,126,141
7	Administration	15500	50,325

8	Buildings.....	25800	951,000
9	Other Assets.....	69000	7,088,880
10	Land.....	73000	<u>2,893,920</u>
11	Total.....		\$ 31,735,875

337-Division of Miners' Health,

Safety and Training

(WV Code Chapter 22)

Fund 8709 FY 2021 Org 0314

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 642,799
3	Current Expenses.....	13000	<u>150,000</u>
4	Total.....		\$ 792,799

338-WorkForce West Virginia

(WV Code Chapter 23)

Fund 8835 FY 2021 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.

339-Office of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2021 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

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

(WV Code Chapter 18)

Fund 8734 FY 2021 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

*341-State Board of Rehabilitation –**Division of Rehabilitation Services –**Disability Determination Services*

(WV Code Chapter 18)

Fund 8890 FY 2021 Org 0932

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 12,476,122
3	Current Expenses	13000	13,383,206
4	Repairs and Alterations.....	06400	1,100
5	Equipment.....	07000	<u>83,350</u>
6	Total.....		\$ 25,943,778

DEPARTMENT OF EDUCATION*342-State Board of Education –**State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2021 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 5,785,359
3	Unclassified	09900	2,000,000
4	Current Expenses	13000	222,367,820
5	Repairs and Alterations.....	06400	10,000
6	Equipment.....	07000	10,000
7	Other Assets.....	69000	<u>10,000</u>
8	Total.....		\$230,183,179

*343-State Board of Education –**School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2021 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

*344-State Board of Education –**Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2021 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,896,249
3	Unclassified	09900	155,000
4	Current Expenses	13000	15,820,081
5	Repairs and Alterations.....	06400	10,000
6	Equipment.....	07000	10,000
7	Other Assets.....	69000	<u>10,000</u>
8	Total.....		\$ 17,901,330

345-State Board of Education –

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2021 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,477,006
3	Unclassified	09900	1,000,000
4	Current Expenses	13000	123,346,390
5	Repairs and Alterations.....	06400	10,000
6	Equipment.....	07000	10,000
7	Other Assets.....	69000	<u>10,000</u>
8	Total.....		\$ 127,853,396

**DEPARTMENT OF ARTS, CULTURE, AND
HISTORY**

346-Commission for National and Community Service

(WV Code Chapter 5F)

Fund 8841 FY 2021 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

347-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2021 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

348-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2021 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

349-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2021 Org 0439

1	Equipment.....	07000	\$ 200,000
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**DEPARTMENT OF ENVIRONMENTAL
PROTECTION***350-Division of Environmental Protection*

(WV Code Chapter 22)

Fund 8708 FY 2021 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 31,406,529
3	Current Expenses	13000	153,850,118
4	Repairs and Alterations.....	06400	739,783
5	Equipment.....	07000	1,712,238
6	Unclassified	09900	1,923,580
7	Other Assets.....	69000	2,177,261
8	Land	73000	<u>80,000</u>
9	Total.....		\$191,889,509

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

351-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2021 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,532,219
3	Unclassified	09900	73,307
4	Current Expenses	13000	<u>36,583,302</u>
5	Total.....		\$ 38,188,828

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

(WV Code Chapter 16)

Fund 8802 FY 2021 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

*353-Division of Health –**West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2021 Org 0506

1	West Virginia Drinking Water Treatment		
2	Revolving Fund – Transfer.....	68900	\$ 16,000,000

354-Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2021 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

355-Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2021 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 76,486,842
3	Unclassified	09900	22,855,833
4	Current Expenses	13000	112,110,500
5	Medical Services.....	18900	3,598,409,155
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.....		\$ 3,999,072,336

DEPARTMENT OF HOMELAND SECURITY*356-Office of the Secretary*

(WV Code Chapter 5F)

Fund 8876 FY 2021 Org 0601

1	Unclassified	09900	\$	5,000
2	Current Expenses	13000		<u>495,000</u>
3	Total.....		\$	500,000

357-Division of Emergency Management

(WV Code Chapter 15)

Fund 8727 FY 2021 Org 0606

1	Personal Services and			
2	Employee Benefits.....	00100	\$	1,260,422
3	Current Expenses	13000		20,429,281
4	Repairs and Alterations.....	06400		5,000
5	Equipment.....	07000		<u>100,000</u>
6	Total.....		\$	21,794,703

358-Division of Corrections and Rehabilitation

(WV Code Chapter 15A)

Fund 8836 FY 2021 Org 0608

1	Unclassified	09900	\$	1,100
2	Current Expenses	13000		<u>108,900</u>
3	Total.....		\$	110,000

359-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2021 Org 0612

1	Personal Services and			
2	Employee Benefits.....	00100	\$	2,480,877

DEPARTMENT OF TRANSPORTATION*363-Division of Motor Vehicles*

(WV Code Chapter 17B)

Fund 8787 FY 2021 Org 0802

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 551,394
3	Current Expenses	13000	5,448,106
4	Repairs and Alterations.....	06400	<u>500</u>
5	Total.....		\$ 6,000,000

364-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2021 Org 0805

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 922,070
3	Current Expenses	13000	8,663,149
4	Repairs and Alterations.....	06400	2,500
5	Equipment.....	07000	2,801,714
6	Buildings.....	25800	1,250,000
7	Other Assets.....	69000	<u>100,000</u>
8	Total.....		\$ 13,739,433

365-Aeronautics Commission

(WV Code Chapter 29)

Fund 8831 FY 2021 Org 0807

1	Current Expenses	13000	400,000
2	Other Assets.....	69000	<u>100</u>
3	Total.....		\$ 400,100

DEPARTMENT OF VETERANS' ASSISTANCE*366-Department of Veterans' Assistance*

(WV Code Chapter 9A)

Fund 8858 FY 2021 Org 0613

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,947,485
3	Current Expenses	13000	2,840,300
4	Repairs and Alterations.....	06400	20,000
5	Equipment.....	07000	25,000
6	Buildings.....	25800	250,000
7	Land.....	73000	500
8	Veterans' Cemetery	80800	<u>175,000</u>
9	Total.....		\$ 6,258,285

*367-Department of Veterans' Assistance –**Veterans' Home*

(WV Code Chapter 9A)

Fund 8728 FY 2021 Org 0618

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 906,850
3	Current Expenses	13000	601,700
4	Repairs and Alterations.....	06400	60,500
5	Equipment.....	07000	10,500
6	Buildings.....	25800	500
7	Other Assets.....	69000	500
8	Land.....	73000	<u>100</u>
9	Total.....		\$ 1,580,650

BUREAU OF SENIOR SERVICES*368-Bureau of Senior Services*

(WV Code Chapter 29)

Fund 8724 FY 2021 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*369-Public Service Commission –**Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2021 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>935,500</u>
6	Total.....		\$ 2,696,029

*370-Public Service Commission –**Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8744 FY 2021 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

371-National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2021 Org 0941

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 163,405
3	Current Expenses.....	13000	633,417
4	Repairs and Alterations.....	06400	5,000
5	Equipment.....	07000	3,000
6	Other Assets.....	69000	<u>2,000</u>
7	Total.....		\$ 806,822

*372-Adjutant General –**State Militia*

(WV Code Chapter 15)

Fund 8726 FY 2021 Org 0603

1	Unclassified	09900	\$ 982,705
2	Mountaineer ChalleNGe Academy	70900	7,200,000
3	Martinsburg Starbase	74200	439,622
4	Charleston Starbase.....	74300	424,685
5	Military Authority.....	74800	<u>91,380,274</u>
6	Total.....		\$100,427,286

7 The Adjutant General shall have the authority to transfer
8 between appropriations.

*373-Adjutant General –**West Virginia National Guard Counterdrug Forfeiture Fund*

(WV Code Chapter 15)

Fund 8785 FY 2021 Org 0603

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,350,000

3	Current Expenses	13000	150,000
4	Repairs and Alterations.....	06400	50,000
5	Buildings	25800	100,000
6	Land	73000	50,000
7	Other Assets.....	69000	100,000
8	Equipment.....	07000	<u>200,000</u>
9	Total.....		\$ 2,000,000
10	Total TITLE II, Section 6 - Federal Funds		
11	(Including claims against the state)		\$ 5,254,586,178

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 2021.

374-West Virginia Development Office –

Community Development

Fund 8746 FY 2021 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

375-Department of Commerce

West Virginia Development Office –

Office of Economic Opportunity –

Community Services

Fund 8902 FY 2021 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

376-WorkForce West Virginia –

Workforce Investment Act

Fund 8749 FY 2021 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

377-Division of Health –

Maternal and Child Health

Fund 8750 FY 2021 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

378-Division of Health –

Preventive Health

Fund 8753 FY 2021 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

*379-Division of Health –**Substance Abuse Prevention and Treatment*Fund 8793 FY 2021 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

*380-Division of Health –**Community Mental Health Services*Fund 8794 FY 2021 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

*381-Division of Human Services –**Energy Assistance*Fund 8755 FY 2021 Org 0511

1	Personal Services and			
2	Employee Benefits.....	00100	\$	1,860,574
3	Unclassified	09900		350,000
4	Current Expenses	13000		<u>38,182,151</u>
5	Total.....		\$	40,392,725

*382-Division of Human Services –**Social Services*Fund 8757 FY 2021 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

383-Division of Human Services –

Temporary Assistance for Needy Families

Fund 8816 FY 2021 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 20,559,397
3	Unclassified	09900	1,250,000
4	Current Expenses	13000	<u>105,851,386</u>
5	Total.....		\$ 127,660,783

384-Division of Human Services –

Child Care and Development

Fund 8817 FY 2021 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,797,226
3	Unclassified	09900	350,000
4	Current Expenses	13000	<u>47,000,307</u>
5	Total.....		\$ 50,147,533

6 Total TITLE II, Section 7 –

7 Federal Block Grants..... \$ 555,940,542

1 **Sec. 8. Awards for claims against the state.** — There
 2 are hereby appropriated for fiscal year 2021, from the fund
 3 as designated, in the amounts as specified, general revenue
 4 funds in the amount of \$1,397,579, special revenue funds in
 5 the amount of \$6,433, state road funds in the amount of
 6 \$844,164, and federal revenue funds in the amount of
 7 \$280,346 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 2021 out
 5 of surplus funds only, accrued from the fiscal year ending
 6 June 30, 2020, 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, 2020 from the fiscal year ending June 30, 2020,
 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 2020, 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.

385-Governor's Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2021 Org 0100

1	Milton Flood Wall - Surplus(R)	XXXXXX \$ 6,000,000
2	Total TITLE II, Section 9 –	
3	Surplus Accrued	<u>\$ 6,000,000</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 2021 out of
 5 surplus funds only, as determined by the director of lottery,
 6 accrued from the fiscal year ending June 30, 2020, 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, 2020.

11 In the event that surplus revenues available from the
12 fiscal year ending June 30, 2020, 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.

386 - Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2021 Org 0508

1	In-Home Services and Nutrition for		
2	Senior Citizens – Lottery Surplus..	76699	\$ 750,000
3	Senior Services Medicaid Transfer –		
4	Lottery Surplus	68199	<u>16,000,000</u>
5	Total.....		\$ <u>16,750,000</u>
6	Total TITLE II, Section 10 –		
7	Surplus Accrued		<u>\$ 16,750,000</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, and
4 is to be available for expenditure during the fiscal year 2021
5 out of surplus funds only, as determined by the director of
6 lottery, accrued from the fiscal year ending June 30, 2020,
7 subject to the terms and conditions set forth in this section.

8 It is the intent and mandate of the Legislature that the
9 following appropriation be payable only from surplus
10 accrued from the fiscal year ending June 30, 2020.

11 In the event that surplus revenues available from the
12 fiscal year ending June 30, 2020, 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.

387 - Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 5365 FY 2021 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 2021 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 2021, 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:

388 -Attorney General

Consumer Protection Recovery Fund

(WV Code Chapter 46A)

Fund 1509 FY 2021 Org 1500

1 Directed Transfer..... 70000 \$ 6,100,000

2 From the above appropriation for Directed Transfer
3 (Fund 1509, appropriation 70000), \$100,000 shall be
4 transferred to the Supreme Court – Family Court Fund
5 (Fund 1763), \$1,000,000 shall be transferred to the West
6 Virginia State Police – Forensic Laboratory Fund (Fund
7 6511) and \$5,000,000 shall be transferred to the Department
8 of Health and Human Resources, Division of Health – Ryan
9 Brown Addiction Prevention and Recovery Fund (Fund
10 5111).

389 - Attorney General

Medicaid Fraud Control Fund

(WV Code Chapter 9)

Fund 1506 FY 2021 Org 1500

1 Directed Transfer..... 70000 \$ 941,000

2 From the above appropriation for Directed Transfer
3 (Fund 1506, appropriation 70000), \$941,000 shall be
4 transferred to the Department of Health and Human
5 Resources, Division of Human Services – Medical Services
6 Trust Fund (Fund 5185).

7 Total TITLE II, Section 12 –
8 Appropriations for Special Revenue
9 Appropriations..... \$ 7,041,000

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 2021,
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 2021 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.

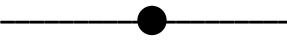
1 **Sec. 19. General school fund.** — The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is
4 appropriated for expenditure in accordance with W.Va.
5 Code §18-9A-16.

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.



CHAPTER 12

**(S. B. 569 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 12, 2020.]

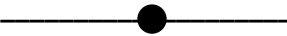
AN ACT expiring funds to the balance of the Department of Health and Human Resources, Division of Human Services, Medical Services Program Fund, fund 5084, organization 0511, in the amount of \$3,000,000 from the Department of Administration, Premium Tax Savings Fund, fund 2367, fiscal year 2020, organization 0218; in the amount of \$2,000,000 from the Department of Health and Human Resources, Division of Health, Hospital Services Revenue Account Special Fund, Capital Improvement, Renovation and Operations, fund 5156, fiscal year 2020, organization 0506; and in the amount of \$360,000 from the Department of Health and Human Resources, Division of Human Services, Marriage Education Fund, fund 5490, fiscal year 2020, organization 0511, by supplementing and amending chapter 31, Acts of the Legislature, regular session, 2019, known as the Budget Bill.

Whereas, The Governor finds that the account balance in the Department of Administration, Premium Tax Savings Fund, fund 2367, fiscal year 2020, organization 0218, the Department of Health and Human Resources, Division of Health, Hospital Services Revenue Account Special Fund, Capital Improvement, Renovation and Operations, fund 5156, fiscal year 2020, organization 0506, and the Department of Health and Human Resources, Division of Human Services, Marriage Education Fund, fund 5490, fiscal year 2020, organization 0511, exceed that

which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2020, to the Department of Administration, Premium Tax Savings Fund, fund 2367, fiscal year 2020, organization 0218, be decreased by expiring the amount of \$3,000,000; that the balance of funds available for expenditure to the Department of Health and Human Resources, Division of Health, Hospital Services Revenue Account Special Fund, Capital Improvement, Renovation and Operations, fund 5156, fiscal year 2020, organization 0506, be decreased by expiring the amount of \$2,000,000 and the balance of funds available for expenditure to the Department of Health and Human Resources, Division of Human Services, Marriage Education Fund, fund 5490, fiscal year 2020, organization 0511, be decreased by expiring the amount of \$360,000 all to the Department of Health and Human Resources, Division of Human Services, Medical Services Program Fund, fund 5084, organization 0511, during the fiscal year ending June 30, 2020.



CHAPTER 13

**(Com. Sub. for S. B. 570 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT expiring funds to the balance of the Department of Health and Human Resources, Division of Human Services, Medical Services Program Fund, fund 5084, organization 0511, in the amount of \$36,202,960, from the State Excess

Lottery Revenue Fund, Division of Human Services, fund 5365, fiscal year 2020, organization 0511, by supplementing and amending chapter 31, Acts of the Legislature, regular session 2019, known as the Budget Bill.

Whereas, The Governor finds that the account balance in the State Excess Lottery Revenue Fund, Division of Human Services, fund 5365, fiscal year 2020, organization 0511 exceeds that which is necessary for the purposes 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, 2020 to the State Excess Lottery Revenue Fund, Division of Human Services, fund 5365, fiscal year 2020, organization 0511, be decreased by expiring the amount of \$36,202,960 to the West Virginia Division of Human Services, Medical Services Program Fund, fund 5084, organization 0511.



CHAPTER 14

**(Com. Sub. for S. B. 571 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed February 29, 2020; in effect from passage.]

[Approved by the Governor on March 12, 2020.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, in the amount of \$20,000,000 from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund, and making a supplementary appropriation of public moneys out of the

State Treasury from the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2020, organization 0221.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 8, 2020, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2019, and further included the estimate of revenue for the fiscal year 2020, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2020, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; 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 expiration during the fiscal year ending June 30, 2020; and

Whereas, It appears from the Governor's statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds remaining as an unappropriated balance for the fiscal year ending June 30, 2020, in the State Excess Lottery Revenue Fund be decreased by expiring the amount of \$20,000,000 to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2020;

And, That the total appropriations for the fiscal year ending June 30, 2020, to fund 0226, fiscal year 2020, organization 0221, be supplemented and amended by increasing existing items of appropriation and creating new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

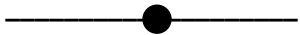
DEPARTMENT OF ADMINISTRATION

27 – Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2020 Org 0221

		Appropriation	General Revenue Fund
1	1	Personal Services and Employee Benefits–	
2		Surplus	XXXXXX \$ 188,402
3	3	Unclassified – Surplus	09700 18,600
4	6	Appointed Counsel Fees –	
5		Surplus (R)	43500 19,792,998
6		Any unexpended balance remaining in the above	
7		appropriation for Appointed Counsel Fees – Surplus (fund	
8		0226, appropriation 43500) at the close of the fiscal year	
9		2020 is hereby reappropriated for expenditure during the	
10		fiscal year 2021.	



CHAPTER 15

(S. B. 572 - By Senators Carmichael (Mr. President) and Prezioso)

[By Request of the Executive]

[Passed February 29, 2020; in effect ninety days from passage.]
 [Approved by the Governor on March 12, 2020.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending

June 30, 2020, in the amount of \$18,294,868 from the balance of moneys remaining as an unappropriated balance in the Lottery Net Profits, and making a supplementary appropriation of public moneys out of the State Treasury from the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, to the Department of Health and Human Resources – Division of Health – Central Office, fund 0407, fiscal year 2020, organization 0506, to the Department of Health and Human Resources – Consolidated Medical Services Fund, fund 0525, fiscal year 2020, organization 0506, and to the Department of Health and Human Resources – Division of Human Services, fund 0403, fiscal year 2020, organization 0511.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 8, 2020, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2019, and further included the estimate of revenue for the fiscal year 2020, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2020; and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's statement of the Lottery Net Profits, there now remains an unappropriated balance in the State Treasury which is available for expiration during the fiscal year ending June 30, 2020; and

Whereas, It appears from the Governor's statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds remaining as an unappropriated balance for the fiscal year ending June 30, 2020, in the Lottery Net Profits be decreased by expiring the amount of \$18,294,868

to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2020.

And, That the total appropriation for the fiscal year ending June 30, 2020, to fund 0407, fiscal year 2020, organization 0506, 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

57 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2020 Org 0506

	Appropriation	General Revenue Fund
1 12 Office of Medical Cannabis –		
2 Surplus (R)	42099	\$ 920,500

3 Any unexpended balance remaining in the
 4 appropriation for Office of Medical Cannabis – Surplus
 5 (fund 0407, appropriation 42099) at the close of the fiscal
 6 year 2020 is hereby reappropriated for expenditure during
 7 the fiscal year 2021.

8 And, That the total appropriations for the fiscal year
 9 ending June 30, 2020, to fund 0525, fiscal year 2020,
 10 organization 0506, be supplemented and amended by
 11 increasing an existing item and adding a new item of
 12 appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

58 – Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2020 Org 0506

	Appropriation	General Revenue Fund
1 6 Institutional Facilities Operations –		
2 Surplus (R)	63200	\$ 10,000,000
3 8a Capital Outlay, Repairs, and Equipment –		
4 Surplus (R)	67700	714,368

5 Any unexpended balances remaining in the
6 appropriations for Institutional Facilities Operations –
7 Surplus (fund 0525, appropriation 62300) and Capital
8 Outlay, Repairs, and Equipment – Surplus (fund 0525,
9 appropriation 67700) at the close of the fiscal year 2020
10 are hereby reappropriated for expenditure during the fiscal
11 year 2021.

12 And, That the total appropriation for the fiscal year
13 ending June 30, 2020, to fund 0403, fiscal year 2020,
14 organization 0511, be supplemented and amended by
15 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 2020 Org 0511

			General Revenue Fund
	Appro- priation		
1 5	Medical Services – Surplus	63300	\$ 6,660,000

CHAPTER 16

**(S. B. 573 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed February 21, 2020; in effect from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT supplementing, amending, and increasing the appropriations of public moneys out of the Treasury for claims against the state by making supplementary appropriations from the unappropriated balance in the State Fund, General Revenue, special revenue funds and state road funds for the fiscal year ending June 30, 2020.

Whereas, The Legislature passed House Bill 2020, the Budget Bill, during the 2019 Regular Legislative Session, which included therein an appropriation of general revenue funds in Title II, Section 8, Awards for Claims Against the State, in the amount of \$642,817; special revenue funds in Title II, Section 8, Awards for Claims Against the State, in the amount of \$212,743; and state road funds in Title II, Section 8, Awards for Claims Against the State, in the amount of \$1,703,146; and

Whereas, The Legislature passed House Bill 2831, authorizing the payment of Claims Against the State; and

Whereas, House Bill 2831 authorized an amount for Claims against the General Revenue Fund, Claims against Special Revenue Funds, and Claims against the State Road Fund that exceed the amounts included in House Bill 2020, the Budget Bill, 2019 Regular Legislative Session; and

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 8, 2020, containing a statement of the State Fund, General Revenue, and the State Road Fund, setting forth therein the cash balances as of July 1, 2019, and further included the estimate of revenue for the fiscal year 2020, less net appropriation balances forwarded and regular appropriations for the fiscal year 2020; and

Whereas, It appears from the Governor's statement of the State Fund, General Revenue, and the State Road Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That Section 8 of House Bill 2020, the Budget Bill, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

1 **Sec. 8. Awards for claims against the state. —**
 2 There are hereby appropriated for fiscal year 2020, from
 3 the funds as designated, in the amounts as specified,
 4 general revenue funds in the amount of \$644,261, special
 5 revenue funds in the amount of \$242,243, and state road
 6 funds in the amount of \$2,609,799 for payment of claims
 7 against the state.

●

CHAPTER 17

**(S. B. 725 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

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, 2020, to the Department of Education, State Board of Education – State Department of Education, fund 8712, fiscal year 2020, organization 0402, to the Department of Education, State Board of Education – Vocational Division, fund 8714, fiscal year 2020, organization 0402, and to the Department of Education, State Board of Education – Aid for Exceptional Children, fund 8715, fiscal year 2020, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2020, which are 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, 2020, to fund 8712, fiscal year 2020, organization 0402, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION

336 – State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2020 Org 0402

		Appro- priation	Federal Funds
1	3	Current Expenses.....	13000 \$ 10,000,000

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2020, to fund 8714, fiscal year 2020,
4 organization 0402, be supplemented and amended by
5 increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION

338 – State Board of Education –

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2020 Org 0402

		Appro- priation	Federal Funds
1	3	Current Expenses.....	13000 \$ 1,000,000

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2020, to fund 8715, fiscal year 2020,
4 organization 0402, be supplemented and amended by
5 increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION

339 – State Board of Education –

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2020 Org 0402

		Appropriation	Federal Funds
1	3	Current Expenses.....	13000 \$ 10,000,000



CHAPTER 18

(S. B. 778 - By Senators Blair, Boley, Hamilton, Mann, Maroney, Roberts, Tarr, Swope, Sypolt, Ihlenfeld, Palumbo, Prezioso, Plymale and Stollings)

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, in the amount of \$5,158,000 from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund, and making a supplementary appropriation of public moneys out of the Treasury from the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, to the Department of Health and Human Resources –

Division of Human Services, fund 0403, fiscal year 2020, organization 0511.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 8, 2020, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2019, and further included the estimate of revenue for the fiscal year 2020, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2020, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; 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 expiration during the fiscal year ending June 30, 2020; and

Whereas, It appears from the Governor's statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds remaining as an unappropriated balance for the fiscal year ending June 30, 2020, in the State Excess Lottery Revenue Fund be decreased by expiring the amount of \$5,158,000 to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2020.

And, That the total appropriations for the fiscal year ending June 30, 2020, to fund 0226, fiscal year 2020, organization 0221, be supplemented and amended by increasing an existing item appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

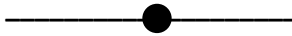
**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

61 – Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2020 Org 0511

				Appro- priation					General Revenue Fund
1	5	Medical Services – Surplus	63300	\$	5,158,000				



CHAPTER 19

**(S. B. 779 - By Senators Blair, Boley, Hamilton,
Mann, Maroney, Roberts, Tarr, Swope, Sypolt,
Ihlenfeld, Palumbo, Prezioso, Plymale and Stollings)**

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, in the amount of \$4,500,000 from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund, and making a supplementary appropriation of public moneys out of the Treasury from the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, to the Department of Veterans' Assistance – Department of Veterans' Assistance, fund 0456, fiscal year 2020, organization 0613.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 8, 2020, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2019, and further included the estimate of revenue for the fiscal year 2020, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2020, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; 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 expiration during the fiscal year ending June 30, 2020; and

Whereas, It appears from the Governor's statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds remaining as an unappropriated balance for the fiscal year ending June 30, 2020, in the State Excess Lottery Revenue Fund be decreased by expiring the amount of \$4,500,000 to the unappropriated surplus balance of the State Fund, General Revenue to be available for appropriation during the fiscal year ending June 30, 2020.

And, That the total appropriations for the fiscal year ending June 30, 2020, to fund 0226, fiscal year 2020, organization 0221, be supplemented and amended by increasing an existing item appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

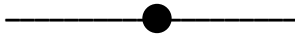
DEPARTMENT OF VETERANS' ASSISTANCE

83 – Department of Veterans’ Assistance

(WV Code Chapter 9A)

Fund 0456 FY 2020 Org 0613

		Appropriation	General Revenue Fund
1	6	Veterans’ Nursing Home –	
2		Surplus (R)	29100 \$ 4,500,000
3		Any unexpended balance remaining in the	
4		appropriation for Veterans’ Nursing Home – Surplus	
5		(fund 0456, appropriation 29100) at the close of the fiscal	
6		year 2020 is hereby reappropriated for expenditure during	
7		the fiscal year 2021.	



CHAPTER 20

**(S. B. 780 - By Senators Blair, Boley, Hamilton,
Mann, Maroney, Roberts, Tarr, Swope, Sypolt,
Ihlenfeld, Palumbo, Prezioso, Plymale and Stollings)**

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

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 Military Affairs and Public Safety – Adjutant General – West Virginia National Guard Counterdrug Forfeiture Fund, fund 8785, fiscal year 2020, organization 0603, by supplementing, amending, decreasing, and adding new items of appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2020, 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, 2020, to fund 8785, fiscal year 2020, organization 0603, be supplemented and amended by decreasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

**DEPARTMENT OF MILITARY AFFAIRS AND
PUBLIC SAFETY**

353 – Adjutant General –

West Virginia National Guard Counterdrug Forfeiture Fund

(WV Code Chapter 15)

Fund 8785 FY 2020 Org 0603

			Appro- priation	Federal Funds
1	2	Current Expenses.....	13000	\$ 150,000
2	3	Equipment	07000	150,000

3 And, That the total appropriation for the fiscal year
4 ending June 30, 2020, to fund 8785, fiscal year 2020,
5 organization 0603, be supplemented and amended by
6 adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

**DEPARTMENT OF MILITARY AFFAIRS AND
PUBLIC SAFETY**

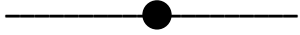
353 – Adjutant General –

West Virginia National Guard Counterdrug Forfeiture Fund

(WV Code Chapter 15)

Fund 8785 FY 2020 Org 0603

	Appropriation		Federal Funds
1 3a Other Assets.....	69000	\$	100,000
2 3b Repairs and Alterations	64000		50,000
3 3c Buildings.....	25800		100,000
4 3d Land.....	73000		50,000



CHAPTER 21

**(S. B. 803 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed March 3, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT supplementing and amending the appropriations of public moneys out of the State Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health, Central Office, fund 0407, fiscal year 2020, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, Senate Bill 386, passed during the 2017 Regular Legislative Session, created the West Virginia Medical Cannabis

Act, placing the Medical Cannabis Program within the Department of Health and Human Resources, and under the direction of the Bureau for Public Health; and

Whereas, The Bureau for Public Health required the ability to transfer General Revenue-funded appropriations to its Special Revenue-funded appropriation for proper administration of the Medical Cannabis Program; and

Whereas, The Legislature passed Senate Bill 1038 during the First Extraordinary Legislative Session of 2019, requiring the General Revenue appropriation to the Bureau for Public Health for the Medical Cannabis Program be transferred to its Special Revenue-funded appropriation; and

Whereas, It has been determined that the General Revenue appropriation to the Bureau for Public Health for the Medical Cannabis Program should remain in the General Revenue Fund; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2020, to fund 0407, fiscal year 2020, organization 0506, be supplemented and amended to read 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 2020 Org 0506

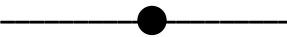
		Appropriation	General Revenue Fund
1	1	Personal Services and	
2		Employee Benefits	00100 \$ 12,694,773
3	2	Chief Medical Examiner.....	04500 9,666,347
4	3	Unclassified	09900 671,795
5	4	Current Expenses.....	13000 4,470,904
6	5	State Aid for Local and Basic	
7		Public Health Services.....	18400 14,160,490
8	6	Safe Drinking Water Program (R)	18700 2,211,323
9	7	Women, Infants and Children	21000 38,621
10	8	Early Intervention.....	22300 8,134,060
11	9	Cancer Registry	22500 206,306
12	10	Office of Drug	
13		Control Policy (R)	35401 567,953
14	11	Statewide EMS	
15		Program Support (R)	38300 1,845,271
16	12	Office of Medical Cannabis.....	42001 2,380,489
17	13	Black Lung Clinics	46700 170,885
18	14	Vaccine for Children	55100 338,235
19	15	Tuberculosis Control	55300 379,256
20	16	Maternal and Child Health Clinics,	
21		Clinicians Medical Contracts	
22		and Fees (R)	57500 6,342,707
23	18	Epidemiology Support.....	62600 1,547,192
24	19	Primary Care Support	62800 4,263,706
25	20	Sexual Assault Intervention	
26		and Prevention.....	72300 125,000
27	21	Health Right Free Clinics	72700 3,750,000
28	22	Capital Outlay	
29		and Maintenance (R)	75500 100,000
30	23	Healthy Lifestyles.....	77800 1,000,000
31	24	Maternal Mortality Review	83400 49,933
32	25	Diabetes Education	
33		and Prevention.....	87300 97,125
34	26	BRIM Premium	91300 169,791

35	27	State Trauma and Emergency		
36		Care System.....	91800	2,021,322
37	28	WVU Charleston		
38		Poison Control Hotline.....	94400	<u>712,942</u>
39		Total.....		\$ 78,116,426

40 Any unexpended balances remaining in the
 41 appropriations for Safe Drinking Water Program (fund
 42 0407, appropriation 18700), Office of Drug Control
 43 Policy (fund 0407, appropriation 35401), Office of Drug
 44 Control Policy – Surplus (fund 0407, appropriation
 45 35402), Statewide EMS Program Support (fund 0407,
 46 appropriation 38300), Maternal and Child Health Clinics,
 47 Clinicians and Medical Contracts and Fees (fund 0407,
 48 appropriation 57500), Capital Outlay and Maintenance
 49 (fund 0407, appropriation 75500), Emergency Response
 50 Entities – Special Projects (fund 0407, appropriation
 51 82200), and Tobacco Education Program (fund 0407,
 52 appropriation 90600) at the close of the fiscal year 2019
 53 are hereby reappropriated for expenditure during the fiscal
 54 year 2020.

55 From the above appropriation for Current Expenses
 56 (fund 0407, appropriation 13000), an amount not less than
 57 \$100,000 is for the West Virginia Cancer Coalition;
 58 \$50,000 shall be expended for the West Virginia Aids
 59 Coalition; \$100,000 is for Adolescent Immunization
 60 Education; \$73,065 is for informal dispute resolution
 61 relating to nursing home administrative appeals; \$50,000
 62 is for Hospital Hospitality House of Huntington; and
 63 \$200,000 is for Potomac Center Inc. of Romney, West
 64 Virginia.

65 From the above appropriation for Maternal and Child
 66 Health Clinics, Clinicians and Medical Contracts and Fees
 67 (fund 0407, appropriation 57500) up to \$400,000 may be
 68 transferred to the Breast and Cervical Cancer Diagnostic
 69 Treatment Fund (fund 5197) and \$11,000 is for the
 70 Marshall County Health Department for dental services.



CHAPTER 22

**(S. B. 804 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed March 3, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

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, 2020, to the Public Service Commission, Consumer Advocate Fund, fund 8627, fiscal year 2020, organization 0926, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor has established that there now remains an unappropriated balance in the Public Service Commission, Consumer Advocate Fund, fund 8627, fiscal year 2020, organization 0926, that is available for expenditure during the fiscal year ending June 30, 2020, 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, 2020, to fund 8627, fiscal year 2020, organization 0926, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

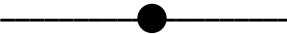
MISCELLANEOUS BOARDS AND COMMISSIONS

*280 – Public Service Commission –**Consumer Advocate Fund*

(WV Code Chapter 24)

Fund 8627 FY 2020 Org 0926

			Appro- priation		Other Funds
1	1	Personal Services and			
2		Employee Benefits	00100	\$	104,000
3	2	Current Expenses.....	13000		110,000

**CHAPTER 23**

**(S. B. 805 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed March 3, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT making a supplementary appropriation of public moneys out of the State Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2020, to the Department of Transportation, Division of Highways, A. James Manchin Fund, fund 8319, fiscal year 2020, organization 0803, and to the Department of Transportation, State Rail Authority, West Virginia Commuter Rail Access Fund, fund 8402, fiscal year 2020, organization 0804, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of

Transportation, Division of Highways, A. James Manchin Fund, fund 8319, fiscal year 2020, organization 0803, and in the Department of Transportation, State Rail Authority, West Virginia Commuter Rail Access Fund, fund 8402, fiscal year 2020, organization 0804, that is available for expenditure during the fiscal year ending June 30, 2020, 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, 2020, to fund 8319, fiscal year 2020, organization 0803, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF TRANSPORTATION

264 – Division of Highways –

A. James Manchin Fund

(WV Code Chapter 22)

Fund 8319 FY 2020 Org 0803

			Appro- priation	Other Funds
1	1	Current Expenses.....	13000 \$	800,000

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2020, to fund 8402, fiscal year 2020,
4 organization 0804, be supplemented and amended by
5 increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF TRANSPORTATION*265 – State Rail Authority –**West Virginia Commuter Rail Access Fund*

(WV Code Chapter 29)

Fund 8402 FY 2020 Org 0804

		Appro- priation	Other Funds
1	1	Current Expenses.....	13000 \$ 2,300,000

CHAPTER 24

**(S. B. 806 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed March 3, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT supplementing and amending by adding a new appropriation of federal funds out of the State Treasury to the Department of Transportation, fund 8831, fiscal year 2020, organization 0807, by supplementing, amending, and adding a new appropriation for the fiscal year ending June 30, 2020.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2020, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter 31, Acts of the Legislature, regular session, 2019, known as the Budget Bill, be supplemented and amended by adding a new item appropriation to Title II, Section 6 thereof, the following:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

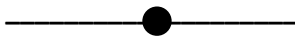
DEPARTMENT OF TRANSPORTATION

361a – Aeronautics Commission

(WV Code Chapter 29)

Fund 8831 FY 2020 Org 0807

	Appro- priation	Federal Funds
1 1 Current Expenses.....	13000	400,000



CHAPTER 25

**(S. B. 812 - By Senators Carmichael (Mr. President)
and Prezioso)**

[By Request of the Executive]

 [Passed March 6, 2020; in effect from passage.]
 [Approved by the Governor on March 12, 2020.]

AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Bureau of Senior Services, Lottery Senior Citizens Fund, fund 5405, fiscal year 2020, organization 0508, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 8, 2020, which included a statement of the Lottery Fund setting forth therein the unappropriated cash balance as of July 1, 2019, and further included the estimate of revenues for the fiscal year 2020, less regular appropriations for fiscal year 2020; 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, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2020, to fund 5405, fiscal year 2020, organization 0508, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 4. Appropriations from lottery net profits.

296 – Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2020 Org 0508

	Appropriation	Lottery Funds
1 15 In-Home Services and Nutrition		
2 for Senior Citizens.....	91700	\$ 3,000,000
3 Any unexpended balance remaining in the		
4 appropriation for In-Home Services and Nutrition for		
5 Senior Citizens (fund 5405, appropriation 91700) is		
6 hereby reappropriated for expenditure during the fiscal		
7 year 2021.		

8 From the above appropriation for In-Home Services
9 and Nutrition for Senior Citizens (fund 5405,
10 appropriation 91700) \$1,500,000 shall be utilized for
11 congregate and home-delivered nutrition meal
12 reimbursement rate increases and \$1,500,000 shall be
13 utilized for the nutrition home-delivered meal program
14 wait list.



CHAPTER 26

**(S. B. 843 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT making a supplementary appropriation of federal funds out of the State Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2020, to the Department of Health and Human Resources, Division of Human Services, Energy Assistance, fund 8755, fiscal year 2020, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2020, 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, 2020, to fund 8755, fiscal year 2020, 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**

374 – Division of Human Services–

Energy Assistance

Fund 8755 FY 2020 Org 0511

		Appro- priation	Federal Funds
1 3	Current Expenses.....	13000	\$ 5,000,000

CHAPTER 27

**(S. B. 844 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT making a supplementary appropriation of public moneys out of the State Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2020, to the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2020, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health - West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2020, organization 0506, that is available for expenditure during the fiscal year ending June 30, 2020, 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, 2020, to fund 5214, fiscal year 2020, 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

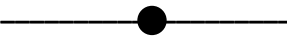
207 – Division of Health –

West Virginia Birth-to-Three Fund

(WV Code Chapter 16)

Fund 5214 FY 2020 Org 0506

		Appro- piation	Other Funds
1	3	Current Expenses.....	13000 \$ 2,080,851



CHAPTER 28

**(Com. Sub. for S. B. 845 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT making a supplementary appropriation of federal funds out of the State Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2020, to the Department of Health and Human Resources, Division of Human Services, fund 8722, fiscal year 2020, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2020, 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, 2020, to fund 8722, fiscal year 2020, organization 0511, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

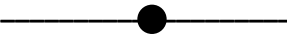
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

350 – Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2020 Org 0511

			Appro- priation	Federal Funds
1	6	CHIP Administrative Costs	85601	\$ 115,000
2	7	CHIP Services.....	85602	3,200,000



CHAPTER 29

**(S. B. 852 - By Senators Carmichael (Mr. President)
and Prezioso)**

[By Request of the Executive]

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT supplementing and amending by decreasing an existing item of appropriation and adding a new item of appropriation for expenditure of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, State Excess Lottery Revenue Fund, to the State Department of Education, School Building Authority, fund 3514, fiscal year 2020, organization 0402, by supplementing and amending chapter 31, Acts of the Legislature, regular session, 2019, known as the Budget Bill, for the fiscal year ending June 30, 2020.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 8, 2020, which included a statement of the State Fund, State Excess Lottery Revenue Fund, setting forth therein the cash balance as of July 1, 2019, less net appropriation balances forwarded and regular and

recommended supplemental appropriations for the fiscal year 2020; and

Whereas, It appears from the statement of the State Fund, State Excess Lottery Revenue Fund, and this supplemental appropriation bill, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That chapter 31, Acts of the Legislature, regular session, 2019, known as the Budget Bill, be supplemented and amended by decreasing an existing item of appropriation and adding a new item of appropriation to Title II, Section 5 thereof, to read as follows:

TITLE II – APPROPRIATIONS.

Sec. 5. Appropriations from state excess lottery revenue fund.

305 –Department of Education –

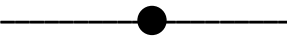
School Building Authority –

Fund 3514 FY 2020 Org 0402

1	1	Debt Service - Total.....	31000	\$ 18,999,900
2	2	SBA Construction Grants	24000	<u>100</u>
3		Total.....		\$ 19,000,000

4 The School Building Authority shall have the
5 authority to transfer between the above appropriations in
6 accordance with W.Va. Code §29-22-18a.

7 The above appropriation for SBA Construction Grants
8 (fund 3514, appropriation 24000) may be transferred to
9 the Department of Education, State Board of Education,
10 School Construction Fund, fund 3951, organization 0402,
11 to be used for school construction and maintenance
12 projects.



CHAPTER 30

**(S. B. 853 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT supplementing and amending by decreasing an existing item of appropriation and adding a new item of appropriation for expenditure of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, Lottery Net Profits, to the State Department of Education, School Building Authority, fund 3963, fiscal year 2020, organization 0402, by supplementing and amending chapter 31, Acts of the Legislature, regular session, 2019, known as the Budget Bill, for the fiscal year ending June 30, 2020.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 8, 2020, which included a statement of the State Fund, Lottery Net Profits, setting forth therein the cash balance as of July 1, 2019, less net appropriation balances forwarded and regular and recommended supplemental appropriations for the fiscal year 2020; and

Whereas, It appears from the statement of the State Fund, Lottery Net Profits, and this supplemental appropriation bill, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That chapter 31, Acts of the Legislature, regular session, 2019, known as the Budget Bill, be supplemented and amended by decreasing an existing item of appropriation and adding a new item of appropriation to Title II, Section 4 thereof, to read as follows:

TITLE II – APPROPRIATIONS.

Sec. 4. Appropriations from lottery net profits.

DEPARTMENT OF EDUCATION

293 – State Department of Education –

School Building Authority –

Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2020 Org 0402

1	1	Debt Service - Total.....	31000	\$ 15,320,363
2	2	Directed Transfer.....	70000	100
3	3	SBA Construction Grants	24000	<u>2,679,537</u>
4		Total.....		\$ 18,000,000

5 The School Building Authority shall have the
6 authority to transfer between the above appropriations in
7 accordance with W.Va. Code §29-22-18.

8 The above appropriation for SBA Construction Grants
9 (fund 3963, appropriation 24000) may be transferred to
10 the Department of Education, State Board of Education,
11 School Construction Fund, fund 3951, organization 0402,
12 to be used for school construction and maintenance
13 projects.

●

CHAPTER 31

(S. B. 651 - By Senator Azinger)

[Passed March 4, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §31-17A-2 of the Code of West Virginia, 1931, as amended, relating to amending the definition of “mortgage loan originator”; and clarifying the definition of “mortgage loan originator” with respect to retailers of manufactured or modular homes and their employees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.

§31-17A-2. Definitions.

1 As used in this article:

2 (a) “Commissioner” means the Commissioner of
3 Financial Institutions of this state;

4 (b) “Depository institution” has the same meaning as in
5 Section three of the Federal Deposit Insurance Act and
6 includes any federally insured credit union;

7 (c) “Division” means the West Virginia Division of
8 Financial Institutions;

9 (d) “Federal banking agencies” means the Board of
10 Governors of the Federal Reserve System, the Comptroller
11 of the Currency, the Director of the Office of Thrift

12 Supervision, the National Credit Union Administration, and
13 the Federal Deposit Insurance Corporation;

14 (e) “Immediate family member” means a spouse, child,
15 sibling, parent, grandparent, or grandchild. This includes
16 stepparents, stepchildren, stepsiblings, and adoptive
17 relationships;

18 (f) “Individual” means a natural person;

19 (g) “Loan processor or underwriter” means an
20 individual who performs clerical or support duties as an
21 employee at the direction of and subject to the supervision
22 and instruction of a person licensed or exempt from
23 licensing under §31-17-1 *et seq.* of this code.

24 (1) For purposes of this paragraph, “clerical or support
25 duties” may include subsequent to the receipt of an
26 application:

27 (A) The receipt, collection, distribution, and analysis of
28 information common for the processing or underwriting of
29 a residential mortgage loan; and

30 (B) Communicating with a consumer to obtain the
31 information necessary for the processing or underwriting of
32 a loan, to the extent that such communication does not
33 include offering or negotiating loan rates or terms, or
34 counseling consumers about residential mortgage loan rates
35 or terms; or

36 (2) An individual engaging solely in loan processor or
37 underwriter activities shall not represent to the public,
38 through advertising or other means of communicating or
39 providing information, including the use of business cards,
40 stationery, brochures, signs, rate lists, or other promotional
41 items, that such individual can or will perform any of the
42 activities of a mortgage loan originator;

43 (h) “Mortgage loan originator” means an individual who
44 for compensation or gain or in the expectation of

45 compensation or gain takes a residential mortgage loan
46 application or offers or negotiates terms of a residential
47 mortgage loan and is sponsored by a mortgage lender,
48 broker, or regulated consumer lender licensed by the
49 Division of Financial Institutions. “Mortgage loan
50 originator” does not include:

51 (1) An individual engaged solely as a loan processor or
52 underwriter except as otherwise provided in §31-17A-3 of
53 this code;

54 (2) A person or entity who does not currently have and
55 has never held a residential mortgage loan originator license
56 in this or any other state and who acts as a mortgage loan
57 originator on no more than three residential mortgage loans
58 to purchasers of any dwelling owned by the person or entity
59 in any calendar year: *Provided*, That the person or entity is
60 required to report any such loan within 30 days of the date
61 of the loan to the Division of Financial Institutions on a form
62 available from the division upon request. Failure to timely
63 report as required by this subdivision may result in
64 imposition by the commissioner of a civil administrative
65 penalty of up to \$250;

66 (3) A person or entity that only performs real estate
67 brokerage activities and is licensed or registered in
68 accordance with West Virginia law, unless the person or
69 entity is compensated by a lender, a mortgage broker, or
70 other mortgage loan originator or by any agent of such
71 lender, mortgage broker, or other mortgage loan originator;

72 (4) A person or entity solely involved in extensions of
73 credit relating to timeshare plans, as that term is defined in
74 Section 101(53D) of Title 11, United States Code; or

75 (5) A retailer of manufactured or modular homes or an
76 employee of the retailer if the retailer or employee, as
77 applicable:

78 (A) Does not receive compensation or gain for engaging
79 in activities described in this subsection, that is in excess of
80 any compensation or gain received in a comparable cash
81 transaction;

82 (B) Discloses to the consumer:

83 (i) In writing, any corporate affiliation with any
84 mortgage lender; and

85 (ii) If the retailer has a corporate affiliation with any
86 mortgage lender, at least one unaffiliated mortgage lender;

87 (C) Does not directly negotiate with the consumer or
88 mortgage lender on loan terms (including rates, fees, and
89 other costs); and

90 (D) Does not represent to the public, through advertising
91 or other means of communicating or providing information,
92 including the use of business cards, stationery, brochures,
93 signs, rate lists, social media, or other promotional items,
94 that the individual can or will perform the activities
95 described in this subsection;

96 (i) “Real estate brokerage activity” means any activity
97 that involves offering or providing real estate brokerage
98 services to the public, including:

99 (1) Acting as a real estate salesperson or real estate
100 broker for a buyer, seller, lessor, or lessee of real property;

101 (2) Bringing together parties interested in the sale,
102 purchase, lease, rental, or exchange of real property;

103 (3) Negotiating, on behalf of any party, any portion of a
104 contract relating to the sale, purchase, lease, rental, or
105 exchange of real property other than in connection with
106 providing financing with respect to any such transaction;

107 (4) Engaging in any activity for which a person engaged
108 in the activity is required to be registered or licensed as a

109 real estate agent or real estate broker under any applicable
110 law; and

111 (5) Offering to engage in any activity, or act in any
112 capacity, described in paragraph (1), (2), (3), or (4) of this
113 subdivision;

114 (j) “Nationwide Mortgage Licensing System and
115 Registry” means a mortgage licensing system developed
116 and maintained by the Conference of State Bank
117 Supervisors and the American Association of Residential
118 Mortgage Regulators for the licensing and registration of
119 mortgage brokers and lenders licensed pursuant to §31-17-
120 1 *et seq.* of this code and mortgage loan originators licensed
121 pursuant to this article;

122 (k) “Nontraditional mortgage product” means any
123 mortgage product other than a fixed rate mortgage;

124 (l) “Person” means a natural person, corporation,
125 company, limited liability company, partnership, or
126 association;

127 (m) “Registered mortgage loan originator” means any
128 individual who:

129 (1) Meets the definition of mortgage loan originator and
130 is an employee of:

131 (A) A depository institution;

132 (B) A subsidiary that is:

133 (i) Owned and controlled by a depository institution;
134 and

135 (ii) Regulated by a federal banking agency; or

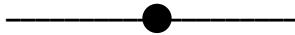
136 (C) An institution regulated by the Farm Credit
137 Administration; and

138 (2) Is registered with, and maintains a unique identifier
139 through, the Nationwide Mortgage Licensing System and
140 Registry;

141 (n) “Residential mortgage loan” means any loan
142 primarily for personal, family, or household use that is
143 secured by a mortgage, deed of trust, or other equivalent
144 consensual security interest on a dwelling as defined in
145 Section 103(w) of the Truth in Lending Act or residential
146 real estate upon which is constructed or intended to be
147 constructed a dwelling;

148 (o) “Residential real estate” means any real property
149 located in West Virginia, upon which is constructed or
150 intended to be constructed a dwelling; and

151 (p) “Unique identifier” means a number or other
152 identifier assigned by protocols established by the
153 Nationwide Mortgage Licensing System and Registry.



CHAPTER 32

(H. B. 4406 - By Delegates Nelson, Criss, Porterfield and Espinosa)

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §31A-4-35 of the Code of West Virginia, 1931, as amended, relating to the reproduction of checks and other records; the period for which banks shall retain or preserve records; providing clarification that an action against a bank for any balance, amount, or proceeds of an account must be brought during the retention or preservation period; providing duties of a bank in possession of records after expiration of the record retention or

preservation period; and providing an exception to retention or preservation period limitation for actions brought on behalf of minors.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES
GENERALLY.**

**§31A-4-35. Reproduction of checks and other records;
admissibility of copies in evidence; disposition of originals;
record production generally.**

1 (a) Any bank may cause to be copied or reproduced, by
2 any photographic, photostatic, microphotographic or by
3 similar miniature photographic process or by nonerasable
4 optical image disks (commonly referred to as compact
5 disks) or by other records retention technology approved by
6 rule of the Commissioner of Banking, all or any number of
7 its checks and all or any part of its documents, books,
8 records, correspondence and all other instruments, papers
9 and writings in any manner relating to the operation of its
10 business, other than its notes, bonds, mortgages and other
11 securities and investments, and may substitute such copies
12 or reproductions either in positive or negative form for the
13 originals thereof. Thereafter, such copy or reproduction in
14 the form of a positive print thereof shall be deemed for all
15 purposes to be an original counterpart of and shall have the
16 same force and effect as the original thereof and shall be
17 admissible in evidence in all courts and administrative
18 agencies in this state, to the same extent and for the same
19 purposes as the original thereof, and the banking institution
20 may destroy or otherwise dispose of the original, but every
21 banking institution shall retain either the originals or such
22 copies or reproductions of its records of final entry,
23 including, without limiting the generality of the foregoing,
24 cards used under the card system and deposit tickets for
25 deposits made, for a period of at least five years from the
26 date of the last entry on such books or the date of making of
27 such deposit tickets and card records or, in the case of a

28 banking institution exercising trust or fiduciary powers,
29 accounting and legal records shall be retained until the
30 expiration of five years from the date of termination of any
31 trust or fiduciary relationship relating to such accounting
32 and legal records by a final accounting, release, court decree
33 or other proper means of termination and supporting
34 documentation for fiduciary account transactions shall be
35 retained for five years from the dates of entry of such
36 transactions.

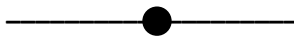
37 All circumstances surrounding the making or issuance
38 of such checks, documents, books, records, correspondence
39 and other instruments, papers or writings, or the
40 photographic, photostatic or microphotographic copies or
41 optical disks or other permissible reproductions thereof,
42 when the same are offered in evidence, may be shown to
43 affect the weight but not the admissibility thereof.

44 Any device used to copy or reproduce such documents
45 and records shall be one which correctly and accurately
46 reproduces the original thereof in all details and any disk or
47 film used therein shall be of durable material.

48 (b) When a subpoena duces tecum is served upon a
49 custodian of records of any bank in an action or proceeding
50 in which the bank is neither a party nor the place where any
51 cause of action is alleged to have arisen and the subpoena
52 requires the production of all or any part of the records of
53 the bank relating to the conduct of its business with its
54 customers, the bank shall be entitled to a search fee not to
55 exceed \$10, together with reimbursement for costs incurred
56 in the copying or other reproduction of any such record or
57 records which have already been reduced to written form, in
58 an amount not to exceed 75 cents per page. Any and all such
59 costs shall be borne by the party requesting the production
60 of the record or records.

61 (c) Notwithstanding any other provision of this code
62 establishing a statute of limitations for any period greater
63 than five years, any action by or against a bank for any

64 balance, amount, or proceeds from any time, savings or
65 demand deposit account based on the contents of records for
66 which a period of retention or preservation is set forth in
67 section (a) of this section shall be brought within the time
68 for which the record must be retained or preserved. If
69 records are retained beyond the period set forth in section
70 (a) of this section or the bank otherwise has information
71 regarding the status of funds held or previously held in any
72 time, savings or demand deposit account, the bank shall
73 provide such information, to the extent permitted by all
74 applicable state and federal privacy laws, upon written
75 request, to anyone with a legal interest in such balance,
76 amount, or proceeds. This section does not apply to savings
77 accounts or certificates of deposit established as a result of
78 any legal action for the benefit of a minor.



CHAPTER 33

**(H. B. 4410 - By Delegates Nelson, Criss, Westfall,
Azinger, Estep-Burton, Lovejoy, Espinosa, Barrett,
Bates, D. Jeffries and Capito)**

[Passed March 5, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §31A-4-26 of the Code of West Virginia, 1931, as amended, relating to permitting directors and executive officers of a banking institution to borrow from a banking institution with which he or she is connected up to \$25,000 or five percent of unimpaired capital and surplus to a maximum aggregate amount of \$500,000 without the prior approval of a majority of the board of directors or discount committee of the banking institution.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES
GENERALLY.**

**§31A-4-26. Limitation on loans and extensions of credit;
limitation on investments; loans to executive officers and
directors of banks and employees of the banking
department; exceptions; valuation of securities.**

1 (a) (1) The total loans and extensions of credit made by
2 a state-chartered banking institution to any one person or
3 common enterprise and not fully secured, as determined in
4 a manner consistent with subdivision (2) of this subsection,
5 may not exceed 15 percent of the unimpaired capital and
6 unimpaired surplus of that state-chartered banking
7 institution initially determined for the period such loan or
8 extension of credit is made.

9 (2) Where the total loans and extensions of credit by a
10 state-chartered banking institution to any one person or
11 common enterprise are fully secured by readily marketable
12 collateral having a market value, as determined by reliable
13 and continuously available price quotations, at least equal to
14 the outstanding amount of such loans and extensions, then
15 the bank may provide such loans or extensions of up to 10
16 percent of the unimpaired capital and unimpaired surplus of
17 that state-chartered banking institution initially determined
18 for the period such loan or extension is made. This
19 limitation shall be separate from and in addition to the
20 limitation contained in subdivision (1) of this subsection.

21 (3) For the purposes of this subsection:

22 (A) The term “loans and extensions of credit” includes
23 all direct or indirect advances of funds to a person made on
24 the basis of any obligation of that person to repay the funds
25 or repayable from specific property pledged by or on behalf
26 of the person and to the extent specified by the
27 Commissioner of Financial Institutions; the terms also
28 include any liability of a state-chartered banking institution

29 to advance funds to or on behalf of a person pursuant to a
30 contractual commitment;

31 (B) The term “person” includes an individual,
32 partnership, sole proprietorship, society, association, firm,
33 institution, company, public or private corporation, not-for-
34 profit corporation, state, governmental agency, bureau,
35 department, division or instrumentality, political
36 subdivision, county commission, municipality, trust,
37 syndicate, estate or any other legal entity whatsoever,
38 formed, created or existing under the laws of this state or
39 any other jurisdiction;

40 (C) The term “unimpaired capital and unimpaired
41 surplus” means the amount of tier 1 (core) capital, as
42 defined in federal regulations, that is outstanding as
43 indicated in the bank’s most recent quarterly report of
44 condition and income as filed with the Commissioner of
45 Financial Institutions pursuant to §31A-4-19 of this code,
46 plus the amount of the allowance for loan losses; and

47 (D) The term “common enterprise” includes, but is not
48 limited to, persons and entities who are so related by
49 business or otherwise that the expected source of repayment
50 on the loan or extension of credit is substantially the same
51 for each person or entity.

52 (4) The limitations contained in this subsection are
53 subject to the following exceptions:

54 (A) Loans or extensions of credit arising from the
55 discount of commercial or business paper evidencing an
56 obligation to the person negotiating it with recourse are not
57 subject to any limitation based on capital and surplus;

58 (B) The purchase of bankers’ acceptances of the kind
59 described in Section 13 of the Federal Reserve Act and
60 issued by other banks are not subject to any limitation based
61 on capital and surplus;

62 (C) Loans and extensions of credit having a term of 10
63 months or less and secured by bills of lading, warehouse
64 receipts or similar documents transferring or securing title
65 to readily marketable staples are subject to a limitation of
66 20 percent of unimpaired capital and unimpaired surplus in
67 addition to the general limitations set forth in subdivision
68 (1) of this subsection, provided the market value of the
69 staples securing each additional loan or extension of credit
70 at all times equals or exceeds 115 percent of the outstanding
71 amount of such loan or extension of credit. The staples shall
72 be fully covered by insurance whenever it is customary to
73 insure the staples. If collateral values of the staples fall
74 below the levels required herein, to the extent that the loan
75 is no longer in conformance with its collateral requirements
76 and exceeds the general 15 percent limitation, the loan must
77 be brought into conformance within five business days,
78 except where judicial proceedings, regulatory actions or
79 other extraordinary occurrences prevent the bank from
80 taking action;

81 (D) Loans or extensions of credit secured by bonds,
82 notes, certificates of indebtedness or treasury bills of the
83 United States or by other such obligations fully guaranteed
84 as to principal and interest by the United States or by bonds,
85 notes, certificates of indebtedness which are general
86 obligations of the State of West Virginia or by other such
87 obligations fully guaranteed as to principal and interest by
88 the State of West Virginia are not subject to any limitation
89 based on capital and surplus;

90 (E) Loans or extensions of credit to or secured by
91 unconditional takeout commitments or guarantees of any
92 department, agency, bureau, board, commission or
93 establishment of the United States or of the State of West
94 Virginia or any corporation wholly owned directly or
95 indirectly by the United States are not subject to any
96 limitation based on capital and surplus;

97 (F) Loans or extensions of credit secured by a
98 segregated deposit account in the lending bank are not
99 subject to any limitation based on capital and surplus;

100 (G) Loans or extensions of credit to any banking
101 institution or to any receiver, conservator or other agent in
102 charge of the business and property of such banking
103 institution or other federally insured depository institution,
104 when the loans or extensions of credit are approved by the
105 Commissioner of Financial Institutions, are not subject to
106 any limitation based on capital and surplus;

107 (H) (i) Loans and extensions of credit arising from the
108 discount of negotiable or nonnegotiable installment
109 consumer paper which carries a full recourse endorsement
110 or unconditional guarantee by the person or common
111 enterprise transferring the paper are subject under this
112 section to a maximum limitation equal to 25 percent of such
113 unimpaired capital and unimpaired surplus, notwithstanding
114 the collateral requirements set forth in subdivision (2) of this
115 subsection;

116 (ii) If the bank's files or the knowledge of its officers of
117 the financial condition of each maker of consumer paper is
118 reasonably adequate and an officer of the bank designated
119 for that purpose by the board of directors of the bank
120 certifies in writing that the bank is relying primarily upon
121 the responsibility of each maker for payment of such loans
122 or extensions of credit and not upon any full or partial
123 recourse endorsement or guarantee by the transferor, the
124 limitations of this section as to the loans or extensions of
125 credit of each such maker are the sole applicable loan
126 limitations;

127 (I)(i) Loans and extensions of credit secured by shipping
128 documents or instruments transferring or securing title
129 covering livestock or giving a lien on livestock when the
130 market value of the livestock securing the obligation is not
131 at any time less than 115 percent of the face amount of the
132 note covered shall be subject under this section to a

133 maximum limitation equal to 25 percent of the unimpaired
134 capital and unimpaired surplus, notwithstanding the
135 collateral requirements set forth in subdivision (2) of this
136 subsection;

137 (ii) Loans and extensions of credit which arise from the
138 discount by dealers in livestock of paper given in payment
139 for livestock, which paper carries a full recourse
140 endorsement or unconditional guarantee of the seller and
141 which are secured by the livestock being sold, are subject
142 under this section to a limitation of 25 percent of the
143 unimpaired capital and unimpaired surplus, notwithstanding
144 the collateral requirements set forth in subdivision (2) of this
145 subsection;

146 (iii) If collateral values of the livestock documents,
147 instruments or discount paper fall below the levels required
148 herein, to the extent that the loan is no longer in
149 conformance with its collateral requirements and exceeds
150 the general 15 percent limitation, the loan must be brought
151 into conformance within 30 business days, except where
152 judicial proceedings, regulatory actions or other
153 extraordinary occurrences prevent the bank from taking
154 action;

155 (J) Loans or extensions of credit to the Student Loan
156 Marketing Association are not subject to any limitation
157 based on capital and surplus; and

158 (K) Loans or extensions of credit to a corporation
159 owning the property in which that state-chartered banking
160 institution is located, when that state-chartered banking
161 institution has an unimpaired capital and surplus of not less
162 than \$1 million or when approved in writing by the
163 Commissioner of Financial Institutions, are not subject to
164 any limitation based on capital and surplus.

165 (5) (A) The Commissioner of Financial Institutions
166 may prescribe rules to administer and carry out the purposes
167 of this subsection including rules to define or further define

168 terms used in this subsection and to establish limits or
169 requirements other than those specified in this subsection
170 for particular classes or categories of loans or extensions of
171 credit;

172 (B) The Commissioner of Financial Institutions may
173 also prescribe rules to deal with loans or extensions of
174 credit, which were not in violation of this section prior to
175 the effective date of this article, but which will be in
176 violation of this section upon the effective date of this
177 article; and

178 (C) The Commissioner of Financial Institutions may
179 also determine when a loan putatively made to a person is,
180 for purposes of this subsection, attributed to another person.

181 (b) (1) Except as hereinafter provided or otherwise
182 permitted by law, nothing herein contained authorizes the
183 purchase by a state-chartered banking institution for its own
184 account of any shares of stock of any corporation: *Provided*,
185 That a state-chartered banking institution may purchase and
186 sell securities and stock without recourse, solely upon the
187 order and for the account of customers.

188 (2) The total amount of investment securities of any one
189 obligor or maker held by a state-chartered banking
190 institution for its own account may not exceed that
191 percentage of the unimpaired capital and unimpaired
192 surplus of that state-chartered banking institution as is
193 permitted for investment by national banks or for any
194 federally insured depository institution.

195 (3) For purposes of this subsection:

196 (A) The term “investment securities” means a
197 marketable obligation in the form of a stock, bond, note or
198 debenture commonly regarded as an investment security
199 and that is salable under ordinary circumstances with
200 reasonable promptness at a fair value. “Derivative security”
201 means a type of investment security involving a financial

202 contract whose value depends on the values of one or more
203 underlying assets or indexes of asset values. The term
204 “derivative” refers inter alia to financial contracts such as
205 collateralized mortgage obligations, forwards, futures,
206 forward rate agreements, swaps, options and
207 caps/floors/collars whose primary purpose is to transfer
208 price risks associated with fluctuations in asset values;

209 (B) The term “person” includes any individual,
210 partnership, sole proprietorship, society, association, firm,
211 institution, company, public or private corporation, not-for-
212 profit corporation, state, governmental agency, bureau,
213 department, division or instrumentality, political
214 subdivision, county commission, municipality, trust,
215 syndicate, estate or any other legal entity whatsoever,
216 formed, created or existing under the laws of this state or
217 any other jurisdiction; and

218 (C) The term “unimpaired capital and unimpaired
219 surplus” has the same meaning as set forth in subsection (a)
220 of this section.

221 (4) Notwithstanding any other provision of this
222 subsection, a state-chartered banking institution may invest
223 its funds in any investment authorized for national banking
224 associations or for any other federally insured depository
225 institution. The investments by state-chartered banking
226 institutions shall be on the same terms and conditions
227 applicable to national banking associations or any other
228 federally insured depository institution: *Provided*, That: (i)
229 The purchase of investment securities under this subdivision
230 may be made only when in the bank’s prudent judgment,
231 which judgment may be based in part on estimates which it
232 believes to be reliable, there is adequate evidence that the
233 obligor will be able to perform all it undertakes to perform
234 in connection with the securities, including all debt service
235 requirements, and that the securities may be sold with
236 reasonable promptness at a price that corresponds to their
237 fair value; and (ii) the purchase conforms to the requirement
238 of subdivision (5) of this subsection. The Commissioner of

239 Financial Institutions may, from time to time, provide notice
240 to state-chartered banking institutions of authorized
241 investments under this paragraph.

242 (5) The purchase of investment securities, including
243 derivative securities, in which the investment characteristics
244 are considered distinctly or predominantly speculative, or
245 the purchase of such securities that are in default, whether
246 as to principal or interest, is prohibited. The proper
247 management of interest rate risk through the use of
248 derivative or other investment securities may not be held a
249 speculative purpose.

250 (6) The Commissioner of Financial Institutions may
251 prescribe rules to administer and carry out the purposes of
252 this subsection, including rules to define or further define
253 terms used in this subsection and to establish limits or
254 requirements other than those specified in this subsection
255 for particular classes or categories of investment securities.

256 (c) If there is a material decline of unimpaired capital
257 and unimpaired surplus of a state-chartered bank during any
258 quarterly reporting period of more than 20 percent from that
259 amount reported in the bank's most recent report of income
260 and condition, or where there is a decrease of more than 30
261 percent in any 12 month period, the bank shall review its
262 outstanding loans, extensions of credit and investments and
263 report to the Commissioner of Financial Institutions those
264 loans, extensions and investments that exceed the
265 limitations of this section using the bank's current
266 reevaluated unimpaired capital and unimpaired surplus. The
267 report shall detail the bank's position in each such loan,
268 extension of credit and investment. The commissioner may,
269 within his or her discretion, require that such loans,
270 extensions of credit and investments be brought into
271 conformity with the bank's current reevaluated legal
272 lending and investment limitation.

273 (d) Notwithstanding any other provision of this section,
274 in order to ensure a bank's safety and soundness, the

275 Commissioner of Financial Institutions retains the authority
276 to direct any state-chartered bank to recalculate its lending
277 and investment limits at more frequent intervals than
278 otherwise provided herein and to require all outstanding
279 loans, extensions of credit and investments be brought into
280 conformance with the reevaluated limitations. In such cases,
281 the commissioner will provide the bank a written notice
282 explaining briefly the specific reasons why the
283 determination was made to require the more frequent
284 calculations.

285 (e) Loans to directors or executive officers are subject
286 to the following limitations:

287 (1) A director or executive officer of any banking
288 institution may not borrow, directly or indirectly, from a
289 banking institution with which he or she is connected more
290 than \$25,000 or five percent of unimpaired capital and
291 surplus to a maximum aggregate amount of \$500,000
292 without the prior approval of a majority of the board of
293 directors or discount committee of the banking institution,
294 or of any duly constituted committee whose duties include
295 those usually performed by a discount committee. The
296 approval shall be by resolution adopted by a majority vote
297 of the board or committee, exclusive of the director or
298 executive officer to whom the loan is made.

299 (2) If any director or executive officer of any bank owns
300 or controls a majority of the stock of any corporation, or is
301 a partner in any partnership, a loan to the corporation or
302 partnership constitutes a loan to the director or officer.

303 (3) For purposes of this subsection, an “executive
304 officer” means:

305 (A) A person who participates or has authority to
306 participate, other than in the capacity of a director, in major
307 policy-making functions of the company or bank, regardless
308 of any official title, salary or other compensation. The
309 chairman of the board, the president, every vice president,

310 the cashier, the secretary and the treasurer of a company or
311 bank are considered executive officers unless the officer is
312 excluded, by resolution of the board of directors or by the
313 bylaws of the bank or company from participation, other
314 than in the capacity of director, in major policy-making
315 functions of the bank or company and the officer does not
316 actually participate therein.

317 (B) An executive officer of a company of which the
318 bank is a subsidiary, and any other subsidiary of that
319 company, unless the executive officer of the subsidiary is
320 excluded, by name or by title, from participation in major
321 policy-making functions of the bank by resolutions of the
322 boards of directors of both the subsidiary and the bank and
323 does not actually participate in such major policy-making
324 functions.

325 (4) Prior approval under subdivision (1) of this
326 subsection is not required for:

327 (A) Payments of overdrafts pursuant to: (i) A written,
328 preauthorized, interest-bearing extension of credit plan that
329 has been approved by the board of directors or an
330 appropriate committee and that specifies a method of
331 repayment; or (ii) a written, preauthorized transfer of funds
332 from another account of the account holder at the bank; or

333 (B) Payments of inadvertent overdrafts on an account in
334 an aggregate amount of \$1,000 or less: *Provided*, That: (i)
335 The account is not overdrawn for more than five
336 consecutive business days; and (ii) the bank charges the
337 director or executive officer the same fee charged to any
338 other customer of the bank in similar circumstances.

339 (f) An employee of the Division of Financial Institutions
340 whose regulatory activities involve participation in an
341 examination, audit, visitation, review, investigation or any
342 other particular matter involving depository institutions
343 chartered by the division may not borrow, directly or
344 indirectly, any sum of money from a state-chartered bank or

345 state-chartered credit union. An employee of the Division of
346 Financial Institutions whose regulatory activities involve
347 participation in an examination, audit, visitation, review,
348 investigation or any other particular matter involving
349 nondepository institutions licensed by the division may not
350 borrow, directly or indirectly, any sum of money from a
351 nondepository entity that is licensed by the division. The
352 commissioner, deputy commissioner and in-house legal
353 counsel of the Division of Financial Institutions may not
354 borrow, directly or indirectly, any sum of money from any
355 entity that is under the jurisdiction of the division.

356 (g) Securities purchased by a state-chartered banking
357 institution shall be entered upon the books of the bank at
358 actual cost. For the purpose of calculating the undivided
359 profits applicable to the payment of dividends, securities
360 may not be valued at a valuation exceeding their present cost
361 as determined by amortization of premiums and accretion
362 of discounts pursuant to generally accepted accounting
363 principles, that is, by charging to profit and loss a sum
364 sufficient to bring them to par at maturity: *Provided*, That
365 securities held for trade or permissible marketable equity
366 securities and any other types of debt securities which
367 pursuant to generally accepted accounting principles are to
368 be carried on the bank's books at fair market value shall
369 have the unrealized market appreciation and depreciation
370 included in the income and capital as permitted by generally
371 accepted accounting principles.

372 (h) The market value of securities purchased and loans
373 extended by a state-chartered banking institution shall be
374 reported in all public reports and quarterly reports to the
375 commissioner pursuant to §31A-4-19 of this code in
376 accordance with generally accepted accounting principles
377 and any applicable state or federal law, rule or regulation.

●

CHAPTER 34

**(H. B. 4411 - By Delegates Nelson, Criss, Westfall,
Azinger, Estep-Burton, Lovejoy, Espinosa, Bates,
Barrett, Waxman and Capito)**

[Passed February 27, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §31-17-8 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Residential Mortgage Lender, Broker and Servicer Act; and adjusting the allowable final installment payment on mortgage loans.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER, BROKER AND SERVICER ACT.

§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.

1 (a) The maximum rate of finance charges on or in
2 connection with any subordinate mortgage loan may not
3 exceed 18 percent per year on the unpaid balance of the
4 amount financed.

5 (b) A borrower has the right to prepay his or her debt, in
6 whole or in part, at any time and shall receive a rebate for
7 any unearned finance charge, exclusive of any points,
8 investigation fees and loan origination fees, which rebate
9 shall be computed under the actuarial method.

10 (c) Except as provided by §46A-3-109 of this code and
11 by subsection (g) of this section, no additional charges may
12 be made, nor may any charge permitted by this section be
13 assessed unless the loan is made: *Provided*, That if the loan
14 is not made, the licensee is not required to refund an
15 appraisal fee that is collected from a loan applicant by the
16 licensee and paid to an unrelated third-party appraiser
17 unless the fee is required to be refunded pursuant to federal
18 law.

19 (d) Where loan origination fees, investigation fees or
20 points have been charged by the licensee, the charges may
21 not be imposed again in any refinancing of that loan or any
22 additional loan on that property made within 24 months
23 thereof, unless the new loan has a reasonable, tangible net
24 benefit to the borrower considering all of the circumstances,
25 including the terms of both the new and the refinanced
26 loans, the cost of the new loan and the borrower's
27 circumstances. The licensee shall document this benefit in
28 writing on a form prescribed by the commissioner and
29 maintain the documentation in the loan file. To the extent
30 this subdivision overrides the preemption on limiting points
31 and other charges on first lien residential mortgage loans
32 contained in the United States Depository Institutions
33 Deregulation and Monetary Control Act of 1980, 12 U. S.
34 C. §1735f-7a, the state law limitations contained in this
35 section apply.

36 (e) Notwithstanding other provisions of this section, a
37 delinquent charge or late charge may be charged on any
38 installment made 10 or more days after the regularly
39 scheduled due date in accordance with §46A-3-112 or
40 §46A-3-113 of this code, whichever is applicable. The
41 charge may be made only once on any one installment
42 during the term of the primary or subordinate mortgage
43 loan.

44 (f) Hazard insurance may be required by the lender. The
45 charges for any insurance may not exceed the standard rate
46 approved by the Insurance Commissioner for the insurance.

47 Proof of all insurance in connection with primary and
48 subordinate mortgage loans subject to this article shall be
49 furnished to the borrower within 30 days from and after the
50 date of application therefor by the borrower.

51 (g) Except for fees for services provided by unrelated
52 third parties for appraisals, inspections, title searches and
53 credit reports, no application fee is allowed whether or not
54 the mortgage loan is consummated; however, the borrower
55 may be required to reimburse the licensee for actual
56 expenses incurred by the licensee in a purchase money
57 transaction after acceptance and approval of a mortgage
58 loan proposal made in accordance with the provisions of this
59 article which is not consummated because of:

60 (1) The borrower's willful failure to close the loan; or

61 (2) The borrower's false or fraudulent representation of
62 a material fact which prevents closing of the loan as
63 proposed.

64 (h) A licensee may not make, offer to make, accept or
65 offer to accept any primary or subordinate mortgage loan
66 except on the terms and conditions authorized in this article.

67 (i) A licensee may not induce or permit any borrower to
68 become obligated to the licensee under this article, directly
69 or contingently, or both, under more than one subordinate
70 mortgage loan at the same time for the purpose or with the
71 result of obtaining greater charges than would otherwise be
72 permitted under the provisions of this article.

73 (j) An instrument evidencing or securing a primary or
74 subordinate mortgage loan may not contain:

75 (1) A power of attorney to confess judgment;

76 (2) A provision whereby the borrower waives any rights
77 accruing to him or her under the provisions of this article;

78 (3) A requirement that more than one installment be
79 payable in any one installment period, or that the amount of
80 any installment be greater or less than that of any other
81 installment, except for the final installment which may be in
82 a lesser amount or no more than \$5 greater than any
83 previous payment installment, or unless the loan is
84 structured as a revolving line of credit having no set final
85 payment date: *Provided*, That this prohibition does not
86 apply to any mortgage modification or refinancing loan
87 made in participation with and in compliance with the
88 federal Making Homes Affordable program, or any other
89 mortgage modification or refinancing loan eligible under
90 any government sponsored enterprise requirements or
91 funded through any federal or state program or litigation
92 settlement;

93 (4) An assignment of or order for the payment of any
94 salary, wages, commissions or other compensation for
95 services, or any part thereof, earned or to be earned;

96 (5) A requirement for compulsory arbitration which
97 does not comply with federal law; or

98 (6) Blank or blanks to be filled in after the
99 consummation of the loan. A borrower must be given a
100 copy of every signed document executed by the borrower at
101 the time of closing.

102 (k) A licensee may not charge a borrower or receive
103 from a borrower money or other valuable consideration as
104 compensation before completing performance of all
105 services the licensee has agreed to perform for the borrower
106 unless the licensee also registers and complies with all
107 requirements set forth for credit service organizations in
108 §46A-6C-1 *et seq.* of this code, including all additional
109 bonding requirements as may be established therein.

110 (l) A licensee may not make or broker revolving loans
111 secured by a primary or subordinate mortgage lien for the

112 retail purchase of consumer goods and services by use of a
113 lender credit card.

114 (m) In making any primary or subordinate mortgage
115 loan, a licensee may not, and a primary or subordinate
116 mortgage lending transaction may not, contain terms which:

117 (1) Collect a fee not disclosed to the borrower; collect
118 any attorney fee at closing in excess of the fee that has been
119 or will be remitted to the attorney; collect a fee for a product
120 or service where the product or service is not actually
121 provided; misrepresent the amount charged by or paid to a
122 third party for a product or service; or collect duplicate fee
123 or points to act as both broker and lender for the same
124 mortgage loan, however, fees and points may be divided
125 between the broker and the lender as they agree, but may
126 not exceed the total charges otherwise permitted under this
127 article: *Provided*, That the fact of any fee, point or
128 compensation is disclosed to the borrower consistent with
129 the solicitation representation made to the borrower;

130 (2) Compensate, whether directly or indirectly, coerce
131 or intimidate an appraiser for the purpose of influencing the
132 independent judgment of the appraiser with respect to the
133 value of real estate that is to be covered by a deed of trust or
134 is being offered as security according to an application for a
135 primary or subordinate mortgage loan;

136 (3) Make or assist in making any primary or subordinate
137 mortgage loan with the intent that the loan will not be repaid
138 and that the lender will obtain title to the property through
139 foreclosure: *Provided*, That this subdivision may not apply
140 to reverse mortgages obtained under §47-24-1 *et seq.* of this
141 code;

142 (4) Require the borrower to pay, in addition to any
143 periodic interest, combined fees, compensation or points of
144 any kind to the lender and broker to arrange, originate,
145 evaluate, maintain or service a loan secured by any
146 encumbrance on residential property that exceed, in the

147 aggregate, six percent of the loan amount financed, including
148 any yield spread premium paid by the lender to the broker:
149 *Provided*, That reasonable closing costs, as defined in §46A-
150 1-102 of this code, payable to unrelated third parties may not
151 be included within this limitation: *Provided, however*, That
152 no yield spread premium is permitted for any loan for which
153 the annual percentage rate exceeds 18 percent per year on the
154 unpaid balance of the amount financed: *Provided further*,
155 That if no yield spread premium is charged, the aggregate of
156 fees, compensation or points can be no greater than five
157 percent of the loan amount financed. The financing of the
158 fees and points are permissible and, where included as part of
159 the finance charge, does not constitute charging interest on
160 interest. To the extent that this section overrides the
161 preemption on limiting points and other charges on first lien
162 residential mortgage loans contained in the United States
163 Depository Institutions Deregulation and Monetary Control
164 Act of 1980, 12 U. S. C. §1735f-7a, the state law limitations
165 contained in this section apply;

166 (5) Secure a primary or subordinate mortgage loan by
167 any security interest in personal property unless the personal
168 property is affixed to the residential dwelling or real estate;

169 (6) Allow or require a primary or subordinate mortgage
170 loan to be accelerated because of a decrease in the market
171 value of the residential dwelling that is securing the loan;

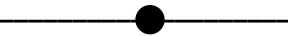
172 (7) Require terms of repayment which do not result in
173 continuous monthly reduction of the original principal
174 amount of the loan: *Provided*, That the provisions of this
175 subdivision do not apply to reverse mortgage loans obtained
176 under §47-24-1 *et seq.* of this code, home equity, open-end
177 lines of credit, bridge loans used in connection with the
178 purchase or construction of a new residential dwelling or
179 commercial loans for multiple residential purchases;

180 (8) Secure a primary or subordinate mortgage loan in a
181 principal amount that, when added to the aggregate total of
182 the outstanding principal balances of all other primary or
183 subordinate mortgage loans secured by the same property,

184 exceeds the fair market value of the property on the date that
185 the latest mortgage loan is made. For purposes of this
186 paragraph, a broker or lender may rely upon a bona fide
187 written appraisal of the property made by an independent
188 third-party appraiser, duly licensed or certified by the West
189 Virginia Real Estate Appraiser Licensing and Certification
190 Board and prepared in compliance with the uniform
191 standards of professional appraisal practice: *Provided*, That
192 this prohibition does not apply to any mortgage
193 modification or refinancing loan made in participation with
194 and in compliance with the federal Making Homes
195 Affordable program, or any other mortgage modification or
196 refinancing loan eligible under any government sponsored
197 enterprise requirements or funded through any federal or
198 state program or litigation settlement;

199 (9) Advise or recommend that the consumer not make
200 timely payments on an existing loan preceding loan closure
201 of a refinancing transaction; or

202 (10) Knowingly violate any provision of any other
203 applicable state or federal law regulating primary or
204 subordinate mortgage loans, including, without limitation,
205 §46A-1-1 *et seq.* of this code.



CHAPTER 35

**(Com. Sub. for H. B. 4621 - By Delegates Capito,
Cowles, Espinosa, Shott and Queen)**

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §31A-8G-1, §31A-
8G-2, §31A-8G-3, §31A-8G-4, §31A-8G-5, §31A-8G-6,

§31A-8G-7, and §31A-8G-8, all relating to creating the West Virginia FinTech Regulatory Sandbox Program; defining terms; providing that the program shall be administered by the West Virginia Division of Financial Institutions, establishing requirements for participants to temporarily test innovative financial products or services on a limited basis without otherwise being licensed under the laws of the state; establishing scope of the ability to operate approved financial products or services without a license; providing consumer protections; establishing time limitations on the ability to test approved financial products or services without a license; providing reporting requirements; providing for rulemaking; and directing the West Virginia Division of Financial Institutions to provide annual reports to the Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8G. THE WEST VIRGINIA FINTECH REGULATORY SANDBOX PROGRAM.

§31A-8G-1. The West Virginia FinTech Regulatory Sandbox Program.

1 This article shall be known as the West Virginia
2 FinTech Regulatory Sandbox Act.

§31A-8G-2. Definitions.

1 As used in this article:

2 “Applicable agency” means a department or agency of
3 the state that by law regulates certain types of business
4 activity in the state and persons engaged in such business
5 activity, including the issuance of licenses or other types of
6 authorization, which the department determines would
7 otherwise regulate a regulatory sandbox participant.

8 “Applicant” means an individual or entity that is
9 applying to participate in the regulatory sandbox program.

10 “Consumer” means a person that purchases or otherwise
11 enters into a transaction or agreement to receive an

12 innovative product or service that is being tested by a
13 regulatory sandbox participant.

14 “Distributed ledger” means the use of a digital database
15 containing records of financial transactions, including
16 blockchain technology, which can be simultaneously used
17 and shared within a decentralized, publicly accessible
18 network and can record transactions between two parties in
19 a verifiable and permanent way.

20 “Division of Financial Institutions” and “division”
21 mean the West Virginia Division of Financial Institutions.

22 “Financial product or service” means:

23 (A) A financial product or financial service that requires
24 state licensure or registration; or

25 (B) A financial product or financial service that includes
26 a business model, delivery mechanism, or element that may
27 require a license or other authorization to act as a financial
28 institution, enterprise, or other entity that is regulated by the
29 West Virginia Division of Financial Institutions under
30 chapters 31, 31A, and 31C of this code, §32A-2-1 *et seq.* of
31 this code, or other related provisions.

32 “Innovation” means the use or incorporation of a new or
33 emerging technology or a new use of existing technology,
34 including distributed ledger, to address a problem, provide
35 a benefit, or otherwise offer a product, service, business
36 model, or delivery mechanism that is not known by the
37 Division of Financial Institutions to have a comparable
38 widespread offering in the state.

39 “Innovative product or service” means a financial
40 product or service that includes an innovation.

41 “Regulatory sandbox participant” means a person
42 whose application to participate in the regulatory sandbox
43 program is approved in accordance with the provisions of
44 this article.

45 “Regulatory sandbox program” means the West
46 Virginia FinTech Regulatory Sandbox Program created by
47 this article, which allows a person to temporarily test an
48 innovative product or service on a limited basis without
49 otherwise being licensed or authorized to act under the laws
50 of the state.

51 “Regulatory sandbox testing period” means a 24-month
52 period beginning on the date an applicant is admitted to the
53 regulatory sandbox program.

54 “Test” means to provide an innovative product or
55 service in accordance with the provisions of this chapter.

**§31A-8G-3. Regulatory Sandbox Program; administration;
application requirements; fee; rulemaking.**

1 (a) There is created in the Division of Financial
2 Institutions the Regulatory Sandbox Program.

3 (b) In administering the regulatory sandbox program,
4 the Division of Financial Institutions:

5 (1) Shall consult with the West Virginia Development
6 Office relating to the economic development opportunities
7 relating to the potential regulatory sandbox participant and
8 may consult with any applicable agency which otherwise
9 may have jurisdiction or authority relating to any activity
10 proposed for the regulatory sandbox program for which the
11 applicant is seeking to proceed without authorization or
12 license;

13 (2) Shall have the authority to promulgate rules in
14 accordance with §31A-2-4 and §29A-3-1 *et seq.* of this
15 code for the purposes of administering the regulatory
16 sandbox program;

17 (3) Shall establish a program permitting an individual or
18 an entity to obtain limited access to the market in the state
19 to test an innovative product or service without obtaining a

20 license or other authorization that might otherwise be
21 required; and

22 (4) May enter into cooperative, coordinating, or
23 information-sharing agreements with or follow the best
24 practices of the federal Consumer Financial Protection
25 Bureau or other states that are administering similar
26 programs as well as other state and federal agencies to carry
27 out the mandates of this article.

28 (c) An applicant for the regulatory sandbox program
29 shall provide to the Division of Financial Institutions an
30 application in a form prescribed by the Division of Financial
31 Institutions that:

32 (1) Demonstrates that the applicant is subject to the
33 jurisdiction of the state;

34 (2) Demonstrates that the applicant has established a
35 physical location in the state; where all required records,
36 documents, and data relating to any approved testing can be
37 made available for examination and review by the Division
38 of Financial Institutions and any other applicable agency
39 with jurisdiction;

40 (3) Demonstrates that the applicant has attempted in
41 good faith to establish a partnership with a bank operating
42 within the State of West Virginia or another financial
43 institution licensed by the State of West Virginia to
44 implement the applicant's proposed test of an innovative
45 product or service within the regulatory sandbox
46 program: *Provided*, That the applicant shall not be excluded
47 from participation in the regulatory sandbox program solely
48 based on the applicant's ability to establish a partnership
49 with a bank operating within the State of West Virginia or
50 another financial institution licensed by the State of West
51 Virginia;

52 (4) Contains relevant personal and contact information
53 for the applicant, including legal names, addresses,

54 telephone numbers, email addresses, website addresses, and
55 other information required by the Division of Financial
56 Institutions;

57 (5) Discloses any and all criminal convictions of the
58 applicant or other participating personnel, if any, and
59 submits to a criminal background investigation, including
60 requiring fingerprints for submission to the Federal Bureau
61 of Investigation or any governmental agency or entity
62 authorized to receive such information for a state, national
63 or international criminal history check;

64 (6) Demonstrates that the applicant has the necessary
65 personnel, financial and technical expertise, access to
66 capital, and a developed plan to test, monitor, and assess the
67 innovative product or service;

68 (7) Contains a description of the innovative product or
69 service to be tested, including statements regarding all of the
70 following:

71 (A) How the innovative product or service is subject to
72 licensing or other authorization requirements outside of the
73 regulatory sandbox program;

74 (B) How the innovative product or service would
75 benefit consumers;

76 (C) How the innovative product or service is different
77 from other products or services available in the state;

78 (D) What risks may confront consumers that use or
79 purchase the innovative product or service;

80 (E) What measures will be put into place to limit
81 potential risks and harm to consumers and to resolve
82 complaints during the regulatory sandbox testing period;

83 (F) How participating in the regulatory sandbox
84 program would enable a successful test of the innovative
85 product or service;

86 (G) A description of the proposed testing plan, including
87 estimated time periods for beginning the test, ending the
88 test, and obtaining necessary licensure or authorizations
89 after the testing is complete;

90 (H) A description of how the applicant will perform
91 ongoing duties after the test; and

92 (I) How the applicant will end the test and protect
93 consumers if the test fails;

94 (8) Sets forth whether the applicant has been provided
95 any license or authorization by any state or federal agency;
96 whether any state or federal agency has previously
97 investigated, sanctioned, or pursued legal action against the
98 applicant; and whether the applicant has had licensure or
99 authorization denied or withdrawn by any state or federal
100 agency;

101 (9) Demonstrates registration with the West Virginia
102 Secretary of State;

103 (10) Demonstrates that the applicant has an exit plan to
104 limit consumer harm at the conclusion of the regulatory
105 sandbox testing period, including a plan to notify consumers
106 and advise them of next steps; and

107 (11) Provides any other information as required by the
108 Division of Financial Institutions.

109 (d) The Division of Financial Institutions may collect an
110 application fee of not more than \$1,500 from an applicant.

111 (e) An applicant shall file a separate application for each
112 innovative product or service that the applicant wants to
113 test.

114 (f) After an application is filed, the Division of Financial
115 Institutions may seek additional information from the
116 applicant as it deems necessary.

117 (g) Subject to subsection (h) of this section, not later
118 than 90 days after the day on which a complete application
119 is received by the Division of Financial Institutions, the
120 division shall inform the applicant as to whether the
121 application is approved for entry into the regulatory
122 sandbox program.

123 (h) The Division of Financial Institutions and an
124 applicant may mutually agree to extend the 90-day time
125 period described in subsection (g) of this section in order for
126 the Division to determine whether an application is
127 approved for entry into the regulatory sandbox program.

128 (i)(1) In reviewing an application under this section, the
129 Division of Financial Institutions may consult with, and
130 seek the approval of, any applicable agency before
131 admitting an applicant into the regulatory sandbox program.

132 (2) The consultation with an applicable agency may
133 include but is not limited to seeking information about
134 whether:

135 (A) The applicant could obtain a license or other
136 authorization from the applicable agency after exiting the
137 regulatory sandbox program; and

138 (B) Certain licensure or other regulations should not be
139 waived even if the applicant is accepted into the regulatory
140 sandbox program.

141 (j) In reviewing an application under this section, the
142 Division of Financial Institutions shall consider whether a
143 competitor to the applicant is or has been a regulatory
144 sandbox participant and, if so, weigh that as a factor in favor
145 of allowing the applicant to also become a regulatory
146 sandbox participant.

147 (k) If the Division of Financial Institutions approves
148 admitting an applicant into the regulatory sandbox program,
149 an applicant may become a regulatory sandbox participant.

150 (I)(1) The Division of Financial Institutions may deny
151 any application submitted under this section, for any reason,
152 at the division's discretion.

153 (2) If the Division of Financial Institutions denies an
154 application submitted under this section, the division shall
155 provide to the applicant a written description of the reasons
156 for the denial as a regulatory sandbox participant.

**§31A-8G-4. Scope; testing period; licenses; consumer
protections.**

1 (a) If the Division of Financial Institutions approves an
2 application under §31A-8G-3 of this code, the regulatory
3 sandbox participant has 24 months after the day on which
4 the application was approved to test the innovative product
5 or service described in the regulatory sandbox participant's
6 application.

7 (b) An innovative product or service that is tested within
8 the regulatory sandbox program is subject to the following:

9 (1) All consumers participating in the innovative
10 product or service being tested shall be residents of the state;

11 (2) The Division of Financial Institutions may, on a
12 case-by-case basis, specify the maximum number of
13 consumers that may transact through or enter into an
14 agreement to use the innovative product or service:

15 (A) For a regulatory sandbox participant testing a
16 consumer loan, the Division of Financial Institutions may,
17 on a case-by-case basis, specify the maximum amount of an
18 individual loan that may be issued to an individual
19 consumer and the maximum amount of aggregate loans that
20 may be issued to an individual consumer; and

21 (B) For a regulatory sandbox participant testing an
22 innovative product or service that would normally require a
23 money transmission license pursuant to this code, the
24 Division of Financial Institutions may, on a case-by-case

25 basis, specify the maximum amount of a single transaction
26 for an individual consumer and the maximum aggregate
27 amount of transactions for an individual consumer.

28 (c) This section does not restrict a regulatory sandbox
29 participant who holds a license or other authorization in
30 another jurisdiction from acting in accordance with that
31 license or other authorization.

32 (d) A regulatory sandbox participant is deemed to
33 possess an appropriate license under the laws of this state
34 for the purposes of any provision of federal law requiring
35 state licensure or authorization.

36 (e) Except as otherwise provided in this chapter,
37 including subsections (f), (g), and (h), a regulatory sandbox
38 participant that is testing an innovative product or service is
39 not subject to state laws that regulate financial products or
40 services.

41 (f) Regulatory sandbox participants and the innovative
42 products and services that they are testing in the regulatory
43 sandbox program are subject to all applicable consumer
44 protection laws, including, but not limited to those
45 contained in chapter 46A of this code, the Collection
46 Agency Act contained in chapter 47A of this code, and any
47 limitations on interest rates, whether or not those interest
48 rates would otherwise require licensure.

49 (g)(1) The Division of Financial Institutions may
50 determine that additional state laws that regulate a financial
51 product or service apply to a regulatory sandbox participant
52 if the Division of Financial Institutions, at its sole discretion,
53 determines that an applicant's proposed testing plan or the
54 innovative product or service to be tested poses significant
55 risk to consumers or to the safety and soundness of other
56 institutions within the financial services marketplace as to
57 warrant the imposition of other applicable state laws.

58 (2) The Division of Financial Institutions shall
59 determine the applicability of certain state laws to each
60 innovative product or service prior to approval of any
61 application to participate in the regulatory sandbox program
62 and shall notify the regulatory sandbox participant of the
63 specific regulatory provisions that shall apply to the
64 innovative product or service throughout the duration of the
65 regulatory sandbox testing period.

66 (3) If at any time during the regulatory sandbox testing
67 period, the Division of Financial Institutions determines that
68 the imposition of certain state laws is necessary to eliminate
69 the risk of harm to consumers or the safety and soundness
70 of other institutions operating within the financial services
71 marketplace, the division may require that the regulatory
72 sandbox participant come into compliance with such state
73 laws within a reasonable time.

74 (h) Notwithstanding any other provision of this chapter,
75 a regulatory sandbox participant does not have immunity
76 related to any criminal offense committed during the
77 regulatory sandbox participant's participation in the
78 regulatory sandbox program.

79 (i) By written notice, the Division of Financial
80 Institutions may end a regulatory sandbox participant's
81 participation in the regulatory sandbox program at any time
82 and for any reason, including if the Division of Financial
83 Institutions determines a regulatory sandbox participant is
84 not operating in good faith to bring an innovative product or
85 service to market.

86 (j) The Division of Financial Institutions shall require a
87 regulatory sandbox participant to post a consumer
88 protection bond as security for potential losses suffered by
89 consumers. The bond amount shall be determined by the
90 commissioner in an amount not less than \$5,000 and shall
91 be commensurate with the risk profile of the innovative
92 product or service. The commissioner may require that a
93 bond be increased or decreased at any time based on risk

94 profile and shall provide the regulatory sandbox participant
95 with 30 days prior written notice of such increase or
96 decrease. The commissioner may use bond proceeds to
97 offset losses suffered by consumers as a result of an
98 innovative product or service. The bond shall expire two
99 years after the date of the conclusion of the regulatory
100 sandbox testing period. The commissioner may accept
101 electronic bonds from any regulatory sandbox participant.

§31A-8G-5. Additional consumer protections; disclosures.

1 (a) Before providing an innovative product or service to
2 a consumer, a regulatory sandbox participant shall disclose
3 the following to the consumer:

4 (1) The name and contact information of the regulatory
5 sandbox participant;

6 (2) That the innovative product or service is authorized
7 pursuant to the regulatory sandbox program and, if
8 applicable, that the regulatory sandbox participant does not
9 have a license or other authorization to provide a product or
10 service under state laws that regulate products or services
11 outside the regulatory sandbox program;

12 (3) That the innovative product or service is undergoing
13 testing, may not function as intended, and may expose the
14 consumer to financial risk;

15 (4) That the provider of the innovative product or
16 service is not immune from civil liability for any losses or
17 damages caused by the innovative product or service;

18 (5) That the state does not endorse or recommend the
19 innovative product or service;

20 (6) That the innovative product or service is a temporary
21 test that may be discontinued at the conclusion of the
22 regulatory sandbox testing period;

23 (7) The expected end date of the regulatory sandbox
24 testing period; and

25 (8) That a consumer may contact the Division of
26 Financial Institutions to file a complaint regarding the
27 innovative product or service being tested and provide the
28 Division of Financial Institution's telephone number and
29 website address where a complaint may be filed.

30 (b) The disclosures required by subsection (a) of this
31 section shall be provided to a consumer in a clear and
32 conspicuous form and, for an internet or application-based
33 innovative product or service, a consumer shall
34 acknowledge receipt of the disclosure before a transaction
35 may be completed.

36 (c) The Division of Financial Institutions may
37 investigate all consumer complaints made against a
38 regulatory sandbox participant pursuant to subsection (a) of
39 this section: *Provided*, That the consumer making the
40 complaint was directly provided the innovative product or
41 service by the regulatory sandbox participant, and the
42 innovative product or service was provided in the course of
43 participation in the regulatory sandbox program.

44 (d) The Division of Financial Institutions may require
45 that a regulatory sandbox participant make additional
46 disclosures to a consumer.

§31A-8G-6. Exiting requirements; extensions.

1 (a) At least 30 days before the conclusion of the
2 regulatory sandbox testing period, a regulatory sandbox
3 participant shall:

4 (1) Notify the Division of Financial Institutions that the
5 regulatory sandbox participant will exit the regulatory
6 sandbox program, discontinue the regulatory sandbox
7 participant's test, and stop offering any innovative product
8 or service in the regulatory sandbox program within 60 days

9 after the day on which the regulatory sandbox testing period
10 ends; or

11 (2) Seek an extension in accordance with §31A-8G-7 of
12 this code.

13 (b) Subject to subsection (c) of this section, if the
14 Division of Financial Institutions does not receive
15 notification as required by subsection (a) of this section, the
16 regulatory sandbox participant shall immediately stop
17 offering each innovative product or service being tested at
18 the conclusion of the regulatory sandbox testing period.

19 (c) If a test includes offering an innovative product or
20 service that requires ongoing duties, such as servicing a
21 loan, the regulatory sandbox participant shall continue to
22 fulfill those duties or arrange for another person to fulfill
23 those duties after the date on which the regulatory sandbox
24 participant exits the regulatory sandbox program, and not
25 less than 30 days before the conclusion of the regulatory
26 sandbox testing period, notify, in writing, any consumer of
27 the innovative product or service of the plan related to
28 continuation or discontinuation of duties with respect to the
29 innovative product or service.

§31A-8G-7. Testing period extensions.

1 (a) Thirty days prior to the conclusion of the regulatory
2 sandbox testing period, a regulatory sandbox participant
3 may request an extension of the regulatory sandbox testing
4 period for the purpose of obtaining a license or other
5 authorization required by law.

6 (b) The Division of Financial Institutions shall grant or
7 deny a request for an extension in accordance with
8 subsection (a) of this section by the conclusion of the
9 regulatory sandbox testing period.

10 (c) The Division of Financial Institutions may grant an
11 extension in accordance with this section for not more than

12 12 months after the conclusion of the regulatory sandbox
13 testing period.

14 (d) A regulatory sandbox participant that obtains an
15 extension in accordance with this section shall provide the
16 Division of Financial Institutions with a written report every
17 three months that provides an update on efforts to obtain a
18 license or other authorization required by law, including any
19 submitted applications for licensure or other authorization,
20 rejected applications, or issued licenses or other
21 authorization.

**§31A-8G-8. Recordkeeping and reporting requirements;
participant removal.**

1 (a) A regulatory sandbox participant shall retain
2 records, documents, and data produced in the ordinary
3 course of business regarding an innovative product or
4 service tested in the regulatory sandbox program, and shall
5 maintain comprehensive records for not less than five years
6 after the conclusion of the regulatory sandbox testing
7 period.

8 (b) If an innovative product or service fails before the
9 conclusion of a regulatory sandbox testing period, the
10 regulatory sandbox participant shall notify the Division of
11 Financial Institutions and report on actions taken by the
12 regulatory sandbox participant to ensure consumers have
13 not been harmed as a result of the failure.

14 (c) The Division of Financial Institutions will
15 collaborate with a regulatory sandbox participant to
16 establish periodic and reasonable reporting requirements for
17 the regulatory sandbox participant.

18 (d) The Division of Financial Institutions may request
19 records, documents, and data from a regulatory sandbox
20 participant, and, upon the division's request, a regulatory
21 sandbox participant shall make such records, documents,
22 and data available for inspection by the division.

23 (e) If the Division of Financial Institutions determines
24 that a regulatory sandbox participant has engaged in, is
25 engaging in, or is about to engage in any practice or
26 transaction that is in violation of this chapter or that
27 constitutes a violation of a state or federal criminal law, the
28 Division of Financial Institutions may remove a regulatory
29 sandbox participant from the regulatory sandbox program
30 and may refer suspected violations of law relating to this act
31 to appropriate state or federal agencies for investigation,
32 prosecution, civil penalties, and other appropriate
33 enforcement actions.

34 (f) On or before December 1 of each year, the Division
35 of Financial Institutions shall provide an annual written
36 report to the Joint Committee on Government and Finance
37 that provides information regarding each regulatory
38 sandbox participant and that provides recommendations
39 regarding the effectiveness of the regulatory sandbox
40 program. This report shall be made publicly available on the
41 division's website.



CHAPTER 36

**(Com. Sub. for H. B. 4015 - By Delegates Linville,
Atkinson, Barnhart, D. Kelly, Maynard, Sypolt,
Porterfield, Hanshaw (Mr. Speaker), Queen, Pack
and Nelson)**

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §31G-1-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §31G-5-1, §31G-5-2, §31G-5-3, and §31G-5-4, all relating to telecommunications and broadband; limiting the consecutive terms of the public

members of the Broadband Enhancement Council; limiting the consecutive terms of the chair and vice-chair of the Broadband Enhancement Council; enacting the Vertical Real Estate Management and Availability Act; requiring the Department of Administration to coordinate with the Governor to seek proposals to manage state-owned vertical real estate; establishing how the vertical real estate is to be managed; defining “vertical real estate” as any structure that is suitable for the mounting of communications equipment and associated ground facilities; providing for a distribution of funds from leasing state-owned vertical real estate; and setting forth certain exceptions to the availability for management of state-owned vertical real estate.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§31G-1-3. Broadband Enhancement Council; members of council; administrative support.

1 (a) The Broadband Enhancement Council is hereby
2 established and continued. The current members, funds, and
3 personnel shall continue in effect and be wholly transferred;
4 except as may be hereinafter provided. With regard to the
5 terms of the public members appointed under subdivision
6 five, subsection (d) of this section, at the next regular
7 meeting of the council following July 1, 2017, the currently
8 serving public members shall draw by lot for the length of
9 their terms, three members to serve for one additional year,
10 three members to serve for two additional years and the last
11 three members to serve for three additional years, with all
12 public members in future to serve for the duration of the
13 term described below.

14 (b) The council is a governmental instrumentality of the
15 State. The exercise by the council of the powers conferred
16 by this article and the carrying out of its purpose and duties
17 are considered and held to be, and are hereby determined to
18 be, essential governmental functions and for a public

19 purpose. The council is created under the Department of
20 Commerce for administrative, personnel, and technical
21 support services only.

22 (c) The council shall consist of 13 voting members,
23 designated as follows:

24 (1) The Secretary of Commerce or his or her designee;

25 (2) The Chief Technology Officer or his or her designee;

26 (3) The Vice Chancellor for Administration of the
27 Higher Education Policy Commission or his or her
28 designee;

29 (4) The State Superintendent of Schools or his or her
30 designee;

31 (5) Nine public members that shall serve no more than
32 three consecutive three-year terms from the date of their
33 appointment and are appointed by and serve at the will and
34 pleasure of the Governor with the advice and consent of the
35 Senate, as follows:

36 (i) One member representing users of large amounts of
37 broadband services in this state;

38 (ii) One member from each congressional district
39 representing rural business users in this state;

40 (iii) One member from each congressional district
41 representing rural residential users in this state;

42 (iv) One member representing urban business users in
43 this state; and

44 (v) One member representing urban residential users in
45 this state; and

46 (6) Additionally, the President of the Senate shall name
47 two Senators from the West Virginia Senate, one from each
48 party, and the Speaker of the House shall name two

49 Delegates from the West Virginia House of Delegates, one
50 from each party, each to serve in the capacity of ex officio,
51 nonvoting advisory members of the council.

52 (d) The Secretary of Commerce shall chair the first
53 meeting at which time a chair and vice chair shall be elected
54 from the members of the council for a term of two years:
55 *Provided*, That a chair or vice-chair may not serve more
56 than two consecutive full or partial terms in that capacity. In
57 the absence of the chair, the vice chair shall serve as chair.
58 The council shall appoint a secretary-treasurer who need not
59 be a member of the council and who, among other tasks or
60 functions designated by the council, shall keep records of its
61 proceedings.

62 (e) The council may appoint committees or
63 subcommittees to investigate and make recommendations to
64 the full council. Members of these committees or
65 subcommittees need not be members of the council.

66 (f) Seven voting members of the council constitute a
67 quorum and the affirmative vote of a simple majority of
68 those members present is necessary for any action taken by
69 vote of the council.

70 (g) The gubernatorial appointed members shall be
71 deemed part-time public officials, and may pursue and
72 engage in another business or occupation or gainful
73 employment. Any person employed by, owning an interest
74 in, or otherwise associated with a broadband deployment
75 project, project sponsor, or project participant may serve as
76 a council member and is not disqualified from serving as a
77 council member because of a conflict of interest prohibited
78 under §6B-2-5 of this code and is not subject to prosecution
79 for violation of that section when the violation is created
80 solely as a result of his or her relationship with the
81 broadband deployment project, project sponsor, or project
82 participant so long as the member recuses himself or herself
83 from board participation regarding the conflicting issue in
84 the manner set forth in §6B-2-5 of this code and the

85 legislative rules promulgated by the West Virginia Ethics
86 Commission.

87 (h) No member of the council who serves by virtue of
88 his or her office may receive any compensation or
89 reimbursement of expenses for serving as a member. The
90 public members and members of any committees or
91 subcommittees are entitled to be reimbursed for actual and
92 necessary expenses incurred for each day or portion thereof
93 engaged in the discharge of his or her official duties in a
94 manner consistent with the guidelines of the Travel
95 Management Office of the Department of Administration.

96 (i) No person is subject to antitrust or unfair competition
97 liability based on membership or participation in the
98 council, which provides an essential governmental function
99 and enjoys state action immunity.

ARTICLE 5. VERTICAL REAL ESTATE MANAGEMENT AND AVAILABILITY ACT.

§31G-5-1. Short title.

1 This article shall be known and cited as the Vertical
2 Real Estate Management and Availability Act.

§31G-5-2. Definitions.

1 For the purposes of this article unless the context
2 otherwise requires:

3 “Ground facilities” means any shed, buildings, server
4 rooms, or other ancillary structure providing essential
5 services to a tower, including, but not limited to, distributing
6 power, providing communications backhaul, or other
7 service necessary to carry out the purposes of the tower.

8 “Tower” means a structure which hosts an antenna or
9 other equipment used for the purposes of transmitting
10 cellular or wireless signals for communications purposes,

11 including telephonically, or, for computing purposes,
12 including any antenna and all associated equipment; and

13 “Vertical Real Estate” means any communication or
14 broadcast tower, or any other structure or similar installation
15 mounted on a rooftop or other prominent place, and any
16 other such facilities associated with that structure, upon
17 which is suitable to mount communications equipment
18 thereon, and the associated ground facilities necessary to
19 accommodate that communications purpose, or other real
20 estate suitable for the installation of a telecommunications
21 vertical asset: *Provided*, That any excess
22 telecommunications facilities owned or controlled by the
23 West Virginia Division of Highways that do not meet this
24 definition of Vertical Real Estate, shall be subject to the
25 provisions of §17-2E-6a of this code: *Provided further*, That
26 nothing in this definition may serve to prohibit terrestrial,
27 middle-mile or last-mile broadband or high speed internet
28 wiring or facilities installation pursuant to §17-2E-1 *et seq.*
29 nor may classification as such facilities serve to prevent
30 utility installation including, but not limited to, water,
31 electric and sewer services.

§31G-5-3. Management of vertical real estate.

1 (a) Beginning on July 1, 2020, the Department of
2 Administration shall coordinate with the executive to issue
3 a request for proposals to manage state-owned vertical real
4 estate. This request for proposals shall contain at a
5 minimum the following information from each prospective
6 manager:

7 (1) A standard method for valuation of space on each
8 tower that is reasonable and customary for the reach of and
9 the numbers of the population served by the vertical real
10 estate.

11 (2) A clause which forbids any vendor to enter into an
12 exclusive arrangement with any person for the right to use
13 the vertical real estate, unless no other entity is interested,

14 and a clause which forbids the sharing of information,
15 backhaul, or any other resources gleaned from managing the
16 assets competitively with any competitors.

17 (3) A clause forbidding the vendor from engaging in any
18 preferential treatment to their own operations as a
19 competing provider of wireless broadband access.

20 (4) A minimum of 50 percent rental reduction for any
21 entity whose utilization of that vertical real estate is
22 providing broadband access which is rate unlimited or
23 unthrottled; subject to current load/demand network
24 management.

25 (b) There is hereby created in the state treasury a special
26 account to be known as the Technology Infrastructure
27 Reinvestment Fund to be administered by the Office of
28 Technology. All revenue derived from the management of
29 the vertical real estate shall be deposited into the fund
30 pursuant to §31G-5-3 of this code. Expenditures from the
31 fund shall be made by the Office of Technology for the
32 purpose of reinvestment in the vertical real estate or
33 technology infrastructure supporting broadband on state-
34 owned property. Expenditures are not authorized from
35 collections but are to be made in accordance with
36 appropriation by the Legislature pursuant to the provisions
37 of §12-3-1, *et seq.* of this code and upon the fulfillment of
38 the provisions of §11B-2-1, *et seq.* of this code.

39 (c) The Office of Technology shall remit to the manager
40 the compensation as per the contract and then on June 30
41 each year shall distribute any funds received in excess of the
42 compensation due the manager as follows:

43 (1) Fifty percent to the Technology Infrastructure
44 Reinvestment Fund,

45 (2) Fifty percent will go to the Broadband Expansion
46 Fund established in §31G-1-5 of this code in control of the

47 Broadband Enhancement Council with the specific purpose
48 of:

49 (A) Funding the ongoing operations of the Broadband
50 Enhancement Council, and

51 (B) To provide funds to match federal grants.

52 (d) Counties, municipalities and other political
53 subdivisions, as applicable, may join or participate in an
54 awarded agreement with a successful manager under the
55 same terms and conditions: *Provided*, That distribution of
56 funds attributable to their assets may be expended at the
57 discretion of their governing body.

§31G-5-4. Exceptions to the management of vertical real estate.

1 Any vertical real estate shall be exempted from
2 management if:

3 (A) The rental of that vertical real estate would
4 potentially affect the operations of any public safety,
5 emergency management or homeland security operations:
6 *Provided*, That if there is a showing that a reasonable,
7 technically feasible, nondiscriminatory design can prevent
8 such adverse effect on any public safety, emergency
9 management or homeland security operations then such
10 management may occur; or

11 (B) It would have an adverse effect on historic
12 preservation of a property: *Provided*, That if there is a
13 showing that a reasonable, technically feasible,
14 nondiscriminatory, and technologically neutral design or
15 concealment measures can prevent such adverse effect on
16 the property's historic preservations then such management
17 may occur.

●

CHAPTER 37

**(Com. Sub. for H. B. 4619 – By Delegates Hanshaw
(Mr. Speaker), Capito, Atkinson, Westfall, Queen,
Nelson, Summers, J. Kelly, Barrett, Boggs and Miley)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated †§24-2-1p; to amend and reenact §31G-4-5 of said code; and to amend said code by adding thereto a new section, designated §31G-4-5a, all relating to broadband enhancement; excepting certain middle-mile fiber broadband infrastructure from consideration as a public utility; making legislative findings; defining terms; establishing the Middle-Mile Fiber Broadband Infrastructure Expansion Program; authorizing certain electric utilities to participate in said program; setting forth powers and duties of the Public Service Commission in reviewing and considering written plans and amendments thereto submitted pursuant to said program; requiring certain electric utilities to file written plans and application with the Public Service Commission upon a determination by the Broadband Enhancement Council that a proposed project is feasible; establishing that such a written plan and application is in lieu of a proceeding pursuant to §24-2-11; setting forth the required contents of said written plan and application; requiring that an electric utility publish in certain publication areas the anticipated monthly and yearly electric rate increase, if any, and actual rates under the proposal, as a Class I legal advertisement in compliance with the provisions of §59-3-1, *et seq.* of this code; requiring that a public hearing be held within 90 days of the publication of said notice; setting forth instances when no such public hearing is necessary; requiring

† Redesignated

that the Public Service Commission issue a final order within 150 days of the application filing date; setting forth instances when the Public Service Commission must approve such a written plan; authorizing an electric utility to implement such a plan upon approval by the Public Service Commission; setting forth project costs that an electric utility is entitled to recover as part of the implementation of an approved project; authorizing an electric utility to make certain accounting accruals; providing that electric utilities shall control the scope, scheduling and execution of a project; authorizing an electric utility to reestablish electric service and assure safety of its workers prior to restoration of middle-mile fiber broadband service; authorizing electric utilities to use contractors chosen by the electric utility to construct, install, operate, maintain and repair middle-mile fiber assets; providing an electric utility with sole control of the location and method of attachment and connection of certain middle-mile fiber infrastructure; requiring electric utilities to manage and document the entities that lease middle-mile fiber assets for last-mile operations; allowing an electric utility to own, manage, or control certain broadband capacity, fiber strands, equipment and electronics; allowing an electric utility to lease certain broadband capacity, fiber strands, equipment and electronics to certain Internet service providers and other third parties; allowing an electric utility to provide access points that are outside the electric utility's power supply zone to allow connection between the electric utility's broadband capacity system or fiber strands and non-governmental Internet service provider's or other third party's system; removing certain references to underserved areas of the state from feasibility studies of proposed broadband projects; and authorizing certain electric cooperatives to utilize their distribution system, poles, or rights of way to provide for critical infrastructure.

Be it enacted by the Legislature of West Virginia:

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWER AND DUTIES OF PUBLIC SERVICE COMMISSION.

†§24-2-1p. Middle-Mile Fiber Broadband Infrastructure Expansion Program.

1 (a) Legislative findings. The Legislature finds:

2 (1) That access to broadband services is of critical
3 importance to and a necessary prerequisite for enabling
4 economic development in the state and for improving
5 education, health care, public safety and government
6 services, among other benefits to its citizens;

7 (2) That broadband expansion into unserved rural areas
8 of the state continues to be an issue of importance to the
9 Legislature, and progress is hindered by lack of full
10 development of middle-mile broadband fiber infrastructure
11 within the state;

12 (3) That the issues which have hindered the provision of
13 broadband access to rural areas of the state especially
14 disadvantage the elderly and low-income households;

15 (4) That it continues to be a primary goal of the
16 Legislature to make every municipality, community, and
17 rural area in this state accessible to Internet communications
18 through the expansion, extension, and general availability
19 of broadband services and technology;

20 (5) That regulated electric utilities have existing
21 distribution infrastructure in place throughout the state, and
22 that their existing and new infrastructure could be utilized
23 in connection with construction of middle-mile broadband
24 fiber assets;

25 (6) That it is in the public interest to expedite
26 construction of middle-mile broadband fiber infrastructure
27 to provide the necessary architecture to facilitate additional
28 broadband Internet access to individuals and institutions in
29 unserved areas of the state; and

† Redesignated

30 (7) That it is appropriate to establish a program to allow
31 electric utilities to construct middle-mile fiber broadband
32 assets within the power supply zone utilizing existing and
33 new electric utility distribution assets in a manner that
34 addresses the needs of the public and is consistent with the
35 operational concerns of the electric utilities that may
36 participate in this program.

37 (b) Definitions. For purposes of this section:

38 “Commission” means the Public Service Commission
39 of West Virginia.

40 “Council” means the Broadband Enhancement Council,
41 as defined in §31G-1-1, *et seq.* of this code.

42 “Electric utility” means any electric utility operating
43 within this state that is regulated by the commission:
44 *Provided*, That an electric utility that has installed middle-
45 mile fiber broadband infrastructure pursuant to this section
46 shall not be considered a public utility engaged in the
47 transmission of messages by telephone, telegraph or radio
48 for purposes of §24-2-1(a) of this code.

49 “Program” means the Middle-mile fiber Broadband
50 Expansion Program established pursuant to subsection (c)
51 of this section.

52 “Project” means one or more middle-mile fiber
53 infrastructure expansion projects, including any portion of
54 such projects to be used for the electric utility’s
55 communication needs, proposed by an electric utility and
56 approved by the commission pursuant to subsection (e) of
57 this section as part of the program.

58 “Served” means any area with broadband service as
59 defined in §31G-1-2 of this code.

60 “Unserved” means any area without broadband service
61 as defined in §31G-1-2 of this code.

62 (c) Establishment of program. Commencing July 1,
63 2020, the Middle-Mile Fiber Broadband Infrastructure
64 Expansion Program is hereby authorized and established.

65 (d) Authorizing participation. An electric utility having
66 distribution infrastructure in this state may participate in the
67 program pursuant to the provisions of this section.

68 (e) Powers and duties of Public Service Commission to
69 act on written plans and amendments to written plans. The
70 commission shall have the following powers and duties in
71 connection with the program:

72 (1) Review, approve, or reject each written plan
73 submitted by an electric utility pursuant to subsection (f) of
74 this section. A written plan shall be approved if the
75 commission determines that the proposed plan is
76 reasonable, prudent, useful, and is not contrary to the public
77 interests, considering the interests of the potential
78 broadband users and the electric utility customers.

79 (2) Review, approve, or reject amendments to written
80 plans submitted by an electric utility pursuant to subsection
81 (f) of this section. Amendments to a written plan shall be
82 approved if the commission determines that the proposed
83 amendments to a written plan are reasonable, prudent,
84 useful and not contrary to the public interest considering the
85 interests of the potential broadband users and the electric
86 utility customers.

87 (3) Perform any other duties necessary to effectuate the
88 provisions of this section.

89 (f) Written plan. Following the council's determination
90 that construction, installation, operation, and repair of a
91 middle-mile broadband infrastructure expansion project by
92 an electric utility is feasible pursuant to §31G-4-5 of this
93 code, the electric utility shall file a written plan and
94 application seeking the commission's approval of the
95 project and its associated cost recovery. The written plan

96 and application is in lieu of a proceeding pursuant to §24-2-
97 11 of this code and shall contain the following:

98 (1) The route of the middle-mile fiber infrastructure
99 proposed for the project, the number of fiber strands that
100 would be utilized in connection with the proposed project
101 and dedicated to serve as the middle-mile, the location of
102 the electric utility's distribution infrastructure that will be
103 utilized in connection with the proposed project, the
104 capacity or number of fiber strands of the middle-mile that
105 will be available to lease to non-governmental last-mile
106 broadband Internet providers and other third parties upon
107 completion of the proposed project, and the commitment of
108 at least one non-governmental last-mile broadband Internet
109 provider that will lease access to the middle-mile fiber
110 assets constructed as part of the proposed project, and an
111 estimate of potential broadband customers, determined in
112 consultation with the council, that would be served by the
113 middle-mile infrastructure;

114 (2) The estimated cost of the proposed project,
115 including, but not limited to, engineering costs, construction
116 costs, permitting costs, right of way costs and a reasonable
117 allowance for funds used during construction;

118 (3) Proposed schedule of construction of the proposed
119 project;

120 (4) Method of attachment and connection of the middle-
121 mile broadband fiber assets to the electric utility's
122 distribution infrastructure;

123 (5) Testimony, exhibits or other evidence that
124 demonstrates the project is reasonable, prudent, useful and
125 not contrary to the public interest;

126 (6) A cost recovery mechanism that allocates all net
127 costs to be recovered under this section on a distribution-
128 level basis; and

129 (7) Other information the applicant considers relevant
130 or the commission requires.

131 (g) The electric utility shall publish, in the form the
132 commission directs, which form shall include, but not be
133 limited to, the anticipated monthly and yearly electric rate
134 increase, if any, and actual rates under the proposal, by
135 average percentage and dollar amount for customers within
136 a class of service, as a Class I legal advertisement in
137 compliance with the provisions of §59-3-1 *et seq.* of this
138 code, the publication area to be each county in which service
139 is provided by the electric utility, a notice of the filing of the
140 application and that the commission shall hold a hearing on
141 the application within 90 days of the notice; unless no
142 opposition to the plan or the rate change is received by the
143 commission within the time limits established by the
144 commission, in which case the hearing can be waived, and
145 the commission shall issue a final order within 150 days of
146 the application filing date: *Provided*, That upon the request
147 of any interested person or entity, the commission shall
148 allow for the submission of comments on the feasibility of
149 the plan.

150 (h) Upon notice and hearing, if required by the
151 commission, the commission shall approve the plan and
152 allow expedited recovery of costs related to the
153 expenditures as provided in subsection (f) of this section if
154 the commission finds that the expenditures and the
155 associated rate requirements are just, reasonable, not
156 contrary to the public interest, and will allow for the
157 provision and maintenance of adequate, efficient, safe,
158 reliable and reasonably priced middle-mile fiber broadband
159 service.

160 (i) The council or the commission may not act to limit
161 the number of last-mile broadband Internet providers
162 eligible to be contracted to utilize the middle-mile fiber
163 infrastructure constructed as part of a project proposed
164 pursuant to this section. No board, commission, agency, or
165 other governmental body may regulate the costs extended to

166 a broadband customer from any last-mile broadband
167 Internet service provider. Nothing in this subsection shall
168 prevent the commission from reviewing, modifying, and
169 approving or denying the cost or means of providing a
170 middle-mile fiber proposed project pursuant to this section.

171 (j) Upon commission approval, an electric utility will be
172 authorized to implement the plan and to recover related
173 project costs, net of any middle-mile broadband revenues or
174 contributions in aid of construction, as provided in the
175 following:

176 (1) An allowance for return shall be calculated by
177 applying a rate of return to the planned net incremental
178 increase to rate base attributable to the project for the
179 coming year, considering the projected amount and timing
180 of expenditures under the project, plus any expenditures in
181 previous years of the project. The rate of return shall be
182 determined by utilizing the rate of return on equity
183 authorized by the commission in the electric utility's most
184 recent rate case proceeding or in the case of a settled rate
185 case, a rate of return on equity as determined by the
186 commission, and the projected cost of the electric utility's
187 debt during the period of the project to determine the
188 weighted cost of capital based upon the electric utility's
189 capital structure.

190 (2) Income taxes applicable to the return allowed on the
191 project shall be calculated for inclusion in rates at the federal
192 and state statutory rates.

193 (3) Depreciation and property tax expenses directly
194 attributable to the project shall be estimated for the
195 upcoming year.

196 (4) Operation and maintenance expense specifically and
197 directly related to operation and maintenance of the middle-
198 mile fiber broadband facilities.

199 (5) Following commission approval of the project and
200 related cost recovery mechanism, an electric utility shall
201 place into effect a commission approved reconcilable rate
202 surcharge that recovers the revenue requirement of the
203 allowance for return, related income taxes, operation and
204 maintenance expenses, depreciation, property tax expenses
205 associated with the electric utility's estimated project
206 investments for the upcoming year, net of middle-mile
207 revenue or contributions in aid of construction recovery of
208 those costs provided by last mile broadband Internet
209 providers upon completion of the project, if any ("middle-
210 mile cost recovery rates"). In each year subsequent to the
211 order approving the project and middle-mile cost recovery
212 rates, the electric utility shall file a petition with the
213 commission setting forth new proposed middle-mile cost
214 recovery rates that recover the revenue requirement of the
215 project investments previously installed and projected costs
216 of the project based on investments to be made in the
217 subsequent year, plus any under-recovery or minus any
218 over-recovery of actual costs attributable to the project, for
219 the preceding year.

220 (k) The electric utility may make any accounting
221 accruals necessary to establish a regulatory asset or liability
222 through which actual costs incurred and costs recovered
223 through the rate mechanism are tracked.

224 (l) Construction, installation, operation, maintenance,
225 and repair of middle-mile fiber expansion projects. Subject
226 to continuing authority of the commission to determine the
227 reasonableness of acts and practices, for all projects
228 contained in a written plan approved by the commission
229 pursuant to subsection (e) of this section, and constructed,
230 installed, operated, maintained, and repaired by an electric
231 utility pursuant to this section, the electric utility shall have
232 control of the scope, scheduling and execution of the project
233 to construct, install, operate, maintain and repair middle-
234 mile fiber assets, including fiber build route selection and
235 build and splice schedules. The electric utility shall be

236 entitled to reestablish electric service and assure safety of its
237 workers prior to restoration of middle-mile fiber broadband
238 service in order to ensure operational safety matters of the
239 shared infrastructure. Additionally, the electric utility shall
240 be entitled to use contractors chosen and approved by the
241 electric utility to construct, install, operate, maintain, and
242 repair middle-mile fiber assets pursuant to this section
243 because of its or electric utility's knowledge of hazards in
244 the power supply zone and the associated controls to reduce
245 the risks involved. Nothing in this section confers any rights
246 to work in the power supply space except by the electric
247 utility and its designated contractors.

248 (m) Attachment and connection of middle-mile fiber
249 assets. An electric utility participating in the program shall
250 have sole control of the location and method of attachment
251 and connection of middle-mile fiber assets to the electric
252 utility's distribution infrastructure, unless otherwise ordered
253 by the commission.

254 (n) Management of fiber projects. In order to manage
255 operations, an electric utility participating in the program
256 shall manage and document the entities that lease middle-
257 mile fiber assets for last-mile operations, including, but not
258 limited to, outage notification and management.

259 (o) Notwithstanding anything in this code or in the
260 articles of incorporation of an electric utility to the contrary,
261 an electric utility may, either directly or indirectly or
262 through an affiliate or subsidiary, pursuant to a written plan
263 approved by the commission:

264 (1) Own, manage or control any broadband capacity,
265 number of fiber strands, equipment and electronics,
266 including any plant, works, system, lines, facilities or
267 properties, or any part or parts thereof, together with all
268 appurtenances thereto, used or useful in connection with the
269 provisions and extension of such broadband services;

270 (2) Lease such broadband capacity, number of fiber
271 strands, equipment, or electronics to non-governmental
272 Internet service providers and other third parties, on a
273 nonexclusive basis; and

274 (3) Provide access points that are outside the electric
275 utility's power supply zone to allow connection between the
276 electric utility's broadband capacity system or fiber strands,
277 and any non-governmental Internet service provider's or
278 other third party's system.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 4. MAKE-READY POLE ACCESS.

§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
31 the 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 proposed
49 legislation to address such regulatory barriers;

50 (3) Whether it is in the public interest and the interest of
51 the electric utility to make improvements to the distribution
52 grid in furtherance of providing such middle-mile
53 broadband Internet services in conjunction with its program
54 of electric distribution projects;

55 (4) Whether it is in the public interest and the interest of
56 the electric utility to operate middle-mile broadband
57 Internet assets to provide access to unserved areas of the
58 state;

59 (5) Whether it is in the public interest and the interest of
60 the electric utility to permit a third party to lease such
61 capacity to provide last-mile broadband Internet services to
62 unserved areas of the state;

63 (6) Whether construction of middle-mile broadband
64 Internet infrastructure utilizing electric utility distribution
65 systems is feasible with respect to the maturity of the
66 relevant technology, the compatibility of such services with
67 existing electric services, and the financial requirements to
68 undertake such project;

69 (7) The anticipated level of rate adjustment necessary to
70 allow the electric utility to recover its costs associated with
71 the proposed project, and a reasonable rate of return, on an
72 expedited basis, that will be recovered by the electric utility
73 through a rate adjustment at the commission; and

74 (8) Such other information that is pertinent to the
75 project.

76 (e) Upon receipt of a feasibility study, the council shall
77 post the same on the council website for written public
78 comment for a period of seven days and then shall render a
79 determination, by a majority vote of the council, as to the
80 feasibility of the proposed project.

81 (f) In its consideration of the feasibility of a project, the
82 council shall identify one or more last-mile broadband
83 Internet providers that may lease the middle-mile broadband

84 Internet capacity created by the proposed project pursuant
85 to lease terms and conditions set by the council.

86 (g) The council shall render such feasibility
87 determination within 60 days from the date the feasibility
88 study is submitted to the council.

89 (h) Commencing January 1, 2020, and each year
90 thereafter, the council shall give a report of its consideration
91 of feasibility studies submitted pursuant to this section to
92 the Governor, the President of the Senate, the Speaker of the
93 House of Delegates, and the Joint Committee on
94 Government and Finance.

§31G-4-5a. Electric Cooperative Providing Broadband Services.

1 An electric cooperative organized pursuant to state and
2 federal law, including the Rural Electrification Act of 1936,
3 may utilize its distribution system, poles, or rights of way to
4 provide for critical infrastructure, which may include the
5 construction or operation, or both, of a broadband
6 infrastructure project consisting of middle mile or last mile
7 services, or both.



CHAPTER 38

**(Com. Sub. for S. B. 575 - By Senators Maynard,
*original sponsor**)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §49-4-201 and §49-4-202 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §49-4-206,

*NOTE: Senator Rucker was also a sponsor of this bill.

all relating to safe-surrender sites; allowing the governing entity of a local fire department to designate the premises of its fire department as a safe-surrender site; providing the criteria of the child who may be accepted from a parent; setting forth requirements upon the fire department upon taking possession of a child; and establishing criteria for the fire department as a safe-surrender site.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

PART II. EMERGENCY POSSESSION OF CERTAIN RELINQUISHED CHILDREN.

§49-4-201. Accepting possession of certain relinquished children.

1 (a) A hospital or health care facility operating in this
2 state, or a fire department that has been designated a safe-
3 surrender site under §49-4-206 of this code, shall, without a
4 court order, take possession of a child if the child is
5 voluntarily delivered to the hospital, health care facility, or
6 fire department by the child's parent within 30 days of the
7 child's birth, and the parent did not express an intent to
8 return for the child.

9 (b) A hospital, health care facility, or fire department
10 that takes possession of a child under this article shall
11 perform any act necessary to protect the physical health or
12 safety of the child. In accepting possession of the child, the
13 hospital, health care facility, or fire department may not
14 require the person to identify himself or herself and shall
15 otherwise respect the person's desire to remain anonymous.

§49-4-202. Notification of possession of relinquished child; department responsibilities.

1 (a) (1) Not later than the close of the first business day
2 after the date on which a hospital or health care facility takes
3 possession of a child pursuant to §49-4-201 of this code, the

4 hospital or health care facility shall notify the Child
5 Protective Services Division of the Department of Health
6 and Human Resources that it has taken possession of the
7 child and shall provide the division any information
8 provided by the parent delivering the child. The hospital or
9 health care facility shall refer any inquiries about the child
10 to the Child Protective Services Division.

11 (2) Upon taking possession of a child pursuant to §49-
12 4-201 of this code, a fire department shall:

13 (A) Deliver the child to the nearest hospital or health
14 care facility as soon as possible, but transport may begin no
15 later than 30 minutes upon taking possession of a child; and

16 (B) Notify the Child Protective Services Division of the
17 Department of Health and Human Resources within two
18 hours of taking possession of a child:

19 (i) That it has delivered the child and identify the
20 hospital or health care facility to which it delivered the
21 child; and

22 (ii) Provide the division any information provided by
23 the parent delivering the child.

24 (3) The fire department shall refer any inquiries about
25 the child to the Child Protective Services Division.

26 (b) The Department of Health and Human Resources shall
27 assume the care, control, and custody of the child as of the time
28 of delivery of the child to the hospital, health care facility, or
29 fire department, and may contract with a private child care
30 agency for the care and placement of the child after the child
31 leaves the hospital, health care facility, or fire department.

**§49-4-206. Designation of local fire department as a safe-
surrender site; posting requirement.**

1 The governing entity of a local fire department that is
2 staffed 24 hours a day, seven days a week, may designate

3 the premises of its fire department as a safe-surrender site to
4 accept physical custody of a child who is 30 days old or
5 younger from a parent of the child and who surrenders the
6 child pursuant to §49-4-201 of this code. A local fire
7 department that is designated a safe-surrender site shall post
8 a sign that notifies the public that it is a location where a
9 child 30 days old or younger may be safely surrendered
10 pursuant to this article.



CHAPTER 39

(Com. Sub. for S. B. 711 - By Senator Trump)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-4-726, relating to directing the Secretaries of the Department of Health and Human Resources, the Department of Military Affairs and Public Safety, and requesting that the Juvenile Justice Commission of the Supreme Court of Appeals to collaborate and undertake an investigation of numerous issues related to juvenile justice, juvenile competency, and procedures for dealing with juveniles found incompetent to assist counsel in proceedings against them; and are determined to be nonrestorable; requiring certain recommendations and proposed legislation; and requiring the report and proposed legislation be supplied to the President of the Senate and the Speaker of the House of Delegates on or before July 31, 2020.

Be it enacted by the Legislature of West Virginia:

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

§49-4-726. Study of juvenile competency issues; requiring and requesting report and proposed legislation; submission to Legislature.

1 (a) The Secretary of the Department of Health and
2 Human Resources and the Secretary of the Department of
3 Military Affairs and Public Safety are directed, and the
4 Juvenile Justice Commission of the Supreme Court of
5 Appeals is requested to undertake a collaborative
6 investigation and evaluation of issues regarding juvenile
7 competency. They shall:

8 (1) Develop appropriate procedures for determining
9 what actions should be taken when a juvenile is determined
10 to lack substantial capacity to understand the proceedings
11 against him or her brought under §49-4-704 of this code;

12 (2) Recommend appropriate processes for juveniles to
13 receive restorative services when found to be incompetent;
14 and

15 (3) Recommend appropriate disposition alternatives for
16 juveniles found to be incompetent and not restorable,
17 including a recommendation as to the location and operation
18 of an appropriate facility to house juveniles determined to
19 be incompetent, nonrestorable, and in need of out-of-home
20 placement.

21 (b) The secretaries shall issue a joint report of their
22 findings and recommendations, together with draft
23 legislation necessary to effectuate the recommendations, on
24 or before July 31, 2020, to the President of the Senate and
25 the Speaker of the House of Delegates.

26 (c) The report shall:

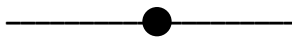
27 (1) Include models from other states considered to be
28 best practices;

29 (2) Include an estimate of the number of juveniles that
30 may be affected by this procedure and data of trends by
31 other states;

32 (3) Include an estimate of the cost of providing
33 restorative services and a recommendation of which agency
34 should pay for the services; and

35 (4) Ensure that any recommended legislation provides
36 that all services be provided in the least restrictive
37 placement for the juvenile and recommend a facility for the
38 housing and treatment of juveniles determined to be
39 incompetent, nonrestorable, and in need of out-of-home
40 placement which can appropriately provide the juvenile
41 with necessary services.

42 (d) It is the intent of the Legislature in enacting this
43 section to acknowledge the importance of ensuring the
44 constitutionality of juvenile proceedings under §49-4-704
45 of this code.



CHAPTER 40

**(Com. Sub. for H. B. 4092 - By Delegates Hill, Pack,
Summers, Espinosa, Hanna, Worrell, Estep-Burton,
Lavender-Bowe, Pushkin, C. Thompson and Walker)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §49-2-102 and §49-2-104 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-1-206 of said code; to amend and reenact §49-2-108, §49-2-110, §49-2-111, §49-2-111a, §49-2-112, §49-2-118, §49-2-121, §49-2-124, and §49-2-126 of said code; to amend said code by adding thereto five new sections, designated §49-2-111c,

§49-2-127, §49-2-127a, §49-2-128, and §49-2-129; to amend said code by adding thereto two new sections, designated §49-4-601a and §49-4-601b; and to amend and reenact §49-4-604 of said code, all relating generally to the child welfare system; defining terms; increasing the number children allowed in a foster family home; removing authorization for the Secretary of the Department of Health and Human Resources to transfer funds between certain accounts; eliminating requirement that the secretary provide public education; requiring certain information to be included in child placing agency data reports; setting a minimum amount that the Department of Health and Human Resources must pay child placing agencies per child adopted; requiring the department to review the rate of payment to foster parents at certain time intervals; authorizing and directing the department to expend funds to achieve certain priorities and objectives related to child placement and other services; requiring the department to expend an amount of appropriated funds in fiscal year 2021 to achieve certain priorities and objectives; requiring the secretary of the department to report annually, and upon request, to the Joint Standing Committee on Government and Finance regarding expenditures and progress toward meeting certain objectives and priorities; specifying when the department shall remit payments to foster families; eliminating summary review requirements for behavioral health care services and facilities for children in out of home placements; establishing the Foster Child Bill of Rights; establishing the Foster and Kinship Parent Bill of Rights; providing that violations of the rights provided to foster children and parents may be reported to and investigated by the foster care ombudsman; setting forth certain duties of foster parents; requiring a number of provisions to be included in the agreement between the foster parent and the child placing agency and the department; providing that neglect of a foster or kinship parent's duties and violations of agreements may be reported to and investigated by the foster care ombudsman; requiring the foster care ombudsman to make certain reports; setting forth the reasonable and prudent foster parent standard; providing that children in out-of-home care

are entitled to participate in certain activities and requiring caregivers to use the reasonable and prudent foster parent standard to make certain decisions regarding the child; limiting liability of a person adhering to the reasonable and prudent foster parent standard; requiring the department to establish minimum standards for transitional living services by legislative rule; establishing eligibility criteria for children and transitioning adults to participate in transitional living services; providing requirements for transitional living arrangements and the agency's duties in relation thereto; establishing preference that children removed from the home be placed with relatives and fictive kin; establishing a process by which the department shall, and others may assist, in identifying family members and fictive kin; requiring the department to provide notice to a person against whom an allegation of abuse or neglect, that does not result in a finding by a court, is substantiated; providing that a person against whom an allegation of abuse or neglect has been substantiated has a right to contest the substantiation and the right to appeal a decision of the department to the courts; establishing requirements for legislative rules of the department regarding substantiation of abuse and neglect allegations; requiring guardians ad litem to adhere to certain policies and meet certain requirements; requesting the supreme court to review certain rules; clarifying when the department, in an abuse and neglect case, is not required to make efforts to preserve the family; requiring the department to promulgate legislative rules; requiring the department promulgate emergency rules; making technical corrections; and eliminating obsolete language from the code.

Be it enacted by the Legislature of West Virginia:

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, the following terms have the
2 following meanings, unless the context clearly indicates
3 otherwise:

4 “Child Advocacy Center (CAC)” means a
5 community-based organization that is a member, in good
6 standing, of the West Virginia Child Advocacy Network,
7 Inc., as set forth in §49-3-101 of this code.

8 “Child care” means responsibilities assumed and
9 services performed in relation to a child’s physical,
10 emotional, psychological, social, and personal needs and the
11 consideration of the child’s rights and entitlements, but does
12 not include secure detention or incarceration under the
13 jurisdiction of the Division of Corrections and
14 Rehabilitation pursuant to §49-2-901 *et seq.* of this code. It
15 includes the provision of child care services or residential
16 services.

17 “Child care center” means a facility maintained by the
18 state or any county or municipality thereof, or any agency
19 or facility maintained by an individual, firm, corporation,
20 association, or organization, public or private, for the care
21 of 13 or more children for child care services in any setting,
22 if the facility is open for more than 30 days per year per
23 child.

24 “Child care services” means direct care and protection
25 of children during a portion of a 24-hour day outside of the
26 child’s own home which provides experiences to children
27 that foster their healthy development and education.

28 “Child placing agency” means a child welfare agency
29 organized for the purpose of placing children in private
30 family homes for foster care or for adoption. The function
31 of a child placing agency may include the investigation and
32 certification of foster family homes and foster family group
33 homes as provided in this chapter. The function of a child
34 placing agency may also include the supervision of children

35 who are 16 or 17 years of age and living in unlicensed
36 residences.

37 “Child welfare agency” means any agency or facility
38 maintained by the state or any county or municipality
39 thereof, or any agency or facility maintained by an
40 individual, firm, corporation, association, or organization,
41 public or private, to receive children for care and
42 maintenance or for placement in residential care facilities,
43 including, without limitation, private homes or any facility
44 that provides care for unmarried mothers and their children.
45 A child welfare agency does not include juvenile detention
46 facilities or juvenile correctional facilities operated by or
47 under contract with the Division of Corrections and
48 Rehabilitation, pursuant to §49-2-901 *et seq.* of this code,
49 nor any other facility operated by that division for the secure
50 housing or holding of juveniles committed to its custody.

51 “Community based” means a facility, program, or
52 service located near the child’s home or family and
53 involving community participation in planning, operation,
54 and evaluation and which may include, but is not limited to,
55 medical, educational, vocational, social, and psychological
56 guidance, training, special education, counseling, substance
57 abuse, and any other treatment or rehabilitation services.

58 “Community-based juvenile probation sanctions”
59 means any of a continuum of nonresidential accountability
60 measures, programs, and sanctions in response to a
61 technical violation of probation, as part of a system of
62 community-based juvenile probation sanctions and
63 incentives, that may include, but are not limited to:

64 (A) Electronic monitoring;

65 (B) Drug and alcohol screening, testing, or monitoring;

66 (C) Youth reporting centers;

67 (D) Reporting and supervision requirements;

68 (E) Community service; and

69 (F) Rehabilitative interventions such as family
70 counseling, substance abuse treatment, restorative justice
71 programs, and behavioral or mental health treatment.

72 “Community services” means nonresidential prevention
73 or intervention services or programs that are intended to
74 reduce delinquency and future court involvement.

75 “Evidence-based practices” means policies, procedures,
76 programs, and practices demonstrated by research to
77 reliably produce reductions in the likelihood of reoffending.

78 “Facility” means a place or residence, including
79 personnel, structures, grounds, and equipment used for the
80 care of a child or children on a residential or other basis for
81 any number of hours a day in any shelter or structure
82 maintained for that purpose. Facility does not include any
83 juvenile detention facility or juvenile correctional facility
84 operated by or under contract with the Division of
85 Corrections and Rehabilitation for the secure housing or
86 holding of juveniles committed to its custody.

87 “Family child care facility” means any facility which is
88 used to provide nonresidential child care services for
89 compensation for seven to 12 children, including children
90 who are living in the household, who are under six years of
91 age. A facility may be in a provider’s residence or a separate
92 building.

93 “Family child care home” means a facility which is used
94 to provide nonresidential child care services for
95 compensation in a provider’s residence. The provider may
96 care for four to six children at one time, including children
97 who are living in the household, who are under six years of
98 age.

99 “Family resource network” means:

100 (A) A local community organization charged with
101 service coordination, needs and resource assessment,
102 planning, community mobilization, and evaluation, and
103 which has met the following criteria:

104 (i) Has agreed to a single governing entity;

105 (ii) Has agreed to engage in activities to improve service
106 systems for children and families within the community;

107 (iii) Addresses a geographic area of a county or two or
108 more contiguous counties;

109 (iv) Has, as the majority of the members of the
110 governing body, nonproviders, which includes family
111 representatives and other members who are not employees
112 of publicly funded agencies, with family representatives as
113 the majority of those members who are nonproviders;

114 (v) Has members of the governing body who are
115 representatives of local service agencies, including, but not
116 limited to, the public health department, the behavioral
117 health center, the local health and human resources agency,
118 and the county school district; and

119 (vi) Adheres to principles consistent with the cabinet's
120 mission as part of its philosophy.

121 (B) A family resource network may not provide direct
122 services, which means to provide programs or services
123 directly to children and families.

124 "Family support", for the purposes of §49-2-601 *et seq.*
125 of this code, means goods and services needed by families
126 to care for their family members with developmental
127 disabilities and to enjoy a quality of life comparable to other
128 community members.

129 "Family support program" means a coordinated system
130 of family support services administered by the Department

131 of Health and Human Resources through contracts with
132 behavioral health agencies throughout the state.

133 “Fictive kin” means an adult of at least 21 years of age,
134 who is not a relative of the child, as defined herein, but who
135 has an established, substantial relationship with the child,
136 including but not limited to, teachers, coaches, ministers,
137 and parents, or family members of the child’s friends.

138 “Foster family home” means a private residence which
139 is used for the care on a residential basis of no more than six
140 children who are unrelated, by blood, marriage, or adoption,
141 to any adult member of the household.

142 “Foster parent” means a person with whom the
143 department has placed a child and who has been certified by
144 the department, a child placing agency, or another agent of
145 the department to provide foster care.

146 “Health care and treatment” means:

147 (A) Developmental screening;

148 (B) Mental health screening;

149 (C) Mental health treatment;

150 (D) Ordinary and necessary medical and dental
151 examination and treatment;

152 (E) Preventive care including ordinary immunizations,
153 tuberculin testing, and well-child care; and

154 (F) Nonemergency diagnosis and treatment. However,
155 nonemergency diagnosis and treatment does not include an
156 abortion.

157 “Home-based family preservation services” means
158 services dispensed by the Department of Health and Human
159 Resources or by another person, association, or group who
160 has contracted with that division to dispense services when
161 those services are intended to stabilize and maintain the

162 natural or surrogate family in order to prevent the placement
163 of children in substitute care. There are two types of
164 home-based family preservation services and they are as
165 follows:

166 (A) Intensive, short-term intervention of four to six
167 weeks; and

168 (B) Home-based, longer-term after care following
169 intensive intervention.

170 “Informal family child care” means a home that is used
171 to provide nonresidential child care services for
172 compensation for three or fewer children, including children
173 who are living in the household who are under six years of
174 age. Care is given in the provider’s own home to at least one
175 child who is not related to the caregiver.

176 “Kinship parent” means a person with whom the
177 department has placed a child to provide a kinship
178 placement.

179 “Kinship placement” means the placement of the child
180 with a relative of the child, as defined herein, or a placement
181 of a child with a fictive kin, as defined herein.

182 “Needs Assessment” means an evidence-informed
183 assessment which identifies the needs a child or family has,
184 which, if left unaddressed, will likely increase the chance of
185 reoccurring.

186 “Nonsecure facility” means any public or private
187 residential facility not characterized by construction fixtures
188 designed to physically restrict the movements and activities
189 of individuals held in lawful custody in that facility and
190 which provides its residents access to the surrounding
191 community with supervision.

192 “Nonviolent misdemeanor offense” means a
193 misdemeanor offense that does not include any of the
194 following:

- 195 (A) An act resulting in bodily injury or death;
- 196 (B) The use of firearm or other deadly weapon in the
197 commission of the offense;
- 198 (C) A domestic abuse offense involving a significant or
199 likely risk of harm to a family member or household
200 member;
- 201 (D) A criminal sexual conduct offense; or
- 202 (E) Any offense for driving under the influence of
203 alcohol or drugs.
- 204 “Out-of-home placement” means a post-adjudication
205 placement in a foster family home, kinship parent home,
206 group home, nonsecure facility, emergency shelter,
207 hospital, psychiatric residential treatment facility, staff
208 secure facility, hardware secure facility, detention facility,
209 or other residential placement other than placement in the
210 home of a parent, custodian, or guardian.
- 211 “Out-of-school time” means a child care service which
212 offers activities to children before and after school, on
213 school holidays, when school is closed due to emergencies,
214 and on school calendar days set aside for teacher activities.
- 215 “Placement” means any temporary or permanent
216 placement of a child who is in the custody of the state in any
217 foster home, kinship parent home, group home, or other
218 facility or residence.
- 219 “Pre-adjudicatory community supervision” means
220 supervision provided to a youth prior to adjudication, for a
221 period of supervision up to one year for an alleged status or
222 delinquency offense.
- 223 “Regional family support council” means the council
224 established by the regional family support agency to carry
225 out the responsibilities specified in §49-2-601 *et seq.* of this
226 code.

227 “Relative family child care” means a home that provides
228 nonresidential child care services only to children related to
229 the caregiver. The caregiver is a grandparent,
230 great-grandparent, aunt, uncle, great-aunt, great-uncle, or
231 adult sibling of the child or children receiving care. Care is
232 given in the provider’s home.

233 “Relative of the child” means an adult of at least 21
234 years of age who is related to the child, by blood or
235 marriage, within at least three degrees.

236 “Residential services” means child care which includes
237 the provision of nighttime shelter and the personal
238 discipline and supervision of a child by guardians,
239 custodians, or other persons or entities on a continuing or
240 temporary basis. It may include care or treatment, or both,
241 for transitioning adults. Residential services does not
242 include or apply to any juvenile detention facility or juvenile
243 correctional facility operated by the Division of Corrections
244 and Rehabilitation, created pursuant to this chapter, for the
245 secure housing or holding of juveniles committed to its
246 custody.

247 “Risk and needs assessment” means a validated,
248 standardized actuarial tool which identifies specific risk
249 factors that increase the likelihood of reoffending and the
250 factors that, when properly addressed, can reduce the
251 likelihood of reoffending.

252 “Scattered-site living arrangement” means a living
253 arrangement where youth, 17 to 26 years of age, live in a
254 setting that allows staff to be available as needed, depending
255 on the youth’s level of autonomy. Sites for such living
256 arrangements shall be in community environments to allow
257 the youth full access to services and resources in order to
258 fully develop independent living skills.

259 “Secure facility” means any public or private residential
260 facility which includes construction fixtures designed to

261 physically restrict the movements and activities of juveniles
262 or other individuals held in lawful custody in such facility.

263 “Staff secure facility” means any public or private
264 residential facility characterized by staff restrictions of the
265 movements and activities of individuals held in lawful
266 custody in such facility, and which limits its residents’
267 access to the surrounding community, but is not
268 characterized by construction fixtures designed to
269 physically restrict the movements and activities of residents.

270 “Standardized screener” means a brief, validated
271 nondiagnostic inventory or questionnaire designed to
272 identify juveniles in need of further assessment for medical,
273 substance abuse, emotional, psychological, behavioral, or
274 educational issues, or other conditions.

275 “State family support council” means the council
276 established by the Department of Health and Human
277 Resources pursuant to §49-2-601 *et seq.* of this code to carry
278 out the responsibilities specified in §49-2-101 *et seq.* of this
279 code.

280 “Supervised group setting” means a setting where
281 youth, 16 to 21 years of age, live with staff onsite or are
282 available 24 hours per day and seven days per week. In this
283 setting, staff provide face to face daily contact with youth.

284 “Time-limited reunification services” means individual,
285 group, and family counseling, inpatient, residential, or
286 outpatient substance abuse treatment services, mental health
287 services, assistance to address domestic violence, services
288 designed to provide temporary child care, and therapeutic
289 services for families, including crisis nurseries and
290 transportation to or from those services, provided during 15
291 of the most recent 22 months a child or juvenile has been in
292 foster or in a kinship placement, as determined by the earlier
293 date of the first judicial finding that the child is subjected to
294 abuse or neglect, or the date which is 60 days after the child
295 or juvenile is removed from home.

296 “Technical violation” means an act that violates the
297 terms or conditions of probation or a court order that does
298 not constitute a new delinquent offense.

299 “Truancy diversion specialist” means a school-based
300 probation officer or truancy social worker within a school
301 or schools who, among other responsibilities, identifies
302 truants and the causes of the truant behavior, and assists in
303 developing a plan to reduce the truant behavior prior to court
304 involvement.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-102. Minimum staffing complement for child protective services.

1 [Repealed.]

§49-2-104. Education of the public.

1 [Repealed.]

§49-2-108. Visits and inspections; records.

1 The department or its authorized agent shall visit and
2 inspect every certified foster home as often as is necessary
3 to assure proper care is given to the children. Every certified
4 foster home shall maintain a record of the children received.
5 This record shall include information in a type, form, and
6 manner as prescribed by the department in legislative rule.

§49-2-110. Development of standards of child care.

1 The department shall develop standards for the care of
2 children. It shall cooperate with, advise, and assist all child
3 welfare agencies, including state institutions, which care for
4 children who have been neglected, have been adjudicated
5 delinquent, or have special needs such as physical, mental,
6 or intellectual disabilities, and shall supervise those
7 agencies. The department, in cooperation with child welfare
8 agencies, shall formulate and make available standards of

9 child care and services for children, to which all child
10 welfare agencies must conform.

§49-2-111. Supervision of child welfare agencies by the department; records and reports.

1 (a) In order to improve standards of child care, the
2 department shall cooperate with the governing boards of
3 child welfare agencies, assist the personnel of those
4 agencies through advice on progressive methods and
5 procedures of child care and improvement of the service
6 rendered, and assist in the development of community plans
7 of child care. The department, or its duly authorized agent,
8 may visit any child welfare agency to advise the agency on
9 matters affecting the health of children.

10 (b) Each child welfare agency shall keep records of each
11 child under its control and care as the department may
12 prescribe, and shall report to the department, whenever
13 requested, facts as may be required with reference to the
14 children, upon forms furnished by the department. All
15 records regarding children and all facts learned about
16 children and their parents or relatives shall be regarded as
17 confidential and shall be properly safeguarded by the
18 agency and 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 of less than 18 years of age; or

4 (B) A person 18 to 21 years of age 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;

51 (E) Placement of older children;

52 (F) Placement of children with special needs; and

53 (G) Recruitment and retention of foster parents; and

54 (4) A hold harmless period to determine a baseline for
55 evaluation.

56 (f) As part of the procurement process under this
57 section, the department shall issue the request for proposals
58 no later than July 1, 2020. The department shall notify the
59 apparently successful bidders no later than September 1,
60 2020.

61 (g) Performance-based payment methodologies must be
62 used in child placing agency contracting. Performance
63 measures should relate to successful engagement by a child
64 or parent in services included in their case plan, and
65 resulting improvement in identified problem behaviors and
66 interactions. For the first year of implementation of
67 performance-based contracting, the department may

68 transfer financial risk for the provision of services to the
69 child placing agency only to the limited extent necessary to
70 implement a performance-based payment methodology,
71 such as phased payment for services. However, the
72 department may develop a shared savings methodology
73 through which the child placing agency will receive a
74 defined share of any savings that result from improved
75 performance. If the department receives a Title IV-E
76 waiver, the shared savings methodology must be consistent
77 with the terms of the waiver. If a shared savings
78 methodology is adopted, the child placing agency shall
79 reinvest the savings in enhanced services to better meet the
80 needs of the families and children they serve.

81 (h) The department shall actively monitor the child
82 placing agency's compliance with the terms of contracts
83 executed under this section.

84 (i) The use of performance-based contracts under this
85 section shall be done in a manner that does not adversely
86 affect the state's ability to continue to obtain federal funding
87 for child welfare-related functions currently performed by
88 the state and with consideration of options to further
89 maximize federal funding opportunities and increase
90 flexibility in the use of such funds, including use for
91 preventive and in-home child welfare services.

92 (j) The department shall pay child placing agencies
93 contracted to provide adoption services to foster families a
94 minimum of \$1,000 per child for each adoption finalized.

95 (k) The rate of payment to foster parents and child
96 placing agencies shall be reviewed by the department, at a
97 minimum of every two years, to determine whether the level
98 of foster care payments facilitates or hinders the efficient
99 placement of foster children with West Virginia families.
100 The department shall remit payments to foster parents on
101 the same week each month to facilitate foster parents'
102 ability to budget and appropriately expend payments for the
103 benefit of the children in their custody.

104 (1) The department shall report the performance of the
105 child placing agency to the Legislative Oversight
106 Commission on Health and Human Resources
107 Accountability by December 31, annually.

§49-2-111c. Priorities for use of funds.

1 (a) Subject to appropriations by the Legislature, the
2 department is authorized and directed to:

3 (1) Enhance and increase efforts to provide services to
4 prevent the removal of children from their homes;

5 (2) Identify relatives and fictive kin of children in need
6 of placement outside of the home;

7 (3) Train kinship parents to become certified foster
8 parents;

9 (4) Expand a tiered foster care system that provides
10 higher payments for foster parents providing care to, and
11 child placing agencies providing services to, foster children
12 who have severe emotional, behavioral, or intellectual
13 problems or disabilities, with particular emphasis upon
14 removing children in congregate care and placing them with
15 suitable foster parents. This program shall be operational no
16 later than December 1, 2020; and

17 (5) Develop a pilot program to increase payment to
18 uncertified kinship parents for the purpose of further
19 helping families who have accepted kinship placements.

20 (b) During fiscal year 2021, the department shall expend
21 at least \$16,900,000 for the purposes of implementing the
22 priorities and objectives listed in this section.

23 (c) On or before July 1, 2022 and on or before July 1 of
24 every year thereafter, the secretary of the department shall
25 present a report to the Joint Standing Committee on
26 Government and Finance regarding the expenditures made
27 pursuant to subsection (b) of this section and the

28 department's progress in meeting the priorities and
29 objectives listed in subsection (a) of this section: *Provided*,
30 That the secretary shall provide the information described
31 in this subsection and updates to previous reports at any
32 time, upon request of the Joint Standing Committee on
33 Government and Finance.

§49-2-112. Family homes; approval of incorporation by Secretary of State; approval of articles of incorporation.

1 Before issuing a charter for the incorporation of any
2 organization having as its purpose the receipt of children for
3 care or for placement in family homes, the Secretary of State
4 shall provide a copy of the petition, together with any other
5 information in his or her possession pertaining to the
6 proposed corporation, to the secretary.

§49-2-118. Closing of facilities by the secretary; placement of children.

1 When the secretary finds that the operation of a
2 residential care facility constitutes an immediate danger of
3 serious harm to children served by the facility, the secretary
4 shall issue an order of closure terminating operation of the
5 facility. When necessary, the secretary shall place or direct
6 the placement of the children in a residential facility which
7 has been closed into appropriate facilities. A facility closed
8 by the secretary may not operate pending administrative or
9 judicial review without court order.

§49-2-121. Rule-making.

1 (a) The secretary shall promulgate legislative rules in
2 accordance with §29A-3-1 *et seq.* of this code regarding the
3 licensure, approval, certification, and registration of child
4 care facilities and the implementation of this article.

5 (b) The secretary shall review the rules promulgated
6 pursuant to this article at least once every five years, making
7 revisions when necessary or convenient.

8 (c) The rules shall incorporate, by reference, the
9 requirements of the Integrated Pest Management Program
10 established by legislative rule by the Department of
11 Agriculture under §19-16A-4 of this code.

**§49-2-124. Certificate of need not required; conditions;
review.**

1 A certificate of need, as provided in §16-2D-1 *et seq.* of
2 this code, is not required by an entity proposing behavioral
3 health care facilities or behavioral health care services for
4 children who are placed out of their home, or who are at
5 imminent risk of being placed out of their home.

§49-2-126. The Foster Child Bill of Rights.

1 (a) Foster children and children in a kinship placement
2 are active and participating members of the child welfare
3 system and have the following rights:

4 (1) The right to live in a safe and healthy environment,
5 and the least restrictive environment possible;

6 (2) The right to be free from physical, sexual, or
7 psychological abuse or exploitation, including being free
8 from unwarranted physical restraint and isolation.

9 (3) The right to receive adequate and healthy food,
10 appropriate and seasonally necessary clothing, and an
11 appropriate travel bag;

12 (4) The right to receive medical, dental, and vision care,
13 mental health services, and substance use treatment
14 services, as needed;

15 (5) The right to be placed in a kinship placement, when
16 such placement meets the objectives set forth in this article;

17 (6) The right, when placed with a foster of kinship
18 family, to be matched as closely as possible with a family
19 meeting the child's needs, including, when possible, the
20 ability to remain with siblings;

21 (7) The right, as appropriate to the child's age and
22 development, to be informed on any medication or chemical
23 substance to be administered to the child;

24 (8) The right to communicate privately, with
25 caseworkers, guardians ad litem, attorneys, Court
26 Appointed Special Advocates (CASA), the prosecuting
27 attorney, and probation officers;

28 (9) The right to have and maintain contact with siblings
29 as may be reasonably accommodated, unless prohibited by
30 court order, the case plan, or other extenuating
31 circumstances;

32 (10) The right to contact the department or the foster
33 care ombudsman, regarding violations of rights, to speak to
34 representatives of these offices confidentially, and to be free
35 from threats, retaliation, or punishment for making
36 complaints;

37 (11) The right to maintain contact with all previous
38 caregivers and other important adults in his or her life, if
39 desired, unless prohibited by court order or determined by
40 the parent, according to the reasonable and prudent parent
41 standard, not to be in the best interests of the child;

42 (12) The right to participate in religious services and
43 religious activities of his or her choice to the extent possible;

44 (13) The right to attend school, and, consistent with the
45 finances and schedule of the foster or kinship family, to
46 participate in extracurricular, cultural, and personal
47 enrichment activities, as appropriate to the child's age and
48 developmental level;

49 (14) The right to work and develop job skills in a way
50 that is consistent with the child's age and developmental
51 level;

52 (15) The right to attend Independent Living Program
53 classes and activities if the child meets the age
54 requirements;

55 (16) The right to attend court hearings and speak
56 directly to the judge, in the court's discretion;

57 (17) The right not to be subjected to discrimination or
58 harassment;

59 (18) The right to have access to information regarding
60 available educational options;

61 (19) The right to receive a copy of, and receive an
62 explanation of, the rights set forth in this section from the
63 child's guardian ad litem, caseworker, and attorney;

64 (20) The right to receive care consistent with the
65 reasonable and prudent foster parent standard; and

66 (21) The right to meet with the child's department case
67 worker no less frequently than every 30 days.

68 (b) The rights provided in this section do not create an
69 independent cause of action. Violations of these rights may
70 be reported to and investigated by the foster care
71 ombudsman. On or before December 15, 2021 and on or
72 before December 15 of every year thereafter, the foster care
73 ombudsman shall submit a written summary of the number
74 and nature of reports received, and investigations conducted
75 in response to said reports, to the Joint Standing Committee
76 on Government and Finance, the West Virginia Supreme
77 Court of Appeals, and the Governor: *Provided*, That the
78 summary required by this section may not include any
79 personally identifying information of a person named in a
80 report, or a person submitting a report to, the ombudsman.

§49-2-127. The Foster and Kinship Parent Bill of Rights.

1 (a) Foster parents and kinship parents play an integral,
2 indispensable, and vital role in the state's effort to care for

3 children displaced from their homes, and such parents and
4 persons have the following rights:

5 (1) The right to be treated professionally and ethically
6 as the primary provider of foster or kinship care in
7 accordance with the terms of the agreement between the
8 foster or kinship parent and the child placing agency and the
9 department;

10 (2) The right to maintain the parent's or parents' own
11 family values and beliefs, so long as the values and beliefs
12 of the child are not infringed upon;

13 (3) The right to receive training, as provided in the
14 agreement with the child placing agency and the department
15 at appropriate intervals;

16 (4) The right to have an emergency contact 24 hours per
17 day, seven days per week, as set forth in the agreement
18 between the foster or kinship parent and the child placing
19 agency and the department;

20 (5) The right, prior to the placement of a child, to be
21 notified by the department and the child placing agency of
22 any known issues relative to the child that may jeopardize
23 the health and safety of the foster or kinship family or the
24 child, or alter the manner in which foster or kinship care
25 should be administered;

26 (6) The right to receive from the department and the
27 child placing agency, prior to placement of a child, all
28 known information relating to the child's behavior, family
29 background, health, history, or special needs and to receive
30 updates relevant to the care of the child as information
31 becomes available;

32 (7) The right to be provided with a written copy of the
33 individual treatment and service plan concerning the child
34 in the foster or kinship parent's home and to discuss such
35 plan with the case manager, and to receive reasonable notice
36 of any changes to that plan, including timely notice of the

37 need to remove a child from the foster or kinship home and
38 the reasons for the removal;

39 (8) The right to timely and reasonable notice of the
40 department's case planning and decision-making process
41 regarding the child, as provided in §49-4-101 *et seq.* of this
42 code, and the right to participate in such process, in the
43 discretion of the court;

44 (9) The right to communicate with professionals who
45 work with the child, including, but not limited to, therapists,
46 physicians, and teachers, as permitted by the case plan or
47 the court;

48 (10) The right to be notified, in advance, by the
49 department or the court, of any hearing or review where the
50 case plan or permanency of the child is an issue, including
51 initial and periodic reviews held by the court and
52 permanency plan hearings: *Provided*, That the right of a
53 foster or kinship parent to attend any hearing is in the
54 discretion of the court;

55 (11) The right to be provided information regarding the
56 final outcome of an investigation of complaints concerning
57 the operation of a foster or kinship home and to receive an
58 explanation of a corrective action plan or policy violation
59 relating to foster or kinship parents;

60 (12) The right to be provided with information on how
61 to contact the foster care ombudsman, and to contact the
62 foster care ombudsman's office, regarding alleged
63 violations of rights, to speak to representatives of these
64 offices confidentially, and to be free from threats,
65 retaliation, or punishment for making complaints;

66 (13) The right to write a letter or submit a report to the
67 court regarding a violation of the rights provided in this
68 section or §49-2-126 of this code, or any concerns over the
69 conduct or performance of the guardian ad litem, a
70 representative of the department, or a representative of the

71 child placing agency, which the court may act upon as it
72 deems in its discretion to be appropriate: *Provided*, That the
73 court may require the clerk to send copies of a letter or
74 report, submitted to the court pursuant to this subdivision,
75 to the parties in the case prior to the court's review or
76 consideration of such communications;

77 (14) The right to be considered, where appropriate and
78 consistent with the best interests of the child, as a permanent
79 parent or parents for a child who is available for adoption or
80 legal guardianship;

81 (15) The right to move to intervene in the pending case,
82 without fear of retaliation, once parental rights have been
83 terminated; and

84 (16) The right to receive, from the department and the
85 child placing agency, a written copy of the rights set forth
86 in this section and a copy of the contract between the
87 department and the child placing agency.

88 (b) The rights provided in this section do not create an
89 independent cause of action. Violations of these rights may
90 be reported to and investigated by the foster care
91 ombudsman. On or before December 15, 2021 and on or
92 before December 15 of every year thereafter, the foster care
93 ombudsman shall submit a written summary of the number
94 and nature of reports received, and investigations conducted
95 in response to said reports, to the Joint Standing Committee
96 on Government and Finance, the West Virginia Supreme
97 Court of Appeals, and the Governor: *Provided*, That the
98 summary required by this section may not include any
99 personally identifying information of a person named in a
100 report or a person submitting a report to the ombudsman.

**§49-2-127a. Foster and kinship parent duties; foster parent
and kinship parent agreements.**

1 (a) The West Virginia Legislature finds that foster and
2 kinship parents providing care for children who are in the

3 legal custody of the department have duties and contractual
4 rights. The duties and contractual rights shall be set forth in
5 an agreement between the department and the child placing
6 agency and the foster or kinship parent. The duties of the
7 foster or kinship parent shall include, but are not limited to:

8 (1) The duty not to violate the rights of the child,
9 provided in §49-2-126 of this code;

10 (2) The duty to provide all children in the parent's or
11 parents' care with appropriate food, clothing, shelter,
12 supervision, medical attention, and educational
13 opportunities using the reasonable and prudent foster parent
14 standard as defined in §49-2-128 of this code;

15 (3) The duty to complete the training required by the
16 department and the child placing agency and the foster or
17 kinship parent;

18 (4) The duty to support reunification with the biological
19 family unless it has been determined not to be appropriate
20 by the court;

21 (5) The duty not to divulge any information concerning
22 the child's case or the child's family to anyone except for
23 the child's caseworker, the child's guardian ad litem, the
24 child's attorney, the child's Court Appointed Special
25 Advocate (CASA) worker, the prosecuting attorney, the
26 probation officer, the multidisciplinary team, the foster care
27 ombudsman, or the child's school or health care provider;

28 (6) The duty to provide information to the caseworker
29 and the guardian ad litem regarding the child's progress, and
30 to attend multi-disciplinary team meetings, case planning
31 sessions, court hearings, and to advise the court of any
32 issues or concerns, in the court's discretion; and

33 (7) The duty to teach all children placed in their home
34 age appropriate life skills.

35 (b) The duties of the department and the child placing
36 agency shall include, but are not limited to:

37 (1) The duty not to infringe upon the rights of the child,
38 provided in §49-2-126;

39 (2) The duty not to infringe upon the rights of the
40 kinship or foster parent, provided in in §49-2-127; and

41 (3) The duty to abide by the provisions of the agreement
42 required by this section.

43 (c) The terms of the agreement shall include the rights
44 of the foster or kinship parent provided in §49-2-127 of this
45 code. The terms of the agreement shall also include, but not
46 be limited to:

47 (1) Provisions addressing what child care will be
48 provided while the foster or kinship parent attends required
49 training;

50 (2) Provisions informing the foster or kinship parent of
51 applicable laws and guidelines regarding the responsibilities
52 of the foster or kinship parent and provisions requiring that
53 the foster or kinship parent receive regular updates on
54 changes to such laws and guidelines in a timely manner;

55 (3) Provisions regarding required and available training
56 for the foster or kinship parent;

57 (4) Provisions addressing payment to the foster or
58 kinship parent;

59 (5) Provisions naming and addressing the emergency
60 24-hour contact provided by the child placing agency and
61 the department;

62 (6) Provisions addressing travel, including out-of-state
63 and overnight travel;

64 (7) Provisions addressing child care for the child;

65 (8) Provisions addressing when a placement may be
66 terminated by the foster or kinship parent, the child placing
67 agency, or the department;

68 (9) Provisions addressing medical care for the child,
69 including how to obtain medical consent for procedures;
70 and

71 (10) Provisions addressing how complaints against the
72 foster or kinship parent will be handled and adjudicated,
73 including provisions for appeal and review of the
74 adjudication.

75 (d) The agreement may contain such other terms and
76 provisions, not inconsistent with this article, as may be
77 negotiated by the parties and as may be in the best interests
78 of the child.

79 (e) The requirements of this section apply to
80 agreements, entered into on or after the effective date of this
81 section. Agreements entered into pursuant to this section
82 shall expire on July 1 of each year and shall be renewed by
83 the parties as necessary.

84 (f) The duties and requirements provided in this section
85 do not create an independent cause of action, including a
86 cause of action for breach of contract. Violations of these
87 rights may be reported to and investigated by the foster
88 care ombudsman. On or before December 15, 2021 and on
89 or before December 15 of every year thereafter, the foster
90 care ombudsman shall submit a written summary of the
91 number and nature of reports received, and investigations
92 conducted in response to said reports, to the Joint Standing
93 Committee on Government and Finance, the West Virginia
94 Supreme Court of Appeals, and the Governor: *Provided,*
95 That the summary required by this section may not include
96 any personally identifying information of a person named
97 in a report or a person submitting a report to the
98 ombudsman.

§49-2-128. Reasonable and prudent foster parent standard.

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

3 “Age-appropriate” means activities or items that are
4 generally accepted as suitable for children of the same
5 chronological age or level of maturity. Age-appropriateness
6 is based on the development of cognitive, emotional,
7 physical, and behavioral capacity that is typical for an age
8 or age group.

9 “Caregiver” means a foster parent, kinship parent, or a
10 designated official in a residential treatment facility.

11 “Reasonable and prudent foster parent standard” means
12 the standard characterized parental decisions that maintain
13 the child’s health, safety, and best interests, while at the
14 same time encouraging the child’s emotional and
15 developmental growth, that a caregiver shall use when
16 determining whether to allow a child to participate in
17 extracurricular, enrichment, and social activities.

18 (b) Each child who comes into care under this chapter is
19 entitled to participate in age-appropriate extracurricular,
20 enrichment, and social activities.

21 (c) Caregivers shall use a reasonable and prudent foster
22 parent standard in determining whether to give permission
23 for a child in out-of-home care to participate in
24 extracurricular, enrichment, and social activities. When
25 using the reasonable and prudent foster parent standard, the
26 caregiver shall consider:

27 (1) The child’s age, maturity, and developmental level,
28 to maintain the overall health and safety of the child;

29 (2) The potential risk factors and the appropriateness of
30 the extracurricular, enrichment, and social activity;

31 (3) The best interest of the child based on information
32 known to the caregiver;

33 (4) The importance of encouraging the child's
34 emotional and developmental growth;

35 (5) The importance of providing the child with the most
36 family-like living experience possible; and

37 (6) The behavioral history of the child and the child's
38 ability to safely participate in the proposed activity, as with
39 any other child.

40 (d) Child placing agencies and residential treatment
41 facilities shall have policies consistent with this section and
42 shall promote and protect the ability of children to
43 participate in age-appropriate extracurricular, enrichment,
44 and social activities.

45 (e) A foster or kinship parent may use persons to care
46 for or babysit for the child or permit overnight stays outside
47 of the home using the reasonable and prudent foster parent
48 standard.

49 (f) There is a rebuttable presumption that a caregiver has
50 acted as a reasonable and prudent foster parent.

51 (g) A caregiver is not liable for harm caused to a child
52 in his or her care who participates in an activity approved
53 by the caregiver, provided that the caregiver has acted as a
54 reasonable and prudent foster parent, unless the foster
55 parent commits an act or omission that is an intentional tort
56 or conduct that is willful, wanton, grossly negligent,
57 reckless, or criminal.

§49-2-129. Transitional living services, scattered-site living arrangements, and supervised group settings; eligibility criteria.

1 (a) The department shall establish minimum standards,
2 by legislative rule, for transitional living services, such as

3 scattered-site living arrangements and supervised group
4 settings, to which all child placing agencies or child welfare
5 agencies who provide this service must conform.

6 (b) Agencies shall establish eligibility criteria for
7 serving transitioning children and adults and shall require,
8 at a minimum, the following:

9 (1) That a transitioning child or adult receiving a
10 transitional living placement is between 16 and 26 years of
11 age;

12 (2) Written permission from the child's parents or
13 guardian for a child less than 18 years of age to enter a
14 scattered-site living arrangement;

15 (3) A written service agreement with a transitioning
16 adult entering a transitional living arrangement;

17 (4) A determination by an agency that a transitioning
18 child or adult has shown that he or she is stable, mature, and
19 responsible enough for entry into the determined level of
20 transitional living arrangement;

21 (5) A life skills assessment by an agency of the
22 transitioning child or adult, prior to placing him or her in a
23 transitional living arrangement, and an annual reassessment;
24 and

25 (6) A written transition plan, developed with the
26 transitioning child or adult, that provides an educational,
27 training, or employment program or a plan for the child or
28 adult to pursue employment while in transitional living.

29 (c) The agency and transitioning child or adult shall
30 determine if a roommate is appropriate for the child or adult
31 prior to placement in a transitional living setting. The
32 roommate must be able to support himself or herself and
33 contribute at least a pro rata share of the living expenses for
34 the setting.

35 (d) An agency shall document face-to-face contact and
36 hours spent with a transitioning child or adult in a
37 transitional living setting in the service plan that meet the
38 child's or adult's needs and program level.

39 (e) After a child or adult is in a transitional living
40 placement, an agency shall assess the child's or adult's
41 progress in acquiring basic living skills at a minimum of
42 once every six months.

43 (f) An agency shall develop and implement policies and
44 procedures to ensure that any child or adult in a transitional
45 living setting receives training and guidance on appropriate
46 health screening and services, including medical and dental
47 screening and services.

48 (g) An agency shall develop policies and procedures for
49 assisting a transitioning child or adult in searching for an
50 appropriate dwelling that will be used as a scattered-site
51 living setting, that meets the following criteria:

52 (1) The dwelling is safe and affordable;

53 (2) The dwelling has a working telephone or other
54 means of communication in an emergency;

55 (3) The dwelling has appropriate equipment for indoor
56 cooking; and

57 (4) The dwelling has an appropriate water source for
58 cooking, cleaning, and bathing.

59 (h) The department shall promulgate legislative rules,
60 including emergency rules if necessary, to implement the
61 provisions of this section.

ARTICLE 4. COURT ACTIONS.

§49-4-601a. Preference of child placement.

1 When a child is removed from his or her home,
2 placement preference is to be given to relatives or fictive kin

3 of the child. If a child requires out-of-home care, placement
4 of a child with a relative is the least restrictive alternative
5 living arrangement. The department must diligently search
6 for relatives of the child and fictive kin within the first days
7 of a child's removal and must identify and provide notice of
8 the child's need for a placement to relatives and fictive kin
9 who are willing to act as a foster or kinship parent.

10 (1) After a petition alleging abuse and neglect of a child
11 is filed, the department shall commence a search for every
12 relative and fictive kin of the child.

13 (2) No later than seven calendar days after the petition
14 for removal has been filed, the department shall file, with
15 the court, a list of all of the relatives and fictive kin of the
16 child known to the department at the time of the filing,
17 whether or not those persons have expressed a willingness
18 to take custody of the child.

19 (3) Within seven days after the department files the list
20 described in subdivision (2) of this subsection, any party to
21 the case may file, with the court, his or her own list
22 containing names and addresses of relatives and fictive kin
23 of the child.

24 (4) The department shall investigate and determine
25 whether any of the persons identified in the lists filed
26 pursuant to this section are willing and able to act as foster
27 or kinship parents to the child. The department shall file its
28 determinations with the court within 45 days from the filing
29 of the petition alleging abuse or neglect of a child.

§49-4-601b. Substantiation by the department of abuse and neglect.

1 (a) Notwithstanding any provision of this code to the
2 contrary, when the department substantiates an allegation of
3 abuse or neglect against a person, but there is no judicial
4 finding of abuse or neglect as a result of the allegation, the
5 department shall provide written notice of the substantiation
6 to the person by certified mail, return receipt requested.

7 (b) The individual against whom an abuse or neglect
8 allegation has been substantiated, as described in subsection
9 (a) of this section, has the right to contest the substantiation
10 by filing a grievance with the board of review of the
11 department and has the right to appeal the decision of the
12 board of review to the court, in accordance with the
13 provisions of §29A-5-1 *et seq.* of this code regarding
14 administrative appeals.

15 (c) The secretary of the department shall promulgate
16 legislative rules in accordance with §29A-3-1 *et seq.* of this
17 code, within the applicable time limit to be considered by
18 the Legislature during its regular session in the year 2021,
19 which rules shall include, at a minimum:

20 (1) Provisions for ensuring that an individual against
21 whom the department has substantiated an allegation of
22 abuse and neglect, but against whom there is no judicial
23 finding of abuse or neglect, receives written notice of the
24 substantiation in a timely manner. The written notice must,
25 at a minimum, state the following:

26 (A) The name of the child the person is alleged to have
27 abused or neglected, the place or places where the abuse or
28 neglect allegedly occurred, and the date or dates on which
29 the abuse or neglect is alleged to have occurred;

30 (B) That the person has a right to file a grievance
31 protesting the substantiation of abuse and neglect with the
32 board of review of the department and clear instructions
33 regarding how to file a grievance with the board of review,
34 including a description of any applicable time limits;

35 (C) That the person has a right to appeal an adverse
36 decision of the board of review of the department to the
37 courts and notice of any applicable time limits; and

38 (D) A description of any public or nonpublic registry on
39 which the person's name will be included as a result of a
40 substantiated allegation of abuse and neglect and a

41 statement that the inclusion of the person's name on the
42 registry may prevent the person from holding jobs from
43 which child abusers are disqualified, or from providing
44 foster or kinship care to a child in the future;

45 (2) Provisions for ensuring that a person against whom
46 an allegation of abuse and neglect has been substantiated,
47 but against whom there is no judicial finding of abuse or
48 neglect, may file a grievance with the department and
49 provisions guaranteeing that any such person will have a full
50 and fair opportunity to be heard; and

51 (3) Provisions requiring the department to remove a
52 person's name from an abuse and neglect registry
53 maintained by the department if a substantiation is
54 successfully challenged in the board of review or in a court.

**§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 wherein
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 or kinship parents in order to
16 improve the conditions that made the child unsafe in the care
17 of his or her parent(s), including any reasonable
18 accommodations in accordance with the Americans with

19 Disabilities Act of 1990, 42 U. S. C. §12101 *et seq.*, to
20 parents with disabilities in order to allow them meaningful
21 access to reunification 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 kinship 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) Requirements for a Guardian ad litem. —

50 A guardian ad litem appointed pursuant to
51 §49-4-601(f)(1) of this code, shall, in the performance of
52 his or her duties, adhere to the requirements of the Rules of
53 Procedure for Child Abuse and Neglect Proceedings and the
54 Rules of Professional Conduct and such other rules as the

55 West Virginia Supreme Court of Appeals may promulgate,
56 and any appendices thereto, and must meet all educational
57 requirements for the guardian ad litem. A guardian ad litem
58 may not be paid for his or her services without meeting the
59 certification and educational requirements of the court. The
60 West Virginia Supreme Court of Appeals is requested to
61 provide guidance to the judges of the circuit courts
62 regarding supervision of said guardians ad litem. The West
63 Virginia Supreme Court of Appeals is requested to review
64 the Rules of Procedure for Child Abuse and Neglect
65 Proceedings and the Rules of Professional Conduct specific
66 to guardians ad litem.

67 (c) Disposition decisions. — The court shall give
68 precedence to dispositions in the following sequence:

69 (1) Dismiss the petition;

70 (2) Refer the child, the abusing parent, the battered
71 parent or other family members to a community agency for
72 needed assistance and dismiss the petition;

73 (3) Return the child to his or her own home under
74 supervision of the department;

75 (4) Order terms of supervision calculated to assist the
76 child and any abusing parent or battered parent or parents or
77 custodian which prescribe the manner of supervision and
78 care of the child and which are within the ability of any
79 parent or parents or custodian to perform;

80 (5) Upon a finding that the abusing parent or battered
81 parent or parents are presently unwilling or unable to
82 provide adequately for the child's needs, commit the child
83 temporarily to the care, custody, and control of the
84 department, a licensed private child welfare agency, or a
85 suitable person who may be appointed guardian by the
86 court. The court order shall state:

87 (A) That continuation in the home is contrary to the best
88 interests of the child and why;

89 (B) Whether or not the department has made reasonable
90 efforts, with the child's health and safety being the
91 paramount concern, to preserve the family, or some portion
92 thereof, and to prevent or eliminate the need for removing
93 the child from the child's home and to make it possible for
94 the child to safely return home;

95 (C) Whether the department has made reasonable
96 accommodations in accordance with the Americans with
97 Disabilities Act of 1990, 42 U. S. C. § 12101 *et seq.*, to
98 parents with disabilities in order to allow them meaningful
99 access to reunification and family preservation services;

100 (D) What efforts were made or that the emergency
101 situation made those efforts unreasonable or impossible;
102 and

103 (E) The specific circumstances of the situation which
104 made those efforts unreasonable if services were not offered
105 by the department. The court order shall also determine
106 under what circumstances the child's commitment to the
107 department are to continue. Considerations pertinent to the
108 determination include whether the child should:

109 (i) Be considered for legal guardianship;

110 (ii) Be considered for permanent placement with a fit
111 and willing relative; or

112 (iii) Be placed in another planned permanent living
113 arrangement, but only in cases where the child has attained
114 16 years of age and the department has documented to the
115 circuit court a compelling reason for determining that it
116 would not be in the best interests of the child to follow one
117 of the options set forth in subparagraphs (i) or (ii) of this
118 paragraph. The court may order services to meet the special
119 needs of the child. Whenever the court transfers custody of
120 a youth to the department, an appropriate order of financial
121 support by the parents or guardians shall be entered in
122 accordance with §49-4-801 through §49-4-803 of this code;

123 (6) Upon a finding that there is no reasonable likelihood
124 that the conditions of neglect or abuse can be substantially
125 corrected in the near future and, when necessary for the
126 welfare of the child, terminate the parental, custodial and
127 guardianship rights and responsibilities of the abusing
128 parent and commit the child to the permanent sole custody
129 of the nonabusing parent, if there be one, or, if not, to either
130 the permanent guardianship of the department or a licensed
131 child welfare agency. The court may award sole custody of
132 the child to a nonabusing battered parent. If the court shall
133 so find, then in fixing its dispositional order the court shall
134 consider the following factors:

135 (A) The child's need for continuity of care and
136 caretakers;

137 (B) The amount of time required for the child to be
138 integrated into a stable and permanent home environment;
139 and

140 (C) Other factors as the court considers necessary and
141 proper. Notwithstanding any other provision of this article,
142 the court shall give consideration to the wishes of a child 14
143 years of age or older or otherwise of an age of discretion as
144 determined by the court regarding the permanent
145 termination of parental rights. No adoption of a child shall
146 take place until all proceedings for termination of parental
147 rights under this article and appeals thereof are final. In
148 determining whether or not parental rights should be
149 terminated, the court shall consider the efforts made by the
150 department to provide remedial and reunification services to
151 the parent. The court order shall state:

152 (i) That continuation in the home is not in the best
153 interest of the child and why;

154 (ii) Why reunification is not in the best interests of the
155 child;

156 (iii) Whether or not the department made reasonable
157 efforts, with the child's health and safety being the
158 paramount concern, to preserve the family, or some portion
159 thereof, and to prevent the placement or to eliminate the
160 need for removing the child from the child's home and to
161 make it possible for the child to safely return home, or that
162 the emergency situation made those efforts unreasonable or
163 impossible; and

164 (iv) Whether or not the department made reasonable
165 efforts to preserve and reunify the family, or some portion
166 thereof, including a description of what efforts were made
167 or that those efforts were unreasonable due to specific
168 circumstances.

169 (7) For purposes of the court's consideration of the
170 disposition custody of a child pursuant to this subsection,
171 the department is not required to make reasonable efforts to
172 preserve the family if the court determines:

173 (A) The parent has subjected the child, another child of
174 the parent or any other child residing in the same household
175 or under the temporary or permanent custody of the parent
176 to aggravated circumstances which include, but are not
177 limited to, abandonment, torture, chronic abuse, and sexual
178 abuse;

179 (B) The parent has:

180 (i) Committed murder of the child's other parent,
181 guardian or custodian, another child of the parent, or any
182 other child residing in the same household or under the
183 temporary or permanent custody of the parent;

184 (ii) Committed voluntary manslaughter of the child's
185 other parent, guardian, or custodian, another child of the
186 parent, or any other child residing in the same household or
187 under the temporary or permanent custody of the parent;

188 (iii) Attempted or conspired to commit murder or
189 voluntary manslaughter, or been an accessory before or after
190 the fact to either crime;

191 (iv) Committed a malicious assault that results in
192 serious bodily injury to the child, the child's other parent,
193 guardian, or custodian, to another child of the parent, or any
194 other child residing in the same household or under the
195 temporary or permanent custody of the parent;

196 (v) Attempted or conspired to commit malicious assault,
197 as outlined in subparagraph (iv), or been an accessory
198 before or after the fact to the same;

199 (vi) Committed sexual assault or sexual abuse of the
200 child, the child's other parent, guardian, or custodian,
201 another child of the parent, or any other child residing in the
202 same household or under the temporary or permanent
203 custody of the parent; or

204 (vii) Attempted or conspired to commit sexual assault
205 or sexual abuse, as outlined in subparagraph (vi), or been an
206 accessory before or after the fact to the same.

207 (C) The parental rights of the parent to another child
208 have been terminated involuntarily;

209 (D) A parent has been required by state or federal law
210 to register with a sex offender registry, and the court has
211 determined in consideration of the nature and circumstances
212 surrounding the prior charges against that parent, that the
213 child's interests would not be promoted by a preservation of
214 the family.

215 (d) As used in this section, "No reasonable likelihood
216 that conditions of neglect or abuse can be substantially
217 corrected" means that, based upon the evidence before the
218 court, the abusing adult or adults have demonstrated an
219 inadequate capacity to solve the problems of abuse or
220 neglect on their own or with help. Those conditions exist in
221 the following circumstances, which are not exclusive:

222 (1) The abusing parent or parents have habitually
223 abused or are addicted to alcohol, controlled substances or
224 drugs, to the extent that proper parenting skills have been
225 seriously impaired and the person or persons have not
226 responded to or followed through the recommended and
227 appropriate treatment which could have improved the
228 capacity for adequate parental functioning;

229 (2) The abusing parent or parents have willfully refused
230 or are presently unwilling to cooperate in the development
231 of a reasonable family case plan designed to lead to the
232 child's return to their care, custody and control;

233 (3) The abusing parent or parents have not responded to
234 or followed through with a reasonable family case plan or
235 other rehabilitative efforts of social, medical, mental health,
236 or other rehabilitative agencies designed to reduce or
237 prevent the abuse or neglect of the child, as evidenced by
238 the continuation or insubstantial diminution of conditions
239 which threatened the health, welfare, or life of the child;

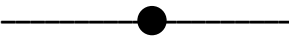
240 (4) The abusing parent or parents have abandoned the
241 child;

242 (5) The abusing parent or parents have repeatedly or
243 seriously injured the child physically or emotionally, or
244 have sexually abused or sexually exploited the child, and the
245 degree of family stress and the potential for further abuse
246 and neglect are so great as to preclude the use of resources
247 to mitigate or resolve family problems, or assist the abusing
248 parent or parents in fulfilling their responsibilities to the
249 child; and

250 (6) The battered parent's parenting skills have been
251 seriously impaired and the person has willfully refused or is
252 presently unwilling or unable to cooperate in the
253 development of a reasonable treatment plan, or has not
254 adequately responded to or followed through with the
255 recommended and appropriate treatment plan.

256 (e) The court may, as an alternative disposition, allow
257 the parents or custodians an improvement period not to
258 exceed six months. During this period the court shall require
259 the parent to rectify the conditions upon which the
260 determination was based. The court may order the child to
261 be placed with the parents, or any person found to be a fit
262 and proper person, for the temporary care of the child during
263 the period. At the end of the period, the court shall hold a
264 hearing to determine whether the conditions have been
265 adequately improved and at the conclusion of the hearing
266 shall make a further dispositional order in accordance with
267 this section.

268 (f) The court may not terminate the parental rights of a
269 parent on the sole basis that the parent is participating in a
270 medication-assisted treatment program, as regulated in
271 §16-5Y-1 *et seq.*, for substance use disorder, as long as the
272 parent is successfully fulfilling his or her treatment
273 obligations in the medication-assisted treatment program.



CHAPTER 41

**(Com. Sub. for H. B. 4094 - By Delegates Hill, Pack,
Summers, Espinosa, Mandt, Rowan, Worrell,
Fleischauer, Pushkin, C. Thompson and Walker)**

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §49-9-101, §49-9-
102, §49-9-103, §49-9-104, §49-9-105, §49-9-106, §49-9-
107, §49-9-108, §49-9-109, and §49-9-110, all relating to the
Foster Care Ombudsman Program; continuing the Foster Care
Ombudsman; providing authority to the ombudsman;
permitting access to foster care children; providing access to

certain records; providing the ombudsman with subpoena authority; requiring government entities to cooperate with the ombudsman; requiring investigations to remain confidential; providing the ombudsman with a limitation of liability; setting forth criminal penalties; providing funding for the ombudsman.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. FOSTER CARE OMBUDSMAN PROGRAM.

§49-9-101. The Foster Care Ombudsman.

1 (a) There is continued within the Office of the Inspector
2 General the position of the West Virginia Foster Care
3 Ombudsman. The Office of the Inspector General shall
4 employ a Foster Care Ombudsman to affect the purposes of
5 this article.

6 (b) In addition to the duties provided in §9-5-27 of this
7 code, the duties of the Foster Care Ombudsman include, but
8 are not limited to, the following:

9 (1) Establishing a statewide procedure to receive,
10 investigate, and resolve complaints filed on behalf of a
11 foster child, foster parent, or kinship parent, or, on the Foster
12 Care Ombudsman's own initiative, on behalf of a foster
13 child, relating to action, inaction, or decisions of the state
14 agency, child-placing agency, or residential care facility
15 which may adversely affect the foster child, foster parent, or
16 kinship parent;

17 (2) Review periodically and make appropriate
18 recommendations for the policies and procedures
19 established by any state agency providing services to foster
20 children, foster parents, kinship parents, including, but not
21 limited to, the system of providing foster care and treatment;

22 (3) Pursuant to an investigation, provide assistance to a
23 foster child, foster parent, or kinship parent who the Foster
24 Care Ombudsman determines is in need of assistance,

25 including, but not limited to, collaborating with an agency,
26 provider, or others on behalf of the best interests of the
27 foster child;

28 (4) Recommend action when appropriate, including, but
29 not limited to, undertaking legislative advocacy and making
30 proposals for systemic reform and formal legal action, in
31 order to secure and ensure the legal, civil, and special rights
32 of foster children who reside in this state;

33 (5) Conduct programs of public education when
34 necessary and appropriate;

35 (6) Have input into the creation of, and thereafter make
36 recommendations consistent with, the foster children, foster
37 parents, and kinship parents bill of rights;

38 (7) Take appropriate steps to advise the public of the
39 services of the Foster Care Ombudsman, the purpose of the
40 ombudsman, and procedures to contact the office; and

41 (8) Make inquiries and obtain assistance and
42 information from other state governmental agencies or
43 persons as the Foster Care Ombudsman requires for the
44 discharge of his or her duties.

§49-9-102. Investigation of complaints.

1 (a) Upon receipt of a complaint filed on behalf of a
2 foster child, foster parent, or kinship parent, on his or her
3 own initiative or by court order within the scope of the
4 Foster Care Ombudsman Program, the Foster Care
5 Ombudsman shall investigate, except as provided in §49-9-
6 102(c), any act, practice, policy, or procedure of any state
7 agency, child-placing agency, or residential care facility
8 which affects the health, safety, welfare, or rights of a foster
9 child, a foster parent, or a kinship parent.

10 (b) Investigative activities of the Foster Care
11 Ombudsman include, but are not limited to: information
12 gathering, mediation, negotiation, informing parties of the

13 status of the investigation, notification to any aggrieved
14 party of alternative processes, reporting of suspected
15 violations to a licensing or certifying agency, and the
16 reporting of suspected criminal violations to the appropriate
17 authorities.

18 (c) The Foster Care Ombudsman need not investigate
19 any complaint upon determining that:

20 (1) The complaint is trivial, frivolous, vexatious, or not
21 made in good faith;

22 (2) The complaint has been too long delayed to justify
23 present investigation;

24 (3) The resources available, considering the established
25 priorities, are insufficient for an adequate investigation;

26 (4) The matter complained of is not within the
27 investigatory authority of the Foster Care Ombudsman; or

28 (5) A real or apparent conflict of interest exists and no
29 other person within the office is available to investigate the
30 complaint in an impartial manner.

31 (d) The Office of the Inspector General and other
32 appropriate state governmental agencies may establish and
33 implement cooperative agreements for receiving,
34 processing, responding to, and resolving complaints
35 involving state governmental agencies under the provisions
36 of this section.

37 (e) Beginning with the third quarter of 2020, the Foster
38 Care Ombudsman shall submit a written report to the
39 Governor containing:

40 (1) The number of complaints;

41 (2) The types of complaints;

42 (3) The location of the complaints;

43 (4) How the complaints are resolved; and

44 (5) Any other information the Foster Care Ombudsman
45 feels is appropriate.

46 (f) Beginning in December 2020, the Foster Care
47 Ombudsman shall summarize the quarterly reports and
48 present that information to the Legislative Oversight
49 Commission on Health and Human Resources
50 Accountability.

§49-9-103. Access to foster care children.

1 (a) The Foster Care Ombudsman shall, with proper
2 identification, have access to a foster family home, a state
3 agency, a child-placing agency, or a residential care facility
4 for the purposes of investigations of a complaint. The Foster
5 Care Ombudsman may enter a foster family home, a state
6 agency, a child-placing agency, or a residential care facility
7 at a time appropriate to the complaint. The visit may be
8 announced in advance or be made unannounced as
9 appropriate to the complaint under investigation. Upon
10 entry, the Foster Care Ombudsman shall promptly and
11 personally advise the person in charge of his or her
12 presence. If entry is refused by the person in charge, the
13 Foster Care Ombudsman may apply to the magistrate court
14 of the county in which a foster family home, a state agency,
15 a child-placing agency, or a residential care facility is
16 located for a warrant authorizing entry, and the court shall
17 issue an appropriate warrant if it finds good cause therefor.

18 (b) For activities other than those specifically related to
19 the investigation of a complaint, the Foster Care
20 Ombudsman, upon proper identification, shall have access
21 to a foster family home, a state agency, a child-placing
22 agency, or a residential care facility between the hours of
23 8:00 a.m. and 8:00 p.m. in order to:

24 (1) Provide information on the Foster Care Ombudsman
25 Program to a foster child, foster parents, or kinship parents;

26 (2) Inform a foster child, a foster parent, or a kinship
27 parent of his or her rights and entitlements, and his or her
28 corresponding obligations, under applicable federal and
29 state laws; and

30 (3) Direct the foster child, the foster parents, or the
31 kinship parents to appropriate legal resources;

32 (c) Access to a foster family home, a state agency, a
33 child-placing agency, or a residential care facility under this
34 section shall be deemed to include the right to private
35 communication with the foster child, the foster parents, or
36 the kinship parents.

37 (d) A Foster Care Ombudsman who has access to a
38 foster family home, a state agency, a child-placing agency,
39 or a residential care facility under this section shall not enter
40 the living area of a foster child, foster parent, or kinship
41 parent without identifying himself or herself to the foster
42 child, foster parent, or kinship parent. After identifying
43 himself or herself, an ombudsman shall be permitted to
44 enter the living area of a foster child, foster parent, or
45 kinship parent unless that foster child, foster parent, or
46 kinship parent communicates on that particular occasion the
47 foster child, foster parents', or kinship parents' desire to
48 prevent the ombudsman from entering. A foster child, foster
49 parent, or kinship parent has the right to terminate, at any
50 time, any visit by the Foster Care Ombudsman.

51 (e) Access to a foster family home, a state agency, a
52 child-placing agency, or a residential care facility pursuant
53 to this section includes the right to tour the facility
54 unescorted.

§49-9-104. Access to records.

1 (a) The Foster Care Ombudsman is allowed access to
2 any foster child's, foster parents' or kinship parents'
3 records, including medical records reasonably necessary to
4 any investigation, without fee.

5 (b) The Foster Care Ombudsman is allowed access to all
6 records of any foster family home, state agency, child-
7 placing agency, or residential care facility that is reasonably
8 necessary for the investigation of a complaint, including,
9 but not limited to, incident reports; dietary records; policies
10 and procedures that a foster family home, a state agency, a
11 child-placing agency, or a residential care facility are
12 required to maintain under federal or state law; admission
13 agreements; staffing schedules; or any document depicting
14 the actual staffing pattern.

§49-9-105. Subpoena powers.

1 (a) The Foster Care Ombudsman may, in the course of
2 any investigation:

3 (1) Apply to the circuit court of the appropriate county
4 or the Circuit Court of Kanawha County for the issuance of
5 a subpoena to compel at a specific time and place, by
6 subpoena, the appearance, before a person authorized to
7 administer oaths, the sworn testimony of any person whom
8 the Foster Care Ombudsman reasonably believes may be
9 able to give information relating to a matter under
10 investigation; or

11 (2) Apply to the circuit court of the appropriate county
12 or the Circuit Court of Kanawha County for the issuance of
13 a subpoena duces tecum to compel any person to produce at
14 a specific time and place, before a person authorized to
15 administer oaths, any documents, books, records, papers,
16 objects, or other evidence which the Foster Care
17 Ombudsman reasonably believes may relate to a matter
18 under investigation.

19 (b) A subpoena or subpoena duces tecum applied for by
20 the Foster Care Ombudsman may not be issued until a
21 circuit court judge in term or vacation thereof has personally
22 reviewed the application and accompanying affidavits and
23 approved, by a signed order entered by the judge, the
24 issuance of the subpoena or subpoena duces tecum.

25 Subpoenas or subpoenas duces tecum applied for pursuant
26 to this section may be issued on an ex parte basis following
27 review and approval of the application by the judge in term
28 or vacation thereof.

29 (c) The Attorney General shall, upon request, provide
30 legal counsel and services to the Foster Care Ombudsman
31 in all administrative proceedings and in all proceedings in
32 any circuit court and the West Virginia Supreme Court of
33 Appeals.

§49-9-106. Cooperation among government departments or agencies.

1 (a) The Foster Care Ombudsman shall have access to
2 the records of any state government agency reasonably
3 necessary to any investigation. The Foster Care
4 Ombudsman shall be notified of and be allowed to observe
5 any survey conducted by a government agency affecting the
6 health, safety, welfare, or rights of the foster child, the foster
7 parents, or the kinship parents.

8 (b) The Foster Care Ombudsman shall develop
9 procedures to refer any complaint to any appropriate state
10 government department, agency, or office.

11 (c) When abuse, neglect, or exploitation of a foster child
12 is suspected, the Foster Care Ombudsman shall make a
13 referral to the Bureau for Children and Families, Office of
14 Health Facility Licensure and Certification, or both.

15 (d) Any state government department, agency, or
16 office that responds to a complaint referred to it by the
17 Foster Care Ombudsman Program shall make available to
18 the Foster Care Ombudsman copies of inspection reports
19 and plans of correction, and notices of any citations and
20 sanctions levied against the foster family home, the child-
21 placing agency, or the residential care facility identified
22 in the complaint.

§49-9-107. Confidentiality of investigations.

1 (a) Information relating to any investigation of a
2 complaint that contains the identity of the complainant or
3 foster child, foster parent, or kinship parent shall remain
4 confidential except:

5 (1) Where disclosure is authorized in writing by the
6 complainant foster child, foster parent, kinship parent, or the
7 guardian.

8 (2) Where disclosure is necessary to the Bureau for
9 Children and Families in order for such office to determine
10 the appropriateness of initiating an investigation regarding
11 potential abuse, neglect, or emergency circumstances; or

12 (3) Where disclosure is necessary to the Office of Health
13 Facility Licensure and Certification in order for such office
14 to determine the appropriateness of initiating an
15 investigation to determine facility compliance with
16 applicable rules of licensure, certification, or both.

17 (b) Notwithstanding any other section within this
18 article, all information, records, and reports received by or
19 developed by the Foster Care Ombudsman Program which
20 relate to a foster child, foster parent, or kinship parent,
21 including written material identifying a foster child, foster
22 parent, or kinship parent, are confidential pursuant to §49-
23 5-101 *et seq.* of this code, and are not subject to the
24 provisions of §29B-1-1 *et seq.* of this code, and may not be
25 disclosed or released by the Foster Care Ombudsman
26 Program, except under the circumstances enumerated in this
27 section.

28 (c) Nothing in this section prohibits the preparation and
29 submission by the Foster Care Ombudsman of statistical
30 data and reports, as required to implement the provisions of
31 this article or any applicable federal law, exclusive of any
32 material that identifies any foster child, foster parent,
33 kinship parent, or complainant.

34 (d) The Inspector General shall have access to the
35 records and files of the Foster Care Ombudsman Program
36 to verify its effectiveness and quality where the identity of
37 any complainant or foster child, foster parent, or kinship
38 parent is not disclosed.

§49-9-108. Limitations on liability.

1 (a) The Foster Care Ombudsman participating in an
2 investigation carried out pursuant to this article who is
3 performing his or her duties is immune from civil liability
4 that otherwise might result by reason of his or her
5 participation in the investigation, as long as such
6 participation is not violative of any applicable law, rule, or
7 regulation, and done within the scope of his or her
8 employment and in good faith.

9 (b) If an act or omission by the Foster Care Ombudsman
10 or an act in good faith pursuant to a specific foster child,
11 foster parent, or kinship parent complaint causes a foster
12 child's, foster parents', or kinship parents' rights to be
13 violated, no foster family home, state agency, child-placing
14 agency, or residential care facility, its owners,
15 administrators, officers, director, agents, consultants,
16 employees, or any member of management may be held
17 civilly liable as a result of the act or omission.

§49-9-109. Willful interference; retaliation; penalties.

1 (a) An individual who willfully interferes with or
2 impedes the Foster Care Ombudsman in the performance of
3 his or her official duties shall be guilty of a misdemeanor
4 and, upon conviction thereof, shall be fined not more than
5 \$100.

6 (b) An individual who institutes or commits a
7 discriminatory, disciplinary, retaliatory, or reprisal action
8 against a foster child, foster parent, or kinship parent for
9 having filed a complaint with or provided information in
10 good faith to the Foster Care Ombudsman in carrying out
11 the duties pursuant to this article is guilty of a misdemeanor

12 and, upon conviction thereof, shall be fined not more than
 13 \$100.

14 (c) An individual violating the provisions of subsection
 15 (a) or (b) of this section is, for the second or any subsequent
 16 offense under either of these subsections, guilty of a
 17 misdemeanor and, upon conviction thereof, shall be fined
 18 not more than \$250. Each day of a continuing violation after
 19 conviction shall be considered a separate offense.

20 (d) Nothing in this section infringes upon the rights of
 21 an employer to supervise, discipline, or terminate an
 22 employee for other reasons.

§49-9-110. Funding for Foster Care Ombudsman Program.

1 The Foster Care Ombudsman Program shall receive
 2 such funds appropriated by the Legislature for the operation
 3 of the program.



CHAPTER 42

**(Com. Sub. for H. B. 4415 - By Delegates Rowan,
 Rohrbach, Boggs, Estep-Burton, Pyles, C. Martin,
 Toney, Mandt, Lovejoy, Sypolt and Hanna)**

 [Passed March 5, 2020; in effect ninety days from passage.]
 [Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §15-3D-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §15-3D-9; to amend and reenact §49-6-103, §49-6-105, §49-6-106, §49-6-109, §49-6-110, §49-6-112, §49-6-113, and §49-6-114; and to amend said code by adding thereto a new section, designated §49-6-116, all relating to children; defining terms; creating missing and

endangered child advisory system; providing for rulemaking; expanding missing child information clearinghouse requirements; updating requirements for providing information; updating requirements for missing child report forms; requiring law-enforcement agency to investigate and issue advisory; providing for confidential information to be provided to Department of Health and Human Resources as legal custodian; updating clearinghouse advisory council; updating comprehensive strategic plan; establishing missing foster child locator unit program; establishing duties; providing for report; and making technical changes.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 3D. MISSING PERSONS ACT.

§15-3D-3. Definitions.

1 For the purposes of this article:

2 (1) “CODIS” means the Federal Bureau of
3 Investigation’s Combined DNA Index System, which
4 allows for the storage and exchange of DNA records
5 submitted by federal, state, and local forensic DNA
6 laboratories. The term “CODIS” includes the National DNA
7 Index System or NDIS, administered and operated by the
8 Federal Bureau of Investigation.

9 (2) “Complainant” means a person who contacts law
10 enforcement to report that a person is missing.

11 (3) “Electronic communication device” means a cellular
12 telephone, personal digital assistant, electronic device with
13 mobile data access, laptop computer, pager, broadband
14 personal communication device, two-way messaging
15 device, electronic game, or portable computing device.

16 (4) “Juvenile” means any person under 18 years of age.

17 (5) “Law-enforcement agency” means any duly
18 authorized state, county, or municipal organization
19 employing one or more persons whose responsibility is the
20 enforcement of laws of the state or any county or
21 municipality thereof.

22 (6) “Lead law-enforcement agency” means the law-
23 enforcement agency that initially receives a missing persons
24 complaint or, after the fulfillment of all requirements of this
25 article related to the initial receipt of a missing persons
26 complaint and transmission of information to required
27 databases, the law-enforcement agency with the primary
28 responsibility for investigating a missing or unidentified
29 persons complaint.

30 (7) “Missing and endangered child” means any missing
31 child for which there are substantial indications the child is
32 at high risk of harm or in immediate danger, and rapid action
33 is required, including, but not limited to:

34 (A) Physically or mentally disabled and dependent upon
35 an agency or another individual for care;

36 (B) Under the age of 13;

37 (C) Missing under circumstances which indicate the
38 child’s safety may be in danger; or

39 (D) A foster child and has been determined a missing
40 and endangered child by the Department of Health and
41 Human Resources.

42 (8) “Missing child” means any child under the age of 18
43 whose whereabouts are unknown to the child’s legal
44 custodian.

45 (9) “Missing person” means any person who is reported
46 missing to a law-enforcement agency.

47 (10) “NamUs” means the database of the National
48 Missing and Unidentified Persons System.

49 (11) “NCIC” means the database of the National Crime
50 Information Center, the nationwide, online computer
51 telecommunications system maintained by the Federal
52 Bureau of Investigation to assist authorized agencies in
53 criminal justice and related law-enforcement objectives.

54 (12) “NCMEC” means the database of the National
55 Center for Missing and Exploited Children.

56 (13) “Unidentified person” means any person, living or
57 deceased, who has not been identified through investigation
58 for over 30 days.

59 (14) “Violent Criminal Apprehension Program” or
60 “ViCAP” is a unit of the Federal Bureau of Investigation
61 responsible for the analysis of serial violent and sexual
62 crimes.

63 (15) “WEAPON system” means the West Virginia
64 Automated Police Network.

**§15-3D-9. Missing and Endangered Child Advisory System;
definitions; rule-making authority.**

1 (a) There is hereby created an advisory system, referred
2 to in this section as the “system”, to aid in the identification
3 and location of missing and endangered children.

4 (b) “Missing and Endangered Child Advisory” means a
5 system used to alert the public of a missing and endangered
6 child to aid in the child’s rapid recovery.

7 (c) The State Police shall promulgate emergency rules
8 establishing procedures for local law-enforcement agency’s
9 issuance of a missing and endangered child advisory.

CHAPTER 49. CHILD WELFARE.

ARTICLE 6. MISSING CHILDREN INFORMATION ACT.

§49-6-103. Information to clearinghouse; definitions.

1 (a) The Department of Health and Human Resources
2 and every law-enforcement agency in West Virginia shall
3 provide to the clearinghouse or another investigating law-
4 enforcement agency any information that would assist in
5 locating or identifying a missing child.

6 (b) For purposes of this article:

7 (1) "Missing and endangered child" means any missing
8 child for which there are substantial indications the child is
9 at high risk of harm or in immediate danger, and rapid action
10 is required, including, but not limited to:

11 (A) Physically or mentally disabled and dependent upon
12 an agency or another individual for care;

13 (B) Under the age of 13;

14 (C) Missing under circumstances which indicate the
15 child's safety may be in danger; or

16 (D) A foster child and has been determined a missing
17 and endangered child by the Department of Health and
18 Human Resources.

19 (2) "Missing child" means any child under the age of 18
20 whose whereabouts are unknown to the child's legal
21 custodian.

§49-6-105. Missing child report forms; where filed.

1 (a) The clearinghouse shall distribute missing child and
2 missing and endangered child report forms to law-
3 enforcement agencies in the state and to the Department of
4 Health and Human Resources.

5 (b) A missing child or missing and endangered child
6 report may be made to a law-enforcement agency in person
7 or by telephone, or other indirect method of communication,
8 and the person taking the report may enter the information
9 on the form for the reporter. A missing child or missing and

10 endangered child report form may be completed by the
11 reporter and delivered to a law-enforcement office.

12 (c) A copy of the report form shall be maintained by the
13 clearinghouse.

§49-6-106. Missing child reports; law-enforcement agency requirements; unidentified bodies.

1 (a) A law-enforcement agency, upon receiving a
2 missing child or missing and endangered child report, shall:

3 (1) Start an investigation to determine the present
4 location of the child if it determines that the child is in
5 danger; and

6 (2) Enter the name of the missing child or missing and
7 endangered child into the clearinghouse and the National
8 Crime Information Center missing person file if the child
9 meets the center's criteria, with all available identifying
10 features, including dental records, fingerprints, other
11 physical characteristics, and a description of the clothing
12 worn when the missing child or missing and endangered
13 child was last seen.

14 (b) Information not immediately available shall be
15 obtained as soon as possible by the law-enforcement agency
16 and entered into the clearinghouse and the National Crime
17 Information Center file as a supplement to the original
18 entry.

19 (c) All West Virginia law-enforcement agencies shall
20 enter information about all unidentified bodies of children
21 found in their jurisdiction into the clearinghouse and the
22 National Crime Information Center unidentified person file,
23 including all available identifying features of the body and
24 a description of the clothing found on the body. If an
25 information entry into the National Crime Information
26 Center file results in an automatic entry of the information
27 into the clearinghouse, the law-enforcement agency is not

28 required to make a direct entry of that information into the
29 clearinghouse.

30 (d) A law-enforcement agency, upon receiving a
31 missing and endangered child report, shall immediately:

32 (1) Start an investigation to determine the present
33 location of the child if it determines that the child is missing
34 and endangered; and

35 (2) Issue a Missing and Endangered Child Advisory
36 pursuant to §15-3D-9 of this code.

§49-6-109. Interagency cooperation.

1 (a) State agencies and public and private schools shall
2 cooperate with a law-enforcement agency that is
3 investigating any missing child or missing and endangered
4 child report and shall furnish any information, including
5 confidential information, that will assist the law-
6 enforcement agency in completing the investigation.

7 (b) Information provided by a state agency or a public
8 or private school may not be released to any person outside
9 the law-enforcement agency or the clearinghouse, except as
10 provided by rules of the West Virginia State Police.

**§49-6-110. Confidentiality of records; rulemaking;
requirements.**

1 (a) The State Police shall promulgate rules according
2 §29A-3-1 *et seq.* of this code to provide for the classification
3 of information and records as confidential that:

4 (1) Are otherwise confidential under state or federal law
5 or rules promulgated pursuant to state or federal law;

6 (2) Are related to the investigation by a law-
7 enforcement agency of a missing child, a missing and
8 endangered child, or an unidentified body, if the State
9 Police, in consultation with the law-enforcement agency,

10 determines that release of the information would be
11 deleterious to the investigation;

12 (3) Are records or notations that the clearinghouse
13 maintains for internal use in matters relating to missing
14 children or missing and endangered children and
15 unidentified bodies and the State Police determines that
16 release of the internal documents might interfere with an
17 investigation by a law-enforcement agency in West Virginia
18 or any other jurisdiction; or

19 (4) Are records or information that the State Police
20 determines might interfere with an investigation or
21 otherwise harm a child or custodian.

22 (b) The rules may provide for the sharing of confidential
23 information with the custodian of the missing child or
24 missing and endangered child: *Provided*, That confidential
25 information, which is not believed to jeopardize an
26 investigation, must be shared with the custodian when the
27 legal custodian is the Department of Health and Human
28 Resources.

**§49-6-112. Agencies to receive report; law-enforcement
agency requirements.**

1 (a) Upon completion of the missing child or missing and
2 endangered child report the law-enforcement agency shall
3 immediately forward the contents of the report to the
4 missing children information clearinghouse and the
5 National Crime Information Center's missing person file.
6 However, if an information entry into the National Crime
7 Information Center file results in an automatic entry of the
8 information into the clearinghouse, the law-enforcement
9 agency is not required to make a direct entry of that
10 information into the clearinghouse.

11 (b) Within 15 days of completion of the report, if the
12 child is less than 13 years of age the law-enforcement
13 agency may, when appropriate, forward the contents of the
14 report to the last:

15 (1) Child care center or child care home in which the
16 child was enrolled; or

17 (2) School the child attended in West Virginia, if any.

18 (c) A law-enforcement agency involved in the
19 investigation of a missing child or missing and endangered
20 child shall:

21 (1) Update the initial report filed by the agency that
22 received notification of the missing child or missing and
23 endangered child upon the discovery of new information
24 concerning the investigation;

25 (2) Forward the updated report to the appropriate
26 agencies and organizations;

27 (3) Search the National Crime Information Center's
28 wanted person file for reports of arrest warrants issued for
29 persons who allegedly abducted or unlawfully retained
30 children and compare these reports to the missing child's
31 National Crime Information Center's missing person file;
32 and

33 (4) Notify all law-enforcement agencies involved in the
34 investigation, the missing children information
35 clearinghouse, and the National Crime Information Center
36 when the missing child is located.

§49-6-113. Clearinghouse Advisory Council; members, appointments and expenses; appointment, duties and compensation of director; annual reports.

1 (a) The Clearinghouse Advisory Council is continued as
2 a body corporate and politic, constituting a public
3 corporation and government instrumentality. The council
4 shall consist of 11 members who are knowledgeable about
5 and interested in issues relating to missing or exploited
6 children, as follows:

7 (1) Six members to be appointed by the Governor, with
8 the advice and consent of the Senate, with not more than
9 four belonging to the same political party, three being from
10 different congressional districts of the state and, as nearly as
11 possible, providing broad state geographical distribution of
12 members of the council, and at least one representing a
13 nonprofit organization involved with preventing the
14 abduction, runaway, or exploitation of children or locating
15 missing or missing and endangered children;

16 (2) The Secretary of the Department of Health and
17 Human Resources or his or her designee;

18 (3) The Superintendent of the West Virginia State
19 Police or his or her designee;

20 (4) The State Superintendent of Schools or his or her
21 designee;

22 (5) The Director of the Division of Administrative
23 Services or his or her designee; and

24 (6) The Commissioner of the Bureau for Children and
25 Families or his or her designee.

26 (b) The Governor shall appoint the six council members
27 for staggered terms. The terms of the members first taking
28 office on or after the effective date of this legislation shall
29 expire as designated by the Governor. Each subsequent
30 appointment shall be for a full three-year term. Any
31 appointed member whose term is expired shall serve until a
32 successor has been duly appointed and qualified. Any
33 person appointed to fill a vacancy may serve only for the
34 unexpired term. A member is eligible for only one
35 successive reappointment. A vacancy shall be filled by the
36 Governor in the same manner as the original appointment
37 was made.

38 (c) Members of the council are not entitled to
39 compensation for services performed as members but are
40 entitled to reimbursement for all reasonable and necessary

41 expenses actually incurred in the performance of their duties
42 in a manner consistent with the guidelines of the Travel
43 Management Office of the Department of Administration.

44 (d) A majority of serving members constitutes a quorum
45 for the purpose of conducting business. The chair of the
46 council shall be designated by the Governor from among the
47 appointed council members who represent nonprofit
48 organizations involved with preventing the abduction,
49 runaway, or exploitation of children or locating missing
50 children or missing and endangered children. The term of
51 the chair shall run concurrently with his or her term of office
52 as a member of the council. The council shall meet
53 semiannually at the call of the chair. The council shall
54 conduct all meetings in accordance with the open
55 governmental meetings law pursuant to §6-9A-1 *et seq.* of
56 this code.

57 (e) The employee of the West Virginia State Police who
58 is primarily responsible for the clearinghouse established by
59 §49-6-101 of this code, shall serve as the executive director
60 of the council. He or she shall receive no additional
61 compensation for service as the executive director of the
62 council but shall be reimbursed for any reasonable and
63 necessary expenses actually incurred in the performance of
64 his or her duties as executive director in a manner consistent
65 with the guidelines of the Travel Management Office of the
66 Department of Administration.

67 (f) The executive director shall provide or obtain
68 information necessary to support the administrative work of
69 the council and, to that end, may contract with one or more
70 nonprofit organizations or state agencies for research and
71 administrative support.

72 (g) The executive director of the council shall be
73 available to the Governor and to the Speaker of the House
74 of Delegates and the President of the Senate to analyze and
75 comment upon proposed legislation and rules which relate
76 to or materially affect missing or exploited children.

77 (h) The council shall prepare and publish an annual
78 report of its activities and accomplishments and submit it to
79 the Governor and the Legislature on or before December 15
80 of each year.

§49-6-114. Powers and duties of clearinghouse advisory council; comprehensive strategic plan required to be provided to the Legislature.

1 The council shall prepare a comprehensive strategic
2 plan and recommendation of programs in furtherance
3 thereof that will support efforts to prevent the abduction,
4 runaway and exploitation, or any thereof, of children to
5 locate missing children, advise the West Virginia State
6 Police regarding operation of the clearinghouse and its other
7 responsibilities under this article, and cooperate with and
8 coordinate the efforts of state agencies and private
9 organizations involved with issues relating to missing or
10 exploited children. The council may seek public and private
11 grants, contracts, matching funds, and procurement
12 arrangements from the state and federal government, private
13 industry, and other agencies in furtherance of its mission
14 and programs. An initial comprehensive strategic plan that
15 will support and foster efforts to prevent the abduction,
16 runaway, and exploitation of children, and to locate missing
17 children, shall be developed and provided to the Governor,
18 the Speaker of the House of Delegates, and the President of
19 the Senate no later than July 1, 2020, and shall include, but
20 not be limited to, the following:

21 (1) Findings and determinations regarding the extent of
22 the problem in this state related to: (A) Abducted children;
23 (B) missing children; (C) exploited children; and (D)
24 missing and endangered children.

25 (2) Findings and determinations identifying the
26 systems, both public and private, existing in the state to
27 prevent the abduction, runaway, or exploitation of children,
28 and to locate missing children, and assessing the strengths
29 and weaknesses of those systems and the clearinghouse;

30 (3) The inclusion of exploited children within the
31 functions of the clearinghouse. For purposes of this article,
32 an exploited child is a person under the age of 18 years who
33 has been: (A) Used in the production of pornography; (B)
34 subjected to sexual exploitation or sexual offenses under
35 §61-8B-1 *et seq.* of this code; or (C) employed or exhibited
36 in any injurious, immoral, or dangerous business or
37 occupation in violation of §§61-8-5 through 61-8-8 of this
38 code;

39 (4) Recommendations of legislative changes required to
40 improve the effectiveness of the clearinghouse and other
41 efforts to prevent abduction, runaway, or exploitation of
42 children, and to locate missing children. Those
43 recommendations shall consider the following:

44 (A) Interaction of the clearinghouse with child custody
45 proceedings;

46 (B) Involvement of hospitals, child care centers, and
47 other private agencies in efforts to prevent child abduction,
48 runaway, or exploitation, and to locate missing children;

49 (C) Publication of a directory of and periodic reports
50 regarding missing children;

51 (D) Required reporting by public and private agencies
52 and penalties for failure to report and false reporting;

53 (E) Removal of names from the list of missing children;

54 (F) Creating of an advocate for missing and exploited
55 children;

56 (G) State funding for the clearinghouse and efforts to
57 prevent the abduction, runaway, and exploitation of
58 children, and to locate missing children;

59 (H) Mandated involvement of state agencies, such as
60 publication of information regarding missing children in

61 existing state publications and coordination with the state
62 registrar of vital statistics under §16-5-12 of this code; and

63 (I) Expanded requirement for boards of education to
64 notify the clearinghouse in addition to local law-
65 enforcement agencies under §18-2-5c of this code or if a
66 birth certificate or school record received appears to be
67 inaccurate or fraudulent and to receive clearinghouse
68 approval before releasing records;

69 (5) Methods that will coordinate and engender
70 collaborative efforts among organizations throughout the
71 state, whether public or private, involved with missing or
72 exploited children;

73 (6) Plans for the use of technology in the clearinghouse
74 and other efforts related to missing or exploited children;

75 (7) Compliance of the clearinghouse, state law, and all
76 rules promulgated pursuant thereto with applicable federal
77 law so as to enhance opportunities for receiving federal
78 grants;

79 (8) Consultation with the state board of education and
80 other agencies responsible for promulgating rules under this
81 article;

82 (9) Possible methods for identifying missing children
83 prior to enrollment in a public or nonpublic school;

84 (10) The feasibility and effectiveness of utilizing the
85 federal parent locator service in locating missing children;
86 and

87 (11) Programs for voluntary fingerprinting.

§49-6-116. Establish a missing foster child locator unit program.

1 (a) The Secretary of the West Virginia Department of
2 Health and Human Resources shall establish a Missing

3 Foster Child Locator Unit within the department with a
4 minimum staffing of a northern-based caseworker, a
5 southern-based caseworker, and an identified worker
6 located in the Centralized Intake Unit.

7 (b) The duties of the Missing Foster Child Locator Unit
8 shall include, but are not limited to, the following:

9 (1) Receiving reports of missing foster children;

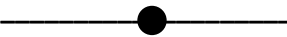
10 (2) Assisting law enforcement in locating missing foster
11 children who have been reported missing; and

12 (3) Interviewing missing foster children and completing
13 trafficking screening once the child is located.

14 (c) For this section, “missing foster child” means
15 missing child or missing and endangered child, as defined
16 in §49-6-103 of this code, who is a foster child at the time
17 he or she was reported missing.

18 (d) Beginning in July 1, 2021, and each year thereafter,
19 the Secretary of the Department of Health and Human
20 Resources shall provide a status report to the Legislative
21 Oversight Committee on Health and Human Resources
22 Accountability.

23 (e) The secretary shall implement and administer this
24 program at least until December 31, 2022. The secretary
25 may administer this program after such date.



CHAPTER 43

**(Com. Sub. for H. B. 4470 - By Delegates D. Kelly,
Shott, Criss, Graves, Steele, Howell, Miller, N.
Brown, Maynard, J. Kelly and Mandt)**

**[By Request of the Department of Military Affairs
and Public Safety]**

[Passed February 17, 2020; in effect from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §49-4-722 of the Code of West Virginia, 1931, as amended, relating to persons 18 years of age or older in the custody of the Bureau of Juvenile Services; and authorizing the Commissioner of the Division of Corrections and Rehabilitation to designate a unit in one or more institutions to house adults remaining under the juvenile jurisdiction of the circuit court to ensure that such persons are not within sight or sound of adult inmates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-722. Conviction for offense while in custody.

1 (a) Notwithstanding any other provision of law to the
2 contrary, any person who is 18 years of age or older who is
3 convicted as an adult of an offense that he or she committed
4 while in the custody of the Bureau of Juvenile Services and
5 who is sentenced for the conviction to a regional jail or state
6 correctional facility for the offense may not be returned to
7 the custody of the Bureau upon the completion of his or her
8 adult sentence.

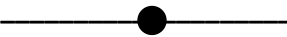
9 (b) Whenever a person of 18 years of age or older is
10 charged with an offense while in the custody of the Bureau
11 of Juvenile Services, the Bureau shall provide notice of the

12 person's custodial status to the court in which the charge is
13 pending and provide notice of the pending charge to the
14 circuit court having juvenile jurisdiction over the person.

15 (c) At least 10 days prior to the sentencing on a criminal
16 charge referred to in subsection (b) of this section, the
17 sentencing court shall provide written notice of the
18 sentencing hearing to the Commissioner of the Division of
19 Corrections and Rehabilitation and to the circuit court
20 having juvenile jurisdiction over the person. The person
21 may not be released from custody until the sentencing court
22 has received notice from the circuit court having juvenile
23 jurisdiction over the person that it has held the hearing
24 required by subsection (d) of this section.

25 (d) Prior to completion of the adult sentence referenced
26 in subsection (c) of this section, the circuit court having
27 jurisdiction over the underlying juvenile matter shall
28 conduct a hearing to determine whether the person who has
29 turned 18 years of age shall remain in the regional jail
30 during pendency of the underlying juvenile matter or if
31 another disposition or pretrial placement is appropriate and
32 available: *Provided*, That the court may not remand a child
33 who reached the age of 18 years to a juvenile facility or
34 placement during the pendency of the underlying juvenile
35 matter.

36 (e) Notwithstanding the provisions of §15A-3-12(i) of
37 this code, the Commissioner of the Division of Corrections
38 and Rehabilitation is authorized to designate a unit in one or
39 more institutions, either juvenile facilities, jails, or prisons,
40 under his or her management to house adults remaining
41 under the juvenile jurisdiction of the circuit court to ensure
42 that such persons are not within sight or sound of adult
43 inmates.



CHAPTER 44

(H. B. 4551 - By Delegates Hill and Pack)

[Passed March 5, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §49-4-112 of the Code of West Virginia, 1931, as amended, relating to subsidies; providing for adoption subsidies; providing for legal guardianship subsidies; updating availability; requiring payment for attorney's fees; updating requirements for insurance coverage; requiring certification; eliminating requirements with respect to child who is dependent of voluntary licensed child placing agency; prohibiting subsidy payment under certain circumstances; requiring adoptive parents and legal guardians receiving subsidy to inform department; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-112. Subsidized adoption and legal guardianship; conditions.

- 1 (a) From funds appropriated to the Department of
- 2 Health and Human Resources, the secretary shall establish
- 3 a system of assistance for facilitating the adoption or legal
- 4 guardianship of children. An adoption subsidy shall be
- 5 available for children who are legally free for adoption and
- 6 who are dependents of the department. A legal guardianship
- 7 subsidy may not require the surrender or termination of
- 8 parental rights. For either subsidy, the children must be in
- 9 special circumstances because one or more of the following

10 conditions inhibit their adoption or legal guardianship
11 placement:

12 (1) They have a physical or mental disability;

13 (2) They are emotionally disturbed;

14 (3) They are older children;

15 (4) They are a part of a sibling group; or

16 (5) They are a member of a racial or ethnic minority.

17 (b)(1) The department shall provide assistance in the
18 form of subsidies or services to parents who are found and
19 approved for adoption or legal guardianship of a child
20 certified as eligible for subsidy by the department, but
21 before the final decree of adoption or order of legal
22 guardianship is entered, there shall be a written agreement
23 between the family entering into the subsidized adoption or
24 legal guardianship and the department.

25 (2) Adoption or legal guardianship subsidies in
26 individual cases may commence with the adoption or legal
27 guardianship placement and will vary with the needs of the
28 child as well as the availability of other resources to meet
29 the child's needs. The subsidy may be for services, money
30 payments, for a limited period, or for a long term, or for any
31 combination of the foregoing.

32 (3) The specific financial terms of the subsidy shall be
33 included in the agreement between the department and the
34 adoptive parents or legal guardians. The agreement may
35 recognize and provide for direct payment by the department
36 of attorney's fees to an attorney representing the adoptive
37 parent or legal guardian. Any such payment for attorney's
38 fees shall be made directly to the attorney representing the
39 adoptive parent or legal guardian.

40 (4) The amount of the subsidy may in no case exceed
41 that which would be allowable for the child under foster

42 family care or, in the case of a service, the reasonable fee
43 for the service rendered.

44 (5) The department shall provide either Medicaid or
45 other health insurance coverage for any special needs child
46 for whom there is an adoption or legal guardianship
47 assistance agreement, and who the department determines
48 cannot be placed without medical assistance.

49 (c) The department shall certify the child as eligible for
50 a subsidy to obtain adoption or a legal guardianship if it is
51 in the best interest of the child.

52 (d) All records regarding subsidized adoptions or legal
53 guardianships are to be held in confidence; however, records
54 regarding the payment of public funds for subsidized
55 adoptions or legal guardianships shall be available for public
56 inspection provided they do not directly or indirectly identify
57 any child or person receiving funds for the child.

58 (e) A payment may not be made to adoptive parents or
59 legal guardians of child:

60 (1) Who has attained 18 years of age, unless the
61 department determines that the child has a special need
62 which warrants the continuation of assistance or the child is
63 continuing his or her education or actively engaging in
64 employment;

65 (2) Who has obtained 21 years of age;

66 (3) Who has not attained 18 years of age, if the
67 department determines that the adoptive parent or legal
68 guardian is no longer supporting the child by performing
69 actions to maintain a familial bond with the child.

70 (f) Adoptive parents and legal guardians who receive
71 subsidy payments pursuant to this section shall keep the
72 department informed of circumstances which would,
73 pursuant to §49-4-112(e) of this code, make them ineligible
74 for the payment.



CHAPTER 45

(H. B. 4585 - By Delegates Hill and Pack)

**[By Request of the West Virginia Department of
Health and Human Resources]**

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §49-2-810 of the Code of West Virginia, 1931, as amended, relating to immunity from criminal and civil liability and amending the provision of immunity to explicitly grant immunity from civil or criminal liability for individuals providing information or assistance to a good faith report of child abuse or neglect.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-810. Immunity from liability.

1 Any person, official, or institution participating in good
2 faith in any act permitted or required by this article is
3 immune from any civil or criminal liability that otherwise
4 might result by reason of those actions, including
5 individuals making good faith reports of suspected or
6 known instances of child abuse or neglect, or who otherwise
7 provide information or assistance, including medical
8 evaluations or consultations, in connection with a report,
9 investigation or legal intervention pursuant to a good faith
10 report of child abuse or neglect.

●

CHAPTER 46

(Com. Sub. for S. B. 522 - By Senators Trump, Weld and Rucker)

[Passed March 6, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §14-2A-3 and §14-2A-14 of the Code of West Virginia, 1931, as amended, all relating to compensation awards to victims of crimes; providing for an altered definition of an “allowable expense”; establishing conditions to satisfy reporting requirements for juvenile abuse and neglect cases; providing for expanded benefits for juvenile victims of abuse and neglect cases; and establishing agency authority to file an application on behalf of a minor child for expanded benefits for juvenile victims of abuse and neglect cases.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-3. Definitions.

- 1 As used in this article, the term:
- 2 (a) “Claimant” means any of the following persons,
- 3 whether residents or nonresidents of this state, who claim an
- 4 award of compensation under this article:
- 5 (1) A victim, except the term “victim” does not include
- 6 a nonresident of this state where the criminally injurious act
- 7 did not occur in this state;

8 (2) A dependent, spouse, or minor child of a deceased
9 victim or, if the deceased victim is a minor, the parents, legal
10 guardians, and siblings of the victim;

11 (3) A third person, other than a collateral source, who
12 legally assumes or voluntarily pays the obligations of a
13 victim or a victim's dependent when the obligations are
14 incurred as a result of the criminally injurious conduct that
15 is the subject of the claim;

16 (4) A person who is authorized to act on behalf of a
17 victim, dependent, or a third person who is not a collateral
18 source including, but not limited to, assignees, persons
19 holding power of attorney or others who hold authority to
20 make or submit claims in place of or on behalf of a victim,
21 a dependent, or third person who is not a collateral source
22 and if the victim, dependent, or third person who is not a
23 collateral source is a minor or other legally incompetent
24 person, their duly qualified fiduciary; and

25 (5) A person who is a secondary victim in need of
26 mental health counseling due to the person's exposure to the
27 crime committed whose award may not exceed \$1,000.

28 (b) "Collateral source" means a source of benefits or
29 advantages for economic loss otherwise compensable that
30 the victim or claimant has received or that is readily
31 available to him or her from any of the following sources:

32 (1) The offender, including restitution received from the
33 offender pursuant to an order by a court sentencing the
34 offender or placing him or her on probation following a
35 conviction in a criminal case arising from the criminally
36 injurious act for which a claim for compensation is made;

37 (2) The government of the United States or its agencies,
38 a state or its political subdivisions, or an instrumentality of
39 two or more states;

40 (3) Social Security, Medicare, and Medicaid;

41 (4) State-required, temporary, nonoccupational
42 disability insurance or other disability insurance;

43 (5) Workers' compensation;

44 (6) Wage continuation programs of an employer;

45 (7) Proceeds of a contract of insurance payable to the
46 victim or claimant for loss that was sustained because of the
47 criminally injurious conduct;

48 (8) A contract providing prepaid hospital and other
49 health care services or benefits for disability; and

50 (9) That portion of the proceeds of all contracts of
51 insurance payable to the claimant on account of the death of
52 the victim which exceeds \$25,000.

53 (c) "Criminally injurious conduct" means conduct that
54 occurs or is attempted in this state, or in any state not having
55 a victim compensation program, which poses a substantial
56 threat of personal injury or death and is punishable by fine
57 or imprisonment. "Criminally injurious conduct" also
58 includes criminally injurious conduct committed outside of
59 the United States against a resident of this state. "Criminally
60 injurious conduct" does not include conduct arising out of
61 the ownership, maintenance, or use of a motor vehicle
62 unless the person engaging in the conduct intended to cause
63 personal injury or death or committed negligent homicide,
64 driving under the influence of alcohol, controlled
65 substances or drugs, leaving the scene of the accident, or
66 reckless driving.

67 (d) "Dependent" means an individual who received over
68 half of his or her support from the victim. For the purpose
69 of making this determination there shall be taken into
70 account the amount of support received from the victim as
71 compared to the entire amount of support the individual
72 received from all sources including self-support. The term
73 support includes, but is not limited to, food, shelter,
74 clothing, medical and dental care and education. The term

75 dependent includes a child of the victim born after his or her
76 death.

77 (e) “Economic loss” means economic detriment
78 consisting only of allowable expense, work loss, and
79 replacement services loss. If criminally injurious conduct
80 causes death, economic loss includes a dependents
81 economic loss and a dependents replacement services loss.
82 Noneconomic detriment is not economic loss; however,
83 economic loss may be caused by pain and suffering or
84 physical impairment. For purposes of this article, the term
85 economic loss includes a lost scholarship as defined in this
86 section.

87 (f) “Allowable expense” includes the following:

88 (1) Reasonable charges incurred or to be incurred for
89 reasonably needed medical care, including products,
90 services, and accommodations related to medical and
91 psychological care, prosthetic devices, eye glasses,
92 dentures, rehabilitation, and other remedial treatment and
93 care but does not include that portion of a charge for a room
94 in a hospital, clinic, convalescent home, nursing home, or
95 other institution engaged in providing nursing care and
96 related services which is in excess of a reasonable and
97 customary charge for semiprivate accommodations unless
98 accommodations other than semiprivate accommodations
99 are medically required;

100 (2) A total charge not in excess of \$10,000 for expenses
101 in any way related to funerals, cremations and burials;

102 (3) Victim relocation costs not to exceed \$2,500;

103 (4) Reasonable travel expenses not to exceed \$1,000 for
104 a claimant to attend court proceedings conducted for the
105 prosecution of the offender;

106 (5) Reasonable travel expenses for a claimant to return
107 a person who is a minor or incapacitated adult who has been
108 unlawfully removed from this state to another state or

109 country if the removal constitutes a crime under the laws of
110 this state which may not exceed \$2,000 for expenses to
111 another state or \$3,000 to another country; and

112 (6) Reasonable travel expenses for the transportation of
113 a victim to and from a medical facility.

114 (g) “Work loss” means loss of income from work that
115 the injured person would have performed if he or she had
116 not been injured and expenses reasonably incurred or to be
117 incurred by him or her to obtain services in lieu of those he
118 or she would have performed for income. “Work loss” is
119 reduced by income from substitute work actually performed
120 or to be performed by him or her or by income he or she
121 would have earned in available appropriate substitute work
122 that he or she was capable of performing but unreasonably
123 failed to undertake. “Work loss” also includes loss of
124 income from work by the parent or legal guardian of a minor
125 victim who must miss work to take care of the minor victim.

126 (h) “Replacement services loss” means expenses
127 reasonably incurred or to be incurred in obtaining ordinary
128 and necessary services in lieu of those the injured person
129 would have performed for the benefit of himself or herself
130 or his or her family if he or she had not been injured.
131 “Replacement services loss” does not include services an
132 injured person would have performed to generate income.

133 (i) “Dependents’ economic loss” means loss after a
134 victim’s death of contributions or things of economic value
135 to his or her dependents but does not include services they
136 would have received from the victim if he or she had not
137 suffered the fatal injury. This amount is reduced by
138 expenses avoided by the dependent due to the victim’s
139 death.

140 (j) “Dependents’ replacement service loss” means loss
141 reasonably incurred or to be incurred by dependents after a
142 victim’s death in obtaining ordinary and necessary services
143 in lieu of those the victim would have performed for their

144 benefit if he or she had not suffered the fatal injury. This
145 amount is reduced by expenses avoided due to the victim's
146 death but which are not already subtracted in calculating a
147 dependent's economic loss.

148 (k) "Victim" means the following:

149 A person who suffers personal injury or death as a result
150 of any one of the following:

151 (A) Criminally injurious conduct;

152 (B) The good faith effort of the person to prevent
153 criminally injurious conduct; or

154 (C) The good faith effort of the person to apprehend a
155 person that the injured person has observed engaging in
156 criminally injurious conduct or who the injured person has
157 reasonable cause to believe has engaged in criminally
158 injurious conduct immediately prior to the attempted
159 apprehension.

160 (l) "Contributory misconduct" means any conduct of the
161 claimant or of the victim through whom the claimant claims
162 an award that is unlawful or intentionally tortious and that,
163 without regard to the conduct's proximity in time or space
164 to the criminally injurious conduct, has a causal relationship
165 to the criminally injurious conduct that is the basis of the
166 claim and includes the voluntary intoxication of the
167 claimant, either by the consumption of alcohol or the use of
168 any controlled substance, when the intoxication has a causal
169 connection or relationship to the injury sustained.

170 (m) "Lost scholarship" means a scholarship, academic
171 award, stipend, student loan, or other monetary scholastic
172 assistance which had been awarded, conferred upon, or
173 obtained by a victim in conjunction with a post-secondary
174 school educational program and which the victim is unable
175 to receive or use, in whole or in part, due to injuries received
176 from criminally injurious conduct.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.

1 (a) Except as provided in §14-2A-10(b) of this code, the
2 commissioner may not approve an award of compensation
3 to a claimant who did not file his or her application for an
4 award of compensation within two years after the date of the
5 occurrence of the criminally injurious conduct that caused
6 the injury or death for which he or she is seeking an award
7 of compensation.

8 (b) The commissioner may not approve an award of
9 compensation if the criminally injurious conduct upon
10 which the claim is based was not reported to a law-
11 enforcement officer or agency or, in the case of sexual
12 offense, the victim did not undergo a forensic medical
13 examination, within 96 hours after the occurrence of the
14 conduct, unless it is determined that good cause existed for
15 the failure to report the conduct or undergo a forensic
16 medical examination within the 96-hour period: *Provided*,
17 That no reporting to a law-enforcement officer or agency or
18 a forensic medical examination is required if the victim is a
19 juvenile in order for a commissioner to approve an award of
20 compensation: *Provided, however*, That the filing of a civil
21 abuse and neglect petition in a circuit court satisfies the
22 reporting requirement, thereby allowing the minor child
23 who is the subject of the petition to file an application for
24 benefits, with the claims process to proceed in accordance
25 with this code. The agency filing the civil abuse and neglect
26 petition shall file an application for benefits on behalf of the
27 minor child.

28 (c) The commissioner may not approve an award of
29 compensation to a claimant who is the offender or an
30 accomplice of the offender who committed the criminally
31 injurious conduct, nor to any claimant if the award would
32 unjustly benefit the offender or his or her accomplice.

33 (d) A commissioner, upon a finding that the claimant or
34 victim has not fully cooperated with appropriate law-

35 enforcement agencies or the claim investigator, may deny a
36 claim, reduce an award of compensation, or reconsider a
37 claim already approved.

38 (e) A commissioner may not approve an award of
39 compensation if the injury occurred while the victim was
40 confined in any state, county, or regional jail, prison, private
41 prison, or correctional facility.

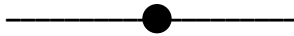
42 (f) After reaching a decision to approve an award of
43 compensation, but prior to announcing the approval, the
44 commissioner shall require the claimant to submit current
45 information as to collateral sources on forms prescribed by
46 the Clerk of the West Virginia Legislative Claims
47 Commission. The commissioner shall reduce an award of
48 compensation or deny a claim for an award of compensation
49 that is otherwise payable to a claimant to the extent that the
50 economic loss upon which the claim is based is or will be
51 recouped from other persons, including collateral sources,
52 or if the reduction or denial is determined to be reasonable
53 because of the contributory misconduct of the claimant or
54 of a victim through whom he or she claims. If an award is
55 reduced or a claim is denied because of the expected
56 recoupment of all or part of the economic loss of the
57 claimant from a collateral source, the amount of the award
58 or the denial of the claim shall be conditioned upon the
59 claimant's economic loss being recouped by the collateral
60 source: *Provided*, That if it is thereafter determined that the
61 claimant will not receive all or part of the expected
62 recoupment, the claim shall be reopened and an award shall
63 be approved in an amount equal to the amount of expected
64 recoupment that it is determined the claimant will not
65 receive from the collateral source, subject to the limitation
66 set forth in subsection (g) of this section.

67 (g)(1) Except in the case of death, or as provided in
68 subdivision (2) of this subsection, compensation payable to
69 a victim and to all other claimants sustaining economic loss
70 because of injury to that victim may not exceed \$35,000 in
71 the aggregate. Compensation payable to all claimants

72 because of the death of the victim may not exceed \$50,000
73 in the aggregate.

74 (2) In the event the victim's personal injuries are so
75 severe as to leave the victim with a disability, as defined in
76 Section 223 of the Social Security Act, as amended, as
77 codified in 42 U. S. C. §423, the commission may award an
78 additional amount, not to exceed \$100,000, for special
79 needs attributable to the injury.

80 (h) If an award of compensation of \$5,000 or more is
81 made to a minor, a guardian shall be appointed pursuant to
82 the provisions of §44-10-1 *et seq.* of this code to manage the
83 minor's estate.



CHAPTER 47

(Com. Sub. for S. B. 529 - By Senator Trump)

[Passed March 7, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §14-2-13a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §14-2A-14a, all relating to establishing limitations on claims and benefits; establishing a two-year time limit for a claimant to file a claim for unjust arrest, conviction, or imprisonment; and establishing a 10-year limitation on eligibility to receive benefits under certain conditions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-13a. Claims for unjust arrest and imprisonment or conviction and imprisonment.

1 (a) *Legislative intent.* — The Legislature finds and
2 declares that innocent persons who have been wrongly
3 convicted of crimes and subsequently imprisoned and
4 innocent persons wrongly arrested, charged with a crime, or
5 imprisoned, who have subsequently been released when
6 another person was arrested, prosecuted, and convicted of
7 the same criminal offense have been frustrated in seeking
8 legal redress due to a variety of substantive and technical
9 obstacles in the law and that affected persons should have
10 an available avenue of redress over and above the existing
11 tort remedies. Therefore, the Legislature intends by
12 enactment of the provisions of this section that those
13 innocent persons who can demonstrate that they were
14 wrongly arrested and imprisoned or unjustly convicted and
15 imprisoned are able to seek damages against the state for
16 loss of liberty.

17 (b) *Notice of claim.* — The claimants notice of claim
18 shall state facts in sufficient detail to permit the court to find
19 that a claimant is likely to succeed at a trial on the merits. If
20 the court finds in its discretion after reviewing a claim that
21 the claimant has failed to allege sufficient facts upon which
22 relief can be granted, the court may dismiss the claim, either
23 on its own motion or by a motion of the state. Any claimant
24 filing a claim under this article shall file his or her claim
25 within two years of the date of the final order vacating the
26 claimant's conviction, a pardon was granted, or the
27 dismissal of the accusatory instrument.

28 (c) *Burden of proof.* — A claimant shall demonstrate by
29 clear and convincing evidence that they were unjustly
30 arrested and imprisoned or unjustly convicted and
31 imprisoned, and the court shall, in the interest of justice,
32 give due consideration to difficulties of proof caused by the
33 passage of time, the death or unavailability of witnesses, the
34 destruction of evidence, or other factors not caused by such
35 persons or those acting on their behalf. Specifically, the
36 following shall be proven by clear and convincing evidence:

37 (1)(A) The claimant has been convicted of one or more
38 felonies or misdemeanors against the state and subsequently
39 sentenced to a term of confinement, and has served all or
40 any part of the sentence; or

41 (B) The claimant has been arrested and confined, and
42 charged by warrant, information, or any other accusatory
43 instrument for one or more felonies or misdemeanors, and
44 that the charges were dismissed against the claimant; and

45 (2)(A) The claimant has been pardoned upon the ground
46 of innocence of the crime or crimes for which the claimant
47 was sentenced and which are the grounds for the complaint;
48 or

49 (B) The claimant's judgment of conviction was reversed
50 or vacated, and the accusatory instrument dismissed or, if a
51 new trial was ordered, either the claimant was found not
52 guilty at the new trial or the claimant was not retried and the
53 accusatory instrument dismissed.

54 (d) *Type of relief granted and the claimant's burden to*
55 *prove damages.* — If the court finds that the claimant is
56 entitled to a judgment, the court shall award damages in a
57 sum of money as the court determines will fairly and
58 reasonably compensate the claimant based upon the
59 sufficiency of the claimant's proof at trial. The damages
60 shall depend upon the unique facts and circumstances of
61 each claim. The claimant shall bear the ultimate burden of
62 proving all damages associated with the claimant's claim.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-14a. Establishing a limitation on benefits.

1 All claims shall be considered closed and no longer
2 eligible for benefits at the expiration of available benefits or 10
3 years after filing the claim, whichever occurs first: *Provided,*
4 That this provision shall not apply to claimants or victims
5 receiving benefits under §14-2A-14(g)(2) of this code.

CHAPTER 48

**(Com. Sub. for S. B. 615 - By Senators Blair, Prezioso
and Plymale)**

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

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:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department of Commerce, Division of Natural Resources; Department of Environmental Protection; Department of Health and Human Resources; Department of Health and Human Resources, Office of Environmental Health Services; Department of Military Affairs and Public Safety, Division of Corrections and Rehabilitation; Department of Military Affairs and Public Safety, Regional Jail Authority; Department of Military Affairs and Public Safety, Eastern Regional Jail; Department of Military Affairs and Public Safety, South Central Regional Jail; Department of Military Affairs and Public Safety, West Virginia Adjutant General's Office; Department of Transportation, Division of Highways; and Department of Transportation, Division of Motor Vehicles, 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 Commerce,*
 14 *Division of Natural Resources:*

15 (TO BE PAID FROM SPECIAL REVENUE FUND)

16 Travis L. Castle and Christine N. Castle\$136.83

17 (b) *Claim against the Department of Environmental*
 18 *Protection:*

19 (TO BE PAID FROM FEDERAL FUNDS)

20 Qlarion, Inc.....\$215,145.02

21 (c) *Claims against the Department of Health and*
 22 *Human Resources:*

23 (TO BE PAID FROM GENERAL REVENUE FUND)

24 (1) Linda Adams-Doheny, Danny L. Boyce,
 25 Ann Boyce, Janey I. Wigal,
 26 and Amy B. Thomas.....\$2,778.48
 27

28 (2) WVARF, Inc.\$76,222.82

29 (d) *Claim against the Department of Health and Human*
 30 *Resources, Office of Environmental Health Services:*

31 (TO BE PAID FROM GENERAL REVENUE FUND)

32 Pitney Bowes, Inc.....\$2,419.92

33 (e) *Claims against the Department of Military Affairs*
 34 *and Public Safety, Division of Corrections and*
 35 *Rehabilitation:*

36 (TO BE PAID FROM GENERAL REVENUE FUND)

37	(1) Yasser Abdelhaq	\$22.28
38	(2) Wendell K. Ash.....	\$11.90
39	(3) Anthony Cartagena	\$18.53
40	(4) Anthony Cartagena	\$18.77
41	(5) Anthony Cartagena	\$1.50
42	(6) Anthony Cartagena	\$9.97
43	(7) Miguel Delgado	\$358.86
44	(8) Miguel Delgado	\$25.44
45	(9) Miguel Delgado	\$403.67
46	(10) Troy Goodman.....	\$38.79
47	(11) Larry Owens.....	\$108.17
48	(12) Charles F. Plymail.....	\$119.80
49	(13) William O. Robinson	\$520.00
50	(14) Wexford Health Sources, Inc.....	\$433,333.00
51	(15) Wexford Health Sources, Inc.....	\$433,334.00
52	(16) Wexford Health Sources, Inc.....	\$433,333.00

53 (f) *Claims against the Department of Military Affairs*
 54 *and Public Safety, Division of Corrections and*
 55 *Rehabilitation, Regional Jail Authority:*

56 (TO BE PAID FROM SPECIAL REVENUE FUND)

57	(1)	Jack Guy.....	\$300.00
58	(2)	David McCarty.....	\$101.00
59	(3)	Julian Richardson.....	\$190.00
60	(4)	Joseph James Salmons.....	\$60.00
61	(5)	Christopher Shy.....	\$269.90
62	<i>(g) Claims against the Department of Military Affairs</i>		
63	<i>and Public Safety, Division of Corrections and</i>		
64	<i>Rehabilitation, Eastern Regional Jail:</i>		
65	(TO BE PAID FROM SPECIAL REVENUE FUND)		
66	(1)	Matthew Barton.....	\$300.00
67	(2)	Samantha D. Boyer.....	\$90.94
68	(3)	Michael R. Hughes.....	\$242.00
69	(4)	Robert Lanham.....	\$350.00
70	<i>(h) Claims against the Department of Military Affairs</i>		
71	<i>and Public Safety, Division of Corrections and</i>		
72	<i>Rehabilitation, South Central Regional Jail:</i>		
73	(TO BE PAID FROM SPECIAL REVENUE FUND)		
74	(1)	Clark F. Cooper.....	\$832.53
75	(2)	Tyrece Phillips.....	\$230.00
76	(3)	ZMM, Inc.	\$3,338.22
77	<i>(i) Claims against the Department of Military Affairs</i>		
78	<i>and Public Safety, West Virginia Adjutant General's Office:</i>		
79	(TO BE PAID FROM FEDERAL FUNDS)		
80		Frontier WV, Inc.	\$65,200.00

81	<i>(j) Claims against Department of Transportation,</i>	
82	<i>Division of Highways:</i>	
83	(TO BE PAID FROM STATE ROAD FUND)	
84	(1) Rommel Abella.....	\$7,332.00
85	(2) Sajith P. Abeyawickrama.....	\$348.98
86	(3) Cindy Ackerman.....	\$138.00
87	(4) David A. Adkins.....	\$280.34
88	(5) Gary C. Adkins.....	\$103.03
89	(6) Jacob Adkins.....	\$202.93
90	(7) Nyoka Adkins.....	\$148.73
91	(8) Richard Adkins.....	\$312.70
92	(9) Spencer Agnew and Danielle Agnew.....	\$319.81
93	(10) Gloria J. Ainsworth.....	\$302.64
94	(11) Gloria Jean Ainsworth.....	\$348.79
95	(12) Neoda Albright and Robert Albright.....	\$604.32
96	(13) William Scott Aley, Arika Foudray	
97	and Kristie Dawn Aley.....	\$107.54
98	(14) Abdullah Allawnha.....	\$358.70
99	(15) Clara Ruth Allen.....	\$1,104.73
100	(16) Christopher Allender.....	\$500.00
101	(17) Tina Marie Alley and Roscoe Hale.....	\$228.38
102	(18) Marcia Allman and Christopher Allman.....	\$185.50
103	(19) Marcia Allman and Christopher Allman.....	\$259.65

104	(20)	Charles T. Alsup, Jr. and Julie K. Jividen....	\$500.00
105	(21)	Todd Alter, Sr. and Susan Julia Alter.....	\$4,978.16
106	(22)	Lynette Anderson	\$100.00
107	(23)	Tiffany Anderson	\$138.02
108	(24)	Wendell L. Archer.....	\$361.55
109	(25)	Benny Arlia.....	\$49.95
110	(26)	Ronald D. Arnett and Donna Arnett	\$250.00
111	(27)	Billy D. Arnolds	\$492.50
112	(28)	Deloris Darlene Ash and Rodney S. Ash....	\$372.36
113	(29)	Sherri A. Ash	\$278.00
114	(30)	Sherrie Ash	\$252.90
115	(31)	Beverly A. Ashley and Richard L. Ashley ..	\$500.00
116	(32)	Michele Atchison	\$349.69
117	(33)	Michael Attfield and Hilary Attfield.....	\$101.75
118	(34)	Alex Michael Austin	\$900.00
119	(35)	Alan Ayala	\$78.50
120	(36)	Eman Ayash and Osama Al-Omar.....	\$257.57
121	(37)	Vincent Azzarello and Kimberly Azzarello ...	\$387.23
122	(38)	Steven A. Baczuk, Jr. and Laura Adams	\$498.96
123	(39)	Jackie Bailes and Amber Bailes	\$125.08
124	(40)	Dennis Bailey.....	\$95.50
125	(41)	Lisa A. Bailey.....	\$208.65

126	(42)	Lisa A. Bailey.....	\$212.60
127	(43)	Sue C. Baker.....	\$125.00
128	(44)	Lisa Baker and Tyler Jarr	\$500.00
129	(45)	Lisa Baker and Tyler Jarr	\$254.24
130	(46)	Jerry Michael Baker, Jr.....	\$242.70
131	(47)	Barry Bales.....	\$1,000.00
132	(48)	Derek E. Ball.....	\$500.00
133	(49)	Jarrett Banks.....	\$110.36
134	(50)	Patty Jo Barlow	\$146.50
135	(51)	Thomas Barlow.....	\$500.00
136	(52)	Chad E. Barnett.....	\$171.30
137	(53)	Johnathan W. Barnett	\$155.15
138	(54)	Richard B. Bartlett	\$500.00
139	(55)	Linda Bartrug and Jack Bartrug.....	\$485.18
140	(56)	Gerald Bastian.....	\$495.22
141	(57)	Cole Riley Bates	\$20,000.00
142	(58)	Judith Bath.....	\$232.10
143	(59)	Virginia Batson	\$500.00
144	(60)	Robert Baylor.....	\$435.15
145	(61)	Beverly J. Beall and Charles D. Beall	\$1,461.85
146	(62)	Maninder Bedi	\$2,500.00
147	(63)	Connie M. Been.....	\$262.36

148	(64)	Sylvia Belcher and Cassius Belcher	\$129.95
149	(65)	David P. Belesky and Veronica L. Belesky....	\$90.10
150	(66)	Donna Belles-Hall	\$25.00
151	(67)	William R. Bennett	\$153.42
152	(68)	David D. Benson and Jamie L. Benson	\$221.41
153	(69)	James Berger	\$500.00
154	(70)	Charles Berry and Deborah Berry	\$149.80
155	(71)	Sharon Best	\$500.00
156	(72)	Jamie L. Betts.....	\$250.00
157	(73)	Bonnie Bevins.....	\$500.00
158	(74)	Stevie Don Biedenbach	\$1,019.24
159	(75)	Mitchell Bievenour	\$147.36
160	(76)	Lisa Bishop.....	\$408.35
161	(77)	Pamela Blair	\$153.63
162	(78)	Curtis A. Blaney, II.....	\$90.10
163	(79)	Mark Blankenship.....	\$407.70
164	(80)	Melissa Blankenship and Jeffrey Blankenship	\$160.00
165	(81)	Rosalie M. Blaul	\$747.50
166	(82)	Brenda K. Bleigh and James A. Bleigh.....	\$229.34
167	(83)	Barbara Boardman.....	\$93.81
168	(84)	Karen Bocsusis.....	\$145.49
169	(85)	Lisa D. Boling.....	\$500.00

498		CLAIMS AGAINST THE STATE	[Ch. 48
170	(86)	Deidra Bolton.....	\$407.14
171	(87)	Shirlene Bolyard and Raymond Bolyard.....	\$353.15
172	(88)	Timothy A. Bolyard.....	\$127.99
173	(89)	Ronald E. Bonecutter, Jr.....	\$528.86
174	(90)	Robin Bonner.....	\$316.24
175	(91)	Brenda G. Booker.....	\$139.43
176	(92)	Kelly Boothe and First Security.....	\$524.47
177	(93)	Ralph T. Bowles.....	\$342.18
178	(94)	Shirley Bowman.....	\$148.00
179	(95)	Grady M. Bowyer and Sharon A. Bowyer.....	\$250.00
180	(96)	Barbara Branard and Roy Branard.....	\$194.94
181	(97)	Leah J. Braner.....	\$517.00
182	(98)	Catherine Brenner, Nicole Brenner and Bob Brenner.....	\$423.95
183			
184	(99)	Scott A. Brodbeck.....	\$194.84
185	(100)	Jeanette A. Brooks.....	\$130.01
186	(101)	Khadajia Brooks and Shonda Brooks.....	\$88.71
187	(102)	Jennette Brown.....	\$465.99
188	(103)	Sarah J. Brown and Wesley Brown.....	\$250.00
189	(104)	Arthetta Browning.....	\$461.35
190	(105)	Quincy O. Bruton and Deborah J. Barker.....	\$526.64
191	(106)	Sandra Taylor Budden and William Budden.....	\$250.00
192	(107)	Floyd O. Bungard and Alice M. Bungard.....	\$356.46

193	(108) Brandi Burgess and Travis Burgess	\$174.41
194	(109) Mark S. Burnette and Deborah S. Burnette	\$500.00
195	(110) James L. Burrows, Jr. and Patricia Burrows...	\$309.85
196	(111) Jennifer Busey.....	\$248.44
197	(112) Jan Bussey and Henry Bussey	\$203.80
198	(113) Karen Butler and Ocie Burgess	\$250.00
199	(114) Ashley Byrd	\$208.61
200	(115) Laura Cain.....	\$171.72
201	(116) Laura Cain.....	\$177.55
202	(117) Amanda Caja and Madison Caja.....	\$212.30
203	(118) Arlie Campbell and Tammy Campbell.....	\$398.56
204	(119) Donald Lou Canterbury.....	\$2,000.00
205	(120) Jeff D. Carpenter.....	\$209.14
206	(121) Marilyn Carpenter.....	\$268.50
207	(122) Shelli Carpenter.....	\$500.00
208	(123) Robin Carper.....	\$282.07
209	(124) Walter Carroll.....	\$500.00
210	(125) Craig Carter	\$500.00
211	(126) Michelle L. Carter.....	\$113.95
212	(127) Jonathan Carter and Tiffany Carter	\$500.00
213	(128) Rex Alan Caruthers	\$500.00
214	(129) Larry A. Casdorff.....	\$120.00

500	CLAIMS AGAINST THE STATE	[Ch. 48
215	(130) Aaron Caserta.....	\$500.00
216	(131) Amanda Cash.....	\$500.00
217	(132) Damon Casseday	\$500.00
218	(133) David Castanon.....	\$414.09
219	(134) Sue A. Castin.....	\$518.89
220	(135) Kimberly Caudill and Ralph Caudill.....	\$290.94
221	(136) Kyle Cedar	\$60.40
222	(137) Lauren Cencula	\$163.66
223	(138) Butch Chaney and Morgan Chaney	\$500.00
224	(139) Lisa Marie Chaplin	\$456.61
225	(140) Richard A. Chaty and Leigh Chaty	\$308.16
226	(141) Sydney Cheesebraugh	\$221.00
227	(142) Bonnie Cheeseman and James Cheeseman....	\$250.00
228	(143) Bonnie Cheeseman and James Cheeseman....	\$215.00
229	(144) Rob L. Chisler, Jr.	\$6,200.02
230	(145) Joseph Cicchirillo.....	\$250.00
231	(146) William M. Clapham.....	\$214.01
232	(147) Chris Claqq.....	\$152.03
233	(148) Trina D. Clark	\$250.00
234	(149) David Classing	\$332.73
235	(150) Jeffrey Clemons	\$12,950.00
236	(151) Deborah C. Clever and Richard A. Clever	\$281.43

237	(152) John S. Clonch	\$500.00
238	(153) Amy Cochran.....	\$500.00
239	(154) Terry A. Coffman and Diana Coffman.....	\$508.27
240	(155) Anthony C. Cogar.....	\$120.84
241	(156) Jeremiah H. Cogar and Wendy D. Cogar	\$1,110.95
242	(157) William G. Cole.....	\$250.43
243	(158) Tabatha Collins	\$500.00
244	(159) Jesse Colon.....	\$500.00
245	(160) Danielle Linn Conaway.....	\$170.81
246	(161) Wayne E. Conaway	\$84.90
247	(162) Denise Conley.....	\$118.05
248	(163) Zachary A. Cook and Elisabeth Cook.....	\$263.89
249	(164) Susan D. Cooper	\$891.45
250	(165) Charles R. Copeland, Sr.	
251	and Penny Copeland.....	\$250.00
252	(166) Sandra K. Corbett	\$250.16
253	(167) Guy Cordonier	\$500.00
254	(168) Clayton D. Corwin.....	\$100.00
255	(169) Nancy C. Cox.....	\$154.08
256	(170) James Tim Coyne and Mary N. Coyne.....	\$476.95
257	(171) Gary D. Cremeans, Sr. and	
258	Kathleen Cremeans.....	\$500.00
259	(172) Gary D. Cremeans, Angela Cremeans Moore,	
260	Brady M. Moore and Ryan Williams.....	\$68.25

261	(173) John M. Criado.....	\$250.00
262	(174) Brenda Crisp.....	\$164.30
263	(175) Sandra Cronin and Wayne Cronin	\$100.00
264	(176) Hannah Crookshanks and Lisa Crookshanks ..	\$250.00
265	(177) Jeanine M. Cruvey and William T. Cruvey, Jr. ..	\$500.00
266	(178) Terry Cullen	\$582.48
267	(179) Sherry Cumberledge.....	\$128.34
268	(180) Stephanie K. Cummings and	
269	Keenan C. Cummings	\$204.55
270	(181) Lori B. Cunningham-Hutson and	
271	Darren Hutson.....	\$263.34
272	(182) Brenda S. Curry and Keith Curry	\$152.71
273	(183) George Dalecke.....	\$399.99
274	(184) Drake Dalton and Donald Dalton.....	\$447.53
275	(185) Eric Dalton and Jodi Dalton.....	\$294.47
276	(186) James S. Dalton.....	\$880.70
277	(187) Leslie Daniel and Gregory Daniel	\$165.28
278	(188) Alberta Daniels	\$79.50
279	(189) Alberta Daniels	\$53.00
280	(190) Hannah Daniels and Stephen Daniels	\$110.00
281	(191) Larry V. Dankmer.....	\$81.09
282	(192) Larry V. Dankmer.....	\$87.45
283	(193) Justin Robert Darby	\$500.00

284	(194) John David	\$365.70
285	(195) Brian M. Davis.....	\$250.00
286	(196) Chelsea Davis and Harley Davis	\$315.16
287	(197) Christa Davis and Allen Davis.....	\$144.45
288	(198) Earl D. Davis.....	\$396.31
289	(199) Jennifer Davis and Randy Davis.....	\$151.39
290	(200) Julie Davis	\$315.97
291	(201) Julie L. Davis.....	\$239.95
292	(202) Karen L. Davis	\$500.00
293	(203) Paul E. Davis and Nesta M. Davis.....	\$500.00
294	(204) Randy E. Davis	\$1,161.53
295	(205) Robert E. Davis and Malene J. Davis.....	\$500.00
296	(206) Susan Davis and Larry Davis.....	\$148.40
297	(207) Dwight Davisson and Jacqueline Davisson....	\$437.20
298	(208) Wesley Deadrick.....	\$69.17
299	(209) Arthur Dean, Carolyn Dean and Kinslee Dean..	\$209.51
300	(210) James Dean and Vickie Dean	\$181.90
301	(211) Deron L. Deem and Melissa A. Deem.....	\$243.80
302	(212) Mary Ann DeGarmo	\$100.00
303	(213) Rodney C. Demott and Lora Lamarre-Demott..	\$457.86
304	(214) Rossana Denicola.....	\$500.00
305	(215) Christle Dennison	\$2,000.00

306	(216) Jenny Destefano.....	\$1,000.00
307	(217) Lan Deyerle and David Deyerle.....	\$65.16
308	(218) James R. Dice and Haley A. Dice.....	\$145.00
309	(219) Timothy D. Dillon and Amy D. Dillon.....	\$485.32
310	(220) Todd G. Dillon.....	\$464.56
311	(221) Jason Dingeldein.....	\$250.00
312	(222) Chelsey Dixon.....	\$96.00
313	(223) Logan Dobrovich.....	\$127.98
314	(224) Doddridge County Humane Society, Inc.....	\$423.97
315	(225) Gabe D’ortenzio.....	\$203.80
316	(226) Rita J. Douglas.....	\$500.00
317	(227) David A. Dove.....	\$265.00
318	(228) Donna Drown.....	\$97.37
319	(229) Donna Drown.....	\$69.55
320	(230) Donna Drown.....	\$105.93
321	(231) Charles W. Dudley and Roberta Dudley.....	\$500.00
322	(232) Dales S. Dues.....	\$500.00
323	(233) John Duffy and Linda Duffy.....	\$100.00
324	(234) James W. Duke and Melanie A. Duke.....	\$87.97
325	(235) Jeffery L. Dulaney.....	\$537.46
326	(236) Pamela Dumire.....	\$167.05
327	(237) Linda L. Duncan.....	\$250.00

328	(238) Linda L. Duncan	\$217.73
329	(239) Jeffrey N. Durst.....	\$106.75
330	(240) Rachel Eades-Gill	\$1,000.00
331	(241) Michael Eakin.....	\$474.86
332	(242) Kathy E. Eddy.....	\$646.00
333	(243) Garnet D. Edwards	\$200.00
334	(244) John M. Efav	\$368.05
335	(245) James Ellenbecker	\$529.62
336	(246) Julie Ellenwood and James Wojcik.....	\$395.68
337	(247) Nancy Eller and Randy Eller	\$704.56
338	(248) Karissa Ellis.....	\$395.13
339	(249) Lila C. Elms.....	\$121.64
340	(250) Sondra Elson and Jeremy Elson	\$463.49
341	(251) Albina M. Engler	\$77.38
342	(252) Jared Enoch	\$231.76
343	(253) Ken Enoch.....	\$656.17
344	(254) Molly S. Erlandson.....	\$500.00
345	(255) Phillip Eshenaur and Amber Eshenaur	\$840.23
346	(256) Scott D. Ethridge.....	\$211.85
347	(257) Richard A. Evans.....	\$260.00
348	(258) Miranda Ezzi and Matthew Ezzi	\$259.00
349	(259) Richard A. Facemire.....	\$250.00

350	(260) Philip J. Faini.....	\$274.54
351	(261) Alyssa Fairbanks and Eric Fairbanks	\$162.44
352	(262) Nick Fantasia.....	\$827.00
353	(263) Jennifer Farley.....	\$500.00
354	(264) Ruby Farley	\$283.32
355	(265) Douglas Ray Farley and Dawn Renee Farley....	\$500.00
356	(266) Leslie Farley and Thomas Farley	\$793.62
357	(267) Andrea Farnham and Jeremy Farnham.....	\$448.97
358	(268) Lillian Faulkner.....	\$477.03
359	(269) Amy J. Ferguson.....	\$500.00
360	(270) Betty Ferrell.....	\$2,099.84
361	(271) Carla Ferrell.....	\$400.00
362	(272) Joshua Fields	\$486.33
363	(273) Angie D. Fink.....	\$141.19
364	(274) Randa Finley and Tiffany Finley.....	\$500.00
365	(275) Ashley Fisher and Benjamin Fisher	\$284.08
366	(276) Jeffery S. Fisher and Brooke J. Fisher.....	\$250.00
367	(277) Jennifer R. Fisher	\$286.58
368	(278) Ryan Fitzwater and Ivy Fitzwater.....	\$1,000.00
369	(279) Eric L. Flevaris.....	\$1,000.00
370	(280) E. Jane Flohr.....	\$96.26
371	(281) June Y. Flohr.....	\$90.95

372	(282)	Ashley D. Ford.....	\$500.00
373	(283)	Karen B. Ford.....	\$321.00
374	(284)	Dennis F. Foreman	\$1,142.65
375	(285)	Kathie R. Forman.....	\$500.00
376	(286)	James A. Fortner and Judy K. Fortner.....	\$336.02
377	(287)	John Gaylord Forzetting, II and	
378		Paula Kay Forzetting	\$407.23
379	(288)	Jacob Lee Foster	\$148.73
380	(289)	Darlene Fowler and Ewings Fowler.....	\$500.00
381	(290)	Stacey L. Fox	\$281.69
382	(291)	Trina J. Fox.....	\$500.00
383	(292)	James F. Fraley and Tennis S. Fraley.....	\$140.00
384	(293)	Tiffany Franco and Jody Franco.....	\$456.84
385	(294)	Cathy Lynn Franks	\$500.00
386	(295)	Michael Frazier	\$430.31
387	(296)	William L. Freed.....	\$100.70
388	(297)	James Freeman and Susan Freeman.....	\$500.00
389	(298)	Michael A. Fridley.....	\$296.50
390	(299)	Angela L. Fuhr	\$195.02
391	(300)	Charlotte Furphy and George Furphy	\$5,673.75
392	(301)	G. M. McCrossin, Inc.	\$41,000.00
393	(302)	Melissa J. Gaines	\$164.54
394	(303)	Vincent A. Gala, Jr.	\$181.85

395	(304) Cynthia A. Gamblin.....	\$779.95
396	(305) Joshua Gant and Autumn Gant.....	\$203.52
397	(306) Jason R. Garnes.....	\$250.00
398	(307) Kelsey Garritano and Antonio Garritano	\$132.10
399	(308) Samuel W. Garvin	\$500.00
400	(309) Dana Gates	\$500.00
401	(310) James D. Gellner.....	\$2,241.05
402	(311) Brian Gillispie	\$559.68
403	(312) Patricia Giompalo	\$500.00
404	(313) Gino Gismondi and Amy Gismondi	\$608.02
405	(314) Gino Gismondi and Amy Gismondi	\$581.80
406	(315) Gino Gismondi and Amy Gismondi.....	\$661.87
407	(316) Todd Gookin.....	\$140.17
408	(317) Carlos Goss	\$912.43
409	(318) Roy Grass.....	\$500.00
410	(319) Larry D. Gray.....	\$812.87
411	(320) Roseanne Gray and James M. Gray	\$377.95
412	(321) Brandon Green.....	\$370.90
413	(322) Diana M. Green.....	\$332.45
414	(323) Dana Greenwood.....	\$154.06
415	(324) Lucas Greza and Anne Greza	\$500.00
416	(325) Debbi Griffith.....	\$250.00

417	(326) Heather Grimes and Philip Grimes.....	\$198.02
418	(327) Michael J. Groom	\$318.00
419	(328) Trevor Gum and Amanda Gum	\$250.00
420	(329) Claudia Gunnoe and Bonnie Bennett.....	\$500.00
421	(330) Shashi B. Gupta and Sukhdev Gupta	\$355.96
422	(331) David C. Gwinn	\$386.24
423	(332) Heather Haddon	\$500.00
424	(333) Riley Hager	\$500.00
425	(334) Samuel Hagley	\$361.87
426	(335) Whitney A. Hajdukovich	\$250.00
427	(336) Cassandra L. Hall.....	\$134.29
428	(337) Gary L. Hall and Chelsea M. Hall	\$500.00
429	(338) Jesse T. Hall	\$404.48
430	(339) William Hall and Betty Hall	\$500.00
431	(340) Jennifer M. Hall-Massey	\$220.42
432	(341) Linwood F. Hamilton	\$651.96
433	(342) Bonnie S. Hamm	\$649.94
434	(343) Kyle Hammond and Rachel Hammond.....	\$279.55
435	(344) Kyle Hammond and Rachel Hammond.....	\$500.00
436	(345) Leonard H. Hancock, Jr.....	\$107.00
437	(346) Theresa Haney	\$239.80
438	(347) Leigh Ann Hannas.....	\$500.00

510	CLAIMS AGAINST THE STATE	[Ch. 48
439	(348) Shannon P. Hapuarachy	\$593.60
440	(349) Kim Harbour and Kris Hall.....	\$241.70
441	(350) Billie Harding and Gatens-Harding	
442	Funeral Home	\$500.00
443	(351) John C. Harless, Jr.	\$664.24
444	(352) Allen Harmon	\$404.82
445	(353) Anthony Harmon.....	\$765.00
446	(354) Eva Harmon	\$267.79
447	(355) Benny Harper and Patricia Harper.....	\$500.00
448	(356) Patricia Harris.....	\$285.68
449	(357) Robert Harris.....	\$437.56
450	(358) Stephon C. Harris.....	\$100.00
451	(359) Laura B. Harshbarger	\$360.00
452	(360) Barbara E. Hart	\$500.00
453	(361) Candace L. Hart	\$250.43
454	(362) Jack L. Hart, Sr.....	\$100.00
455	(363) Mark Hartling and Belinda Hartling.....	\$322.23
456	(364) Kristie N. Hartsell and Allen Hartsell.....	\$283.04
457	(365) Joanne Hartzell.....	\$163.45
458	(366) Sean R. Hatcher	\$148.73
459	(367) Joseph Haun	\$500.00
460	(368) Melissa Hawkins.....	\$99.49
461	(369) Tanya Headley	\$173.84

462	(370) Rick Heasley and Valerie Heasley	\$254.40
463	(371) Dixie M. Heavener	\$129.38
464	(372) Kassidi Heavner and Paula Miley	\$261.00
465	(373) Gary Hebden	\$245.52
466	(374) Cindy Heilman.....	\$250.00
467	(375) Gregory A. Heiskell.....	\$198.72
468	(376) Belinda Henderson and Nick Henderson.....	\$500.00
469	(377) Mary Rose Hendricks.....	\$291.70
470	(378) Katie Hensel and Eli Hensel	\$203.36
471	(379) Robert Hepher.....	\$250.00
472	(380) Zachary Hercules.....	\$249.54
473	(381) Thaddeus Herman.....	\$311.12
474	(382) Wesley Herrick and Kathy Herrick.....	\$500.00
475	(383) Kyle Hess	\$121.85
476	(384) Cheryl M. Hicks.....	\$130.38
477	(385) James Hicks and Marva Hicks.....	\$245.00
478	(386) Bettie J. Hilbert	\$727.02
479	(387) William Scott Hill and Kathy Hill.....	\$929.42
480	(388) Carole L. Hinton	\$303.90
481	(389) Beth Hixenbaugh and Allen Hixenbaugh.....	\$113.21
482	(390) Deborah Hockensmith.....	\$250.00
483	(391) Melanie J. Hodges and John P. Hodges.....	\$130.12

484	(392) Adrian L. Hoffman	\$250.00
485	(393) Anita Hoffman	\$601.00
486	(394) Hazel Carolene Hoffman	\$139.09
487	(395) Kathleen Holden and Calvin Holden	\$154.08
488	(396) Carletta Hollandsworth.....	\$500.00
489	(397) James E. Holley and Jean A. Holley	\$500.00
490	(398) Karen L. Hollinger.....	\$175.00
491	(399) Wesley A. Holstein.....	\$500.00
492	(400) Margaret Holt and Tara L. Self.....	\$62.54
493	(401) Pamela Honaker and Stephen Honaker	\$250.00
494	(402) John Honhart.....	\$175.68
495	(403) Kendra Hoover and Charles Hoover	\$231.08
496	(404) Peter Joshua Hopkins	\$267.60
497	(405) Merrel Hopper.....	\$500.00
498	(406) Brittany Hornbeck	\$250.00
499	(407) Michal A. Hornyak and Karen Hornyak.....	\$250.00
500	(408) Charles Hoskins	\$500.00
501	(409) Bill House.....	\$250.00
502	(410) Lynn Housner	\$500.00
503	(411) Kenneth L. Howard	\$318.00
504	(412) Vernon G. Hudnall	\$277.85
505	(413) Tamy L. Huffman and Donald G. Huffman...	\$500.00

506	(414) Linda Huffman and Robert Goodman	\$201.35
507	(415) Charles Hulett and Jennifer Hulett.....	\$185.52
508	(416) Beverly Hunter.....	\$4,331.00
509	(417) Richard Hurley.....	\$87.93
510	(418) Scott Hurley.....	\$751.70
511	(419) Tracee Husted	\$500.00
512	(420) Lonnie Daniel Izdepski and	
513	Melanie B. Izdepski.....	\$536.92
514	(421) Mistie Jackson and Mike Jackson	\$508.63
515	(422) William S. Jackson	\$500.00
516	(423) Kathleen Jarrell and Timothy Pridemore	\$157.94
517	(424) Noah Jarvis.....	\$249.14
518	(425) Jasper Engines and Transmissions, Inc.	\$890.24
519	(426) Dorris Jeffers and Charles Jeffers	\$565.59
520	(427) Joshua D. Jividen	\$1,000.00
521	(428) Sue Jividen	\$327.40
522	(429) Brandon Carter Johnson.....	\$478.54
523	(430) Garrett Isom Johnson.....	\$82.34
524	(431) James E. Johnson and Ethel R. Johnson	\$500.00
525	(432) Kaleena Johnson and Vernon Johnson	\$1,000.00
526	(433) Kathy J. Johnson.....	\$182.09
527	(434) Matthew H. Johnson and Denice G. Johnson....	\$483.90

514		CLAIMS AGAINST THE STATE	[Ch. 48
528	(435)	Ross E. Johnson and Mountain State	
529		Insurance Agency	\$500.00
530	(436)	Stuart Johnson and Virginia Moles	\$250.00
531	(437)	Robert Johnson, The Sygma Network, Inc.	
532		and Sysco Corporation	\$10,589.61
533	(438)	Scot B. Jonas and Jessica R. Proctor	\$500.00
534	(439)	Rebecca R. Jones	\$956.14
535	(440)	Shelly Jones.....	\$210.21
536	(441)	Tammy L. Jones	\$500.00
537	(442)	Ashley Surprise Jones and Aaron Surprise.....	\$231.71
538	(443)	Gerald Jones and Katherine Jones.....	\$14,000.00
539	(444)	Amy Jones and Ricky Jones	\$500.00
540	(445)	Edgell James Jones, Jr.	\$239.98
541	(446)	Hunter Joyce and Toby Joyce.....	\$242.49
542	(447)	Mark Justice and Angela Justice.....	\$500.00
543	(448)	Esmeralda M. Kaestner	\$500.00
544	(449)	Mary H. Kahle	\$272.85
545	(450)	John Karolcik	\$143.63
546	(451)	Donald R. Keeney.....	\$148.73
547	(452)	Regina Kelbaugh, Jeffrey Kelbaugh	
548		and Kaitlyn N. Kelbaugh.....	\$212.00
549	(453)	Melvin R. Kerr, Sr. and Mary R. Kerr	\$6,000.00
550	(454)	Tara Kester	\$248.19
551	(455)	Tammy Ketchem and Henry Ketchem.....	\$487.53

552	(456) Delson Kiedaisch.....	\$145.76
553	(457) Marcus E. Kilburn	\$221.95
554	(458) Gabriel D. King.....	\$273.48
555	(459) Randy C. Kisner.....	\$500.00
556	(460) Britt Klandorf and Hillar Klandorf.....	\$463.40
557	(461) Charles H. Kline.....	\$800.55
558	(462) Dennis Klingensmith.....	\$352.93
559	(463) Susan Knauss	\$286.31
560	(464) Susan Knauss	\$289.65
561	(465) Joyce Knecht.....	\$74.15
562	(466) Angela M. Knotts and Kevin M. Knotts.....	\$309.41
563	(467) Kerrie L. Knotts	\$172.78
564	(468) Shelli Kobasko.....	\$500.00
565	(469) Jason A. Kociban.....	\$181.00
566	(470) Cynthia Koslik and Joseph R. Koslik.....	\$274.45
567	(471) Michael Kovach.....	\$207.49
568	(472) Chanin Krivonyak.....	\$500.00
569	(473) Lisa Krueger.....	\$193.20
570	(474) George Kurcaba.....	\$74.15
571	(475) William E. Kurczak.....	\$354.58
572	(476) John D. Kyle.....	\$500.00
573	(477) Frank Lambert.....	\$229.18

516	CLAIMS AGAINST THE STATE	[Ch. 48
574	(478) Jerry Lambert and Cheryl Lambert	\$707.04
575	(479) Terry Lamm and State Equipment, Inc.	\$890.68
576	(480) Valerie Lamp	\$104.86
577	(481) Huey M. Land.....	\$209.07
578	(482) Jonathan Lane	\$226.10
579	(483) Michael Lane and Kathy Lane.....	\$500.00
580	(484) Keya Langmyer	\$894.41
581	(485) Tami L. Lanham	\$158.36
582	(486) Pamela Lavender	\$268.01
583	(487) Charlotte Lawler	\$195.76
584	(488) Tuanya Layton, Danielle B. Layton	
585	and Terry Layton	\$189.96
586	(489) Paul Lee and Linda Lee.....	\$478.06
587	(490) Tim Lefevre and Amy Lefevre.....	\$158.40
588	(491) Jessica P. Lemon and Christopher A. Lemon....	\$187.17
589	(492) Bonny Lenz.....	\$199.00
590	(493) Jared Lepic	\$500.00
591	(494) Rachel Lester.....	\$282.54
592	(495) Hollie Lewis.....	\$254.78
593	(496) Matthew Lilly and Robin Lilly	\$500.00
594	(497) Ryan Lindy.....	\$105.35
595	(498) Christopher Lee Linger and	
596	Shawn Nicole Linger.....	\$500.00

597	(499)	Rosanna M. Linton and William J. Hyman....	\$379.24
598	(500)	Jerry Linville and Gloria A. Linville	\$706.32
599	(501)	Aaron H. Litman.....	\$117.21
600	(502)	Clifford H. Lively, Jr. and Susan J. Lively.....	\$500.00
601	(503)	Stephanie Loew.....	\$500.00
602	(504)	James H. Long	\$500.00
603	(505)	Robby Long and Amber Long.....	\$313.21
604	(506)	Paul E. Long and Shirley A. Long.....	\$3,217.35
605	(507)	Nick Lopetrone and Debra Lopetrone	\$250.00
606	(508)	Carol Losh.....	\$490.99
607	(509)	Brian K. Lough and Debra D. Lough.....	\$377.44
608	(510)	Darrell Lovejoy.....	\$500.00
609	(511)	Shasta M. Lowe	\$135.68
610	(512)	Ashley Lucey and Clint Lucey	\$477.00
611	(513)	Holli Ludtman and Jason Ludtman	\$203.30
612	(514)	Janessa Lusk.....	\$500.00
613	(515)	Jacob Eric Lyall	\$1,000.00
614	(516)	David MacDonald	\$290.30
615	(517)	John A. Macleod.....	\$500.00
616	(518)	Justin Joseph Maggard	\$235.02
617	(519)	Rodney S. Maher.....	\$250.00
618	(520)	Catherine A. Maidens.....	\$462.10

619	(521) Richard C. Maier.....	\$750.00
620	(522) John Jay Malatinsky	\$218.36
621	(523) Dolores Malson.....	\$391.63
622	(524) Chris Manack-Stover.....	\$91.95
623	(525) Deborah Marcum and Noah Marcum.....	\$95.40
624	(526) Christopher Marcum and Stephanie Marcum ...	\$886.62
625	(527) Ronald L. Mares	\$84.15
626	(528) Richelle A. Marini	\$399.64
627	(529) Claude Marra and Sherry Marra.....	\$500.00
628	(530) Lillian Diane Martin	\$500.00
629	(531) Jeffrey Paul Massey.....	\$249.58
630	(532) Chris Mattox	\$260.81
631	(533) Karrie M. Mattox.....	\$1,000.00
632	(534) Ron May.....	\$176.29
633	(535) Ronald J. May and Debra May.....	\$142.17
634	(536) Theodore T. Mayberry	\$624.63
635	(537) Symia Mayfield and Joseph Moore.....	\$500.00
636	(538) Mynx Mayhew.....	\$99.49
637	(539) Billy J. Mays	\$250.00
638	(540) Charles Howard McCagg, Jr. and	
639	Connie Jackson McCagg.....	\$173.46
640	(541) Joetta McCallister	\$105.00
641	(542) Linda McCarthy.....	\$500.00

642	(543) Debra L. McClary and Lenny McClary.....	\$265.29
643	(544) Elsie McCloud	\$97.78
644	(545) Edwin K. McClure and Julie Ann McClure ...	\$500.00
645	(546) Lynette J. McCollum and Daniel McCollum ...	\$94.20
646	(547) Joseph C. McComas, II	\$500.00
647	(548) David McCormick.....	\$337.07
648	(549) Kerri Ann McCormick.....	\$381.55
649	(550) Steven R. McCoy and Dawn R. McCoy.....	\$2,900.00
650	(551) Stephen R. McDiffit and HP&E Corp.	\$500.00
651	(552) Michael O. McDonald.....	\$399.23
652	(553) Michael C. McGee	\$152.10
653	(554) Troy D. McGreevy and Denise R. McGreevy ..	\$272.66
654	(555) Timothy L. McHenry	\$265.00
655	(556) Samuel B. McKenney, Steven H. McKenney,	
656	and Margaret A. McKenney	\$1,000.00
657	(557) Kenneth McMillion, Sherry McMillion	
658	and Anthony Shrewsberry.....	\$1,000.00
659	(558) Andrea McNeil	\$303.98
660	(559) Daniel McQuade.....	\$446.85
661	(560) Victor G. McQuiston.....	\$736.81
662	(561) Jane E. Meadows	\$243.67
663	(562) Roger S. Meadows, Roger Meadows	
664	and Karen Meadows.....	\$500.00
665	(563) Timothy D. Meadows	\$432.30

666	(564) Nyoka N. Merilic	\$616.34
667	(565) Deborah Micker	\$361.20
668	(566) Paul M. Mihelic	\$2,308.00
669	(567) Maleea Miker and Joseph Miker, III	\$130.70
670	(568) Kelly J. Miles and Tara J. Miles	\$99.47
671	(569) Rebecca A. Miles and Mark V. Miles	\$193.25
672	(570) Sarah Danielle Milgrim	\$173.31
673	(571) Fred Milhorn	\$293.59
674	(572) Amy Miller	\$244.27
675	(573) Derik J. Miller	\$167.17
676	(574) Martin L. Miller and Teresa Miller	\$250.00
677	(575) Sonya J. Miller and Shane A. Miller	\$1,106.06
678	(576) Tina M. Miller	\$250.00
679	(577) Travis J. Miller and Sherry L. Miller	\$105.47
680	(578) Travis John Miller and Sherry L. Miller	\$103.14
681	(579) Waylon Keith Miller	\$189.42
682	(580) Willie Miller	\$252.00
683	(581) Willie Miller	\$85.55
684	(582) Dana A. Miller and Lisa Miller	\$250.00
685	(583) Connie Minnix and Daniel Minnix	\$250.00
686	(584) Brandon Minor and Leah A. Minor	\$55.56
687	(585) David K. Minturn and Sandra L. Minturn	\$266.50

688	(586) David K. Minturn and Sandra L. Minturn	\$219.67
689	(587) Preston Miske.....	\$79.50
690	(588) William F. Mitchell	\$176.18
691	(589) Tony R. Moles, Jr.	\$609.50
692	(590) Richard A. Monahan	\$250.00
693	(591) Charlene Moody	\$178.93
694	(592) Melissa J. Moody and Prentiss Moody	\$357.90
695	(593) Arun Kuma Moolchandani	\$342.00
696	(594) Erin Mooney	\$171.18
697	(595) Antoinette J. Moore	\$500.00
698	(596) Dale C. Moore and Lisa S. Moore.....	\$503.39
699	(597) Lisa M. Moore and Norman Moore.....	\$500.00
700	(598) Michele Moore and Jarrodd Moore.....	\$500.00
701	(599) Pamela Mae Moore	\$151.50
702	(600) Tyler Moore	\$210.84
703	(601) Zachary A. Moore.....	\$818.82
704	(602) Ronald A. Moore, Jr.	\$1,000.00
705	(603) Amy B. Morehead and	
706	Christopher E. Morehead	\$297.46
707	(604) Wayne K. Moreland.....	\$250.00
708	(605) Wanda K. Moren	\$500.00
709	(606) Elijah C. Moreno.....	\$264.93
710	(607) Aubrey A. Morgan and Jennifer L. Morgan...	\$215.14

711	(608) Mark A. Morgan, Jr.	\$2,000.00
712	(609) Connie Morris	\$53.00
713	(610) Connie Morris	\$142.05
714	(611) Rita F. Morris	\$1,730.34
715	(612) Mahalia D. Morris and Donna J. Oliver.....	\$148.40
716	(613) David Moser and Mary Jane Moser.....	\$143.59
717	(614) William J. Moser.....	\$232.08
718	(615) Steven A. Mossor.....	\$250.00
719	(616) William R. Mott.....	\$859.08
720	(617) Matthew Mousadis and Ashley Mousadis.....	\$309.41
721	(618) Karen Mudry and Ryan Mudry	\$255.60
722	(619) Brandon Mullins	\$136.74
723	(620) Neatta Mullins.....	\$132.44
724	(621) Connie L. Murray and James P. Murray.....	\$100.00
725	(622) James Murray.....	\$500.00
726	(623) Jason Murray.....	\$270.28
727	(624) Anna M. Music	\$250.00
728	(625) Michael A. Muto.....	\$323.92
729	(626) Nathan Myers.....	\$227.91
730	(627) Grethe A. Myles and Tom Witt.....	\$177.54
731	(628) Patrick A. Naples	\$500.00
732	(629) Jeff Nass	\$217.98

733	(630) Steven Neff.....	\$207.34
734	(631) Lloyd L. Neilson.....	\$250.00
735	(632) Eric Nelson.....	\$500.00
736	(633) Sheryl Nelson and Daniel Mahaney.....	\$522.85
737	(634) Howard E. Nelson, Sr.....	\$254.66
738	(635) Eric T. Newell and Martha Newell.....	\$250.00
739	(636) John Newell.....	\$350.00
740	(637) Michael C. Newhouse	\$157.50
741	(638) Pamela G. Newlon.....	\$250.00
742	(639) Alan Newman.....	\$451.23
743	(640) Kent E. Newman	\$176.11
744	(641) Valori Newman and Leroy Newman.....	\$266.25
745	(642) Michelle Nichols and Roger Nichols	\$229.60
746	(643) Dustin Nicholson	\$71.02
747	(644) Renee K. Nicholson and Matthew K. Bauman ..	\$310.58
748	(645) Ray Paul Nicolaoan.....	\$500.00
749	(646) Robert E. Nolan, Jr.	\$190.80
750	(647) Dakota Norris.....	\$575.23
751	(648) Larry F. Nutter and Trena M. Nutter.....	\$595.51
752	(649) Barbara S. Oakes.....	\$500.00
753	(650) Jason Oates.....	\$500.00
754	(651) Nina O'Connor and Steven O'Connor.....	\$100.00

755	(652) John W. O'Dell.....	\$250.00
756	(653) Russell J. Offutt and Glafre L. Offutt.....	\$500.00
757	(654) Robert B. Opperman and Carol J. Opperman....	\$500.00
758	(655) Jennifer Orlofske and Sean A. Orlofske.....	\$500.00
759	(656) James D. Orr, Richard J. Orr and	
760	Sara A. Orr	\$85.07
761	(657) Shirley Osborne	\$444.70
762	(658) Jim Ostrander and Shelly Ostrander.....	\$44.99
763	(659) William Park and Bryanna Park	\$200.00
764	(660) Austin Parker and Tasha Parker.....	\$277.68
765	(661) Mitchell P. Parlett	\$115.50
766	(662) Nancy O. Parsons.....	\$85.48
767	(663) Clarence D. Patton.....	\$248.64
768	(664) David Pauley	\$500.00
769	(665) Randy Pavalok and Tracy Pavalok.....	\$250.00
770	(666) Ellen Payne and James R. Payne.....	\$402.76
771	(667) Jackie R. Payne	\$135.00
772	(668) Carol Ann Peacock.....	\$1,000.00
773	(669) Lauren Peddicord and Jason Peddicord	\$500.00
774	(670) Shawn R. Pennybacker.....	\$250.00
775	(671) Misty Perkins and Brittany Perkins	\$504.00
776	(672) Carmen Melissa Perry and Aubrey S. Perry ...	\$233.44
777	(673) Dolphus J. Perry.....	\$83.74

778	(674) Herbert Perry.....	\$39.22
779	(675) Sherry L. Perry and Donald H. Perry	\$288.86
780	(676) Maureen M. Persons.....	\$133.69
781	(677) Anna Petitto and Karen Petitto.....	\$83.54
782	(678) Allison Petonic.....	\$250.00
783	(679) Jeremy Pevahouse.....	\$300.00
784	(680) Donald B. Phillips and Beverly A. Phillips.....	\$263.88
785	(681) Timmy Phonesavanh.....	\$500.00
786	(682) Ernest J. Pierce.....	\$341.00
787	(683) Lora Pierce	\$89.16
788	(684) Alan E. Piercy	\$500.00
789	(685) Cynthia Pinson and Matt Pinson	
790	and Pinson Mobile Medicine	\$573.15
791	(686) Kent Pirlo.....	\$217.55
792	(687) Michael J. Pitek, III.....	\$471.49
793	(688) Yuenan S. Pitrolo and Joe E. Pitrolo	\$393.96
794	(689) Jon Pittman and Darla Pittman	\$338.34
795	(690) Jeanne M. Pizatella	\$103.78
796	(691) Christopher A. Pletcher	\$1,000.00
797	(692) Benjamin Plunkert	\$1,000.00
798	(693) Roger Plymale.....	\$85,000.00
799	(694) William Ponceroff	\$927.79
800	(695) Shawn Poore	\$3,000.00

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801	(696) Michael Porter and Arlie Dalton.....	\$500.00
802	(697) Mark S. Posten.....	\$500.00
803	(698) Kathryn Powell and Jarod Hooten.....	\$498.20
804	(699) Janet C. Power.....	\$376.35
805	(700) Wayne H. Powers and Brenda Powers	\$232.54
806	(701) April M. Pratt	\$162.99
807	(702) Premier Bank, Inc. and Michael L. Allen	\$203.01
808	(703) Darlene Presley	\$250.00
809	(704) Brien C. Price	\$779.50
810	(705) Jeffrey Ivan Price	\$1,000.00
811	(706) John Prusa	\$943.63
812	(707) Lisa D. Raber and Bryan L. Raber	\$127.20
813	(708) Jeffery T. Racer and Joann Racer	\$500.00
814	(709) Johnny L. Radcliff.....	\$500.00
815	(710) Dale Richard Radcliffe.....	\$1,000.00
816	(711) Timothy Raines and	
817	April Manypenny-Raines.....	\$500.00
818	(712) John C. Ramirez, Jr.	
819	and Elizabeth A. Jones Ramirez	\$229.89
820	(713) Randall C. Rapp and Shelly Rapp Davis	\$250.00
821	(714) Jeanette Ratcliffe.....	\$210.94
822	(715) Randy Ratcliffe and Paul Ratcliffe	\$406.07
823	(716) Christina Raynes and Jared Raynes.....	\$90.95

824	(717) Lyndsay Redden	\$129.71
825	(718) Kevin D. Renick	\$1,000.00
826	(719) Joseph Reynolds, II and Rachel Higgins.....	\$500.00
827	(720) Debra L. Richards and Robert M. Richards....	\$250.00
828	(721) Doris Richardson and Nathan Richardson.....	\$349.75
829	(722) Richard Richmond and JoAnn Richmond.....	\$250.00
830	(723) David E. Ridenour	\$364.41
831	(724) Russell F. Riggins.....	\$500.00
832	(725) Nicole D. Riley and James F. Riley.....	\$181.09
833	(726) Nicole D. Riley and James F. Riley.....	\$184.03
834	(727) Michael L. Rittenhouse	\$321.45
835	(728) Todd C. Roatsey	\$306.91
836	(729) Amy Robertson and Raymond Robertson.....	\$142.54
837	(730) Andrew Robinson and Nancy Robinson	\$100.00
838	(731) Glenda M. Robison.....	\$500.00
839	(732) Claude E. Rodriguez.....	\$154.94
840	(733) William Rogers and Cherry Rogers	\$35,000.00
841	(734) Nathaniel T. Romino	\$314.98
842	(735) Jason Rooper.....	\$241.63
843	(736) Beth Ross.....	\$224.97
844	(737) Kari Ross.....	\$1,000.00
845	(738) Lisa Dianne Roth.....	\$88.18

846	(739) Elmer R. Roth, Jr.	\$100.00
847	(740) Timothy R. Rounds and Melissa Rounds	\$500.00
848	(741) Ellen E. Rowan	\$153.70
849	(742) James E. Rowan.....	\$148.28
850	(743) James Gregory Rowsey.....	\$500.00
851	(744) Christie L. Rucker and Joshua M. Rucker	\$230.05
852	(745) Kimberly Runion	\$406.87
853	(746) Joshua Thomas Ruppert	\$250.00
854	(747) Broaddus Rutledge	\$500.00
855	(748) Gregory A. Sabak	\$796.52
856	(749) Craig Sabol and Tina Sabol	\$500.00
857	(750) James P. Salakovich	\$700.18
858	(751) Niccole Lynn Salvatore and Roberta Carter ...	\$250.00
859	(752) Dustin Scott Samms	\$321.59
860	(753) Joseph A. Samples	\$250.00
861	(754) Russell W. Sandy and Cheri S. Sandy	\$500.00
862	(755) Keith Roy Santagata	\$500.00
863	(756) Gina P. Satterfield	\$222.60
864	(757) Ernest G. Sauers and Iva L. Sauers.....	\$200.83
865	(758) Christie Saunders	\$500.00
866	(759) Samara D. Saunders.....	\$476.95
867	(760) Paula Saver	\$143.18

868	(761) Michael Sayre and Rhonda Sayre	\$89.04
869	(762) Lisa Sayre and Jordan Page	\$143.53
870	(763) Patricia A. Scadden.....	\$250.00
871	(764) Malena Scalise	\$500.00
872	(765) Karen Scarbro	\$210.79
873	(766) Sherri Schambach.....	\$278.85
874	(767) Roger L. Schnegg and Brenda L. Schnegg.....	\$250.00
875	(768) Josh Schramm.....	\$291.50
876	(769) David Schroeder	\$197.05
877	(770) Christopher Schubert.....	\$264.46
878	(771) Enid J. Schultz.....	\$306.80
879	(772) Lance E. Schultz	\$1,038.00
880	(773) Richard Scott.....	\$3,929.45
881	(774) Scott Properties and Heidi Metheny.....	\$500.00
882	(775) Richard D. Seaman and Mary R. Seaman	\$280.90
883	(776) Rita S. Searls and Paul Searls.....	\$163.62
884	(777) Amber Sears.....	\$1,000.00
885	(778) Rosemary Sergakis and Nap Farms, LLC	\$214.21
886	(779) Cindy Settle and	
887	Mindy Settle, Her Daughter	\$40,000.00
888	(780) Michael F. Sewock	\$165.88
889	(781) Jennifer M. Shahan and Michael R. Shahan...	\$162.18
890	(782) Aaron C. Shall.....	\$187.66

530	CLAIMS AGAINST THE STATE	[Ch. 48
891	(783) Patricia Shamblin and Terri Pauley	\$121.90
892	(784) Patricia Shamblin and Terri Pauley	\$292.07
893	(785) Patricia Shamblin and Terri Pauley	\$126.09
894	(786) Mike Shay	\$250.00
895	(787) David R. Sheets.....	\$250.00
896	(788) Deborah Shell and Luther D. Shell.....	\$500.00
897	(789) Johnna Shelton Hunter	\$142.04
898	(790) Catherine E. Shepherd.....	\$435.06
899	(791) David Shepherd.....	\$138.28
900	(792) James M. Sheppard.....	\$622.39
901	(793) Robert H. Sherman, Jr.	
902	and Helen Jean Sherman	\$340.88
903	(794) Robert L. Shields	\$120.42
904	(795) Michelle Shirley.....	\$250.00
905	(796) Tami Shrout.....	\$500.00
906	(797) Sandra Shultz and Kathleen Ertz.....	\$500.00
907	(798) Catherine Simmons	\$500.00
908	(799) Brian Simpson and Kerry Simpson.....	\$500.00
909	(800) David P. Simpson and Sharon Simpson	\$334.96
910	(801) Rachel Sims and Samuel Sims	\$250.00
911	(802) Robert Sine.....	\$100.27
912	(803) Seth Sirbaugh and Denver Sirbaugh	\$525.00
913	(804) Donetta Sisler	\$171.72

914	(805) Sandra Sisler.....	\$500.00
915	(806) Jacob M. Skeens	\$286.00
916	(807) Okey M. Slate, Sr.....	\$63.60
917	(808) Michelle Slaughter.....	\$476.58
918	(809) Edward W. Sloan.....	\$323.14
919	(810) Allison J. Smith and Eric B. Smith.....	\$104.41
920	(811) Felicia L. Smith.....	\$250.00
921	(812) Franklin K. Smith	\$250.00
922	(813) Gary L. Smith.....	\$163.24
923	(814) Kenneth R. Smith.....	\$500.00
924	(815) Mary L. Smith.....	\$250.00
925	(816) Amy Smith and Allison Mullins.....	\$266.15
926	(817) Jeffrey L. Smith, Jr.....	\$278.20
927	(818) Christopher C. Smith, Kendra Smith	
928	and Kaylan Smith	\$408.84
929	(819) James M. Smoot	\$500.00
930	(820) Patricia Smyth.....	\$92.99
931	(821) Bonnie S. Snodgrass and Coy Snodgrass	\$192.60
932	(822) Elaine Snodgrass.....	\$228.41
933	(823) Steve Snodgrass	\$1,379.60
934	(824) Velma Snyder and John J. Snyder.....	\$500.00
935	(825) Stephanie A. Sobolewski	\$640.32
936	(826) Mathew Sokos and Jamie Sokos	\$500.00

937	(827) Helen Sollars	\$500.00
938	(828) Ryan E. Sommerkorn.....	\$500.00
939	(829) David L. Sommers.....	\$261.22
940	(830) Danielle V. South.....	\$500.00
941	(831) Thomas Sloan Sowers.....	\$785.42
942	(832) Thomas Sloan Sowers.....	\$1,000.00
943	(833) Pamela Spangler	\$402.80
944	(834) Jennifer Michelle Sparks.....	\$467.44
945	(835) Greg Specht.....	\$5,000.00
946	(836) William Spencer and Dorothy Spencer.....	\$500.00
947	(837) Diana Spiker.....	\$500.00
948	(838) Willa Spradling	\$118.29
949	(839) Rita Sprouse	\$500.00
950	(840) St. Paul's Episcopal Church.....	\$170,000.00
951	(841) Bobby Stacy	\$155.68
952	(842) Robert Benjamin Stahler.....	\$189.62
953	(843) Amber Indigo Stanley	\$139.65
954	(844) Charlotte L. Stanley	\$283.54
955	(845) Chelsey E. Stanley.....	\$500.00
956	(846) Mark A. Starcher.....	\$265.87
957	(847) Frank L. Starks, Jr.	\$500.00
958	(848) Lori C. Stas.....	\$551.15

959	(849) Robert Statton.....	\$500.00
960	(850) Donna S. Statts and Joann Thompson.....	\$230.74
961	(851) Bryan Stealey	\$193.24
962	(852) Loretta J. Steele	\$275.60
963	(853) Derek Stemple and Lesley Stemple	\$250.00
964	(854) Ciara Stewart.....	\$144.69
965	(855) Lucille Stewart	\$312.35
966	(856) Chelsea M. Stillman	\$500.00
967	(857) Robert B. Stollings.....	\$26.73
968	(858) Robert B. Stollings.....	\$100.00
969	(859) Robert B. Stollings.....	\$100.00
970	(860) Erin M. Stone and Mike Stone	\$500.00
971	(861) Loraine H. Stout and Samuel E. Stout.....	\$250.00
972	(862) Bryan H. Stricklin and Ranny L. Stricklin.....	\$500.00
973	(863) Francis Stump and Richard Stump.....	\$500.00
974	(864) Eva Rene Stutler	\$250.00
975	(865) Sarah C. Sullivan	\$107.67
976	(866) Melissa Summers and Mark Summers	\$279.15
977	(867) Lindsey Swank Meili.....	\$240.56
978	(868) Christopher Swires.....	\$98.50
979	(869) Otmer W. Tanner and Luella Tanner	\$500.00
980	(870) Anthony David Tartell and Mark Demary	\$383.40

981	(871) Brittany Taylor.....	\$220.25
982	(872) George D. Taylor.....	\$291.17
983	(873) Larry D. Taylor and Lydotta Taylor.....	\$651.68
984	(874) Matthew C. Taylor.....	\$123.82
985	(875) Spencer Taylor and George Taylor	\$210.74
986	(876) Heather Teel.....	\$455.75
987	(877) Carol A. Tennant and Roy Neil Tennant	\$459.67
988	(878) Karen Tennant.....	\$486.19
989	(879) Michael D. Tennant and Renae Tennant.....	\$157.28
990	(880) Cheryl A. Terrano and Michael Terrano.....	\$250.00
991	(881) Jeffrey Testement and Faith Testement	\$160.39
992	(882) Thomas Teter and Patricia Teter.....	\$177.02
993	(883) James Thacker.....	\$88.49
994	(884) Curtis L. Thomas, Jocelyn F. Thomas	
995	and Diana B. Thomas.....	\$500.00
996	(885) John A. Thomas	\$500.00
997	(886) Michelle Thomas	\$250.00
998	(887) Ralph W. Thomas.....	\$500.00
999	(888) Brian H. Thompson.....	\$343.97
1000	(889) Jill Robin Thompson	\$243.80
1001	(890) Mary K. Thompson	\$100.00
1002	(891) Terry L. Thompson and Linda Thompson	\$250.00
1003	(892) Paul D. Thompson, PP&J Structures,	
1004	and General Contracting, LLC	\$500.00

1005	(893) Joette Thorn and Tara Johnson	\$500.00
1006	(894) Kristi Tingler	\$294.25
1007	(895) Sandra Toney	\$65.22
1008	(896) Corey Tornes.....	\$500.00
1009	(897) Ashley Torres and Adolfo Torres.....	\$500.00
1010	(898) Michael J. Travis and Barbara J. Travis.....	\$180.15
1011	(899) Patsy S. Trecost, II and Jennifer Trecost.....	\$517.23
1012	(900) Carl Trosper and Joy Trosper	\$404.87
1013	(901) Nancy E. Trudel.....	\$182.85
1014	(902) Alan Tucker and Myrtle Liva Tucker	\$500.00
1015	(903) Ira T. Turner	\$500.00
1016	(904) Jeffrey K. Twigg and Lisa R. Twigg.....	\$424.00
1017	(905) William Twyman and Patricia Twyman.....	\$316.47
1018	(906) Kenneth E. Tyree, Jr. and Leona E. Tyree	\$500.00
1019	(907) Chris Ullman and Chris Ullman	
1020	Pre-Owned Autos, LLC	\$1,280.00
1021	(908) Rodney O. Underwood	
1022	and Dustin N. Underwood	\$459.36
1023	(909) Carolyn Urbanek.....	\$385.74
1024	(910) Debbie Vac and Dennis Vac.....	\$500.00
1025	(911) Shelly Vaczy	\$250.00
1026	(912) John T. Vannatter and Melody Vannatter.....	\$587.92
1027	(913) Cheryl Frank Vega.....	\$250.00

1028	(914) Francis Veon	\$216.01
1029	(915) Robert Vickers and Bernice Vickers	\$415.55
1030	(916) Annette M. Viola	\$500.00
1031	(917) Peter J. Vrotsos and Gretchen J.G. Vrotsos	\$500.00
1032	(918) Ivan Vujic	\$2,776.54
1033	(919) Mark L. Wallace	\$390.11
1034	(920) Christopher D. Waller	\$470.00
1035	(921) Jerry L. Walls	\$317.78
1036	(922) Jerry Lee Walters, Jr. and Carmella Walters...	\$250.00
1037	(923) Ryan L. Walton and Melinda J. Walton.....	\$106.00
1038	(924) Nichole Ward and William Ward.....	\$91.50
1039	(925) Woodrow Ward	\$500.00
1040	(926) Diann Ware	\$500.00
1041	(927) Stacy R. Warren.....	\$500.00
1042	(928) Warwood Armature Repair Co.	
1043	and R.V. Thalman, III.....	\$341.20
1044	(929) Sheila Washington and David Washington....	\$176.96
1045	(930) Marcia Watson.....	\$41.18
1046	(931) Robert A. Watterson.....	\$83.46
1047	(932) Robert Watts.....	\$213.91
1048	(933) Jeffrey Waugh and Dell Beth Waugh	\$567.07
1049	(934) Chuck Waybright.....	\$482.30

1050	(935) Thomas D. Waybright	
1051	and Christie L. Waybright.....	\$1,000.00
1052	(936) Evelyn L. Webb.....	\$100.00
1053	(937) Tonya M. Webber-Miller	
1054	and Molly M. Miller.....	\$340.90
1055	(938) Barton R. Weese and Julia A. Weese.....	\$269.24
1056	(939) Amy Wehrle.....	\$250.00
1057	(940) Richard Weinberger and Lori Weinberger	\$332.07
1058	(941) Kimberley L. Welch.....	\$207.98
1059	(942) Ronald Welch and Brenda Welch	\$116.49
1060	(943) Brenda L. Wells	\$97.86
1061	(944) Heather Hagens Welsh.....	\$229.51
1062	(945) Amy Lynn West	\$197.95
1063	(946) Doreen Wheatley	\$93.28
1064	(947) Bobby W. Whetzel and Mary E. Whetzel	\$500.00
1065	(948) Karen L. Whipkey	\$532.86
1066	(949) Beatrice J. White and Rodney White	\$214.12
1067	(950) Benjamin A. White.....	\$159.00
1068	(951) Charles W. White.....	\$425.76
1069	(952) David A. White	\$288.21
1070	(953) Todd R. White.....	\$924.31
1071	(954) Kaylee Whitlatch	\$224.45
1072	(955) John Whitmore.....	\$91.62

1073	(956) James E. Whitt	\$534.20
1074	(957) Joni Lee Whitt and John Whitt	\$500.00
1075	(958) Carol Wiles and Kevin Wiles	\$111.64
1076	(959) Charles Wiles	\$250.00
1077	(960) Krista A. Wilkins	\$250.00
1078	(961) Dolores Williams	\$347.09
1079	(962) Ted M. Williams and Karen Williams	\$374.50
1080	(963) Alysha Nicole Williams	
1081	and Patricia Holcomb	\$397.87
1082	(964) Larry Williams and Tamara Williams	\$750.00
1083	(965) Krissie Williamson	\$500.00
1084	(966) Angela K. Willman	\$110.77
1085	(967) Deadra D. Wills and Eddie Wills	\$288.47
1086	(968) Deadra Wills and Eddie R. Wills	\$486.85
1087	(969) Mary Ann Wilmoth and Mark Wilmoth	\$343.06
1088	(970) Brenda D. Wilson	\$106.00
1089	(971) Dennis A. Wilson	\$277.29
1090	(972) James P. Wilson and Susan M. Wilson	\$500.00
1091	(973) Mark Allen Wilson and Beverly Rae Wilson	\$500.00
1092	(974) Wayne Wilson and Sandra Wilson	\$216.96
1093	(975) Nicole Wilson-Carr	\$500.00
1094	(976) Bradley Wilton and Danielle N. Rossi	\$500.00
1095	(977) Stephen C. Winslow	\$1,500.00

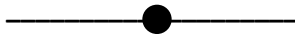
1096	(978) Richard Winters	\$399.54
1097	(979) Kala Withrow.....	\$250.00
1098	(980) Kala Withrow.....	\$250.00
1099	(981) Kala Withrow.....	\$250.00
1100	(982) Kala Withrow.....	\$250.00
1101	(983) Vernon L. Withrow	\$409.53
1102	(984) Robert Wolfe and Kristie Wolfe.....	\$144.22
1103	(985) Susan C. Wolfe	\$500.00
1104	(986) W. Nathan Wolfe.....	\$1,000.00
1105	(987) Tracy A. Wolfe and James Wolfe, III	\$106.13
1106	(988) Betty J. Woodall.....	\$199.00
1107	(989) Christina Woods and Josh Woods.....	\$250.00
1108	(990) Brenda Workman	\$1,000.00
1109	(991) Larry T. Workman and Alex M. Workman ...	\$664.58
1110	(992) Melissa Wright.....	\$340.26
1111	(993) Robert W. Wright and Denise A. Wright	\$500.00
1112	(994) Amber Wroblewski and Ron Wroblewski	\$395.51
1113	(995) Shauntell Yerkey and Justin Yerkey	\$250.86
1114	(996) Robert S. Young, Jr.	
1115	and Willa Jeanne Young	\$100.00
1116	(997) Paula Susan Zaharko	\$500.00
1117	(998) Stacie L. Zelkowski	\$64.35
1118	(999) Alicia Y. Ziman and Matthew Ziman	\$99.95

1119 (k) Claim against the Department of Transportation,
1120 Division of Motor Vehicles:

1121 (TO BE PAID FROM STATE ROAD FUND)

1122 Connie Everhart\$270.00

1123 The Legislature finds that the above moral obligations
1124 and the appropriations made in satisfaction thereof shall be
1125 the full compensation for all claimants and that prior to the
1126 payments to any claimant provided in this bill, the
1127 Legislative Claims Commission shall receive a release from
1128 said claimant releasing any and all claims for moral
1129 obligations arising from the matters considered by the
1130 Legislature in the finding of the moral obligations and the
1131 making of the appropriations for said claimant. The
1132 Legislative Claims Commission shall deliver all releases
1133 obtained from claimants to the department against which the
1134 claim was allowed.



CHAPTER 49

(H. B. 4582 - By Delegates Criss, Pack, Hardy, Bates, Pethtel, Barrett, Hartman and Williams)

[Passed February 29, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

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:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department of Health and Human Resources to be moral obligations of the state and directing payments thereof.

1 The Legislature has heretofore made findings of fact
2 that the state has received the benefit of the commodities
3 received and/or services rendered by certain claimants
4 herein and has considered these claims against the state, and
5 agency thereof, which have arisen due to over-expenditures
6 of the departmental appropriations by officers of the state
7 spending units, the claims having been previously
8 considered by the Legislative Claims Commission which
9 also found that the state has received the benefit of the
10 commodities received and/or services rendered by the
11 claimants, but were denied by the Legislative Claims
12 Commission on the purely statutory grounds that to allow
13 the claims would be condoning illegal acts contrary to the
14 laws of the state. The Legislature, pursuant to its findings of
15 fact and also by the adoption of the findings of fact by the
16 Legislative Claims Commission as its own, while not
17 condoning such illegal acts, hereby declares it to be the
18 moral obligation of the state to pay these claims in the
19 amounts specified below and directs the Auditor to issue
20 warrants upon receipt of properly executed requisitions
21 supported by itemized invoices, statements, or other
22 satisfactory documents as required by §12-3-10 of the Code
23 of West Virginia, 1931, as amended, for the payments
24 thereof out of any fund appropriated and available for the
25 purpose.

26 *Claims against the Department of Health and Human*
27 *Resources:*

28 (TO BE PAID FROM GENERAL REVENUE FUND)

29 (1) Affordable Cremations of WV, LLC\$1,250.00

30 (2) Affordable Cremations of WV, LLC\$1,250.00

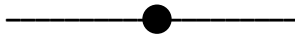
31 (3) Affordable Cremations of WV, LLC\$1,250.00

32 (4) Affordable Cremations of WV, LLC\$1,250.00

33 (5) Affordable Cremations of WV, LLC\$1,250.00

34 (6) Altmeyer Funeral Home.....\$7,000.00

35 (7) Chambers and James Funeral Home\$1,250.00



CHAPTER 50

(S. B. 789 - By Senator Carmichael (Mr. President))

[Passed February 29, 2020; in effect ninety days from passage.]
 [Approved by the Governor on March 25, 2020.]

AN ACT to repeal §4-2B-1 of the Code of West Virginia, 1931, as amended; and to repeal §4-3-3b of said code, relating to removing provisions regarding obsolete functions and completed tasks for the administration of, or by, the Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. WORK GROUPS.

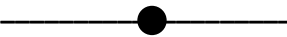
§1. Repeal of article authorizing the establishment of job work groups.

1 That §4-2B-1 of the Code of West Virginia, 1931, as
 2 amended, is repealed.

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§1. Repeal of section relating to duty of the Joint Committee on Government and Finance with respect to the statewide reappraisal to be completed on the March 31, 1985.

1 That §4-3-3b of the Code of West Virginia, 1931, as
 2 amended, is repealed.



CHAPTER 51

(S. B. 830 - By Senator Blair)

[Passed March 5, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

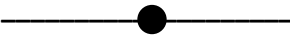
AN ACT to repeal §5-5-4a of the Code of West Virginia, 1931, as amended, relating to eliminating a special merit-based employment system for health care professionals in state-operated health care facilities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4a. Department of Health and Human Resources facility employee classifications.

- 1 That §5-5-4a of the Code of West Virginia, 1931, as
- 2 amended, be repealed.



CHAPTER 52

(Com. Sub. for S. B. 208 - By Senator Tarr)

[Passed March 3, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §46A-6J-2 and §46A-6J-3 of the Code of West Virginia, 1931, as amended, all relating to the protection of consumers from price gouging and unfair pricing practices during and shortly after a state of emergency; amending definition of “state of emergency”; and authorizing the Governor to periodically review the scope and the time period for which prices for certain goods may not be changed following a state of emergency.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6J. PROTECTION OF CONSUMERS FROM PRICE GOUGING AND UNFAIR PRICING PRACTICES DURING AND SHORTLY AFTER A STATE OF EMERGENCY.

§46A-6J-2. Definitions.

- 1 (a) “Building materials” means lumber, construction
2 tools, windows, and any other item used in the building or
3 rebuilding of property.
- 4 (b) “Consumer food item” means any article that is used
5 or intended for use for food or drink by a person or animal.
- 6 (c) “Disaster” means the occurrence or imminent threat
7 of widespread or severe damage, injury, loss of life, or
8 property resulting from any natural or man-made cause,
9 including fire, flood, earthquake, wind, snow, storm,
10 chemical or oil spill, or other water or soil contamination,

11 epidemic, air contamination, blight, drought, infestation, or
12 other public calamity requiring emergency action.

13 (d) “Emergency supplies” includes, but is not limited to,
14 water, flashlights, radios, batteries, candles, blankets,
15 generators, heaters, and temporary shelters.

16 (e) “Essential consumer item” means any article that is
17 necessary to the health, safety, and welfare of consumers,
18 including, but not limited to, clothing, diapers, soap,
19 cleaning supplies, and toiletries.

20 (f) “Gasoline” means any fuel used to power any motor
21 vehicle or power tool.

22 (g) “Housing” means any rental housing leased on a
23 month-to-month term or the sale of manufactured homes, as
24 that term is defined in §21-9-2 of this code.

25 (h) “Large-scale threat” means circumstances which
26 present a reasonable probability that necessary services or
27 public order would be disrupted, and effect a significant
28 number of people from either natural or man-made causes.

29 (i) “Medical supplies” includes, but is not limited to,
30 prescription and nonprescription medications, bandages,
31 gauze, isopropyl alcohol, and antibacterial products.

32 (j) “Repair or reconstruction services” means any
33 services performed by any person for repairs to residential,
34 commercial, or public property of any type that is damaged
35 as a result of a disaster.

36 (k) “State of emergency” means the situation existing
37 during or after the occurrence of a disaster or large-scale
38 threat in which a state of emergency has been declared by
39 the Governor or by the Legislature pursuant to the
40 provisions of §15-5-6 of this code.

41 (l) “State of preparedness” means the situation existing
42 before a disaster or large-scale threat in which a state of

43 preparedness has been declared by the Governor or by the
44 Legislature pursuant to the provisions of §15-5-6 of this
45 code.

46 (m) "Transportation, freight, and storage services"
47 means any service that is performed by any company that
48 contracts to move, store, or transport personal or business
49 property, or rents equipment or storage space for those
50 purposes.

§46A-6J-3. Prohibited unfair pricing practices.

1 (a) Upon the declaration of a state of emergency or state
2 of preparedness, and continuing for the existence of the state
3 of emergency or state of preparedness, or for 30 days
4 following the declaration, whichever period is longer, it is
5 unlawful for any person, contractor, business, or other entity
6 to sell or offer to sell to any person in the area subject to the
7 declaration any consumer food items, essential consumer
8 items, goods used for emergency cleanup, emergency
9 supplies, medical supplies, home heating oil, building
10 materials, housing, transportation, freight and storage
11 services, or gasoline or other motor fuels, for a price greater
12 than 10 percent above the price charged by that person for
13 those goods or services on the 10th day immediately
14 preceding the declaration of emergency state of
15 preparedness, unless the increase in price is directly
16 attributable to additional costs imposed on the seller by the
17 supplier of the goods or directly attributable to additional
18 costs for labor or materials used to provide the services:
19 *Provided*, That in those situations where the increase in
20 price is attributable to additional costs imposed by the
21 seller's supplier or additional costs of providing the good or
22 service during the state of emergency or state of
23 preparedness, the price is no greater than 10 percent above
24 the total of the cost to the seller plus the markup customarily
25 applied by the seller for that good or service in the usual
26 course of business on the 10th day immediately preceding
27 the declaration: *Provided, however*, That where a supplier
28 of gasoline or other motor fuels cannot determine its daily

29 costs, the supplier may sell gasoline or other motor fuels to
30 distributors on any day at a rate not to exceed the average of
31 the Oil Price Information Service's average wholesale rack
32 price for that product at the Montvale/Roanoke, Virginia,
33 Fairfax, Virginia, and Pittsburgh, Pennsylvania, wholesale
34 racks for the previous day.

35 (b) Upon the declaration of a state of emergency or state
36 of preparedness, and for a period of 180 days following that
37 declaration, it is unlawful for any contractor to sell or offer
38 to sell any repair or reconstruction services or any services
39 used in emergency cleanup in the area subject to the
40 declaration for a price greater than 10 percent above the
41 price charged by that person for those services on the 10th
42 day immediately preceding the declaration, unless the
43 increase in price was directly attributable to additional costs
44 imposed on it by the supplier of the goods or directly
45 attributable to additional costs for labor or materials used to
46 provide the services: *Provided*, That in those situations
47 where the increase in price is attributable to the additional
48 costs imposed by the contractor's supplier or additional
49 costs of providing the service, the price is no greater than 10
50 percent above the total of the cost to the contractor plus the
51 markup customarily applied by the contractor for that good
52 or service in the usual course of business on the 10th day
53 immediately preceding to the declaration of the state of
54 emergency or state of preparedness.

55 (c) Any business offering an item for sale at a reduced
56 price 10 days immediately prior to the declaration of the
57 state of emergency or state of preparedness may use the
58 price at which it usually sells the item to calculate the price
59 pursuant to subsection (a) or (b) of this section.

60 (d) Whenever the Governor declares a state of
61 preparedness, the provisions of this article only apply to
62 those items or services specifically set forth in the
63 proclamation.

64 (e) On the 15th day after the declaration of a state of
65 emergency, and each 15th day thereafter for so long as the
66 state of emergency persists, the Governor shall review the
67 scope of goods to which this article applies and may issue a
68 proclamation maintaining, limiting, terminating, or
69 extending the price restrictions imposed by this article with
70 respect to any categories of goods.

●

CHAPTER 53

**(S. B. 642 - By Senators Azinger, Baldwin, Beach,
Clements, Cline, Hardesty, Jeffries, Lindsay,
Maynard, Pitsenbarger, Romano, Rucker, Smith,
Takubo, Weld, Woelfel and Trump)**

[Passed February 17, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §46A-1-105 of the Code of West Virginia, 1931, as amended, relating to correcting an incorrect code citation in the West Virginia Consumer Credit and Protection Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. SHORT TITLE, DEFINITIONS, AND GENERAL PROVISIONS.

§46A-1-105. Exclusions.

- 1 (a) This chapter does not apply to:
 - 2 (1) Extensions of credit to government or governmental
 - 3 agencies or instrumentalities;
 - 4 (2) The sale of insurance by an insurer, except as
 - 5 otherwise provided in this chapter;

6 (3) The obligation of a property owner, lot owner, or
7 homeowner in a planned community containing no more
8 than 12 units which is not subject to any development rights
9 or a planned community that provides in its declaration that
10 the annual average common expense liability of all units
11 restricted to residential purposes, exclusive of optional user
12 fees and any insurance premiums paid by the association,
13 may not exceed \$300 as adjusted pursuant to §36B-1-114 of
14 this code, or the efforts of property owners' associations or
15 homeowners' associations to collect the same to pay dues,
16 assessments, costs, or fees of any kind to a property owners'
17 association or homeowners' association;

18 (4) Transactions under public utility or common carrier
19 tariffs if a subdivision or agency of this state or of the United
20 States regulates the charges for the services involved, the
21 charges for delayed payment, and any discount allowed for
22 early payment; or

23 (5) Licensed pawnbrokers.

24 (b) Mortgage lender and broker licensees are excluded
25 from the provisions of this chapter to the extent those
26 provisions directly conflict with any section of §31-17-1 *et*
27 *seq.* of this code.



CHAPTER 54

**(Com. Sub. for H. B. 4717 - By Delegates Shott,
Fleischauer and Wilson)**

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §60A-7-708 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §60A-7-708, all relating to

bookkeeping procedures and internal controls for seized or forfeited property under the West Virginia Contraband Forfeiture Act; providing for record keeping and accounting procedures; providing for a report to the State Auditor from law enforcement agencies excluding prosecuting attorneys; requiring the State Auditor establish a public website for reporting information; providing the State Auditor prepare and disseminate a yearly report; establishing that the State Auditor may perform a financial audit; requiring the State Auditor to conduct an audit when seizure of assets or expenditure of funds from seized assets exceeds a designated amount; permitting the State Auditor to charge a fee; requiring the State Auditor to notify a law enforcement agency for failure to report; providing the State Auditor may promulgate rules; establishing that reported information is subject to the W.Va. Freedom of Information Act; establishing an effective date; and providing that a court may seal records.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.

§60A-7-708. Bookkeeping procedures and internal controls.

1 (a) Any law-enforcement agency or office in this state,
2 including, but not limited to, an “appropriate person” as
3 identified in §60A-7-703(b), excluding prosecuting
4 attorneys, who seizes or receives forfeited moneys,
5 securities, negotiable instruments, items subject to
6 forfeiture in accordance with §60A-7-703(a) of this code, or
7 other property under the provisions of this article shall
8 account for the same in the following manner:

9 (1) Maintain any items of property subject to forfeiture
10 in accordance with §60A-7-704(d) of this code, including,
11 but not limited to, moneys, securities, negotiable
12 instruments, or other items and property identified in the
13 same manner as the agency’s appropriated funds. Bank

14 accounts, checkbooks, purchase cards, and other financial
15 instruments or documents must be maintained in the same
16 manner as appropriated funds;

17 (2) Establish a segregated account or accounting codes
18 to track both revenues and expenditures for each respective
19 program. No other funds may be commingled in these
20 accounts or with these accounting codes;

21 (3) Process all expenditures and payments in the same
22 manner as appropriated funds, including procurement and
23 payment transactions;

24 (4) In accordance with the provisions of §60A-7-
25 704(d)(4) of this code, in the case of seized moneys,
26 securities, or other negotiable instruments, place the assets
27 in an interest-bearing depository insured by an agency of the
28 federal government. Deposit all interest earned on equitable
29 sharing funds into the respective account or accounting
30 code. All interest is subject to the same use restrictions as
31 equitable sharing funds. Losses to funds maintained in
32 investment accounts in accordance with the jurisdiction's
33 policies may not be allocated to or deducted from the
34 equitable sharing account;

35 (5) Develop, maintain, and follow written policies for
36 accounting, bookkeeping, inventory control, and
37 procurement that comply with the applicable jurisdiction
38 policies. Ensure distribution of relevant policies to all
39 appropriate personnel;

40 (6) Maintain records of all revenue and expenditures
41 posted to the account or accounting code, to include
42 bank/ledger statements, invoices, receipts, required
43 jurisdiction approvals, or any other documents used or
44 created during the procurement and disposition process;

45 (7) Report all transactions using cash-based accounting
46 methods;

47 (8) Dispose of items purchased with shared funds in
48 accordance with the agency's disposal policies. To the
49 extent practicable and, if consistent with the agency's
50 procurement and disposal policies, deposit proceeds from
51 the sale of such property into the agency's sharing account
52 or accounting code. If an item has minimal or no value, an
53 agency may donate the item to a recipient of its choice if
54 permitted under the agency's disposal policies;

55 (9) Ensure the agency head, or designee, authorizes all
56 expenditures from the sharing accounts; and

57 (10) Obtain approval for expenditures from the
58 governing body, such as the county commission, town
59 council, or city manager's office, when required under
60 normal established jurisdiction accounting procedures.

61 (b) Any law-enforcement agency or office in this state,
62 excluding prosecuting attorneys, receiving forfeited
63 moneys, securities, negotiable instruments, real property,
64 personal property, or other property under the provisions of
65 this article shall report the same to the State Auditor. For
66 each seizure only one report shall be filed by the agency that
67 made the seizure. All agencies receiving forfeited property
68 shall report disposition and expenditures of any proceeds of
69 that property. Reports shall be filed in the following
70 manner:

71 (1) Name of the law-enforcement agency or office that
72 seized the property, or if seized by a multijurisdictional task
73 force, the name of the lead agency;

74 (2) The time and date the property was seized;

75 (3) The type of property seized, whether real or
76 personal;

77 (4) The actual or estimated value of the property seized;

78 (5) The property's final disposition, including the
79 amount received if the property was sold, or if the property

80 was put to use on behalf of a law-enforcement agency or
81 office, the identity of the agency or office that took
82 possession and use of the property;

83 (6) Whether forfeiture was made by settlement
84 agreement;

85 (7) Whether any procedure for forfeiture was initiated
86 in accordance with the provisions of §60A-7-705 of this
87 code, or other identifying information sufficient to permit
88 acquisition of any available public records related to the
89 forfeiture procedure and disposition of the forfeited
90 property;

91 (8) The disposition of any action under the provisions of
92 §60A-7-705 of this code;

93 (9) If an arrest was made;

94 (10) Whether any charges brought against a defendant
95 in conjunction with a seizure pursuant to this article resulted
96 in deferred action, conviction, plea deal, acquittal, or
97 ongoing criminal case;

98 (11) When an administrative forfeiture procedure has
99 been initiated pursuant to the provisions of §60A-7-705a of
100 this code, provide designated information contained in the
101 administrative forfeiture notice;

102 (12) The total value of seized and forfeited or property
103 held by the agency at the end of the reporting period; and

104 (13) A copy of the United States Department of Justice's
105 Equitable Sharing Agreement and Certification - Annual
106 Certification Report shall be provided to the State Auditor
107 no later than October 31 each calendar year.

108 (c) The State Auditor shall establish and maintain a
109 searchable public website that includes the aggregate
110 information submitted by any law-enforcement agency or
111 office required under subsection (b) of this section:

112 *Provided*, That the State Auditor's website must not provide
113 individual case details on its public website.

114 (d) The State Auditor, before December 31 of each
115 year, shall submit to the Speaker of the House of Delegates,
116 the President of the Senate, the Attorney General, and the
117 Governor a written report summarizing activity in the state
118 for the preceding fiscal year on the type, approximate value,
119 and disposition of the property forfeited and/or seized and
120 the amount of any proceeds received or expended at the state
121 and local levels. The report shall provide a categorized
122 accounting of all proceeds expended. Summary data on
123 seizures, forfeitures and expenditures of forfeiture proceeds
124 shall be disaggregated by agency.

125 (e) In the course of preparing its annual report, the State
126 Auditor may, in its discretion or for good cause shown,
127 perform a financial audit of records related to inventory of
128 seized property and expenditures of forfeiture proceeds by
129 any law-enforcement agency or office in this state. This
130 audit shall be conducted under the Generally Accepted
131 Government Auditing Standards (GAGAS). A copy of the
132 financial audit report shall be submitted to the State Auditor
133 no later than 90 days after its initiation. The State Auditor
134 shall submit a copy of the financial audit report to the
135 Speaker of the House of Delegates, the President of the
136 Senate, the Attorney General and the Governor.

137 (f) If, in the course of a calendar year, any law
138 enforcement agency or office that secures seized or forfeited
139 assets valued in excess of 50 percent of the prior year's
140 total seized or forfeited assets, or expends more than 50
141 percent of the prior year's total expenditures of forfeited
142 assets, shall so advise the State Auditor, who shall perform
143 a financial audit under the Generally Accepted Government
144 Auditing Standards (GAGAS) of records related to
145 inventory of seized property and expenditures of forfeiture
146 proceeds. A copy of the final audit report shall be submitted
147 to the State Auditor no later than 90 days after the end of the
148 fiscal year and shall be made public.

149 (g) The State Auditor may recoup its costs under this
150 section by charging a fee.

151 (h) The State Auditor may include in its aggregate
152 report required by subsection (d) of this section
153 recommendations to improve statutes, rules, and policies
154 related to seizure, forfeiture, and expenditures. The
155 aggregate report shall be made available on the State
156 Auditor's website.

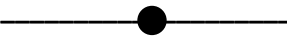
157 (i) If a law-enforcement agency fails to timely file the
158 report identified in subsection (b) of this section the State
159 Auditor shall immediately notify the law-enforcement
160 agency that the report has not been received.

161 (j) The State Auditor may propose rules for legislative
162 approval in accordance with the provisions of §29A-3-1 *et*
163 *seq.* of this code to implement this section.

164 (k) The data and reports compiled and prepared under
165 this section are public information under the West Virginia
166 Freedom of Information Act, chapter 29B of this code.

167 (l) This section is effective for the reporting period
168 starting January 1, 2021.

169 (m) Nothing provided in this section would prevent a
170 court of competent jurisdiction from sealing records
171 otherwise made available under the provisions of this
172 section.



CHAPTER 55

(H. B. 2922 - By Delegates Barrett and S. Brown)

[Passed February 18, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 5, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-407a, relating to authorizing a court to require participation and successful completion of a drug court program or drug treatment program in order for a defendant, pleading or being found guilty of possession of a controlled substance which is or contains a controlled substance listed in §60A-2-204 of this code, other than marijuana, or a controlled substance listed in §60A-2-206, §60A-2-208, or §60A-2-210 to qualify for a final order of discharge and dismissal.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-407a. Authorizing additional requirements to obtain a final order of discharge and dismissal for persons charged with possession of controlled substances.

1 (a) Notwithstanding any provision of this code to the
2 contrary, when a person pleads guilty or is found guilty of a
3 violation of §60A-4-401(c) of this code, or a municipal
4 ordinance containing the same elements where the
5 controlled substance possessed is listed in §60A-2-204 of
6 this code, other than marijuana, or is a controlled substance
7 listed in §60A-2-206, §60A-2-208, or §60A-2-210 of this
8 code, the court may, as an additional condition for the entry
9 of a final order of discharge or dismissal under §60A-4-407
10 of this code or a municipal ordinance containing the same

11 or substantially the same provision, require the defendant to
12 be:

13 (1) Evaluated for admission into a drug court program;
14 or

15 (2) Participate in a drug treatment program.

16 (b) If a defendant is determined to be an appropriate
17 candidate for admission to drug court or a drug treatment
18 program, the court may make successful completion of a
19 drug court or a drug treatment program a requirement for
20 obtaining a final order of discharge and dismissal.



CHAPTER 56

**(H. B. 4354 - By Delegates Worrell, Summers and
Wilson)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §60A-2-201 of the Code of West Virginia, 1931, as amended, relating to drugs; providing for the sale, wholesale, distribution, or prescribing of nabiximols in a product approved by the Food and Drug Administration; and providing that nabiximols shall be placed on the schedules of controlled substances or descheduled as provided by the Drug Enforcement Administration.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STANDARDS AND SCHEDULES.

**§60A-2-201. Authority of Board of Pharmacy;
recommendations to Legislature.**

1 (a) The Board of Pharmacy shall administer the
2 provisions of this chapter. It shall also, on the first day of
3 each regular legislative session, recommend to the
4 Legislature which substances should be added to or deleted
5 from the schedules of controlled substances contained in
6 this article or reschedule therein. The Board of Pharmacy
7 shall also have the authority between regular legislative
8 sessions, on an emergency basis, to add to or delete from the
9 schedules of controlled substances contained in this article
10 or reschedule such substances based upon the
11 recommendations and approval of the federal food, drug and
12 cosmetic agency, and shall report such actions on the first
13 day of the regular legislative session immediately following
14 said actions.

15 In making any such recommendation regarding a
16 substance, the Board of Pharmacy shall consider the
17 following factors:

18 (1) The actual or relative potential for abuse;

19 (2) The scientific evidence of its pharmacological
20 effect, if known;

21 (3) The state of current scientific knowledge regarding
22 the substance;

23 (4) The history and current pattern of abuse;

24 (5) The scope, duration and significance of abuse;

25 (6) The potential of the substance to produce psychic or
26 physiological dependence liability; and

27 (7) Whether the substance is an immediate precursor of
28 a substance already controlled under this article.

29 (b) After considering the factors enumerated in
30 subsection (a), the Board of Pharmacy shall make findings
31 with respect to the substance under consideration. If it finds
32 that any substance not already controlled under any

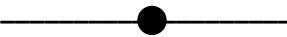
33 schedule has a potential for abuse, it shall recommend to the
34 Legislature that the substance be added to the appropriate
35 schedule. If it finds that any substance already controlled
36 under any schedule should be rescheduled or deleted, it shall
37 so recommend to the Legislature.

38 (c) If the Board of Pharmacy designates a substance as
39 an immediate precursor, substances which are precursors of
40 the controlled precursor shall not be subject to control solely
41 because they are precursors of the controlled precursor.

42 (d) If any substance is designated, rescheduled or
43 deleted as a controlled substance under federal laws and
44 notice thereof is given to the Board of Pharmacy, the board
45 shall recommend similar control of such substance to the
46 Legislature, specifically stating that such recommendation
47 is based on federal action and the reasons why the federal
48 government deemed such action necessary and proper.

49 (e) The authority vested in the board by subsection (a)
50 of this section shall not extend to distilled spirits, wine, malt
51 beverages or tobacco as those terms are defined or used in
52 other chapters of this code nor to any nonnarcotic substance
53 if such substance may under the "Federal Food, Drug and
54 Cosmetic Act" and the law of this state lawfully be sold over
55 the counter without a prescription.

56 (f) Notwithstanding any provision of this chapter to the
57 contrary, the sale, wholesale, distribution or prescribing of
58 a cannabidiol or nabiximols in a product approved by the
59 Food and Drug Administration is permitted and shall be
60 placed on the schedule or descheduled as provided for by
61 the Drug Enforcement Administration.



CHAPTER 57

**(Com. Sub. for H. B. 4544 - By Delegates Waxman,
Steele, Phillips, Miley, Queen, Hamrick, Foster,
Bibby, Kump, N. Brown and Fast)**

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §60A-4-406 of the Code of West Virginia, 1931, as amended, relating to applying a mandatory period of incarceration prior to parole eligibility to persons 18 years old or over who are convicted of distributing a controlled substance within 200 feet of a public library; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-406. Distribution to persons under the age of 18 by persons over the age of 21; distribution by persons 18 or over in, on, or within 1,000 feet of, school or college; distribution by persons 18 or over in, on, or within 200 feet of a public library; increasing mandatory period of incarceration prior to parole eligibility.

1 (a) Notwithstanding any other provision of law to the
2 contrary, a person is ineligible for parole for a period of
3 three years if he or she is sentenced to the custody of the
4 Commissioner of Corrections and Rehabilitation, for
5 service of a sentence of incarceration and is convicted of a
6 felony violation under the provisions of §60A-4-401(a)(i) of
7 this code for distribution of a controlled substance and:

8 (1) Is 21 years of age or older at the time of the
9 distribution upon which the conviction is based, and the

10 person to whom the controlled substance was distributed
11 was under the age of 18 years at the time of the distribution;

12 (2) Is 18 years of age or older and the distribution upon
13 which the conviction is based occurred in, on, or within
14 1,000 feet of, the real property comprising a public or
15 private elementary, vocational or secondary school or a
16 public or private college, junior college or university in this
17 state; or

18 (3) Is 18 years of age or older and the distribution upon
19 which the conviction is based occurred in, on, or within 200
20 feet of, the real property comprising a public library in this
21 state.

22 (b) Notwithstanding any other provision of law to the
23 contrary, a person is ineligible for parole for a period of two
24 years if he or she is sentenced to the custody of the
25 Commissioner of Corrections and Rehabilitation, for
26 service of a sentence of incarceration and is convicted of a
27 felony violation under the provisions of §60A-4-401(a)(ii)
28 of this code for distribution of a controlled substance and:

29 (1) Is 21 years of age or older at the time of the
30 distribution upon which the conviction is based, and the
31 person to whom the controlled substance was distributed
32 was under the age of 18 years at the time of the distribution;

33 (2) Is 18 years of age or older and the distribution upon
34 which the conviction is based occurred in, on, or within
35 1,000 feet of, the real property comprising a public or
36 private elementary, vocational or secondary school or a
37 public or private college, junior college or university in this
38 state; or

39 (3) Is 18 years of age or older and the distribution upon
40 which the conviction is based occurred in, on, or within 200
41 feet of, the real property comprising a public library in this
42 state.

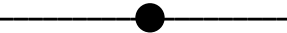
43 (c) The existence of any fact which would make any
44 person subject to the provisions of this section may not be
45 considered unless the fact is clearly stated and included in
46 the indictment or presentment by which the person is
47 charged and is either:

48 (1) Found by the court upon a plea of guilty or nolo
49 contendere;

50 (2) Found by the jury, if the matter be tried before a jury,
51 upon submission to the jury of a special interrogatory for
52 such purpose; or

53 (3) Found by the court, if the matter be tried by the court
54 without a jury.

55 (d) Nothing in this section limits the sentencing
56 alternatives made available to circuit court judges under
57 other provisions of this code.



CHAPTER 58

**(Com. Sub. for H. B. 4852 - By Delegates Shott and
Capito)**

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by amending and reenacting §60A-4-401 relating to treating methamphetamine as a Schedule I or II narcotic under the controlled substances act; increasing the criminal penalty for possession with intent to distribute, or distribution of methamphetamine; increasing the penalty for possession with intent to distribute counterfeit methamphetamine; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited acts A; penalties.

1 (a) Except as authorized by this act, it is unlawful for
2 any person to manufacture, deliver, or possess with intent to
3 manufacture or deliver a controlled substance.

4 Any person who violates this subsection with respect to:

5 (i) A controlled substance classified in Schedule I or II,
6 which is a narcotic drug or which is methamphetamine, is
7 guilty of a felony and, upon conviction thereof, may be
8 imprisoned in a state correctional facility for not less than
9 one year nor more than 15 years, or fined not more than
10 \$25,000, or both fined and imprisoned;

11 (ii) Any other controlled substance classified in
12 Schedule I, II, or III is guilty of a felony and, upon
13 conviction thereof, may be imprisoned in a state
14 correctional facility for not less than one year nor more than
15 five years, or fined not more than \$15,000, or both fined and
16 imprisoned;

17 (iii) A substance classified in Schedule IV is guilty of a
18 felony and, upon conviction thereof, may be imprisoned in
19 a state correctional facility for not less than one year nor
20 more than three years, or fined not more than \$10,000, or
21 both fined and imprisoned;

22 (iv) A substance classified in Schedule V is guilty of a
23 misdemeanor and, upon conviction thereof, may be
24 confined in jail for not less than six months nor more than
25 one year, or fined not more than \$5,000, or both fined and
26 confined: *Provided*, That for offenses relating to any
27 substance classified as Schedule V in §60A-10-1 *et seq.* of
28 this code, the penalties established in said article apply.

29 (b) Except as authorized by this act, it is unlawful for
30 any person to create, deliver, or possess with intent to
31 deliver, a counterfeit substance.

32 Any person who violates this subsection with respect to:

33 (i) A counterfeit substance classified in Schedule I or II,
34 which is a narcotic drug, or methamphetamine, is guilty of
35 a felony and, upon conviction thereof, may be imprisoned
36 in a state correctional facility for not less than one year nor
37 more than 15 years, or fined not more than \$25,000, or both
38 fined and imprisoned;

39 (ii) Any other counterfeit substance classified in
40 Schedule I, II, or III is guilty of a felony and, upon
41 conviction thereof, may be imprisoned in a state
42 correctional facility for not less than one year nor more than
43 five years, or fined not more than \$15,000, or both fined and
44 imprisoned;

45 (iii) A counterfeit substance classified in Schedule IV is
46 guilty of a felony and, upon conviction thereof, may be
47 imprisoned in a state correctional facility for not less than
48 one year nor more than three years, or fined not more than
49 \$10,000, or both fined and imprisoned;

50 (iv) A counterfeit substance classified in Schedule V is
51 guilty of a misdemeanor and, upon conviction thereof, may
52 be confined in jail for not less than six months nor more than
53 one year, or fined not more than \$5,000, or both fined and
54 confined: *Provided*, That for offenses relating to any
55 substance classified as Schedule V in §60A-10-1 *et seq.* of
56 this code, the penalties established in said article apply.

57 (c) It is unlawful for any person knowingly or
58 intentionally to possess a controlled substance unless the
59 substance was obtained directly from, or pursuant to, a valid
60 prescription or order of a practitioner while acting in the
61 course of his or her professional practice, or except as
62 otherwise authorized by this act. Any person who violates

63 this subsection is guilty of a misdemeanor, and disposition
64 may be made under §60A-4-407 of this code, subject to the
65 limitations specified in said section, or upon conviction
66 thereof, the person may be confined in jail not less than 90
67 days nor more than six months, or fined not more than
68 \$1,000, or both fined and confined: *Provided*, That
69 notwithstanding any other provision of this act to the
70 contrary, any first offense for possession of synthetic
71 cannabinoids as defined by §60A-1-101(d)(32) of this code;
72 3,4-methylenedioxypropylvalerone (MPVD) and 3,4-
73 methylenedioxypropylvalerone and/or mephedrone as
74 defined in §60A-1-101(f) of this code; or less than 15 grams
75 of marijuana, shall be disposed of under §60A-4-407 of this
76 code.

77 (d) It is unlawful for any person knowingly or
78 intentionally:

79 (1) To create, distribute, deliver, or possess with intent
80 to distribute or deliver, an imitation controlled substance; or

81 (2) To create, possess, sell, or otherwise transfer any
82 equipment with the intent that the equipment shall be used
83 to apply a trademark, trade name, or other identifying mark,
84 imprint, number, or device, or any likeness thereof, upon a
85 counterfeit substance, an imitation controlled substance, or
86 the container or label of a counterfeit substance or an
87 imitation controlled substance.

88 (3) Any person who violates this subsection is guilty of
89 a misdemeanor and, upon conviction thereof, may be
90 confined in jail for not less than six months nor more than
91 one year, or fined not more than \$5,000, or both fined and
92 confined. Any person 18 years old or more who violates
93 subdivision (1) of this subsection and distributes or delivers
94 an imitation controlled substance to a minor child who is at
95 least three years younger than that person is guilty of a
96 felony and, upon conviction thereof, may be imprisoned in
97 a state correctional facility for not less than one year nor

98 more than three years, or fined not more than \$10,000, or
99 both fined and imprisoned.

100 (4) The provisions of subdivision (1) of this subsection
101 shall not apply to a practitioner who administers or
102 dispenses a placebo.



CHAPTER 59

**(Com. Sub. for S. B. 472 - By Senators Maynard,
Stollings, Clements and Cline)**

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §62-11A-1a of the Code of West Virginia, 1931, as amended, relating to inmate work generally; including persons convicted in municipal court of ordinance violations as eligible to participate in alternative work programs; specifying supervisory authority for municipally sentenced inmates; authorizing approved and sentenced inmates in the custody of the Commissioner of Corrections to work for municipal, county, and state agencies; providing for sentenced persons in jails and state correctional facilities to perform tasks such as cleaning streams, parks, streets, and highways for municipal and county governments and state agencies; and requiring the commissioner to approve the tasks.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-1a. Other sentencing alternatives.

1 (a) Any person who has been convicted in a municipal
2 court, circuit court, or in a magistrate court under any
3 criminal provision of this code of a misdemeanor or felony,
4 or municipal ordinance, which is punishable by imposition
5 of a fine or confinement in a regional jail or a state
6 correctional institution, or both fine and confinement, may,
7 in the discretion of the sentencing judge or magistrate, as an
8 alternative to the sentence imposed by statute or ordinance
9 for the crime, be sentenced under one of the following
10 programs:

11 (1) The weekend jail program under which a person
12 would be required to spend weekends or other days
13 normally off from work in jail;

14 (2) The work program under which a sentenced person
15 would be required to spend the first two or more days of his
16 or her sentence in jail and then, in the discretion of the court,
17 would be assigned to a municipal, county, or state agency to
18 perform labor within the jail, or in and upon the buildings,
19 grounds, institutions, bridges, and roads, including
20 orphaned roads used by the general public and public works
21 within the municipality, county, or state. Eight hours of
22 labor are to be credited as one day of the sentence imposed.
23 A person sentenced under this program may be required to
24 provide his or her own transportation to and from the work
25 site, lunch, and work clothes;

26 (3) The community service program under which a
27 sentenced person would spend no time in jail, but would be
28 sentenced to a number of hours or days of community
29 service work with government entities or charitable or
30 nonprofit entities approved by the circuit court. Regarding
31 any portion of the sentence designated as confinement, eight
32 hours of community service work is to be credited as one
33 day of the sentence imposed. Regarding any portion of the
34 sentence designated as a fine, the fine is to be credited at an
35 hourly rate equal to the prevailing federal minimum wage at
36 the time the sentence was imposed. In the discretion of the
37 court, the sentence credits may run concurrently or

38 consecutively. A person sentenced under this program may
39 be required to provide his or her own transportation to and
40 from the work site, lunch, and work clothes; or

41 (b) In no event may the duration of the alternate
42 sentence exceed the maximum period of incarceration
43 otherwise allowed.

44 (c) In imposing a sentence under the provisions of this
45 section, the court shall first make the following findings of
46 fact and incorporate them into the court's sentencing order:

47 (1) The person sentenced was not convicted of an
48 offense for which a mandatory period of confinement is
49 imposed by statute;

50 (2) In circuit court cases, that the person sentenced is
51 not a habitual criminal within the meaning of §61-11-18 and
52 §61-11-19 of this code;

53 (3) In circuit court cases, that the offense underlying the
54 sentence is not a felony offense for which violence or the
55 threat of violence to the person is an element of the offense;

56 (4) In circuit court cases, that adequate facilities for the
57 administration and supervision of alternative sentencing
58 programs are available through the court's probation
59 officers or the county sheriff or, in magistrate court cases,
60 that adequate facilities for the administration and
61 supervision of alternative sentencing programs are available
62 through the county sheriff; and

63 (5) That an alternative sentence under provisions of this
64 article will best serve the interests of justice.

65 (d) A person sentenced by the circuit court under the
66 provisions of this article remains under the administrative
67 custody and supervision of the court's probation officers or
68 the county sheriff. A person sentenced by a magistrate
69 remains under the administrative custody and supervision of
70 the county sheriff. A person sentenced by a municipal judge

71 would be under the supervision of the city department for
72 whom work is performed.

73 (e) A person sentenced under the provisions of this
74 section may be required to pay the costs of his or her
75 incarceration, including meal costs: *Provided*, That the
76 judge or magistrate considers the person's ability to pay the
77 costs.

78 (f) A person sentenced under the provisions of this
79 section remains under the jurisdiction of the court. The court
80 may withdraw any alternative sentence at any time by order
81 entered with or without notice and require that the
82 remainder of the sentence be served in the county jail, a
83 regional jail or a state correctional facility: *Provided*, That
84 no alternative sentence directed by the sentencing judge or
85 magistrate or administered under the supervision of the
86 sheriff, his or her deputies, a jailer, or a guard may require
87 the convicted person to perform duties which would be
88 considered detrimental to the convicted person's health as
89 attested to by a physician.

90 (g) No provision of this section may be construed to
91 limit a circuit judge's ability to impose a period of
92 supervision or participation in a community corrections
93 program created pursuant to §62-11C-1 *et seq.* of this code,
94 except that a person sentenced to a day report center must
95 be identified as moderate to high risk of reoffending and
96 moderate to high criminogenic need, as defined by the
97 standardized risk and needs assessment adopted by the
98 Supreme Court of Appeals of West Virginia under §62-12-
99 6(d)* of this code, and applied by a probation officer or day
100 report staff: *Provided*, That a judge may impose a period of
101 supervision or participation in a day report center,
102 notwithstanding the results of the standardized risk and
103 needs assessment, upon making specific written findings of
104 fact as to the reason for departing from the requirements of
105 this section.

*NOTE: Correction of apparent word to number translation error.

106 (h) Magistrates may only impose a period of
107 participation in a day report center with the consent by
108 general administrative order of the supervising judge or
109 chief judge of the judicial circuit in which he or she presides.
110 The day report center staff shall determine which services a
111 person receives based on the results of the standardized risk
112 and needs assessment adopted by the Supreme Court of
113 Appeals of West Virginia under §62-12-6(d)* of this code,
114 along with any other conditions of supervision set by the
115 court.

116 (i) There is hereby authorized a program whereby a
117 sentenced person in a regional jail or state correctional
118 facility may be assigned to participate in performing
119 requested tasks approved by the commissioner for
120 municipal, county, and state agencies that could use such
121 services as cleaning up streams, state parks, streets and
122 highways, and similar services.



CHAPTER 60

(S. B. 620 - By Senators Clements, Trump, Baldwin and Weld)

[Passed February 19, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §62-12-13c, all relating to authorizing the Commissioner of the Division of Corrections and Rehabilitation to approve home plans for inmates; authorizing the Commissioner of the Division of Corrections and Rehabilitation to establish a nonviolent offense parole program; establishing eligibility requirements for said program; clarifying that inmates released under said program

*NOTE: Correction of apparent word to number translation error.

are subject to the same conditions of release and sanctions; clarifying that inmate's failing to successfully complete the rehabilitation treatment program are ineligible for release; and clarifying that inmates not otherwise released may be eligible for said program at the time of successful completion of the rehabilitation treatment program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

1 (a) The Parole Board, whenever it is of the opinion that
2 the best interests of the state and of the inmate will be
3 served, and subject to the limitations provided in this
4 section, shall release any inmate on parole for terms and
5 upon conditions provided by this article.

6 (b) Any inmate of a state correctional institution is
7 eligible for parole if he or she:

8 (1) (A) Has served the minimum term of his or her
9 indeterminate sentence or has served one fourth of his or her
10 definite term sentence, as the case may be; or

11 (B) He or she has applied for and been accepted by the
12 Commissioner of Corrections and Rehabilitation into an
13 accelerated parole program. To be eligible to participate in
14 an accelerated parole program, the commissioner must
15 determine that the inmate:

16 (i) Does not have a prior criminal conviction for a felony
17 crime of violence against the person, a felony offense
18 involving the use of a firearm, or a felony offense where the
19 victim was a minor child;

20 (ii) Is not serving a sentence for a crime of violence
21 against the person, or more than one felony for a controlled
22 substance offense for which the inmate is serving a
23 consecutive sentence, a felony offense involving the use of

24 a firearm, or a felony offense where the victim was a minor
25 child; and

26 (iii) Has successfully completed a rehabilitation
27 treatment program created with the assistance of a
28 standardized risk and needs assessment.

29 (C) Notwithstanding any provision of this code to the
30 contrary, any inmate who committed, or attempted to
31 commit, a felony with the use, presentment, or brandishing
32 of a firearm is not eligible for parole prior to serving a
33 minimum of three years of his or her sentence or the
34 maximum sentence imposed by the court, whichever is less:
35 *Provided*, That any inmate who committed, or attempted to
36 commit, any violation of §61-2-12 of this code, with the use,
37 presentment, or brandishing of a firearm, is not eligible for
38 parole prior to serving a minimum of five years of his or her
39 sentence or one third of his or her definite term sentence,
40 whichever is greater. Nothing in this paragraph applies to an
41 accessory before the fact or a principal in the second degree
42 who has been convicted as if he or she were a principal in
43 the first degree if, in the commission of or in the attempted
44 commission of the felony, only the principal in the first
45 degree used, presented, or brandished a firearm. An inmate
46 is not ineligible for parole under the provisions of this
47 paragraph because of the commission or attempted
48 commission of a felony with the use, presentment, or
49 brandishing of a firearm unless that fact is clearly stated and
50 included in the indictment or presentment by which the
51 person was charged and was either: (i) Found guilty by the
52 court at the time of trial upon a plea of guilty or nolo
53 contendere; (ii) found guilty by the jury upon submitting to
54 the jury a special interrogatory for such purpose if the matter
55 was tried before a jury; or (iii) found guilty by the court if
56 the matter was tried by the court without a jury.

57 (D) The amendments to this subsection adopted in the
58 year 1981:

59 (i) Apply to all applicable offenses occurring on or after
60 August 1 of that year;

61 (ii) Apply with respect to the contents of any indictment
62 or presentment returned on or after August 1 of that year
63 irrespective of when the offense occurred;

64 (iii) Apply with respect to the submission of a special
65 interrogatory to the jury and the finding to be made thereon
66 in any case submitted to the jury on or after August 1 of that
67 year or to the requisite findings of the court upon a plea of
68 guilty or in any case tried without a jury: *Provided*, That the
69 state gives notice in writing of its intent to seek such finding
70 by the jury or court, as the case may be. The notice shall
71 state with particularity the grounds upon which the finding
72 will be sought as fully as the grounds are otherwise required
73 to be stated in an indictment, unless the grounds upon which
74 the finding will be sought are alleged in the indictment or
75 presentment upon which the matter is being tried;

76 (iv) Does not apply with respect to cases not affected by
77 the amendments and in those cases the prior provisions of
78 this section apply and are construed without reference to the
79 amendments; and

80 (v) Insofar as the amendments relate to mandatory
81 sentences restricting the eligibility for parole, all matters
82 requiring a mandatory sentence shall be proved beyond a
83 reasonable doubt in all cases tried by the jury or the court.

84 (E) As used in this section, “felony crime of violence
85 against the person” means felony offenses set forth in §61-
86 2-1 *et seq.*, §61-3E-1 *et seq.*, §61-8B-1 *et seq.*, or §61-8D-1
87 *et seq.* of this code.

88 (F) As used in this section, “felony offense where the
89 victim was a minor child” means any felony crime of
90 violence against the person and any felony violation set
91 forth in §61-8-1 *et seq.*, §61-8A-1 *et seq.*, §61-8C-1 *et seq.*,
92 or §61-8D-1 *et seq.* of this code.

93 (G) For the purpose of this section, the term “firearm”
94 means any instrument which will, or is designed to, or may
95 readily be converted to, expel a projectile by the action of
96 an explosive, gunpowder, or any other similar means;

97 (2) Is not in punitive segregation or administrative
98 segregation as a result of disciplinary action;

99 (3) Has prepared and submitted to the Parole Board a
100 written parole release plan setting forth proposed plans for
101 his or her place of residence, employment and, if
102 appropriate, his or her plans regarding education and post-
103 release counseling and treatment which has been approved
104 by the Division of Corrections and Rehabilitation:
105 *Provided*, That an inmate’s application for parole may be
106 considered by the board without the prior submission of a
107 home plan, but the inmate shall have a home plan approved
108 by the division prior to his or her release on parole. The
109 Commissioner of the Division of Corrections and
110 Rehabilitation, or his or her designee, shall review and
111 investigate the plan and provide findings to the board as to
112 the suitability of the plan: *Provided, however*, That in cases
113 in which there is a mandatory 30-day notification period
114 required prior to the release of the inmate, pursuant to §62-
115 12-23 of this code, the board may conduct an initial
116 interview and deny parole without requiring the
117 development of a plan. In the event the board believes
118 parole should be granted, it may defer a final decision
119 pending completion of an investigation and receipt of the
120 commissioner’s findings. Upon receipt of the plan, together
121 with the investigation and findings, the board, through a
122 panel, shall make a final decision regarding the granting or
123 denial of parole; and

124 (4) Has satisfied the board that if released on parole he
125 or she will not constitute a danger to the community.

126 (c) Except in the case of an inmate serving a life
127 sentence, a person who has been previously twice convicted
128 of a felony may not be released on parole until he or she has

129 served the minimum term provided by law for the crime for
130 which he or she was convicted. An inmate sentenced for life
131 may not be paroled until he or she has served 10 years, and
132 an inmate sentenced for life who has been previously twice
133 convicted of a felony may not be paroled until he or she has
134 served 15 years: *Provided*, That an inmate convicted of first
135 degree murder for an offense committed on or after June 10,
136 1994, is not eligible for parole until he or she has served 15
137 years.

138 (d) In the case of an inmate sentenced to a state
139 correctional facility regardless of the inmate's place of
140 detention or incarceration, the Parole Board, as soon as that
141 inmate becomes eligible, shall consider the advisability of
142 his or her release on parole.

143 (e) If, upon consideration, parole is denied, the board
144 shall promptly notify the inmate of the denial. The board
145 shall, at the time of denial, notify the inmate of the month
146 and year he or she may apply for reconsideration and
147 review. The board shall at least once a year reconsider and
148 review the case of every inmate who was denied parole and
149 who is still eligible: *Provided*, That the board may
150 reconsider and review parole eligibility any time within
151 three years following the denial of parole of an inmate
152 serving a life sentence with the possibility of parole.

153 (f) Any inmate in the custody of the commissioner for
154 service of a sentence who reaches parole eligibility is
155 entitled to a timely parole hearing without regard to the
156 location in which he or she is housed.

157 (g) The board shall, with the approval of the Governor,
158 adopt rules governing the procedure in the granting of
159 parole. No provision of this article and none of the rules
160 adopted under this article are intended or may be construed
161 to contravene, limit, or otherwise interfere with or affect the
162 authority of the Governor to grant pardons and reprieves,
163 commute sentences, remit fines, or otherwise exercise his or
164 her constitutional powers of executive clemency.

165 (h) (1) The Division of Corrections and Rehabilitation
166 shall promulgate policies and procedures for developing a
167 rehabilitation treatment plan created with the assistance of a
168 standardized risk and needs assessment. The policies and
169 procedures shall provide for, at a minimum, screening and
170 selecting inmates for rehabilitation treatment and
171 development, using standardized risk and needs assessment
172 and substance abuse assessment tools, and prioritizing the
173 use of residential substance abuse treatment resources based
174 on the results of the standardized risk and needs assessment
175 and a substance abuse assessment. The results of all
176 standardized risk and needs assessments and substance
177 abuse assessments are confidential.

178 (2) An inmate shall not be paroled under paragraph (B),
179 subdivision (1), subsection (b) of this section solely due to
180 having successfully completed a rehabilitation treatment
181 plan, but completion of all the requirements of a
182 rehabilitation treatment plan along with compliance with the
183 requirements of subsection (b) of this section creates a
184 rebuttable presumption that parole is appropriate. The
185 presumption created by this subdivision may be rebutted by
186 a Parole Board finding that, according to the standardized
187 risk and needs assessment, at the time parole release is
188 sought the inmate still constitutes a reasonable risk to the
189 safety or property of other persons if released. Nothing in
190 subsection (b) of this section or in this subsection may be
191 construed to create a right to parole.

192 (i) Notwithstanding the provisions of subsection (b) of
193 this section, the Parole Board may grant or deny parole to
194 an inmate against whom a detainer is lodged by a
195 jurisdiction other than West Virginia for service of a
196 sentence of incarceration, upon a written request for parole
197 from the inmate. A denial of parole under this subsection
198 precludes consideration for parole for a period of one year
199 or until the provisions of subsection (b) of this section are
200 applicable.

201 (j) If an inmate is otherwise eligible for parole pursuant
202 to subsection (b) of this section, and has completed the
203 rehabilitation treatment program required under subdivision
204 (1), subsection (h) of this section, the Parole Board may not
205 require the inmate to participate in an additional program,
206 but may determine that the inmate must complete an
207 assigned task or tasks prior to actual release on parole. The
208 board may grant parole contingently, effective upon
209 successful completion of the assigned task or tasks, without
210 the need for a further hearing.

211 (k) (1) The Division of Corrections and Rehabilitation
212 shall supervise all probationers and parolees whose
213 supervision may have been undertaken by this state by
214 reason of any interstate compact entered into pursuant to the
215 Uniform Act for Out-of-State Parolee Supervision.

216 (2) The Division of Corrections and Rehabilitation shall
217 provide supervision, treatment/recovery, and support
218 services for all persons released to mandatory supervision
219 under §15A-4-17 of this code.

220 (l) (1) When considering an inmate of a state
221 correctional facility for release on parole, the Parole Board
222 panel considering the parole shall have before it an authentic
223 copy of, or report on, the inmate's current criminal record
224 as provided through the West Virginia State Police, the
225 United States Department of Justice, or any other reliable
226 criminal information sources and written reports of the
227 superintendent of the state correctional institution to which
228 the inmate is sentenced:

229 (A) On the inmate's conduct record while in custody,
230 including a detailed statement showing any and all
231 infractions of disciplinary rules by the inmate and the nature
232 and extent of discipline administered for the infractions;

233 (B) On the inmate's industrial record while in custody
234 which shall include: The nature of his or her work,
235 occupation or education, the average number of hours per

236 day he or she has been employed or in class while in custody
237 and a recommendation as to the nature and kinds of
238 employment which he or she is best fitted to perform and in
239 which the inmate is most likely to succeed when he or she
240 leaves the state correctional institution; and

241 (C) On any physical, mental, psychological, or
242 psychiatric examinations of the inmate.

243 (2) The Parole Board panel considering the parole may
244 waive the requirement of any report when not available or
245 not applicable as to any inmate considered for parole but, in
246 every case, shall enter in its record its reason for the waiver:
247 *Provided*, That in the case of an inmate who is incarcerated
248 because the inmate has been found guilty of, or has pleaded
249 guilty to, a felony under the provisions of §61-8-12 of this
250 code or under the provisions of §61-8B-1 *et seq.* or §61-8C-
251 1 *et seq.* of this code, the Parole Board panel may not waive
252 the report required by this subsection. The report shall
253 include a study and diagnosis of the inmate, including an
254 on-going treatment plan requiring active participation in
255 sexual abuse counseling at an approved mental health
256 facility or through some other approved program: *Provided*,
257 *however*, That nothing disclosed by the inmate during the
258 study or diagnosis may be made available to any law-
259 enforcement agency, or other party without that inmate's
260 consent, or admissible in any court of this state, unless the
261 information disclosed indicates the intention or plans of the
262 parolee to do harm to any person, animal, institution, or to
263 property. Progress reports of outpatient treatment are to be
264 made at least every six months to the parole officer
265 supervising the parolee. In addition, in such cases, the
266 Parole Board shall inform the prosecuting attorney of the
267 county in which the person was convicted of the parole
268 hearing and shall request that the prosecuting attorney
269 inform the Parole Board of the circumstances surrounding a
270 conviction or plea of guilty, plea bargaining, and other
271 background information that might be useful in its
272 deliberations.

273 (m) Before releasing any inmate on parole, the Parole
274 Board shall arrange for the inmate to appear in person before
275 a Parole Board panel and the panel may examine and
276 interrogate him or her on any matters pertaining to his or her
277 parole, including reports before the Parole Board made
278 pursuant to the provisions of this section: *Provided*, That an
279 inmate may appear by video teleconference if the members
280 of the Parole Board panel conducting the examination are
281 able to contemporaneously see the inmate and hear all of his
282 or her remarks and if the inmate is able to
283 contemporaneously see each of the members of the panel
284 conducting the examination and hear all of the members'
285 remarks: *Provided, however*, That the requirement that an
286 inmate personally appear may be waived where a physician
287 authorized to do so by the Commissioner of the Division of
288 Corrections and Rehabilitation certifies that the inmate, due
289 to a medical condition or disease, is too debilitated, either
290 physically or cognitively, to appear. The panel shall reach
291 its own written conclusions as to the desirability of releasing
292 the inmate on parole and the majority of the panel
293 considering the release must concur in the decision. The
294 superintendent shall furnish all necessary assistance and
295 cooperate to the fullest extent with the Parole Board. All
296 information, records, and reports received by the Parole
297 Board shall be kept on permanent file.

298 (n) The Parole Board and its designated agents are at all
299 times to have access to inmates imprisoned in any state
300 correctional facility or in any jail in this state and may obtain
301 any information or aid necessary to the performance of its
302 duties from other departments and agencies of the state or
303 from any political subdivision of the state.

304 (o) The Parole Board shall, if requested by the
305 Governor, investigate and consider all applications for
306 pardon, reprieve, or commutation and shall make
307 recommendation on the applications to the Governor.

308 (p) Prior to making a recommendation for pardon,
309 reprieve or commutation, the board shall notify the

310 sentencing judge and prosecuting attorney at least ten days
311 before the recommendation.

312 (q) A parolee shall participate as a condition of parole
313 in the litter control program of the county to which he or she
314 is released to the extent directed by the Parole Board, unless
315 the board specifically finds that this alternative service
316 would be inappropriate.

**§62-12-13c. Authority of commissioner to establish a
nonviolent offense parole program.**

1 (a) The commissioner is authorized to establish a
2 nonviolent offense parole program for any inmate of a state
3 correctional facility in which an inmate may be paroled
4 without action of the Parole Board based upon objective
5 standards as set forth in this section, to commence on July
6 1, 2021.

7 (b) Notwithstanding any provision of this code to the
8 contrary, any inmate of a state correctional facility is
9 eligible for parole under the nonviolent offense parole
10 program if:

11 (1) He or she has served at least the minimum term of
12 his or her sentence and is eligible for parole as determined
13 by the parole board; and

14 (2) He or she qualifies for the nonviolent offense parole
15 program as authorized by this section.

16 (c) To qualify for the nonviolent offense parole
17 program, the commissioner must determine that the inmate:

18 (1) Is not serving a sentence for a crime of violence
19 against the person, crime of violence against an animal, or
20 felony for a controlled substance offense which involves
21 actual or threatened violence to a person, a felony offense
22 involving the use of a firearm, or a felony offense where the
23 victim was a minor child;

24 (2) Has successfully completed an individualized
25 rehabilitation treatment program as determined by the
26 division; and

27 (3) Has otherwise satisfied the requirements for parole
28 eligibility set forth in §62-12-13 of this code.

29 (d) Any person released under the nonviolent offense
30 parole program shall be subject to all conditions of release
31 and sanctions for violations applicable to persons released
32 on parole by the Parole Board, and all parole revocations of
33 persons granted parole pursuant to this section shall be
34 heard in accordance with the provisions of §62-12-19 of this
35 code.

36 (e) The nonviolent offense parole program authorized
37 by subsection (a) of this section requires no action by the
38 Parole Board as to the release decision if the inmate
39 qualifies for the program and has successfully completed his
40 or her rehabilitation treatment program as determined by the
41 commissioner.

42 (f) The commissioner shall develop a policy directive
43 setting forth the processes and procedures to determine
44 successful completion of the rehabilitation treatment
45 program and to provide notice to the inmate. If the inmate
46 fails to successfully complete his or her rehabilitation
47 treatment program, his or her parole shall be determined in
48 accordance with the provisions of §62-12-13 of this code.
49 An inmate who has been denied parole pursuant to the
50 provisions of §62-12-13 of this code and who thereafter
51 successfully completes his or her rehabilitation treatment
52 program prior to his or her next parole review shall be
53 eligible for release under the nonviolent offense parole
54 program within a reasonable time after he or she may
55 successfully complete such program as determined by the
56 commissioner, provided the inmate remains qualified for
57 release under the nonviolent offense parole program.

●

CHAPTER 61

**(Com. Sub. for S. B. 678 - By Senators Clements,
Baldwin, Jeffries, Pitsenbarger, Roberts, Trump,
Cline, Romano and Woelfel)**

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-5-10, relating to requiring that successful completion of the Getting Over Addicted Lifestyles Successfully Program be deemed as successful completion of the Division of Motor Vehicles' DUI Safety and Treatment Program; requiring the Division of Corrections and Rehabilitation to provide each individual that completes the Getting Over Addicted Lifestyles Successfully Program with a certificate of completion; and requiring the Division of Motor Vehicles to accept the certificate of completion as evidence of completion of the DUI Safety and Treatment Program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. BUREAU OF PRISONS AND JAILS.

§15A-5-10. Completing the GOALS Program satisfies the requirements for the DUI Safety and Treatment Program.

1 Notwithstanding any provision of this code to the
2 contrary, any individual committed to the custody of the
3 Commissioner of the Division of Corrections and
4 Rehabilitation who successfully completes the Getting Over
5 Addictive Lifestyles Successfully Program shall be deemed
6 to have also completed the West Virginia DUI Safety and

7 Treatment Program discussed in §17C-5A-3 of this code for
8 purposes of reinstatement of driving privileges.

9 The Commissioner of the Division of Corrections and
10 Rehabilitation shall provide each individual that completes
11 the Getting Over Addictive Lifestyles Successfully Program
12 with a certificate of completion. Upon completion of the
13 Getting Over Addictive Lifestyles Successfully Program,
14 the individual shall provide the certificate of completion to
15 the Division of Motor Vehicles. The Division of Motor
16 Vehicles shall accept the certificate as evidence of
17 completion of the DUI Safety and Treatment Program.



CHAPTER 62

**(H. B. 4501 - By Delegates Miller, Criss, Graves,
Howell, Shott, N. Brown and Maynard)**

**[By Request of the Department of Military Affairs
and Public Safety]**

[Passed February 27, 2020; in effect from passage.]
[Approved by the Governor on March 7, 2020.]

AN ACT to repeal §62-6-6a of the Code of West Virginia, 1931, as amended; to amend and reenact §15A-5-9 of said code; and to amend and reenact §62-1C-14 of said code; all relating to the ability to refuse offenders for commitment to a jail; authorizing the acceptance of certain offenders refusing ordered examination or medical treatment; granting civil and criminal immunity to the division, the commissioner, employees and agents of the division for accepting offenders who refuse a medical examination or medical treatment; and clarifying conditions and circumstances under which division employees accept or refuse to accept offenders brought to a regional jail pursuant to a bailpiece.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 15A. DEPARTMENT OF MILITARY
AFFAIRS AND PUBLIC SAFETY.**

ARTICLE 5. BUREAU OF PRISONS AND JAILS.

§15A-5-9. Ability to refuse offenders.

1 (a) Notwithstanding any other provision of this code, the
2 commissioner, or any employee or agent of the division,
3 having authority to accept offenders in a jail is not required
4 to accept those offenders if an offender appears to be in need
5 of medical attention of a degree necessitating treatment by
6 a physician. If an offender is refused pursuant to the
7 provisions of this section, he or she may not be accepted for
8 detention until a written clearance is received from a
9 licensed physician reflecting that the offender has been
10 examined and if necessary treated, and which states that it
11 is the physician's medical opinion that the offender can be
12 safely housed in a jail.

13 (b) Notwithstanding the provisions of subsection (a) of
14 this section, the division, the commissioner, or any
15 employee or agent of the division, may accept an offender
16 into custody who appears to be in need of medical attention
17 of a degree necessitating treatment by a licensed medical
18 professional, who refuses a medical examination or medical
19 treatment to a licensed medical professional, and is immune
20 from civil or criminal liability for accepting the person into
21 custody.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1C. BAIL.

**§62-1C-14. Bailpiece; issuance to surety; taking accused into
custody.**

1 (a) A bailpiece is a certificate stating that the bail
2 became such for the accused in a particular case and the
3 amount thereof. Upon demand therefor, the court,
4 magistrate, or clerk shall issue to the bail bondsperson a
5 bailpiece. Any officer having authority to execute a warrant

6 of arrest shall assist the bail bondsperson holding such
7 bailpiece to take the accused into custody and produce him
8 or her before the court or magistrate. The bail bondsperson
9 may take the accused into custody and surrender him or her
10 to the court or magistrate without such bailpiece.

11 (b) If bailpiece is inaccessible due to unavailability of
12 the court's circuit clerk or magistrate, the bail bondsperson,
13 or his or her designee, can take an offender to a regional jail
14 without bailpiece, and the jail must accept the offender,
15 provided:

16 (1) The bail bondsperson, or his or her designee,
17 delivering an offender to a jail without a bailpiece issued by
18 the court's circuit clerk or magistrate appears on the
19 registered list maintained at the jails and approved by the
20 court of original jurisdiction;

21 (2) The bail bondsperson signs an agreement provided
22 by the jail indicating that the offender has been booked in
23 lieu of bailpiece. Such agreement shall contain a clause
24 indicating the incarceration of such offender is lawful and
25 that the jail accepting the offender shall be held harmless
26 from any claims of illegal incarceration or other relative
27 charges; thereby, such bail bondsperson assumes the risk
28 and liability of such incarceration; and

29 (3) Bailpiece must be applied for by the bail
30 bondsperson or his or her designee from the court's circuit
31 clerk or magistrate and hand-delivered by the bail
32 bondsperson or his or her designee to the jail housing such
33 offender on the next judicial day following the initial intake.

34 (c) Any bail bondsperson who willfully fails to attempt
35 to obtain the appropriate bailpiece within the allotted time
36 period provided in subsection (b) of this section is guilty of
37 a misdemeanor and, upon conviction thereof, shall be
38 prohibited from continuing to conduct business in this state
39 and shall be fined not more than \$1,000 and confined in the
40 regional jail not more than one year.

41 (d) No officer, jailer, or other person having authority to
 42 accept offenders in a regional jail is required to accept such
 43 offenders being housed in lieu of bailpiece except as set
 44 forth in §15A-5-9 of this code.

45 (e) The Division of Corrections and Rehabilitation, the
 46 county sheriff, county commission, or any of their agents or
 47 employees, shall be immune from liability for any claims of
 48 illegal incarceration or other relative charges for any
 49 offender accepted into a facility under this section.

ARTICLE 6. MISCELLANEOUS PROVISIONS CONCERNING CRIMINAL PROCEDURES.

§62-6-6a. Disposition of prisoners.

1 [Repealed]



CHAPTER 63

**(H. B. 4510 - By Delegates Steele, Criss, Graves,
 Howell, D. Kelly, Miller, Shott, N. Brown, Maynard
 and Fast)**

[Passed March 3, 2020; in effect ninety days from passage.]
 [Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §62-8-1 of the Code of West Virginia, 1931, as amended, relating to creating the offense of bodily intrusion by an inmate in the custody of the Commissioner of Corrections and Rehabilitation; defining terms; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. CRIMES BY AND PROCEEDINGS AGAINST INMATES.

§62-8-1. Offenses by inmates; conspiracy.

1 (a) A person imprisoned or otherwise in the custody
2 of the Commissioner of Corrections and Rehabilitation is
3 guilty of a felony if he or she kills, wounds, or inflicts
4 other bodily injury upon any person at any correctional
5 facility; or breaks, cuts, or injures, or sets fire to any
6 building, fixture, or fastening of any correctional facility,
7 or jail or any part thereof, for the purpose of escaping or
8 aiding any other inmate to escape therefrom, or renders
9 any correctional facility or jail less secure as a place of
10 confinement; or makes, procures, secretes, or has in his
11 or her possession, any instrument, tool, or other thing for
12 such purpose, or with intent to kill, wound, or inflict
13 bodily injury; or resists the lawful authority of an officer
14 or guard of any correctional facility or jail for such
15 purpose or with such intent. Any three or more inmates
16 confined, or in custody, who conspire together to commit
17 any offense mentioned in this section are each guilty of a
18 felony.

19 (b) Any person in the custody of the Commissioner of
20 Corrections and Rehabilitation who commits an act of
21 bodily intrusion is guilty of a felony and, upon conviction
22 thereof, shall be imprisoned for not less than one year nor
23 more than five years. As used in this subsection “bodily
24 intrusion” means penetration, however slight, of the anus
25 of a male or female or the sex organ of a female without
26 his or her consent by means of forcible compulsion and
27 for reasons other than the sexual gratification of either
28 person.

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CHAPTER 64

**(Com. Sub. for S. B. 96 - By Senators Trump, Cline,
Rucker, Azinger, Maynard, Roberts, Sypolt, Smith,
Hamilton, Romano and Facemire)**

[Passed March 2, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §8-12-5a of the Code of West Virginia, 1931, as amended, relating to prohibiting municipalities from limiting in any manner inconsistent with or in conflict with state law, the rights of persons to purchase, possess, transfer, own, carry, transport, sell, or store deadly weapons, firearms, or pepper spray; defining terms; extending restrictions on municipal regulation of firearms to pepper spray and deadly weapons; removing authority of municipalities to prohibit possession of deadly weapons or pepper spray in areas where temporary events are held; and limiting award of attorney's fees and costs to petitioners prevailing in certain actions.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 12. GENERAL AND SPECIFIC POWERS,
DUTIES, AND ALLIED RELATIONS OF
MUNICIPALITIES, GOVERNING BODIES, AND
MUNICIPAL OFFICERS AND EMPLOYEES; SUITS
AGAINST MUNICIPALITIES.**

**§8-12-5a. Limitations upon municipalities' power to restrict
the purchase, possession, transfer, ownership, carrying,
transport, sale, and storage of certain weapons and
ammunition.**

1 (a) Neither a municipality nor the governing body of any
2 municipality may, by ordinance or otherwise, limit the right
3 of any person to purchase, possess, transfer, own, carry,
4 transport, sell, or store any deadly weapon, firearm, or
5 pepper spray, or any ammunition or ammunition
6 components to be used therewith nor to so regulate the
7 keeping of gunpowder so as to directly or indirectly prohibit
8 the ownership of the ammunition in any manner
9 inconsistent with or in conflict with state law.

10 (b) For the purposes of this section:

11 (1) “Deadly weapon” has the meaning provided in §61-
12 7-2 of this code.

13 (2) “Firearm” has the meaning provided in §61-7-2 of
14 this code.

15 (3) “Municipally owned or operated building” means
16 any building that is used for the business of the
17 municipality, such as a courthouse, city hall, convention
18 center, administrative building, or other similar municipal
19 building used for a municipal purpose permitted by state
20 law: *Provided*, That “municipally owned or operated
21 building” does not include a building owned by a
22 municipality that is leased to a private entity where the
23 municipality primarily serves as a property owner receiving
24 rental payments.

25 (4) “Municipally owned recreation facility” means any
26 municipal swimming pool, recreation center, sports facility,
27 facility housing an after-school program, or other similar
28 facility where children are regularly present.

29 (5) “Pepper spray” means a temporarily disabling
30 aerosol that is composed partly of capsicum oleoresin and
31 causes irritation, blinding of the eyes, and inflammation of
32 the nose, throat, and skin that is intended for self-defense
33 use.

34 (c)(1) A municipality may enact and enforce an
35 ordinance or ordinances that prohibit or regulate the
36 carrying or possessing of a deadly weapon, firearm, or
37 pepper spray in municipally owned or operated buildings.

38 (2) A municipality may enact and enforce an ordinance
39 or ordinances that prohibit a person from carrying or
40 possessing a deadly weapon, firearm, or pepper spray
41 openly or that is not lawfully concealed in a municipally
42 owned recreation facility: *Provided*, That a municipality
43 may not prohibit a person with a valid concealed handgun
44 license from carrying an otherwise lawfully possessed
45 firearm into a municipally owned recreation facility and
46 securely storing the firearm out of view and access to others
47 during their time at the municipally owned recreation
48 facility.

49 (3) A person may keep an otherwise lawfully possessed
50 deadly weapon, firearm, or pepper spray in a motor vehicle
51 in municipal public parking facilities if the vehicle is locked
52 and the deadly weapon, firearm, or pepper spray is out of
53 view.

54 (4) A municipality may not prohibit or regulate the
55 carrying or possessing of a deadly weapon, firearm, or
56 pepper spray on municipally owned or operated property
57 other than municipally owned or operated buildings and
58 municipally owned recreation facilities pursuant to
59 subdivisions (1) and (2) of this section: *Provided*, That a
60 municipality may prohibit persons who do not have a valid
61 concealed handgun license from carrying or possessing a
62 firearm on municipally owned or operated property.

63 (d) It shall be an absolute defense to an action for an
64 alleged violation of an ordinance authorized by this section
65 prohibiting or regulating the possession of a deadly weapon,
66 firearm, or pepper spray that the person: (1) Upon being
67 requested to do so, left the premises with the deadly weapon,
68 firearm, or pepper spray or temporarily relinquished the
69 deadly weapon, firearm, or pepper spray in response to

70 being informed that his or her possession of the deadly
71 weapon, firearm, or pepper spray was contrary to municipal
72 ordinance; and (2) but for the municipal ordinance the
73 person was lawfully in possession of the deadly weapon,
74 firearm, or pepper spray.

75 (e) Any municipality that enacts an ordinance regulating
76 or prohibiting the carrying or possessing of a deadly
77 weapon, firearm, or pepper spray pursuant to subsection (c)
78 of this section shall prominently post a clear statement at
79 each entrance to all applicable municipally owned or
80 operated buildings or municipally owned recreation
81 facilities setting forth the terms of the regulation or
82 prohibition.

83 (f) Redress for an alleged violation of this section may
84 be sought through the provisions of §53-1-1 *et seq.* of this
85 code, which may include the awarding of reasonable
86 attorney's fees and costs, if the petitioner prevails.

87 (g) For the purposes of §61-7-14 of this code,
88 municipalities may not be considered a person charged with
89 the care, custody, and control of real property.

90 (h) This section does not:

91 (1) Authorize municipalities to restrict the carrying or
92 possessing of deadly weapons, firearm, or pepper spray,
93 which are otherwise lawfully possessed, on public streets
94 and sidewalks of the municipality; or

95 (2) Limit the authority of a municipality to restrict the
96 commercial use of real estate in designated areas through
97 planning or zoning ordinances.

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CHAPTER 65

(Com. Sub. for S. B. 209 - By Senators Rucker and Maynard)

[Passed February 20, 2020; in effect from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §8-6-4a and §8-6-5 of the Code of West Virginia, 1931, as amended, all relating to annexation by minor boundary adjustment; clarifying language regarding entry of order by county commission following annexation of property within urban growth boundary by minor boundary adjustment; requiring that municipality as part of application provide affidavit that persons, businesses, and freeholders in additional territory consent to inclusion in annexation; providing procedure when affected party is unavailable to provide affidavit; requiring county commission to enter order denying application for minor boundary adjustment annexation upon determination that annexation could be efficiently and cost effectively accomplished under other provisions of said code, that application lacks evidence of consent of all affected parties, or is otherwise insufficient; and prohibiting municipality from applying for annexation by minor boundary adjustment for two years after denial of application.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. ANNEXATION.

PART III. ANNEXATION WITHOUT ELECTION.

§8-6-4a. Annexation without election for municipalities in counties that have an adopted countywide zoning ordinance which includes urban growth boundaries.

1 (a) This section applies to municipalities in counties that
2 have adopted a countywide zoning ordinance with
3 designated urban growth boundaries and, prior to January 1,
4 2009, have adopted local impact fees pursuant to the
5 provisions of §7-20-1 *et seq.* of this code that want to annex
6 additional property without an election.

7 (b) For purposes of this section only:

8 (1) “Contiguous” means property that is next to,
9 abutting, and having a boundary that is coterminous with the
10 municipality’s designated urban growth boundary. The
11 length of a street, highway, road, or other traffic or utility
12 easement, streams, rivers, or other natural topography are
13 not to be used to determine if a property is contiguous:
14 *Provided*, That the width of a street, highway, road, or other
15 traffic or utility easement, streams, rivers, or other natural
16 topography may be used to determine contiguous
17 boundaries.

18 (2) “Urban growth boundary” means a site-specific line,
19 delineated on a zoning map or a written description in a
20 zoning ordinance identifying an area around and outside the
21 corporate limits of a municipality within which there is a
22 sufficient supply of developable land within the boundary
23 for at least a prospective 20-year period of municipal growth
24 based on demographic forecasts and the time reasonably
25 required to effectively provide municipal services to the
26 identified area. The urban growth boundary may be called
27 by any name chosen by the county commission, but the
28 word “boundary” shall be used in the name of the boundary.
29 The boundary shall be established by the county
30 commission in agreement with each individual municipality
31 regarding that municipality’s boundary. If the county
32 commission and municipality cannot agree upon the
33 location or size of the boundary, either party may file for
34 declaratory judgment relief in the circuit court which shall
35 submit the dispute to mediation or arbitration prior to final
36 resolution by the circuit court. Once a county has adopted
37 an urban growth boundary by its designation on an adopted

38 county zoning map, the gross area inside the boundary may
39 not be reduced without written consent of the municipality.
40 The county commission shall review each urban growth
41 boundary at a period not to exceed 10 years or upon request
42 of the individual municipality.

43 (c) *Procedure for a municipality to annex property*
44 *within an urban growth boundary.* —

45 (1) If the proposed property to be annexed by a
46 municipality is entirely within the municipality's designated
47 urban growth boundary, then the municipality may annex
48 without an election the proposed property pursuant to the
49 provisions of §8-6-4 of this code. Agreement with the
50 county commission is not required.

51 (2) If the proposed property to be annexed by minor
52 boundary adjustment by a municipality is entirely within the
53 municipality's designated urban growth boundary, then the
54 municipality may annex without an election the proposed
55 property pursuant to the provisions of §8-6-4 of this code if
56 the provisions of §8-6-5 of this code are followed, except
57 that agreement with the county commission is not required.

58 (d) *Procedure for a municipality to annex property*
59 *within urban growth boundaries of two or more*
60 *municipalities.* —

61 If the proposed property to be annexed by a municipality
62 is partially or wholly within another municipality's urban
63 growth boundary, then the municipality may annex without
64 an election the proposed property pursuant to the provisions
65 of §8-6-4 of this code if the two municipalities have
66 executed an intergovernmental agreement regarding the
67 annexation of the subject property. Agreement with the
68 county commission is not required.

69 (e) *Procedure for a municipality to annex contiguous*
70 *property outside an urban growth boundary.* —

71 (1) If the proposed property to be annexed by a
72 municipality is outside the municipality's designated urban
73 growth boundary, then the municipality may annex without
74 an election the proposed property pursuant to the provisions
75 of §8-6-4 of this code, if:

76 (A) The proposed property to be annexed is contiguous
77 to the municipality, as defined in this section; and

78 (B) The municipality has the county commission's
79 agreement.

80 (2) Prior to the agreement of the county commission to
81 the annexation of the proposed property, the county
82 commission shall:

83 (A) Hold a public hearing;

84 (B) Place a notice on the subject property, which notice
85 shall be the same as that required for property to be rezoned;
86 and

87 (C) At least 15 days prior to the public hearing, publish
88 a notice of the date, time, and place of the public hearing as
89 a Class I legal advertisement in compliance with the
90 provisions of §59-3-1 *et seq.* of this code.

91 (f) *Procedure for a municipality to annex noncontiguous*
92 *property outside an urban growth boundary.* —

93 (1) If the proposed property to be annexed by a
94 municipality is entirely outside the municipality's
95 designated urban growth boundary and is not contiguous to
96 the municipality, as defined in this section, then the
97 municipality may annex without an election the proposed
98 property pursuant to the provisions of §8-6-4 of this code if
99 the municipality has the county commission's agreement
100 and, prior to the agreement of the county commission to the
101 annexation of the proposed property, the county
102 commission shall:

103 (A) Hold a public hearing;

104 (B) Place a notice on the subject property, which notice
105 shall be the same as that required for property to be rezoned;
106 and

107 (C) At least 15 days prior to the public hearing, publish
108 a notice of the date, time, and place of the public hearing as
109 a Class I legal advertisement in compliance with the
110 provisions of §59-3-1 *et seq.* of this code.

111 (2) After the public hearing and on-site notice, if the
112 county commission finds, by a written record, that the
113 proposed annexation is for the good of the county as a
114 whole, then the county commission may agree to the
115 annexation.

116 (g) Prior to the county commission entering an order for
117 any annexation pursuant to this section, the annexed
118 property shall be surveyed by a licensed professional
119 surveyor and a metes and bounds description of the annexed
120 property must be provided to the county commission of the
121 county in which the property is located.

122 (h) After a municipality has annexed property pursuant
123 to this section and the property has been surveyed, the
124 county commission shall enter an order. After the order is
125 entered, the corporate limits of the municipality include the
126 annexed property.

PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.

§8-6-5. Annexation by minor boundary adjustment.

1 (a) In the event a municipality desires to increase its
2 corporate limits by making a minor boundary adjustment,
3 the governing body of the municipality may apply to the
4 county commission of the county wherein the municipality
5 or the major portion of the territory thereof, including the
6 territory to be annexed, is located for permission to effect
7 annexation by minor boundary adjustment. The

8 municipality shall pay the costs of all proceedings before
9 the commission.

10 (b) In addition to any other annexation configuration, a
11 municipality may incorporate by minor boundary
12 adjustment: (i) Territory that consists of a street or highway
13 as defined in §17C-1-35 of this code and one or more
14 freeholders; or (ii) territory that consists of a street or
15 highway as defined in §17C-1-35 of this code which does
16 not include a freeholder but which is necessary for the
17 provision of emergency services in the territory being
18 annexed.

19 (c) A county commission may develop a form
20 application for annexation for minor boundary adjustment.
21 An application for annexation by minor boundary
22 adjustment shall include, but not be limited to:

23 (1) The number of businesses located in and persons
24 residing in the additional territory;

25 (2) An affidavit of each business located in, each person
26 residing in, and each freeholder of the additional territory
27 stating that he, she, or it has consented to be included in the
28 annexation, in such form as the county commission deems
29 sufficient. In the event the municipality cannot obtain an
30 affidavit from a business, resident, or freeholder within 90
31 days after sending the affidavit form and a letter explaining
32 the purpose of the affidavit via certified mail, return receipt
33 requested, to the best available address for the business,
34 resident, or freeholder, such business, resident, or freeholder
35 shall be deemed to have consented to the annexation;

36 (3) An accurate map showing the metes and bounds of
37 the additional territory;

38 (4) A statement setting forth the municipality's plan for
39 providing the additional territory with all applicable public
40 services such as police and fire protection, solid waste
41 collection, public water and sewer services, and street
42 maintenance services, including to what extent the public

43 services are or will be provided by a private solid waste
44 collection service or a public service district;

45 (5) A statement of the impact of the annexation on any
46 private solid waste collection service or public service
47 district currently doing business in the territory proposed for
48 annexation in the event the municipality should choose not
49 to utilize the current service providers;

50 (6) A statement of the impact of the annexation on fire
51 protection and fire insurance rates in the territory proposed
52 for annexation;

53 (7) A statement of how the proposed annexation will
54 affect the municipality's finances and services; and

55 (8) A statement that the proposed annexation meets the
56 requirements of this section.

57 (d) Upon receipt of a complete application for
58 annexation by minor boundary adjustment, the county
59 commission shall determine whether the application meets
60 the threshold requirements for consideration as a minor
61 boundary adjustment including whether the annexation
62 could be efficiently and cost effectively accomplished under
63 §8-6-2 or §8-6-4 of this code. If the county commission
64 determines that the annexation could be cost effectively and
65 efficiently accomplished under §8-6-2 or §8-6-4 of this
66 code, that the application lacks sufficient evidence that all
67 affected parties of the additional territory consent to the
68 annexation, or that the application otherwise fails to meet
69 the threshold requirements for consideration as a minor
70 boundary adjustment, it shall enter an order denying the
71 application, which order shall include the reasons upon
72 which it is based.

73 (e) If the application meets the threshold requirements,
74 the county commission shall order publication of a notice of
75 the proposed annexation to the corporate limits and of the
76 date and time set by the commission for a hearing on the

77 proposal. Publication shall be as in the case of an order
78 calling for an election, as set forth in §8-6-2 of this code. A
79 like notice shall be prominently posted at not less than five
80 public places within the area proposed to be annexed.

81 (f) In making its final decision on an application for
82 annexation by minor boundary adjustment, the county
83 commission shall, at a minimum, consider the following
84 factors:

85 (1) Whether the territory proposed for annexation is
86 contiguous to the corporate limits of the municipality. For
87 purposes of this section, “contiguous” means that at the time
88 the application for annexation is submitted, the territory
89 proposed for annexation either abuts directly on the
90 municipal boundary or is separated from the municipal
91 boundary by an unincorporated street or highway, or street
92 or highway right-of-way, a creek or river, or the right-of-
93 way of a railroad or other public service corporation, or
94 lands owned by the state or the federal government;

95 (2) Whether the proposed annexation is limited solely to
96 a Division of Highways right-of-way or whether the
97 Division of Highways holds title to the property in fee;

98 (3) Whether affected parties of the territory to be
99 annexed oppose or support the proposed annexation. For
100 purposes of this section, “affected parties” means
101 freeholders, firms, corporations, and qualified voters in the
102 territory proposed for annexation and in the municipality,
103 and a freeholder whose property abuts a street or highway,
104 as defined in §17C-1-35 of this code, when: (i) The street or
105 highway is being annexed to provide emergency services;
106 or (ii) the annexation includes one or more freeholders at the
107 end of the street or highway proposed for annexation;

108 (4) Whether the proposed annexation consists of a street
109 or highway as defined in §17C-1-35 of this code and one or
110 more freeholders;

111 (5) Whether the proposed annexation consists of a street or
112 highway as defined in §17C-1-35 of this code which does not
113 include a freeholder but which is necessary for the provision
114 of emergency services in the territory being annexed;

115 (6) Whether another municipality has made application
116 to annex the same or substantially the same territory; and

117 (7) Whether the proposed annexation is in the best
118 interest of the county as a whole.

119 (g) If the county commission denies the application for
120 annexation by minor boundary adjustment, the commission
121 may allow the municipality to modify the proposed
122 annexation to meet the commissions objections. The
123 commission must order another public hearing if significant
124 modifications are proposed.

125 (h) The final order of the commission shall include the
126 reasons for the grant or denial of the application.

127 (i) The municipality applying for annexation or any
128 affected party may appeal the commission's final order to
129 the circuit court of the county in which the municipality or
130 the major portion thereof, including the area proposed to be
131 annexed, is located. The county commission may participate
132 in any appeal taken from its order in the same manner and
133 to the same extent as a party to the appeal. The order may
134 be reviewed by the circuit court as an order of a county
135 commission ordering an election may be reviewed under
136 §8-5-16 of this code.

137 (j) If the final order of the county commission is a denial
138 of the application for annexation, the municipality may
139 appeal as set forth in this section, but the municipality may
140 not present the commission with another application for
141 annexation relating to the same proposed change or any part
142 thereof for a period of two years after issuance of the final
143 order of the commission, unless such application is
144 directed by the circuit court as the result of an appeal.

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CHAPTER 66

(Com. Sub. for S. B. 225 - By Senators Maynard and Cline)

[Passed February 29, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-12-20, relating to empowering municipalities to enact Adopt-A-Street programs; and establishing eligibility criteria.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES, AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-20. Authorizing municipalities to enact Adopt-A-Street programs.

1 (a) In addition to all other powers and duties conferred
2 by law upon municipalities, municipalities are empowered
3 to enact municipality Adopt-A-Street programs.

4 (b) The state Adopt-A-Highway Program was
5 established in the late 1980s to improve the quality of the
6 state's environment by encouraging public involvement in
7 the elimination of highway litter. That program is
8 cosponsored by the Division of Highways and the
9 Department of Environmental Protection, REAP Program.
10 Its objective is to save taxpayer money by increasing public
11 awareness and to serve as an educational tool by focusing

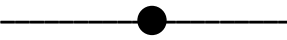
12 on the consequences of littering. The program offers
13 volunteers the opportunity to take charge of their own
14 environment by making a positive effort to create a cleaner,
15 more aesthetic place in which to live.

16 In West Virginia, there are currently 25,000 volunteers
17 who regularly pick up litter on 4,000 miles of highway.
18 They have been responsible for removing more than 40
19 million pounds of litter since the program began.

20 (c) As with the state program, individuals, families,
21 churches, businesses, schools, civic organizations,
22 government agencies, scouting groups, fraternities, and
23 communities may participate in a municipality's Adopt-A-
24 Street program. Anyone who is at least 12 years old may
25 participate. Any street that is maintained by that
26 municipality is eligible for adoption, with the exception of
27 interstates and streets deemed unsafe. Volunteers may select
28 a street to adopt and then have it approved by the
29 municipality, or they may ask the municipality to suggest an
30 adoptable street. Alleys, dirt roads, and streets off the beaten
31 path, as well as major streets, may be adopted. Adopted
32 streets must be at least six blocks long.

33 (d) Adoptions are for a period of two years, during
34 which time three cleanups are required per year. As
35 volunteers pick up litter, bags that have been filled are
36 placed on street sides for removal and disposal by the
37 municipality. Garbage bags, safety vests, safety training,
38 traffic warning signs, and gloves shall be furnished by the
39 municipality.

40 (e) Adopted streets may be identified by a sign at each
41 end of the section bearing the Adopt-A-Street logo and the
42 name of the adopting entity. Volunteers who complete six
43 required litter pickups within the two-year contract period
44 are awarded a certificate of accomplishment signed by the
45 mayor of the municipality.



CHAPTER 67

(S. B. 281 - By Senators Woelfel, Plymale and Palumbo)

[Passed February 28, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §8-14-12 of the Code of West Virginia, 1931, as amended, relating to removing the residency requirement for persons applying for reappointment to a municipal police department.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY, AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-12. Form of application; age and residency requirements; exceptions.

1 (a) The policemen's civil service commission in each
2 Class I and Class II city shall require a person applying for
3 admission to any competitive examination provided under
4 the civil service provisions of this article or under the
5 commission's rules to file in its office, within a reasonable
6 time prior to the proposed examination, a formal application
7 in which the applicant shall state under oath or affirmation:

8 (1) The applicant's full name, residence, and post-office
9 address;

10 (2) The applicant's United States citizenship, age, and
11 the place and date of the applicant's birth;

12 (3) The applicant's state of health and the applicant's
13 physical capacity for the public service;

14 (4) The applicant's business and employments and
15 residences for at least three previous years; and

16 (5) Other information as may reasonably be required,
17 touching upon the applicant's qualifications and fitness for
18 the public service.

19 (b) Applications shall be furnished by the commission,
20 without charge. The commission may require, in connection
21 with the application, the certificates of citizens, physicians,
22 and others, having pertinent knowledge concerning the
23 applicant, as the good of the service may require.

24 (c) Notwithstanding the provisions of §11-5-1 *et seq.* of
25 this code, a person may not submit an application for
26 original appointment if the person is less than 18 years of
27 age or more than 40 years of age at the date of the
28 individual's application.

29 (d) Notwithstanding the requirements established in this
30 section, if an applicant: (1) Formerly served upon the paid
31 police department of the city to which he or she makes
32 application, for a period of more than his or her probationary
33 period; (2) resigned from the department at a time when
34 there were no charges of misconduct or other misfeasance
35 pending against the applicant; and (3) applies for
36 appointment by reinstatement within a period of two years
37 from the date of resignation from the paid police department
38 to which the individual seeks appointment by reinstatement,
39 then the individual is eligible for appointment by
40 reinstatement in the discretion of the policemen's civil
41 service commission. The applicant may be over the age of
42 40 years. The applicant, providing his or her former term of
43 service so justifies, may be appointed by reinstatement to

44 the paid police department without a competitive
45 examination, but the applicant shall undergo a medical
46 examination. The applicant shall be the lowest in rank in the
47 department next above the probationers of the department.

CHAPTER 68

(S. B. 523 - By Senators Plymale and Stollings)

[Passed February 29, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §8-22A-28 of the Code of West Virginia, 1931, as amended, relating to participation in Social Security by certain municipalities; extending the deadline for opting to extend Social Security coverage; and requiring State Auditor's office to assist municipalities in complying with certain requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-28. How a municipality or municipal subdivision becomes a participating public employer; duty to request referendum on Social Security coverage.

1 (a) Subject to §8-22-16 of this code, any municipality or
2 municipal subdivision employing municipal police officers
3 or firefighters may by a majority of the members of its
4 governing body eligible to vote, elect to become a
5 participating public employer and thereby include its police
6 officers and firefighters in the membership of the plan. The
7 clerk or secretary of each municipality or municipal
8 subdivision electing to become a participating public

9 employer shall certify the determination of the municipality
10 or municipal subdivision by corporate resolution to the
11 Consolidated Public Retirement Board within 10 days from
12 and after the vote of the governing body. Separate
13 resolutions are required for municipal police officers and
14 municipal firefighters. Once a municipality or municipal
15 subdivision elects to participate in the plan, the action is
16 final and it may not, at a later date, elect to terminate its
17 participation in the plan.

18 (b) On or before October 1, 2024, all participating
19 employers shall submit a plan to the State Auditor, as the
20 designated state agency under the Social Security Act, to
21 extend Social Security benefits to members of the
22 retirement system as authorized by §5-7-5 of this code and
23 applicable federal laws. The State Auditor shall assist the
24 participating employers in complying with the requirements
25 for providing extension of Social Security benefits to
26 members of the retirement system.



CHAPTER 69

**(Com. Sub. for S. B. 532 - By Senators Azinger,
Hamilton, Ihlenfeld, Plymale, Tarr, Jeffries and
Romano)**

[Passed February 13, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §8-22-28a,
relating to the distribution of the assets remaining in a
municipal policemen's or firemen's pension and relief fund
upon the death or disqualification of the last remaining retiree
or beneficiary receiving benefits from the fund; providing for
the use of the assets received by the municipality; and

providing for the use of assets received by the Municipal Pensions Oversight 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.**

**§8-22-28a. Distribution of remaining assets in a closed
municipal policemen's or firemen's pension and relief
fund.**

1 (a)(1) Upon the cessation of any and all benefit
2 payments to retirees or retiree beneficiaries because of death
3 or disqualification, the board shall transfer the remaining
4 assets of a policemen's pension and relief fund or a
5 firemen's pension and relief fund to the municipality to be
6 used solely by the municipality's governing body to fund
7 future retirement obligations for the municipality's police or
8 fire department members who are in the Municipal Police
9 Officers and Firefighters Retirement System established
10 under §8-22A-1 *et seq.* of this code, subject to subdivision
11 (2) of this subsection.

12 (2) If within five years prior to the death of the last
13 remaining retiree or beneficiary the Municipal Pensions
14 Oversight Board provided any state aid to the fund pursuant
15 to §33-3-14d(b)(2) of this code, an amount equal to the
16 aggregate amount of state aid provided to the fund during
17 that period shall be repaid from the assets of the fund to the
18 Municipal Pensions Oversight Board prior to the
19 municipality's use of the remaining assets for the purposes
20 described in subdivision (1) of this subsection. If the
21 amount to be repaid is greater than the total assets of the
22 fund, then the entire amount of the fund shall be repaid to
23 the Municipal Pensions Oversight Board.

24 (b) The Municipal Pensions Oversight Board shall
 25 deposit any repaid amounts into the Municipal Pensions
 26 Security Fund for reallocation to municipal policemen's or
 27 firemen's pension and relief funds with an actuarial
 28 deficiency during the next allocation cycle pursuant to §33-
 29 3-14d(b)(2) of this code.

CHAPTER 70

**(Com. Sub. for S. B. 649 - By Senators Maynard and
 Cline)**

[Passed March 2, 2020; in effect ninety days from passage.]
 [Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §24-6-5 of the Code of West Virginia, 1931, as amended, relating to permitting directors of county emergency phone systems to obtain mobile phone emergency lines and enter into service provider contracts; establishing payment of emergency mobile phone contracts; and requiring a report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

*** §24-6-5. Enhanced emergency telephone system requirements.**

1 (a) An enhanced emergency telephone system, at a
 2 minimum, shall provide that:

3 (1) All the territory in the county, including every
 4 municipal corporation in the county, which is served by
 5 telephone company central office equipment that will
 6 permit such a system to be established shall be included in
 7 the system: *Provided*, That if a portion of the county or a
 8 portion of a municipal corporation within the county is

*NOTE: This section was also amended by H. B. 4123 (Chapter 295), which passed subsequent to this act.

9 already being served by an enhanced emergency telephone
10 system, that portion of the county or municipality may be
11 excluded from the county enhanced emergency telephone
12 system;

13 (2) Every emergency service provider that provides
14 emergency service within the territory of a county
15 participate in the system;

16 (3) Each county answering point be operated constantly;

17 (4) Each emergency service provider participating in the
18 system maintain a telephone number in addition to the one
19 provided in the system; and

20 (5) If the county answering point personnel reasonably
21 determine that a call is not an emergency, the personnel
22 provide the caller with the number of the appropriate
23 emergency service provider.

24 (b) To the extent possible, enhanced emergency
25 telephone systems shall be centralized.

26 (c) In developing an enhanced emergency telephone
27 system, a county commission or the West Virginia State
28 Police shall seek the advice of both the telephone companies
29 providing local exchange service within the county and the
30 local emergency providers.

31 (d) As a condition of employment, a person employed
32 as the director of an emergency dispatch center who
33 dispatches emergency calls or supervises the dispatching of
34 emergency call takers is subject to an investigation of their
35 character and background. This investigation shall include,
36 at a minimum, a criminal background check conducted by
37 the State Police at its expense. A felony conviction shall
38 preclude a person from holding any of these positions.

39 (e) As a condition of continued employment, persons
40 employed to dispatch emergency calls in county emergency
41 dispatch centers shall successfully complete:

42 (1) A 40-hour nationally recognized training course for
43 dispatchers within one year of the date of their employment;
44 and

45 (2) An additional nationally recognized emergency
46 medical dispatch course or an emergency medical dispatch
47 course approved by the Office of Emergency Medical
48 Services not later than July 1, 2013, or if employed
49 subsequent to July 1, 2013, within one year of the date of
50 employment.

51 (f) On or before July 1, 2013, the director of each county
52 emergency dispatch center shall develop policies and
53 procedures to establish a protocol for dispatching
54 emergency medical calls implementing a nationally
55 recognized emergency medical dispatch program or an
56 emergency medical dispatch program approved by the
57 Office of Emergency Medical Services: *Provided*, That a
58 county's emergency dispatch center, which utilizes a one-
59 button transfer system, may continue to use this system if
60 the county emergency dispatch center establishes policies
61 and procedures which require the agency to whom the call
62 is transferred to remain on the call until a first responder
63 arrives.

64 (g) Each county or municipality shall appoint for each
65 answering point an enhanced emergency telephone system
66 advisory board consisting of at least six members to monitor
67 the operation of the system. The board shall be appointed by
68 the county or municipality and shall include at least one
69 member from affected:

70 (1) Fire service providers;

71 (2) Law-enforcement providers;

72 (3) Emergency medical providers;

73 (4) Emergency services providers participating in the
74 system; and

75 (5) Counties or municipalities.

76 The director of the county or municipal enhanced
77 telephone system shall serve as an ex officio member of the
78 advisory board.

79 (h) The initial advisory board shall serve staggered
80 terms of one, two, and three years. The initial terms of these
81 appointees shall commence on July 1, 1994. All future
82 appointments shall be for terms of three years, except that
83 an appointment to fill a vacancy shall be for the unexpired
84 term. All members shall serve without compensation. The
85 board shall adopt such policies, rules, and regulations as are
86 necessary for its own guidance. The board shall meet
87 monthly or quarterly. The board may make
88 recommendations to the county or municipality concerning
89 the operation of the system.

90 (i) Nothing herein contained shall be construed to
91 prohibit or discourage in any way the establishment of
92 multijurisdictional or regional systems, or
93 multijurisdictional or regional agreements for the
94 establishment of enhanced emergency telephone systems,
95 and any system established pursuant to this article may
96 include the territory of more than one public agency, or may
97 include only a portion of the territory of a public agency.

98 (j) The director of the county or municipal enhanced
99 telephone system shall have the authority to enter into
100 mobile-phone contracts with service providers for the
101 purpose of obtaining a mobile-phone emergency line for the
102 county or municipality. The director must solicit bids for
103 mobile-phone contracts from mobile-phone service
104 providers in this state. The director may award the contract
105 to the lowest responsible bidder, or designate in writing,
106 why any other bidder other than the lowest responsible
107 bidder was awarded a contract. The director may obtain as
108 many lines as reasonably needed for emergencies where
109 landlines are unavailable to serve the county or

110 municipality. The director and phone service provider
111 should collaborate to obtain the following:

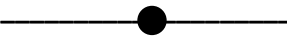
112 (1) The emergency mobile-phone number may be the
113 county prefix and end in 0911, as feasible for the phone
114 service provider;

115 (2) The emergency mobile-phone service provider
116 should permit roll-over service to allow multiple callers to
117 dial into the amount of lines purchased; and

118 (3) The emergency mobile-phone service provider
119 should provide the lowest possible cost.

120 Nothing in this subsection shall be construed to prohibit
121 or discourage in any way the establishment of
122 multijurisdictional or regional systems, or
123 multijurisdictional or regional agreements for the
124 establishment of emergency mobile-telephone systems.
125 This section shall be effective July 1, 2020.

126 (k) Emergency mobile-phone contracts entered into
127 pursuant to subsection (j) of this section may be paid from
128 funds received by the Public Service Commission relating
129 to 911 fees remitted to the county or by other county funds.
130 A report of the funds expended for subsection (j) of this
131 section shall be presented to the interim Joint Committee on
132 Government Organization no later than November 30, 2020,
133 to ensure the fiscal responsibility and efficacy of this
134 section.



CHAPTER 71

**(S. B. 654 - By Senators Tarr, Hardesty,
Pitsenbarger, Prezioso, Smith, Weld, Cline, Stollings
and Plymale)**

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §7-14D-24 of the Code of West Virginia, 1931, as amended, relating to allowing certain sheriffs to transfer from the Public Employees Retirement System into the Deputy Sheriff Retirement System.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 14D. DEPUTY SHERIFF RETIREMENT
SYSTEM ACT.**

§7-14D-24. Service as sheriff.

1 (a) Any member who after the effective date of this
2 article is elected sheriff of a county in West Virginia may
3 elect to continue as a member in this plan by paying the
4 amounts required by §7-14D-7 of this code. Upon the
5 election, service as a sheriff shall be treated as covered
6 employment and the sheriff is not entitled to any credit for
7 that service under any other retirement system of the state.

8 (b) Any member retired as a deputy sheriff under this
9 plan who, after the effective date of this article, is elected or
10 appointed sheriff of a county in West Virginia, may elect to
11 suspend the payment of his or her annuity from this system
12 and again become a contributing member of this plan by
13 paying the amounts required by §7-14D-7 of this code.
14 Upon such election, service as a sheriff shall be treated as
15 covered employment, and the sheriff is not entitled to any

16 credit for that period of elected service under any other
17 retirement system of the state. At the end of his or her term
18 as sheriff, the member making such election shall have his
19 or her annuity recalculated and shall be granted an
20 adjustment to his or her previous annuity to include the
21 period of elected service.

22 (c) Any person, who before the effective date of this
23 article was elected sheriff of a county in West Virginia, and
24 who, immediately prior to being so elected sheriff, was a
25 deputy sheriff with at least 20 years of credited service
26 under the Public Employees Retirement System, with at
27 least 16 of those 20 years having been earned as a deputy
28 sheriff, may elect to become a member of this plan by
29 paying the amounts required by §7-14D-7 of this code.
30 Upon such election, service shall be transferred from the
31 Public Employees Retirement System pursuant to §7-14D-
32 8 of this code: *Provided*, That any service as a sheriff shall
33 be treated as covered employment under this article and the
34 sheriff is not entitled to any credit for that service as a sheriff
35 or the prior service as a deputy sheriff under any other
36 retirement system of the state. Persons making the election
37 provided for in this subsection shall do so within 10 days of
38 taking office as sheriff or within 10 days of the effective
39 date of this provision.

40 (d) Any person who, before the effective date of this
41 article, was elected sheriff of a county of West Virginia, and
42 who, prior to being elected sheriff, was a deputy sheriff and
43 also a previously elected sheriff, with credited service under
44 the Public Employees Retirement System, with at least 16
45 of those years having been earned as combined service as a
46 deputy sheriff and a previously elected sheriff, may elect to
47 become a member of this plan by paying the amounts
48 required by §7-14D-7 of this code. Upon such election,
49 service shall be transferred from the Public Employees
50 Retirement System pursuant to §7-14D-8 of this code:
51 *Provided*, That a person's service as a sheriff shall be treated
52 as covered employment under this article, and that person is

53 not entitled to any credit for that service as a sheriff or
54 deputy sheriff under any other retirement system of this
55 state. A person making the election provided in this
56 subsection shall do so within 30 days of taking office as a
57 sheriff or within 30 days of the effective date of this
58 provision.

59 (e) Notwithstanding any other provision of the code to
60 the contrary, any member who was elected sheriff of a
61 county of West Virginia to serve on or after January 1, 2013,
62 and who has not commenced retirement in the Deputy
63 Sheriff Retirement System or the Public Employees
64 Retirement System, must notify the board in writing by July
65 31, 2020, of his or her intent to pay the difference in the
66 employee contribution between the Public Employees
67 Retirement System and the Deputy Sheriff Retirement
68 System in order to transfer all service credit earned as a
69 sheriff or purchased in accordance with Section 414(u) of
70 the Internal Revenue Code and the federal Uniformed
71 Services Employment and Reemployment Rights Act from
72 the Public Employees Retirement System to the Deputy
73 Sheriff Retirement System. The board shall compute the
74 difference in employee contributions owed up through
75 September 30, 2020, on the total compensation for which
76 assets are being transferred and notify the sheriff of the
77 amount owed in writing by letter mailed no later than
78 August 21, 2020. This difference in employee contributions
79 must be paid in full by the sheriff to the Deputy Sheriff
80 Retirement System no later than September 30, 2020. If
81 timely paid, employee and employer contributions to the
82 Deputy Sheriff Retirement System shall commence October
83 1, 2020.

84 (1) The board shall transfer assets from the Public
85 Employees Retirement System into the Deputy Sheriff
86 Retirement System no later than November 30, 2020.

87 (2) The amount of assets to be transferred for each
88 transferring sheriff shall be computed as of July 1, 2019,
89 using the actuarial valuation assumptions in effect for the

90 July 1, 2019, actuarial valuation of the Public Employees
91 Retirement System, and updated with seven and one-half
92 percent annual interest to the date of the actual asset
93 transfer. The market value of the assets of the transferring
94 sheriff in the Public Employees Retirement System shall be
95 determined as of the end of the month preceding the actual
96 transfer. To determine the computation of the asset share to
97 be transferred the board shall:

98 (A) Compute the market value of the Public Employees
99 Retirement System assets;

100 (B) Compute the accrued liability for all Public
101 Employees Retirement System retirees, beneficiaries,
102 disabled retirees, and terminated inactive members;

103 (C) Reduce the market value of Public Employees
104 Retirement System assets by the accrued liability
105 determined in paragraph (B) of this subdivision;

106 (D) Compute the entry age method accrued liability for
107 all active Public Employees Retirement System members;

108 (E) Compute the share of accrued liability as determined
109 pursuant to paragraph (D) of this subdivision, that is
110 attributable to those sheriffs in the Public Employees
111 Retirement System who have elected to transfer to the plan;

112 (F) Compute the percentage of active member's accrued
113 liability computed to the sheriffs by dividing paragraph (E)
114 by paragraph (D) of this subdivision; and

115 (G) Determine the asset share to be transferred from
116 Public Employees Retirement System to the plan by
117 multiplying paragraph (C) times paragraph (F) of this
118 subdivision.

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CHAPTER 72

**(Com. Sub. for S. B. 729 - By Senators Mann,
Azinger, Jeffries, Romano, Weld, Baldwin, Hardesty,
Stollings, Hamilton and Roberts)**

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §7-14D-14 of the Code of West Virginia, 1931, as amended, relating to awards and benefits for disability under the Deputy Sheriff Retirement Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-14. Awards and benefits for disability – duty related.

1 (a) Any member who after the effective date of this
2 article and during covered employment:

3 (1) Has been or becomes either totally or partially
4 disabled by injury, illness, or disease; and

5 (2) The disability is a result of an occupational risk or
6 hazard inherent in or peculiar to the services required of
7 members; or

8 (3) The disability was incurred while performing law-
9 enforcement functions during either scheduled work hours
10 or at any other time; and

11 (4) In the opinion of the board, the member is by reason
12 of the disability unable to perform adequately the duties
13 required of a deputy sheriff, is entitled to receive and shall

14 be paid from the fund in monthly installments the
15 compensation under either subsection (b) or (c) of this
16 section.

17 (b) If the member is totally disabled, the member shall
18 receive 90 percent of his or her average full monthly
19 compensation for the 12-month contributory period
20 preceding the member's disability award, or the shorter
21 period if the member has not worked 12 months. Any
22 member retired under this subsection, or under §7-14D-17
23 of this code, on or before July 1, 2020, shall have his or her
24 monthly benefit payment increased by \$400.

25 (c) If the member is partially disabled, the member shall
26 receive 45 percent of his or her average full monthly
27 compensation for the 12-month contributory period
28 preceding the member's disability award, or the shorter
29 period if the member has not worked 12 months.

30 (d) If the member remains partially disabled until
31 attaining 60 years of age, the member shall then receive the
32 retirement benefit provided in §7-14D-11 and §7-14D-12 of
33 this code.

34 (e) The disability benefit payments will begin the first
35 day of the month following termination of employment and
36 receipt of the disability retirement application by the
37 Consolidated Public Retirement Board.

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CHAPTER 73

**(H. B. 4396 - By Delegates Barnhart, Foster,
Anderson, C. Martin, Bartlett, D. Jeffries, Azinger,
Campbell, Howell, Hartman and Fast)**

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §7-1-16 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §8-1-9, all relating generally to the Commission on Special Investigations and the State Auditor being informed of fraud and misappropriations by county and municipal governments.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-16. Reporting of fraud and misappropriation of funds.

1 (a) Whenever a county commission, or any of a county's
2 boards, committees, or any other entities of any kind or
3 nature authorized in this chapter, obtains information that an
4 employee, officer or member of the county commission, or
5 any of a county's boards, committees, or any other entities
6 of any kind or nature authorized in this chapter may have
7 misappropriated funds, engaged in fraud, or otherwise
8 violated a law relating to the public trust, the county
9 commission, or the county's board, committee, or other
10 entity authorized in this chapter shall timely report that
11 information or allegation in writing to the county
12 prosecutor's office, the Legislature's Commission on
13 Special Investigations and the State Auditor.

14 (b) The reporting of the information under subsection
15 (a) of this section does not prevent, relieve or replace a
16 report to a law-enforcement agency, if appropriate or
17 warranted.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

§8-1-9. Reporting of fraud and misappropriations of funds.

1 (a) Whenever a governing body for a municipality, or
2 any of a municipality's boards, committees, or any other
3 entities of any kind or nature authorized in this chapter,
4 obtains information that an employee, officer, or member of
5 the municipality, or any of a municipality's boards,
6 committees, or any other entities of any kind or nature
7 authorized in this chapter may have misappropriated funds,
8 engaged in fraud, or otherwise violated a law relating to the
9 public trust, the governing body for a municipality, or the
10 municipality's board, committee, or other entity authorized
11 in this chapter shall timely report that information or
12 allegation in writing to the county prosecutor's office, the
13 Legislature's Commission on Special Investigations and the
14 State Auditor.

15 (b) The reporting of the information under subsection
16 (a) of this section does not prevent, relieve or replace a
17 report to a law-enforcement agency, if appropriate or
18 warranted.

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CHAPTER 74

(H. B. 4600 - By Delegates Graves, Nelson, Anderson, Pethtel and Evans)

[Passed February 27, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §8-22-26 of the Code of West Virginia, 1931, as amended, relating to the use of beneficiaries of a death benefit from a municipal policemen's or firemen's pension and relief fund in the calculation of the distribution of premium tax proceeds.

Be it enacted by the Legislature of West Virginia:

§8-22-26. Death benefits.

1 (a) In case:

2 (1) Any member of a paid police or fire department who
3 has been in continuous service for more than five years dies
4 from any cause other than as specified in subsection (b) of
5 this section before retirement on a disability pension under
6 the provisions of, prior to July 1, 1981, section twenty-four
7 of this article, or after June 30, 1981, §8-22-23a and §8-22-
8 24 of this code, or a retirement pension under the provisions
9 of §8-22-25(a) or §8-22-25(a) and §8-22-25(b) of this code,
10 leaving in either case surviving a spouse, or any dependent
11 child or children under the age of eighteen years, or
12 dependent father or mother or both, or any dependent
13 brothers or sisters or both under the age of eighteen years,
14 or any dependent child over the age of eighteen years of age
15 who is totally physically or mentally disabled so long as
16 such condition exists; or

17 (2) Any former member of any such department who is
18 on a disability pension prior to July 1, 1981, under section
19 twenty-four of this article, or after June 30, 1981, under §8-
20 22-23a and §8-22-24 of this code, or is receiving or is
21 entitled to receive retirement pension benefits under the
22 provisions of §8-22-25(a) or §8-22-25(a) and §8-22-25(b)
23 of this code, dies from any cause other than as specified in
24 subsection (b) of this section leaving in either case surviving
25 a spouse or any dependent child or children under the age of
26 eighteen years or dependent father or mother or both, or any
27 dependent brothers or sisters or both under the age of
28 eighteen years, or any dependent child over the age of
29 eighteen years of age who is totally physically or mentally
30 disabled so long as such condition exists; then in any of the
31 cases set forth in subdivisions (1) and (2) of this subsection,
32 the board of trustees of such pension and relief fund shall,
33 immediately following the death of the member, pay to or
34 for each entitled surviving dependents the following
35 pension benefits: To the surviving spouse, until death or
36 remarriage, a sum per month equal to sixty percent of the
37 member's pension or, in the event the member was not
38 receiving a pension at the time of the member's death, a sum
39 per month equal to sixty percent of the monthly retirement
40 pension such member would have been entitled to receive
41 pursuant to §8-22-25 of this code on the date of the
42 member's death if the member had then been eligible for a
43 retirement pension, or the sum of \$300 per month,
44 whichever is greater; to each dependent child, a sum per
45 month equal to twenty percent of the member's pension or,
46 in the event the member was not receiving a pension on the
47 date of the member's death, a sum per month equal to
48 twenty percent of the monthly retirement pension the
49 member would have been entitled to receive pursuant to §8-
50 22-25 of this code on the date of the member's death if the
51 member had then been eligible for a retirement pension, or
52 until the child attains the age of eighteen years or marries,
53 whichever first occurs; to each dependent orphaned child, a
54 sum per month equal to twenty-five percent of the member's
55 pension or, in the event the member was not receiving a

56 pension at the time of the member's death, a sum per month
57 equal to twenty-five percent of the monthly retirement
58 pension the member would have been entitled to receive
59 pursuant to §8-22-25 of this code on the date of the
60 member's death if the member had then been eligible for a
61 retirement pension, until the child attains the age of eighteen
62 years or marries, whichever first occurs; to each dependent
63 orphaned child, a sum per month equal to twenty-five
64 percent of the member's pension or, in the event the member
65 was not receiving a pension on the date of the member's
66 death, a sum per month equal to twenty-five percent of the
67 monthly retirement pension the member would have been
68 entitled to receive pursuant to §8-22-25 of this code on the
69 date of the member's death if the member had then been
70 eligible for a retirement pension, until the child attains the
71 age of eighteen years or marries, whichever first occurs; to
72 each dependent father or mother, a sum per month for each
73 equal to ten percent of the member's pension or, in the event
74 the member was not receiving a pension on the date of the
75 member's death, a sum per month equal to ten percent of the
76 monthly retirement pension the member would have been
77 entitled to receive pursuant to §8-22-25 of this code on the
78 date of the member's death if the member had then been
79 eligible for a retirement pension; to each dependent brother
80 or sister, the sum of \$50 per month until he or she attains the
81 age of eighteen years or marries, whichever first occurs, but
82 in no event shall the aggregate amount paid to all brothers
83 and sisters of the member exceed \$100 per month. If at any
84 time, because of the number of dependents, all dependents
85 cannot be paid in full as herein provided, then each
86 dependent shall receive his or her pro rata share of the
87 payments. In no case shall the payments to the surviving
88 spouse and children be cut below sixty-five percent of the
89 total amount paid to all dependents.

90 (b) The surviving spouse, child or children, or
91 dependent father or mother, or dependent brothers or sisters,
92 of any member who dies by reason of service rendered in
93 the performance of the member's duties shall, regardless of

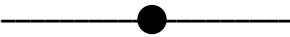
94 the length of the member's service and irrespective of
95 whether the member was or was not entitled to receive, or
96 was or was not receiving, disability pension or temporary
97 disability payments at the time of the member's death,
98 receive the death benefits provided for in subsection (a) of
99 this section. If the member had less than three years' service
100 at the time of the member's death, the member's pension
101 shall be computed on the basis of the actual number of years
102 of service.

103 (c) If a member dies without leaving a spouse,
104 dependent child or children, or dependent father or mother,
105 or dependent brothers or sisters, the member's contributions
106 to the fund plus six percent interest shall be refunded to the
107 member's named beneficiary or, if no beneficiary has been
108 named, to the member's estate to the extent that the
109 contributions plus interest exceed any disability or
110 retirement benefits that the member may have received
111 before the member's death.

112 (d) The provisions of this section shall not be construed
113 as creating or establishing any contractual or vested rights
114 in favor of any individual who may be or become qualified
115 as a beneficiary of the death benefits authorized to be made
116 pursuant to this section. All the provisions of this section
117 and benefits provided pursuant to this section are expressly
118 subject to subsequent legislative enactments as may provide
119 for any change, modification or elimination of the
120 beneficiaries or benefits specified herein.

121 (e) Notwithstanding the provisions of §8-22-24 of this
122 code, the benefit provided for in this section shall be
123 calculated as if the member had remained unemployed
124 throughout any period of disability.

125 (f) For the purpose of distributing premium tax proceeds
126 as required by §33-3-14d of this code, one beneficiary of the
127 death benefit authorized by this section shall be included in
128 the average monthly number of retired police officers and
129 firefighters.



CHAPTER 75

(H. B. 4601 - By Delegates Graves, Nelson, Anderson, Pethtel and Evans)

[Passed February 18, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §8-22-25a of the Code of West Virginia, 1931, as amended, relating to the distribution of premium tax proceeds to municipal policemen's and firemen's pension and relief funds which have members participating in a deferred retirement option plan.

Be it enacted by the Legislature of West Virginia:

§8-22-25a. Deferred retirement option plans; authorization; requirements; limitations.

1 (a) A deferred retirement option plan (DROP) is a
2 method to encourage retention of a worker beyond normal
3 retirement age by permitting the worker to freeze retirement
4 benefits at a certain time prior to ceasing work, to continue
5 to work for a specified period, and to have retirement
6 benefits which accrue while the employee continues
7 working set aside in an account which the worker will then
8 receive in a lump sum upon finally discontinuing work. The
9 Legislature acknowledges that a DROP may be a useful and
10 economical tool for retaining experienced and trained
11 employees and for planning for turnovers in the workforce.
12 Experience, however, dictates that a DROP may place a
13 heavy financial burden on the employer and the affected
14 retirement system, negating any positive benefit offered by
15 the DROP if the DROP is not carefully planned to be
16 economically favorable to the employer and revenue neutral

17 for the affected retirement system while remaining
18 attractive to the targeted employee.

19 (b)(1) The governing bodies of municipalities
20 participating in policemen's and firemen's pension and
21 relief funds pursuant to §8-22-16 through §8-22-28 of this
22 code, are authorized to voluntarily offer DROPs. A
23 participating municipality may design and establish a
24 DROP to best meet the municipality's needs so long as the
25 DROP complies with federal law, the requirements set forth
26 in this section and be approved by the Municipal Pensions
27 Oversight Board.

28 (2) Prior to approval by the Municipal Pensions
29 Oversight Board, a municipality shall submit a proposed
30 DROP to the board for analysis by the qualified actuary
31 retained or employed by the board. The actuary shall
32 examine the plan and, in light of the elements of the DROP
33 and the actuarial projections of the impact of the DROP on
34 the affected pension and relief fund, advise the board of the
35 anticipated impact on the municipal pension and relief fund.
36 The board shall seek to approve only those DROPs which,
37 in the best judgment of the actuary, are designed to have no
38 negative impact on the member's pension and relief fund.
39 The submitting municipality shall reimburse the board for
40 actuarial costs of analyzing the plan.

41 (c) To be eligible to enter a DROP, the member of the
42 policemen's or firemen's pension and relief fund must be in
43 active employment and an active member of his or her
44 pension and relief fund for at least six months beyond
45 attaining eligibility for regular retirement as provided in §8-
46 22-25 of this code and have received a satisfactory
47 performance evaluation within the prior 12 months. The
48 member may defer retirement for a period of not less than
49 one nor more than five years but must complete the period
50 by age 65. The member may elect to commence
51 participation after July 1, 2011.

52 (d)(1) During the DROP participation period, the
53 member shall continue with full-time employment in a
54 covered position subject to the municipality's requirements.
55 A member's retirement benefits are calculated as of the
56 DROP participation date and a member may not accumulate
57 additional retirement benefits during the DROP
58 participation period. Upon beginning participation, the
59 member is treated as retired and receiving benefits for
60 purposes of the retirement system: *Provided*, That for the
61 purpose of distributing premium tax proceeds required in
62 §33-3-14d of this code, he or she shall be included in the
63 calculation of the municipality's average number of
64 policemen or firemen for each month that he or she works
65 at least one hundred hours. During the DROP participation
66 period, the employer shall continue to make regular
67 contributions to the employee's pension and relief fund.

68 (2) Benefit payments are accumulated for the member
69 in the pension and relief fund in an accumulation account
70 during the DROP participation period. At the end of the
71 participation period, the amount in the accumulation
72 account owing to the member, plus interest not to exceed
73 three and one-half percent, shall be paid to the member in a
74 lump sum. Monthly retirement payments shall be paid
75 directly to the member starting in the month following the
76 end of the DROP participation period.

77 (3) A member may voluntarily terminate DROP
78 participation early with 60 days' advance notice. Deferred
79 accumulated benefits will be paid with no interest for the
80 DROP period and benefits payments will commence
81 following the early termination date. Covered employment
82 must terminate before benefit distributions may be made.
83 Should the employer wish to terminate the employment
84 during the participation period, the member may terminate
85 participation with 30 days' notice and the deferred
86 accumulation balance shall be paid with interest according
87 to the DROP design: *Provided*, That if the employee is
88 terminated for cause during the participation period, the
89 member may terminate participation with 30 days' notice

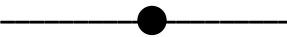
90 and the deferred accumulation balance shall be paid without
91 interest according to the DROP design.

92 (4) A member who is unable to continue working because
93 of disability shall cease participation the first day of the month
94 following notice of disability to the employer and the pension
95 and relief fund. The accumulation account balance shall be
96 paid to the member with no interest. No additional benefits are
97 due the member on account of the disability.

98 (5) In the event of death of a member during DROP
99 participation, the accumulation account of the member
100 through the member's date of death is payable to the
101 member's beneficiary or beneficiaries, with interest
102 according to DROP design.

103 (6) A member entering the DROP is contractually
104 obligated to terminate employment at the end of the DROP
105 participation period. Failure to terminate voluntarily results
106 in termination of employment for cause, except that a
107 member who continues to work with the consent of the
108 employer past the DROP participation period shall have all
109 benefits frozen during the extension period and no
110 additional benefit accumulates. During the period of time
111 the member continues to work beyond the end of the DROP
112 participation period with the consent of the employer, the
113 employer shall continue to make regular contributions to the
114 employee's pension and relief fund. Regular retirement
115 benefits will commence the month following eventual
116 employment termination or death. The member's
117 accumulation account balance is frozen in value following
118 the end of the DROP participation period.

119 (e) The oversight board shall annually report to the
120 Legislature's Joint Committee on Pensions and Retirement,
121 and to the Legislature as required by §4-1-23 and §5-1-20
122 of this code, on DROPs submitted to the board for approval
123 and the status of any DROP that has been approved,
124 including any experienced impact on an affected pension
125 and relief fund.



CHAPTER 76

**(Com. Sub. for H. B. 4633 - By Delegates Storch,
Anderson, Nelson, Kessinger, Waxman, Summers,
Criss, Sypolt, Hill, Espinosa and Capito)**

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §7-3-3 of the Code of West Virginia, 1931, as amended, relating to expanding county commissions' ability to dispose of county or district property; and adding the ability of county commissions to dispose of the property to community center organization in existence on effective date of amendment to this section of said code or nonprofit senior center organization without conducting a public sale.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. COUNTY PROPERTY.

§7-3-3. Sale of county or district property.

1 (a) Except as may be prohibited by law or otherwise, the
2 county commission of a county is authorized by law to sell
3 or dispose of any property, either real or personal, belonging
4 to the county or held by it for the use of any district thereof.
5 The property shall be sold either at an on-site public auction
6 or by utilizing an Internet-based public auction service, and
7 the sale shall be conducted by the president of the county
8 commission, but before making the sale, notice of the time,
9 terms, manner and either the location of the sale or the
10 Internet-based public auction service to be utilized, together
11 with a brief description of the property to be sold, shall be
12 published as a Class II legal advertisement in compliance

13 with the provisions of §59-3-1 *et seq.* of this code, and the
14 publication area for the publication is the county: *Provided,*
15 That this section does not apply to the sale of any one item
16 of property of less value than \$1,000.

17 (b) The provisions of subsection (a) of this section
18 concerning sale at public auction do not apply to a county
19 commission selling or disposing of its property for a public
20 use to:

21 (1) The United States of America, its instrumentalities,
22 agencies or political subdivisions;

23 (2) The State of West Virginia, or its political
24 subdivisions, including county boards of education,
25 volunteer fire departments, and volunteer ambulance
26 services; or

27 (3) Any community center organization already in
28 existence on the effective date of the amendments to this
29 section made during the 2020 Regular Session of the
30 Legislature or nonprofit senior center organization, or any
31 authority, commission, instrumentality, or agency
32 established by act of the State of West Virginia or any of its
33 political subdivisions.

34 (4) For all sales made pursuant to this subsection,
35 county commissions are not required to exclusively
36 consider the present commercial or market value of the
37 property; and

38 (5) A sale under the provisions of this subsection may
39 not be for less than \$1.

40 (c) For all real property conveyed or sold by a county
41 commission to a volunteer fire department, volunteer
42 ambulance service, or any nonprofit community center
43 organization or nonprofit senior center organization or any
44 other authority, commission, instrumentality or agency,
45 under the provisions of subsection (b) of this section, the
46 real property shall revert back to the county commission if

47 the volunteer fire department, volunteer ambulance service,
48 nonprofit community center organization or nonprofit
49 senior center organization, authority, commission,
50 instrumentality or agency proposes to dispose of the
51 property, unless the county commission explicitly disclaims
52 this reversionary right in writing in the deed of conveyance.



CHAPTER 77

**(H. B. 4797 - By Delegates Capito, Pushkin, Miller,
Westfall and Nelson)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §8-12-16 of the Code of West Virginia, 1931, as amended, relating to authorizing municipalities to enact ordinances that allow the municipal court to place a structure, dwelling or building into receivership under certain circumstances.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES,
AND ALLIED RELATIONS OF MUNICIPALITIES,
GOVERNING BODIES, AND MUNICIPAL OFFICERS
AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.**

**§8-12-16. Ordinances regulating the repair, alteration,
improvement, closing, demolition, etc., of structures, dwellings,
or buildings that are unsafe, unsanitary, dangerous, or
detrimental to the public safety or welfare; procedures.**

1 (a) For the purposes of this section:

2 (1) “Code enforcement agency” means either a code
3 enforcement department as defined by 87 CSR 7-2, as may

4 be amended, or an enforcement agency as permitted by
5 subsection (c) of this section.

6 (2) “Code enforcement agency official” means any
7 lawful agent of a code enforcement agency.

8 (3) “Owner” or “landowner” means a person who
9 individually or jointly with others:

10 (A) Has legal title to the property, with or without actual
11 possession of the property;

12 (B) Has charge, care, or control of the property as owner
13 or agent of the owner;

14 (C) Is an executor, administrator, trustee, or guardian of
15 the estate of the owner;

16 (D) Is the agent of the owner for the purpose of
17 managing, controlling, or collecting rents; or

18 (E) May control or direct the management or disposition
19 of the property.

20 (4) “Unsafe, unsanitary, dangerous, or detrimental to the
21 public safety or welfare” means:

22 (A) Any door, aisle, passageway, stairway, exit, or other
23 means of egress that does not conform to the approved
24 building or fire code of the jurisdiction as related to the
25 requirements for existing buildings;

26 (B) The walking surface of any aisle, passageway,
27 stairway, exit, or other means of egress is so warped, worn
28 loose, torn, or otherwise unsafe as to not provide safe and
29 adequate means of egress;

30 (C) Any portion of a dwelling, building, structure, or
31 appurtenance that has been damaged by fire, earthquake,
32 wind, flood, deterioration, neglect, abandonment,
33 vandalism, or by any other cause to an extent that it is likely

34 to partially or completely collapse, or to become detached
35 or dislodged;

36 (D) Any portion of a structure or building, or any
37 member, appurtenance, or ornamentation on the exterior
38 that is not of sufficient strength or stability, or is not so
39 anchored, attached, or fastened in place so as to be capable
40 of resisting natural or artificial loads of one and one-half the
41 original designed value;

42 (E) The dwelling, building, or structure, or part of the
43 building or structure, because of dilapidation, deterioration,
44 decay, faulty construction, the removal or movement of
45 some portion of the ground necessary for the support, or for
46 any other reason, is likely to partially or completely
47 collapse, or some portion of the foundation or underpinning
48 of the dwelling, building or structure is likely to fail or give
49 way;

50 (F) The dwelling, building, or structure, or any portion,
51 is clearly unsafe for its use;

52 (G) The dwelling, building, or structure is neglected,
53 damaged, dilapidated, unsecured, or abandoned so as to
54 become an attractive nuisance to children, becomes a harbor
55 for vagrants, criminals, and criminal activity, or enables
56 persons to resort to the dwelling, building, or structure for
57 committing a nuisance or an unlawful act;

58 (H) Any dwelling, building, or structure constructed,
59 exists or is maintained in violation of any specific
60 requirement or prohibition applicable to any dwelling,
61 building, or structure provided by the approved building or
62 fire code of the jurisdiction or of any law or ordinance that
63 presents either a substantial risk of fire, building collapse,
64 or any other threat to life and safety;

65 (I) A dwelling, building, or structure, used or intended
66 to be used for dwelling purposes, because of inadequate
67 maintenance, dilapidation, decay, contamination by any

68 hazardous substance or material, including, but not limited
69 to, substance resulting from the illegal manufacture of
70 drugs, damage, faulty construction or arrangement,
71 inadequate light, ventilation, mechanical, or plumbing
72 system, or otherwise, is determined by the code
73 enforcement agency to be unsanitary, unfit for human
74 habitation, or in a condition that is likely to cause sickness
75 or disease;

76 (J) Any dwelling, building, or structure, because of a
77 lack of sufficient or proper fire resistance-rated
78 construction, fire protection systems, electrical system, fuel
79 connections, mechanical system, plumbing system, or other
80 cause, is determined by the code official to be a threat to life
81 or health; or

82 (K) Any portion of a building that remains on a site after
83 the demolition or destruction of the building or structure, or
84 whenever any building or structure is abandoned.

85 (b) Plenary power and authority are hereby conferred
86 upon every municipality adopt ordinances regulating the
87 repair, alteration, or improvement, or the vacating and
88 closing or removal or demolition, or any combination, of
89 any structure, dwelling, or building, whether used for
90 human habitation or not, that is unsafe, unsanitary,
91 dangerous, or detrimental to the public safety or welfare.

92 (c) In formally adopting any ordinance under this
93 section, the governing body shall designate the enforcement
94 agency, which shall consist of the code enforcement agency
95 as provided by the state building code and authorized by
96 §29-3-5b and §8-12-13 of this code; or municipal officials
97 as may otherwise be authorized by this code; or municipal
98 officials or agents as authorized by rules promulgated by the
99 State Fire Commission and approved by the Legislature; or
100 municipal officials or agents as may otherwise be
101 authorized by the State Fire Commission. Notwithstanding
102 any provision of this code to the contrary, for the purposes
103 of this section any municipality that has not adopted the

104 state building code may designate an enforcement agency
105 consisting of the mayor, the municipal engineer or building
106 inspector, and one member at large, to be selected by and to
107 serve at the will and pleasure of the mayor, and the ranking
108 health officer and fire chief or their designees, who shall
109 serve as ex officio members of the enforcement agency.

110 (d) Any ordinance adopted under the provisions of this
111 section must provide fair and equitable rules of procedure
112 and any other procedures required by law or necessary and
113 appropriate to guide the code enforcement agency, or its
114 officials, in the investigation of any structure, dwelling, or
115 building conditions, and in any corrective action taken by
116 the code enforcement agency.

117 (e) When a code enforcement agency official enters the
118 premises of the property for investigating or inspecting any
119 structure, dwelling, or building, the investigation shall be
120 performed to minimize the inconvenience to the owner or
121 persons in possession and shall be consistent with the
122 following:

123 (1) Except in exigent circumstances and as permitted by
124 law, the enforcement agency shall provide reasonable
125 advance notice to the owner and request permission from
126 the owner to enter the property;

127 (2) If the owner cannot be located after reasonable
128 inquiry by the code enforcement agency as required by this
129 section, or if the owner refuses entry, the code enforcement
130 agency may obtain an administrative search warrant from
131 either the municipal court or the magistrate court located in
132 the jurisdiction of the municipality or county where the
133 structure, dwelling, or building is located. Before obtaining
134 an administrative search warrant, a code enforcement
135 agency official is required to make a sworn statement and
136 prima facie case showing that the code enforcement agency
137 was unable to gain access to the structure, dwelling, or
138 building after reasonable and good faith efforts, and that
139 there is a legitimate and substantial safety concern involving

140 the structure, dwelling, or building that supports the
141 requested entry;

142 (3) If granted by the court, and if the owner can be
143 located, the code enforcement agency shall provide the
144 owner a copy of the administrative search warrant five days
145 before entering the property. If applicable, the code
146 enforcement agency shall also provide the same notice to
147 any tenant or other person in possession of the structure,
148 dwelling, or building; and

149 (4) Entry is for the sole purpose of inspection of the
150 structure, dwelling, or building for unsafe or unsanitary
151 conditions and not for the purpose of criminal prosecution
152 or gathering evidence for use in any criminal charge or
153 proceeding unrelated to the unsafe or unsanitary condition
154 of the structure, dwelling, or building.

155 (f) The governing body of every municipality has
156 plenary power and authority to adopt an ordinance
157 providing for the vacating, closing, removal, or demolition
158 of any dwelling, structure or building by the municipality in
159 the absence of owner agreement or court order: *Provided*,
160 That the ordinance requires the code enforcement agency to
161 provide lawful notice to and undertake reasonable efforts to
162 seek agreement from the owner before taking any action
163 permitted by this section and shall comply with the
164 requirements set forth in this subsection:

165 (1) Any ordinance adopted under this subsection applies
166 only to dwellings, structures, or buildings which meet the
167 definition of unsafe, unsanitary, dangerous, or detrimental
168 to the public safety or welfare as set forth in:

169 (A) Paragraph (C), (E) or (H), subdivision (4),
170 subsection (a) of this section; or

171 (B) Paragraph (F), (G), (I) or (K), subdivision (4),
172 subsection (a) of this section: *Provided*, That the dwelling,
173 building, or structure is vacant, abandoned, or has been

174 lawfully declared unfit for human habitation; and the
175 reasonable estimated cost of repair, rehabilitation, or
176 corrective action exceeds the fair market value of the
177 dwelling, building, or structure.

178 (2) Any ordinance adopted under this subsection must
179 provide for the following:

180 (A) The code enforcement agency shall produce a
181 written notice containing the date of the last inspection, the
182 name of the inspector, a reasonable description of the
183 unsafe, unsanitary, dangerous, or detrimental conditions,
184 the corrective measures required, the allotted time to correct
185 the substandard conditions and the allotted time the owner
186 has to apply to the circuit court for a temporary injunction
187 or other similar relief restraining action by the enforcement
188 agency.

189 (B) The notice shall be served upon the owner or
190 landowner by conspicuously posting and attaching a copy
191 of the notice to the subject property, and by serving the
192 notice on the owner or landowner in the same manner as
193 service of a complaint as set forth in subsection (j) of this
194 section.

195 (C) If the code enforcement agency cannot effect
196 personal service on the owner, a code enforcement agency
197 official shall subscribe a written affidavit, to be maintained
198 for a minimum of two years, that demonstrates the structure,
199 dwelling, or building falls within one of the categories set
200 forth in paragraph (A) or (B), subdivision (1), subsection (f)
201 of this section and sets forth the basis in reasonable detail,
202 including documentation of same, and memorializes the
203 code enforcement agency official's efforts to contact or get
204 permission for entry and any corrective action from the
205 owner; and the code enforcement agency shall publish
206 notice of its intent to enter the property for the purpose of
207 demolition or correction, along with the address of the
208 property, the name of the owners and the date of the
209 proposed action, as a Class II legal advertisement consistent

210 with the requirements of §59-3-2 of this code, the first of
211 which shall run at least 30 days before the date of the
212 proposed action by the enforcement agency, and the last
213 being no later than 20 days before the date of the proposed
214 action by the enforcement agency.

215 (D) If there is no response to the notice by the owner or
216 landowner in the time specified in the notice, then the
217 municipality may proceed in correction or demolition of the
218 subject dwelling, building, or structure.

219 (3) It is an absolute defense to any civil action by an
220 owner, landowner, or tenant for damages resulting from the
221 closure, demolition, or other corrective action taken by a
222 municipality under this section: *Provided*, That the
223 municipality acted in good faith, can demonstrate that the
224 structure, dwelling, or building falls within one of the
225 categories set forth in paragraph (A) or (B), subdivision (1),
226 subsection (f) of this section, that the municipality followed
227 the procedures set forth in this subsection, and that the
228 municipality had adopted the state building code at the time
229 of the closure, demolition, or other corrective action
230 occurred.

231 (4) Any ordinance adopted under this subsection must
232 also provide for notice to the owner of the owner's right to
233 apply to the circuit court for a temporary injunction or other
234 similar relief restraining correction or demolition by the
235 enforcement agency. If the application is made by the
236 owner, a hearing shall be had within 20 days of the
237 application, or as soon as reasonably possible.

238 (A) Continuances of the hearing provided for in this
239 subdivision may be made for cause only. If a continuance is
240 granted upon request by the owner, the owner is required to
241 pay into court, in the form of a bond, any reasonable and
242 necessary costs related to the property likely to be incurred
243 by the municipality during the continuance.

244 (B) At the conclusion of a hearing held under this
245 subdivision, if the court finds that the property is unsafe,
246 unsanitary, dangerous, or detrimental to the public safety or
247 welfare, the court shall make and enter an order granting the
248 relief as requested by the municipality. The court may
249 disburse any moneys paid into court by the owner in
250 accordance with this section.

251 (g)(1) The governing body of every municipality has
252 plenary power and authority to adopt an ordinance requiring
253 the owner of any dwelling or building under determination
254 of the State Fire Marshal, as provided in §29-3-12 of this
255 code, or under order of the code enforcement agency of the
256 municipality, to pay for the costs of repairing, altering, or
257 improving, or of vacating and closing, removing or
258 demolishing any dwelling or building, and may file a lien
259 against the real property in question for an amount that
260 reflects all costs incurred by the municipality for repairing,
261 altering, or improving, or of vacating and closing,
262 removing, or demolishing any dwelling or building, or
263 structure. Any municipality that adopts an ordinance under
264 this section may authorize the municipal court to place a
265 structure, dwelling, or building into receivership when the
266 following circumstances are present:

267 (A) The owner cannot be located after reasonable
268 inquiry by the code enforcement agency as required by this
269 section or if the owner refuses entry;

270 (B) The code enforcement agency has obtained an
271 administrative search warrant from either the municipal
272 court or the magistrate court located in the jurisdiction of
273 the municipality or county where the structure, dwelling, or
274 building is located;

275 (C) Upon entry, the code enforcement agency has
276 determined that the structure, dwelling, or building is
277 salvageable and does not require immediate demolition; and

278 (D) The code enforcement agency has proffered to the
279 court that the structure, dwelling or building will require
280 demolition or presents a substantial threat to nearby
281 structures, property, or residents due to risk of fire,
282 structural instability, or attractive nuisance if it is not
283 repaired, altered, or improved in the near future.

284 (2) If all of these circumstances are present, the
285 municipal court may place the structure, dwelling, or
286 building into receivership with the municipality or another
287 entity that is capable of making the necessary repairs,
288 alterations, and improvements to the structure, dwelling or
289 building. Any owner of the structure, dwelling, or building
290 may petition the municipal court to terminate the
291 receivership at any time and, upon showing that the owner
292 will either demolish the structure, dwelling, or building or
293 make the necessary repairs, alterations, and improvements
294 to the satisfaction of the code enforcement agency, the
295 municipal court may terminate the receivership.

296 (h) Every municipality may also institute a civil action
297 in circuit court against the landowner or other responsible
298 party to obtain an order allowing the municipality to take
299 corrective action up to and including demolition of any
300 structure, dwelling or building that is unsafe, unsanitary,
301 dangerous, or detrimental to the public safety or welfare;
302 and to recover all reasonable costs and expenses incurred by
303 the municipality with respect to the property and for
304 reasonable attorney fees and court costs incurred in the
305 prosecution of the action:

306 (1) No fewer than 10 days before instituting a civil
307 action as provided in this subsection, the municipality shall
308 send notice to the landowner by certified mail, return receipt
309 requested, advising the landowner of the governing body's
310 intention to institute such action.

311 (2) The notice shall be sent to the most recent address of
312 the landowner of record in the office of the assessor of the
313 county where the subject property is located and to any other

314 address for the landowner as may exist on record with the
315 municipality. If, for any reason, the certified mail is returned
316 without evidence of proper receipt, the municipality shall
317 resend the notices by first class mail, postage prepaid, and
318 shall also post notice on the front door or other conspicuous
319 location on the subject property.

320 (i) To the extent not otherwise authorized by state law,
321 all notices of violation or correction for violations that do
322 not fall within one of the categories set forth in paragraph
323 (A) or (B), subdivision (1), subsection (f) of this section
324 issued by the enforcement agency of a municipality that has
325 adopted the state building code shall be served in
326 accordance with the process set forth in the state building
327 code. All notices of violation or correction orders for
328 violations that do not fall within one of the categories set
329 forth in paragraph (A) or (B), subdivision (1), subsection (f)
330 of this section issued by a code enforcement agency of a
331 municipality that has not adopted the state building code
332 shall be served in accordance with the law of this state
333 concerning the service of process in civil actions, except
334 that personal service may be made by a code enforcement
335 agency official and the method of service effectuated by
336 mail by the clerk of a court as permitted by Rule 4(d)(1)(D)
337 of the West Virginia Rules of Civil Procedure is effectuated
338 by mailing by a code enforcement agency official and shall
339 be posted in a conspicuous place on the property that is the
340 subject of the notice of violation or correction.

341 (j) Any violation of an ordinance adopted under this
342 section, may be prosecuted by the municipality consistent
343 with state and local laws. Unless otherwise authorized by
344 state law, prosecution of a violation shall be initiated by a
345 complaint presented to and sworn or affirmed before a
346 municipal judge or other municipal official with lawful
347 authority to hear and determine violations of municipal code
348 in the municipality where the offense is alleged to have
349 occurred. Unless otherwise provided by statute, the
350 presentation and oath or affirmation shall be made by a code

351 enforcement agency official or municipal attorney showing
352 reason to have reliable information and belief. If from the
353 facts stated in the complaint the municipal judge or other
354 municipal official with lawful authority to hear and
355 determine violations of municipal code finds probable
356 cause, the complaint becomes the charging instrument
357 initiating a criminal proceeding. A complaint lawfully
358 authorized by this subsection along with a summons setting
359 forth the date, time, and place of appearance before a
360 municipal judge or other municipal official with lawful
361 authority to hear and determine violations of municipal code
362 shall be served in accordance with the law of the State of
363 West Virginia concerning the service of process in civil
364 actions, except that personal service of a summons and
365 complaint may be made by a code enforcement agency
366 official. If service is made by certified mail under Rule
367 4(d)(1)(D) of the West Virginia Rules of Civil Procedure
368 and delivery of the summons and complaint is refused, the
369 code enforcement agency official, promptly upon the
370 receipt of the notice of the refusal, shall mail to the person
371 or entity being noticed, by first class mail, postage prepaid,
372 a copy of the summons and complaint. If the first class
373 mailing is not returned as undeliverable by the U. S. Postal
374 Service, service of the summons and complaint is presumed
375 to have been effectuated. Upon service of the summons and
376 complaint consistent with this subsection, the violation may
377 be prosecuted consistent with state and local law.

●

CHAPTER 78

(Com. Sub. for H. B. 4946 - By Delegates Angelucci, Longstreth and Caputo)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §8-14-15 of the Code of West Virginia, 1931, as amended, relating to eliminating the requirement that municipal police civil service commissions certify a list of at least one but no more than three individuals for every position vacancy in a municipal police department not filled by promotion, reinstatement, or reduction.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-15. Appointments from list of eligibles.

1 Every position, unless filled by promotion, reinstatement
2 or reduction, shall be filled only in the manner specified in this
3 section. The appointing officer shall notify the policemen's
4 Civil Service Commission of any vacancy or vacancies in a
5 position or positions which he or she desires to fill and shall
6 request the certification of eligibles. The commission shall
7 forthwith certify the names of at least one but no more than
8 three eligible individuals ranked according to their averages at
9 preceding competitive examinations held under the civil

10 service provisions of this article within a period of three years
11 next preceding the date of the prospective appointment. The
12 appointing officer shall, thereupon, with sole reference to the
13 relative merit and fitness of the candidates, make an
14 appointment or appointments from the names so certified:
15 *Provided*, That should he make objection, to the commission,
16 to one or more of these individuals, for any of the reasons
17 stated in section fourteen of this article, and should such
18 objection be sustained by the commission, after a public
19 hearing along the lines of the hearing provided for in said
20 section fourteen of this article, if any such hearing is requested,
21 the commission shall thereupon strike the name of any such
22 individual from the eligible list, and certify the next highest
23 name for each individual so stricken. As each subsequent
24 vacancy occurs, in the same or another position, precisely the
25 same procedure shall be followed: *Provided, however*, That
26 after any name has been three times rejected for the same or
27 another position in favor of a name or names below it on the
28 same list, the said name shall be stricken from the list. When
29 there are a number of positions of the same kind to be filled at
30 the same time, each appointment shall, nevertheless, be made
31 separately and in accordance with the foregoing provisions.
32 When an appointment is made under the provisions of this
33 section it shall be, in the first instance, for the probationary
34 period of one year, as provided in §8-14-11 of this code.

●

CHAPTER 79

**(Com. Sub. for S. B. 597 - By Senators Trump,
Woelfel, Romano, Unger, Lindsay, Palumbo and
Plymale)**

[Passed March 7, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §50-1-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §51-1-10a of said code; to amend and reenact §51-2-13 of said code; and to amend and reenact §51-2A-6 of said code, all relating to providing a 10 percent salary increase to certain judicial officers.

Be it enacted by the Legislature of West Virginia:

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-3. Salaries of magistrates.

1 (a) The Legislature finds and declares that:

2 (1) The West Virginia Supreme Court of Appeals has
3 held that a salary system for magistrates which is based
4 upon the population that each magistrate serves does not
5 violate the equal protection clause of the Constitution of the
6 United States;

7 (2) The West Virginia Supreme Court of Appeals has
8 held that a salary system for magistrates which is based
9 upon the population that each magistrate serves does not
10 violate section 39, article VI, of the Constitution of West
11 Virginia;

12 (3) The Administrative Office of the Supreme Court of
13 Appeals of West Virginia has stated that the utilization of a
14 two-tiered salary schedule for magistrates is no longer an
15 equitable and rational manner by which magistrates should
16 be compensated for work performed;

17 (4) Organizing the two tiers of the salary schedule into
18 one tier for magistrates serving less than 7,300 in population
19 and a second tier for magistrates serving 7,300 or more in
20 population is no longer rational and equitable given current
21 statistical information relating to population and caseload;
22 and

23 (5) That, by January 1, 2017, all magistrates should be
24 compensated equally.

25 (b) The salary of each magistrate shall be paid by the
26 state. Magistrates who serve fewer than 7,300 in population
27 shall be paid annual salaries of \$51,125 and magistrates who
28 serve 7,300 or more in population shall be paid annual
29 salaries of \$57,500.

30 (c) For the purpose of determining the population served
31 by each magistrate, the number of magistrates authorized
32 for each county shall be divided into the population of each
33 county. For the purpose of this article, the population of
34 each county is the population as determined by the last
35 preceding decennial census taken under the authority of the
36 United States government.

37 (d) Notwithstanding any provision of this code to the
38 contrary, the amendments made to this section during the
39 2013 First Extraordinary Session are effective upon passage
40 and are retroactive to January 1, 2013.

41 (e) On or before July 1, 2013, the Joint Committee on
42 Government and Finance shall request a study by the
43 National Center for State Courts, working in conjunction
44 with the Administrative Office of the Supreme Court of
45 Appeals of West Virginia, to review the weighted caseloads

46 in each of the magistrate courts in this state, and present
47 recommendations as to how the present resources and
48 personnel in the magistrate court system could be better
49 apportioned to equitably and timely meet the collective
50 needs of the magistrate court system in West Virginia.
51 Based on the findings and data generated by that study, the
52 National Center for State Courts shall make
53 recommendations as to the equitable redistribution of
54 personnel and resources, by temporary or permanent
55 reassignment, to better meet the needs and weighted loads
56 that are demonstrated to exist in the various magistrate
57 courts in this state. This study shall be presented to the Joint
58 Committee on Government and Finance no later than
59 December 1, 2014, and shall include recommendations and
60 proposed legislation resulting from such study and shall also
61 include a plan to continue the efficient delivery of justice by
62 the magistrate court system and the justification for
63 equalization of pay for all magistrates. As a part of the
64 submitted study, the plan shall consider the reassignment of
65 magistrates or the extension of their duties and jurisdiction
66 to include holding court or delivering services to adjacent
67 counties with higher caseloads, as part of their regular
68 duties, or being on call as needed to serve other needs in
69 other adjacent counties or within the same judicial circuit.

70 On or before January 15, 2015, the Supreme Court of
71 Appeals of West Virginia shall present its recommendations
72 to the Legislature regarding how to allocate or assign a
73 maximum of 158 magistrates throughout this state to
74 improve the magistrate process, and more equitably
75 distribute the magistrate court resources to efficiently and
76 effectively meet the needs of the citizens of this state.

77 (f) Notwithstanding any provision of this code to the
78 contrary, beginning January 1, 2017, all magistrates shall be
79 compensated equally and the annual salary of all
80 magistrates shall be \$57,500.

81 (g) Notwithstanding any provisions of this code to the
82 contrary, beginning July 1, 2021, the annual salary of a

83 magistrate shall be \$60,375, and beginning July 1, 2022, the
84 annual salary of a magistrate shall be \$63,250.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

1 The salary of each of the justices of the Supreme Court
2 of Appeals shall be \$95,000 per year: *Provided*, That
3 beginning July 1, 2005, the salary of each of the justices of
4 the Supreme Court shall be \$121,000: *Provided, however*,
5 That beginning July 1, 2011, the annual salary of a justice
6 of the Supreme Court shall be \$136,000: *Provided further*,
7 That beginning July 1, 2021, the annual salary of a justice
8 of the Supreme Court of Appeals shall be \$142,800, and
9 beginning July 1, 2022, the annual salary of a justice of the
10 Supreme Court of Appeals shall be \$149,600.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-13. Salaries of judges of circuit courts.

1 The salaries of the judges of the various circuit courts shall
2 be paid solely out of the State Treasury. No county, county
3 commission, board of commissioners, or other political
4 subdivision shall supplement or add to such salaries.

5 The annual salary of all circuit judges shall be \$90,000
6 per year: *Provided*, That beginning July 1, 2005, the annual
7 salary of all circuit judges shall be \$116,000 per year:
8 *Provided, however*, That beginning July 1, 2011, the annual
9 salary of a circuit court judge shall be \$126,000: *Provided*
10 *further*, That beginning July 1, 2021, the annual salary of a
11 circuit judge shall be \$132,300 and beginning July 1, 2022,
12 the annual salary of a circuit court judge shall be \$138,600.

ARTICLE 2A. FAMILY COURTS.

§51-2A-6. Compensation and expenses of family court judges and their staffs.

1 (a) A family court judge is entitled to receive as
2 compensation for his or her services an annual salary of
3 \$62,500: *Provided*, That beginning July 1, 2005, a family
4 court judge is entitled to receive as compensation for his or
5 her services an annual salary of \$82,500: *Provided*,
6 *however*, That beginning July 1, 2011, the annual salary of
7 a family court judge shall be \$94,500: *Provided further*,
8 That beginning July 1, 2020, the annual salary of a family
9 court judge shall be \$103,950.

10 (b) The secretary-clerk of the family court judge is
11 appointed by the family court judge and serves at his or her
12 will and pleasure. The secretary-clerk of the family court
13 judge is entitled to receive an annual salary of \$27,036:
14 *Provided*, That on and after July 1, 2006, the annual salary
15 of the secretary-clerk shall be established by the
16 Administrative Director of the Supreme Court of Appeals,
17 but may not exceed \$39,000. In addition, any person
18 employed as a secretary-clerk to a family court judge on the
19 effective date of the enactment of this section during the
20 sixth extraordinary session of the Legislature in the year
21 2001 who is receiving an additional \$500 per year up to 10
22 years of a certain period of prior employment under the
23 provisions of the prior enactment of §51-2A-8 of this code
24 during the second extraordinary session of the Legislature
25 in the year 1999 shall continue to receive such additional
26 amount. Further, the secretary-clerk will receive such
27 percentage or proportional salary increases as may be
28 provided by general law for other public employees and is
29 entitled to receive the annual incremental salary increase as
30 provided in §5-5-1 *et seq.* of this code.

31 (c) The family court judge may employ not more than
32 one family case coordinator who serves at his or her will and
33 pleasure. The annual salary of the family case coordinator
34 of the family court judge shall be established by the
35 Administrative Director of the Supreme Court of Appeals
36 but may not exceed \$36,000: *Provided*, That on and after
37 July 1, 2006, the annual salary of the family case
38 coordinator of the family court judge may not exceed

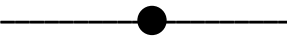
39 \$51,000. The family case coordinator will receive such
40 percentage or proportional salary increases as may be
41 provided by general law for other public employees and is
42 entitled to receive the annual incremental salary increase as
43 provided in §5-5-1 *et seq.* of this code.

44 (d) The sheriff or his or her designated deputy shall
45 serve as a bailiff for a family court judge. The sheriff of each
46 county shall serve or designate persons to serve so as to
47 assure that a bailiff is available when a family court judge
48 determines the same is necessary for the orderly and
49 efficient conduct of the business of the family court.

50 (e) Disbursement of salaries for family court judges and
51 members of their staffs are made by or pursuant to the order
52 of the Director of the Administrative Office of the Supreme
53 Court of Appeals.

54 (f) Family court judges and members of their staffs are
55 allowed their actual and necessary expenses incurred in the
56 performance of their duties. The expenses and
57 compensation will be determined and paid by the Director
58 of the Administrative Office of the Supreme Court of
59 Appeals under such guidelines as he or she may prescribe,
60 as approved by the Supreme Court of Appeals.

61 (g) Notwithstanding any other provision of law, family
62 court judges are not eligible to participate in the retirement
63 system for judges under the provisions of §51-9-1 *et seq.* of
64 this code.



CHAPTER 80

(Com. Sub. for S. B. 35 - By Senator Clements)

[Passed February 13, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 2, 2020.]

AN ACT to amend and reenact §22-15A-4 of the Code of West Virginia, 1931, as amended, relating to limiting the civil penalty for persons convicted of littering to not less than \$200 nor more than \$2,000.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-4. Unlawful disposal of litter; civil and criminal penalty; Litter Control Fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

1 (a) (1) A person may not place, deposit, dump, throw,
2 or cause to be placed, deposited, dumped, or thrown any
3 litter as defined in §22-15A-2 of this code, in or upon any
4 public or private highway, road, street, or alley; any private
5 property; any public property; or the waters of the state or
6 within 100 feet of the waters of this state, except in a proper
7 litter or other solid waste receptacle.

8 (2) A person may not place, deposit, dump, throw, or
9 cause to be placed, deposited, dumped, or thrown any litter
10 from a motor vehicle or other conveyance or perform any
11 act which constitutes a violation of the motor vehicle laws
12 contained in §17C-14-14 of this code.

13 (3) If any litter is placed, deposited, dumped,
14 discharged, thrown, or caused to be placed, deposited,
15 dumped, or thrown from a motor vehicle, boat, airplane, or
16 other conveyance, it is prima facie evidence that the owner
17 or the operator of the motor vehicle, boat, airplane, or other
18 conveyance intended to violate the provisions of this
19 section.

20 (4) Any person who violates the provisions of this
21 section by placing, depositing, dumping, or throwing or
22 causing to be placed, deposited, dumped, or thrown any
23 litter on his or her private property in an amount not
24 exceeding 50 pounds in weight is not subject to the criminal
25 provisions of this section.

26 (5) Any person who violates the provisions of this
27 section by placing, depositing, dumping, or throwing or
28 causing to be placed, deposited, dumped, or thrown any
29 litter, not collected for commercial purposes, in an amount
30 not exceeding 100 pounds in weight or 27 cubic feet in size,
31 is guilty of a misdemeanor. Upon conviction, he or she is
32 subject to a fine of not less than \$100 nor more than \$2,500,
33 or in the discretion of the court, sentenced to perform
34 community service by cleaning up litter from any public
35 highway, road, street, alley, or any other public park or
36 public property, or waters of the state, as designated by the
37 court, for not less than eight nor more than 100 hours, or
38 both. If any person is convicted of the misdemeanor by
39 placing, depositing, dumping, or throwing litter in the
40 waters of the state, that person shall be fined not less than
41 \$500 nor more than \$3,000, or in the discretion of the court
42 sentenced to perform community service by cleaning up
43 litter from any waters of the state, as designated by the court,
44 for not less than 20 hours nor more than 120 hours, or both.

45 (6) Any person who violates the provisions of this
46 section by placing, depositing, dumping, or throwing or
47 causing to be placed, deposited, dumped, or thrown any
48 litter, not collected for commercial purposes, in an amount
49 greater than 100 pounds in weight or 27 cubic feet in size,

50 but less than 500 pounds in weight or 216 cubic feet in size
51 is guilty of a misdemeanor. Upon conviction, he or she is
52 subject to a fine of not less than \$2,500 nor more than
53 \$5,000, or in the discretion of the court, may be sentenced
54 to perform community service by cleaning up litter from any
55 public highway, road, street, alley, or any other public park
56 or public property, or waters of the state, as designated by
57 the court, for not less than 16 hours nor more than 200 hours,
58 or both. If any person is convicted of the misdemeanor by
59 placing, depositing, dumping, or throwing litter in the
60 waters of the state, that person shall be fined not less than
61 \$3,000 nor more than \$5,500, or in the discretion of the
62 court sentenced to perform community service by cleaning
63 up litter from any waters of the state, as designated by the
64 court, for not less than 20 hours nor more than 220 hours, or
65 both.

66 (7) Any person who violates the provisions of this
67 section by placing, depositing, dumping, or throwing or
68 causing to be placed, deposited, dumped, or thrown any
69 litter in an amount greater than 500 pounds in weight or 216
70 cubic feet in size or any amount which had been collected
71 for commercial purposes is guilty of a misdemeanor. Upon
72 conviction, the person shall be fined not less than \$2,500
73 nor more than \$25,000 or confinement in jail for not more
74 than one year, or both. If any person is convicted of the
75 misdemeanor by placing, depositing, dumping, or throwing
76 litter in the waters of the state, that person shall be fined not
77 less than \$3,000 nor more than \$11,000, or confinement in
78 jail for not more than one year, or both. In addition, he or
79 she may be guilty of creating or contributing to an open
80 dump as defined in §22-15-2 of this code and subject to the
81 enforcement provisions of §22-15-15 of this code.

82 (8) Any person convicted of a second or subsequent
83 violation of this section is subject to double the authorized
84 range of fines and community service for the subsection
85 violated.

86 (9) The sentence of litter clean up shall be verified by
87 environmental inspectors from the Department of
88 Environmental Protection. Any defendant receiving the
89 sentence of litter clean up shall provide, within a time to be
90 set by the court, written acknowledgment from an
91 environmental inspector that the sentence has been
92 completed and the litter has been disposed of lawfully.

93 (10) Any person who has been found by the court to
94 have willfully failed to comply with the terms of a litter
95 clean-up sentence imposed by the court pursuant to this
96 section is subject to, at the discretion of the court, double
97 the amount of the original fines and community service
98 penalties originally ordered by the court.

99 (11) All law-enforcement agencies, officers, and
100 environmental inspectors shall enforce compliance with this
101 section within the limits of each agency's statutory
102 authority.

103 (12) A magistrate or municipal court judge may not
104 dismiss an action brought under the provisions of this
105 section without notification to the prosecuting attorney of
106 that county of his or her intention to do so and affording the
107 prosecuting attorney an opportunity to be heard.

108 (13) No portion of this section restricts an owner, renter,
109 or lessee in the lawful use of his or her own private property
110 or rented or leased property or prohibits the disposal of any
111 industrial and other wastes into waters of this state in a
112 manner consistent with the provisions of §22-11-1 *et seq.* of
113 this code. But if any owner, renter, or lessee, private or
114 otherwise, knowingly permits any of these materials or
115 substances to be placed, deposited, dumped, or thrown in a
116 location that high water or normal drainage conditions will
117 cause these materials or substances to wash into any waters
118 of the state, it is prima facie evidence that the owner, renter,
119 or lessee intended to violate the provisions of this section:
120 *Provided*, That if a landowner, renter, or lessee, private or
121 otherwise, reports any placing, depositing, dumping, or

122 throwing of these substances or materials upon his or her
123 property to the prosecuting attorney, county commission,
124 the Division of Natural Resources, or the Department of
125 Environmental Protection, the landowner, renter, or lessee
126 will be presumed to not have knowingly permitted the
127 placing, depositing, dumping, or throwing of the materials
128 or substances.

129 (b) Any indication of ownership found in litter is prima
130 facie evidence that the person identified violated the
131 provisions of this section: *Provided*, That no inference may
132 be drawn solely from the presence of any logo, trademark,
133 trade name, or other similar mass reproduced things of
134 identifying character appearing on the found litter.

135 (c) (1) Every person who is convicted of or pleads guilty
136 to disposing of litter in violation of subsection (a) of this
137 section shall pay a civil penalty of not less than \$200 nor
138 more than \$2,000 as costs for clean up, investigation, and
139 prosecution of the case, in addition to any other court costs
140 that the court is otherwise required by law to impose upon a
141 convicted person.

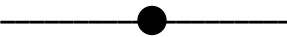
142 (2) The clerk of the circuit court, magistrate court, or
143 municipal court in which these additional costs are imposed
144 shall, on or before the last day of each month, transmit 50
145 percent of a civil penalty received pursuant to this section to
146 the State Treasurer for deposit in the State Treasury to the
147 credit of a special revenue fund known as the Litter Control
148 Fund which was transferred to the Department of
149 Environmental Protection. Expenditures for purposes set
150 forth in this section are not authorized from collections but
151 are to be made only in accordance with appropriation and in
152 accordance with the provisions of §12-3-1 *et seq.* of this
153 code and upon fulfillment of the provisions set forth in §5A-
154 2-1 *et seq.* of this code. Amounts collected which are found
155 from time to time to exceed the funds needed for the
156 purposes set forth in this article may be transferred to other
157 accounts or funds and designated for other purposes by
158 appropriation of the Legislature.

159 (d) The remaining 50 percent of each civil penalty
160 collected pursuant to this section shall be transmitted to the
161 county or regional solid waste authority in the county where
162 the litter violation occurred. Moneys shall be expended by
163 the county or regional solid waste authority for the purpose
164 of litter prevention, clean up, and enforcement. The county
165 commission shall cooperate with the county or regional
166 solid waste authority serving the respective county to
167 develop a coordinated litter control program pursuant to
168 §22C-4-8 of this code.

169 (e) The Commissioner of the Division of Motor
170 Vehicles, upon registering a motor vehicle or issuing an
171 operator's or chauffeur's license, shall issue to the owner or
172 licensee, as the case may be, a summary of this section and
173 §17C-14-14 of this code.

174 (f) The Commissioner of the Division of Highways shall
175 cause appropriate signs to be placed at the state boundary
176 on each primary and secondary road, and at other locations
177 throughout the state, informing those entering the state of
178 the maximum penalty provided for disposing of litter in
179 violation of subsection (a) of this section.

180 (g) Any state agency or political subdivision that owns,
181 operates, or otherwise controls any public area designated
182 by the secretary by rule promulgated pursuant to §22-15A-
183 3(a)(8) of this code shall procure and place litter receptacles
184 at its own expense upon its premises and shall remove and
185 dispose of litter collected in the litter receptacles. After
186 receiving two written warnings from any law-enforcement
187 officer or officers to comply with this subsection or the rules
188 of the secretary, any state agency or political subdivision
189 that fails to place and maintain the litter receptacles upon its
190 premises in violation of this subsection or the rules of the
191 secretary shall be fined \$30 per day of the violation.



CHAPTER 81

(Com. Sub. for S. B. 46 - By Senator Rucker)

[Passed February 11, 2020; in effect ninety days from passage.]

[Approved by the Governor on February 24, 2020.]

AN ACT to amend and reenact §61-6-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-7-2 of said code, all relating to defining “pepper spray”; exempting pepper spray from definition of “deadly weapons”; providing that persons over 16 years of age may carry pepper spray for the purpose of self-defense; and providing that such persons may carry pepper spray in 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 is not
9 a violation of this section.

10 (b) (1) It is unlawful for any person to bring upon the
11 State Capitol Complex any deadly weapon as defined in
12 §61-7-2 of this code: *Provided*, That a person who may
13 lawfully possess a firearm may keep a firearm in his or her
14 motor vehicle upon the State Capitol Complex if the vehicle

15 is locked and the weapon is out of normal view: *Provided*,
16 *however*, That a person may not carry upon the State Capitol
17 Complex, a cannister of pepper spray as defined in §61-7-2
18 of this code that exceeds one ounce. It is unlawful for any
19 person to willfully deface any trees, wall, floor, stairs,
20 ceiling, column, statue, monument, structure, surface,
21 artwork, or adornment in the State Capitol Complex. It is
22 unlawful for any person or persons to willfully block or
23 otherwise willfully obstruct any public access, stair, or
24 elevator in the State Capitol Complex after being asked by
25 a law-enforcement officer acting in his or her official
26 capacity to desist: *Provided further*, That in order to
27 preserve the constitutional right of the people to assemble,
28 it is not willful blocking or willful obstruction for persons
29 gathered in a group or crowd if the persons move to the side
30 or part to allow other persons to pass by the group or crowd
31 to gain ingress or egress: *And provided further*, That this
32 subsection does not apply to a law-enforcement officer
33 acting in his or her official capacity.

34 (2) Any person who violates this subsection is guilty of
35 a misdemeanor and, upon conviction thereof, shall be fined
36 not less than \$100, or confined in jail not more than six
37 months, or both fined and confined.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-2. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (1) “Blackjack” means a short bludgeon consisting, at
4 the striking end, of an encased piece of lead or some other
5 heavy substance and, at the handle end, a strap or springy
6 shaft which increases the force of impact when a person or
7 object is struck. The term “blackjack” includes, but is not
8 limited to, a billy, billy club, sand club, sandbag, or slapjack.

9 (2) “Gravity knife” means any knife that has a blade
10 released from the handle by the force of gravity or the

11 application of centrifugal force and when so released is
12 locked in place by means of a button, spring, lever, or other
13 locking or catching device.

14 (3) “Knife” means an instrument, intended to be used or
15 readily adaptable to be used as a weapon, consisting of a
16 sharp-edged or sharp-pointed blade, usually made of steel,
17 attached to a handle which is capable of inflicting cutting,
18 stabbing, or tearing wounds. The term “knife” includes, but
19 is not limited to, any dagger, dirk, poniard, or stiletto, with
20 a blade over three and one-half inches in length, any
21 switchblade knife or gravity knife, and any other instrument
22 capable of inflicting cutting, stabbing, or tearing wounds. A
23 pocket knife with a blade three and one-half inches or less
24 in length, a hunting or fishing knife carried for hunting,
25 fishing, sports, or other recreational uses, or a knife
26 designed for use as a tool or household implement is not
27 included within the term “knife” as defined in this
28 subsection unless the knife is knowingly used or intended to
29 be used to produce serious bodily injury or death.

30 (4) “Switchblade knife” means any knife having a
31 spring-operated blade which opens automatically upon
32 pressure being applied to a button, catch, or other releasing
33 device in its handle.

34 (5) “Nunchaku” means a flailing instrument consisting
35 of two or more rigid parts, connected by a chain, cable, rope,
36 or other nonrigid, flexible, or springy material, constructed
37 in such a manner as to allow the rigid parts to swing freely
38 so that one rigid part may be used as a handle and the other
39 rigid part may be used as the striking end.

40 (6) “Metallic or false knuckles” means a set of finger
41 rings attached to a transverse piece to be worn over the front
42 of the hand for use as a weapon and constructed in such a
43 manner that, when striking another person with the fist or
44 closed hand, considerable physical damage may be inflicted
45 upon the person struck. The terms “metallic or false
46 knuckles” includes any such instrument without reference

47 to the metal or other substance or substances from which the
48 metallic or false knuckles are made.

49 (7) "Pistol" means a short firearm having a chamber
50 which is integral with the barrel, designed to be aimed and
51 fired by the use of a single hand.

52 (8) "Revolver" means a short firearm having a cylinder
53 of several chambers that are brought successively into line
54 with the barrel to be discharged, designed to be aimed and
55 fired by the use of a single hand.

56 (9) "Pepper spray" means a temporarily disabling
57 aerosol that is composed partly of capsicum oleoresin and
58 causes irritation, blinding of the eyes, and inflammation of
59 the nose, throat, and skin that is intended for self-defense
60 use.

61 (10) "Deadly weapon" means an instrument which is
62 designed to be used to produce serious bodily injury or death
63 or is readily adaptable to such use. The term "deadly
64 weapon" includes, but is not limited to, the instruments
65 defined in subdivisions (1) through (8), inclusive, of this
66 section or other deadly weapons of like kind or character
67 which may be easily concealed on or about the person. For
68 the purposes of §18A-5-1a of this code and §61-7-11a of
69 this code, in addition to the definition of "knife" set forth in
70 subdivision (3) of this section, the term "deadly weapon"
71 also includes any instrument included within the definition
72 of "knife" with a blade of three and one-half inches or less
73 in length. Additionally, for the purposes of §18A-5-1a of
74 this code and §61-7-11a of this code, the term "deadly
75 weapon" includes explosive, chemical, biological, and
76 radiological materials. Notwithstanding any other provision
77 of this section, the term "deadly weapon" does not include
78 any item or material owned by the school or county board,
79 intended for curricular use, and used by the student at the
80 time of the alleged offense solely for curricular purposes.
81 The term "deadly weapon" does not include pepper spray as

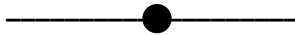
82 defined in subdivision (9) of this section when used by any
83 person over the age of 16 solely for self-defense purposes.

84 (11) “Concealed” means hidden from ordinary
85 observation so as to prevent disclosure or recognition. A
86 deadly weapon is concealed when it is carried on or about
87 the person in such a manner that another person in the
88 ordinary course of events would not be placed on notice that
89 the deadly weapon was being carried. For purposes of
90 concealed handgun licensees, a licensee is considered to be
91 carrying on or about his or her person while in or on a motor
92 vehicle if the firearm is located in a storage area in or on the
93 motor vehicle.

94 (12) “Firearm” means any weapon which will expel a
95 projectile by action of an explosion.

96 (13) “Controlled substance” has the same meaning as is
97 ascribed to that term in §60A-1-101(e) of this code.

98 (14) “Drug” has the same meaning as is ascribed to that
99 term in §60A-1-101(m) of this code.



CHAPTER 82

**(Com. Sub. for S. B. 144 - By Senators Sypolt and
Cline)**

[Passed March 6, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §61-5-17 of the Code of West Virginia, 1931, as amended, relating to precluding the charge of making a materially false statement in the investigation of a misdemeanor offense serving as the basis for a secured bond or pre-trial incarceration; establishing a criminal offense in

certain circumstances for initiating a false complaint or report against a law-enforcement officer, knowing the information is false; and providing misdemeanor criminal penalties for a false report.

Be it enacted by the Legislature of West Virginia:

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. A criminal charge
37 under this subsection relating to the investigation of a
38 misdemeanor offense may not be used to seek or support a
39 secured bond or pre-trial incarceration.

40 (d) A person who intentionally flees or attempts to flee
41 by any means other than the use of a vehicle from a law-
42 enforcement officer, probation officer, parole officer,
43 courthouse security officer, correctional officer, the State
44 Fire Marshal, or a full-time deputy or assistant fire marshal
45 acting in his or her official capacity who is attempting to
46 make a lawful arrest of or to lawfully detain the person, and
47 who knows or reasonably believes that the officer is
48 attempting to arrest or lawfully detain him or her, is guilty
49 of a misdemeanor and, upon conviction thereof, shall be
50 fined not less than \$50 nor more than \$500 or confined in
51 jail not more than one year, or both fined and confined.

52 (e) A person who intentionally flees or attempts to flee
53 in a vehicle from a law-enforcement officer, probation
54 officer, or parole officer acting in his or her official capacity
55 after the officer has given a clear visual or audible signal
56 directing the person to stop is guilty of a misdemeanor and,
57 upon conviction thereof, shall be fined not less than \$500
58 nor more than \$1,000 and shall be confined in jail not more
59 than one year.

60 (f) A person who intentionally flees or attempts to flee
61 in a vehicle from a law-enforcement officer, probation
62 officer, or parole officer acting in his or her official capacity
63 after the officer has given a clear visual or audible signal

64 directing the person to stop, and who operates the vehicle in
65 a manner showing a reckless indifference to the safety of
66 others, is guilty of a felony and, upon conviction thereof,
67 shall be fined not less than \$1,000 nor more than \$2,000 and
68 shall be imprisoned in a state correctional facility not less
69 than one nor more than five years.

70 (g) A person who intentionally flees or attempts to flee
71 in a vehicle from a law-enforcement officer, probation
72 officer, or parole officer acting in his or her official capacity
73 after the officer has given a clear visual or audible signal
74 directing the person to stop, and who causes damage to the
75 real or personal property of a person during or resulting
76 from his or her flight, is guilty of a misdemeanor and, upon
77 conviction thereof, shall be fined not less than \$1,000 nor
78 more than \$3,000 and shall be confined in jail for not less
79 than six months nor more than one year.

80 (h) A person who intentionally flees or attempts to flee
81 in a vehicle from a law-enforcement officer, probation
82 officer, or parole officer acting in his or her official capacity
83 after the officer has given a clear visual or audible signal
84 directing the person to stop, and who causes bodily injury
85 to a person during or resulting from his or her flight, is guilty
86 of a felony and, upon conviction thereof, shall be
87 imprisoned in a state correctional facility not less than three
88 nor more than 10 years.

89 (i) A person who intentionally flees or attempts to flee
90 in a vehicle from a law-enforcement officer, probation
91 officer, or parole officer acting in his or her official capacity
92 after the officer has given a clear visual or audible signal
93 directing the person to stop, and who causes death to a
94 person during or resulting from his or her flight, is guilty of
95 a felony and, upon conviction thereof, shall be imprisoned
96 in a state correctional facility for not less than five nor more
97 than 15 years. A person imprisoned pursuant to this
98 subsection is not eligible for parole prior to having served a
99 minimum of three years of his or her sentence or the

100 minimum period required by §62-12-13 of this code,
101 whichever is greater.

102 (j) A person who intentionally flees or attempts to flee
103 in a vehicle from a law-enforcement officer, probation
104 officer, or parole officer acting in his or her official capacity
105 after the officer has given a clear visual or audible signal
106 directing the person to stop, and who is under the influence
107 of alcohol, controlled substances, or drugs, is guilty of a
108 felony and, upon conviction thereof, shall be imprisoned in
109 a state correctional facility not less than three nor more than
110 10 years.

111 (k) For purposes of this section, the term “vehicle”
112 includes any motor vehicle, motorcycle, motorboat, all-
113 terrain vehicle, or snowmobile as those terms are defined in
114 §17A-1-1 of this code, whether or not it is being operated
115 on a public highway at the time and whether or not it is
116 licensed by the state.

117 (l) For purposes of this section, the terms “flee”,
118 “fleeing”, and “flight” do not include a person’s reasonable
119 attempt to travel to a safe place, allowing the pursuing law-
120 enforcement officer to maintain appropriate surveillance,
121 for the purpose of complying with the officer’s direction to
122 stop.

123 (m) The revisions to subsections (e), (f), (g), and (h) of
124 this section enacted during the 2010 regular legislative
125 session shall be known as the Jerry Alan Jones Act.

126 (n) (1) No person, with the intent to purposefully
127 deprive another person of emergency services, may
128 interfere with or prevent another person from making an
129 emergency communication, which a reasonable person
130 would consider necessary under the circumstances, to law-
131 enforcement, fire, or emergency medical services personnel.

132 (2) For the purpose of this subsection, the term
133 “interfere with or prevent” includes, but is not limited to,

134 seizing, concealing, obstructing access to or disabling or
135 disconnecting a telephone, telephone line, or equipment or
136 other communication device.

137 (3) For the purpose of this subsection, the term
138 “emergency communication” means communication to
139 transmit warnings or other information pertaining to a
140 crime, fire, accident, power outage, disaster, or risk of injury
141 or damage to a person or property.

142 (4) A person who violates this subsection is guilty of a
143 misdemeanor and, upon conviction thereof, shall be
144 confined in jail for a period of not less than one day nor
145 more than one year or shall be fined not less than \$250 nor
146 more than \$2,000, or both fined and confined.

147 (5) A person who is convicted of a second offense under
148 this subsection is guilty of a misdemeanor and, upon
149 conviction thereof, shall be confined in jail for not less than
150 three months nor more than one year or fined not less than
151 \$500 nor more than \$3,000, or both fined and confined.

152 (6) A person who is convicted of a third or subsequent
153 offense under this subsection is guilty of a misdemeanor
154 and, upon conviction thereof, shall be confined in jail not
155 less than six months nor more than one year or fined not less
156 than \$500 nor more than \$4,000, or both fined and confined.

157 (7) In determining the number of prior convictions for
158 purposes of imposing punishment under this subsection, the
159 court shall disregard all such prior convictions occurring
160 more than 10 years prior to the offense in question.

161 (o) A person is guilty of filing a false complaint against
162 a law-enforcement officer when, knowing the information
163 reported is false or baseless, he or she:

164 (1) Initiates a false complaint of improper action of a
165 law-enforcement officer relating to an incident or other
166 circumstance; or

167 (2) Reports, by word or action, to any official or quasi-
168 official agency or organization having the function of
169 dealing with conduct of law-enforcement officers which did
170 not occur, does not in fact exist; or

171 (3) Reports to a law-enforcement officer or agency the
172 alleged occurrence of any offense or incident which did not
173 in fact occur.

174 Any person who violates this subsection is guilty of a
175 misdemeanor and, upon conviction thereof, shall be fined
176 not more than \$1,000 or confined in jail not more than six
177 months, or both fined and confined.



CHAPTER 83

**(Com. Sub. for S. B. 201 - By Senators Weld,
Hamilton, Lindsay, Ihlenfeld, Rucker, Woelfel,
Baldwin and Romano)**

[Passed March 3, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §61-2-9a of the Code of West Virginia, 1931, as amended, relating generally to the criminal offenses of stalking and harassment; modifying and clarifying elements of offenses; creating new offense of violating a personal safety order where the person against whom the violation is directed is the subject of the order; creating a new offense of harassment to cause a person to physically harm or kill himself or herself; defining terms; enhancing penalties for second and subsequent offenses; authorizing proposal of legislative rules and promulgation of emergency rules by the Governor's Office of Crime, Delinquency, and Correction; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9a. Harassment; penalties; definitions.

1 (a) Any person who engages in a course of conduct
2 directed at another person with the intent to cause the other
3 person to fear for his or her personal safety, the safety of
4 others, or suffer substantial emotional distress, or causes a
5 third person to so act, is guilty of a misdemeanor and, upon
6 conviction thereof, shall be fined not more than \$1,000,
7 confined in jail for not more than six months, or both fined
8 and confined.

9 (b) Any person who harasses or repeatedly makes
10 credible threats against another is guilty of a misdemeanor
11 and, upon conviction thereof, shall be confined in jail for
12 not more than six months, or fined not more than \$1,000, or
13 both fined and confined.

14 (c) Notwithstanding any provision of this code to the
15 contrary, any person who violates the provisions of
16 subsection (a) or (b) of this section in violation of an order
17 entered by a circuit court, magistrate court, or family court
18 judge, in effect and entered pursuant to §48-5-501, §48-5-
19 601, or §48-27-403 of this code, is guilty of a misdemeanor
20 and, upon conviction thereof, shall be confined in jail for
21 not less than 90 days nor more than one year, or fined not
22 less than \$2,000 nor more than \$5,000, or both fined and
23 confined.

24 (d) A second or subsequent conviction for a violation of
25 subsection (a) or (b) of this section is a felony punishable by
26 imprisonment in a state correctional facility for not less than
27 one year nor more than five years, or fined not less than
28 \$3,000 nor more than \$10,000, or both fined and
29 imprisoned.

30 (e) Notwithstanding any provision of this code to the
31 contrary, any person against whom a protective order is in

32 effect for injunctive relief pursuant to the provisions of §48-
33 5-608 or §48-27-501 of this code, who has been served with
34 a copy of said order, who commits a violation of the
35 provisions of this section, in which the subject in the
36 protective order is the victim, shall be guilty of a felony and,
37 upon conviction thereof, be imprisoned in a state
38 correctional facility for not less than one year nor more than
39 five years, or fined not less than \$3,000 nor more than
40 \$10,000, or both fined and imprisoned.

41 (f) Notwithstanding any provision of this code to the
42 contrary, any person against whom a protective order is in
43 effect pursuant to the provisions of §53-8-7 of this code,
44 who has been previously served with a copy of said order,
45 who commits a violation of the provisions of this section, in
46 which the subject in the protective order is the victim, is
47 guilty of a felony and punishable by imprisonment in a state
48 correctional facility for not less than one year nor more than
49 five years, or fined not less than \$3,000 nor more than
50 \$10,000, or both fined and confined.

51 (g) Notwithstanding any provision of this code to the
52 contrary, any person who harasses another person with the
53 intent to cause the person to physically injure himself or
54 herself, or to take his or her own life, or who continues to
55 harass another, knowing or having reason to know that the
56 person is likely to physically injure himself or herself, or to
57 take his or her own life based, in whole or in part, on such
58 harassment, is guilty of a felony and, upon conviction, shall
59 be imprisoned in a state correctional facility for a
60 determinate sentence of not less than two years nor more
61 than 10 years.

62 (h) For the purposes of this section:

63 (1) "Bodily injury" means substantial physical pain,
64 illness, or any impairment of physical condition;

65 (2) "Course of conduct" means a pattern of conduct
66 composed of two or more acts in which a defendant directly,

67 indirectly, or through a third party by any action, method,
68 device, or means:

69 (A) Follows, monitors, observes, surveils, or threatens a
70 specific person or persons;

71 (B) Engages in other nonconsensual contact and/or
72 communications, including contact through electronic
73 communication, with a specific person or persons; or

74 (C) Interferes with or damages a person's property or
75 pet;

76 (3) "Credible threat" means a threat of bodily injury
77 made with the apparent ability to carry out the threat and
78 with the result that a reasonable person would believe that
79 the threat could be carried out;

80 (4) "Harasses" means a willful course of conduct
81 directed at a specific person or persons which would cause
82 a reasonable person mental injury or emotional distress and
83 which serves no legitimate or lawful purpose;

84 (5) "Immediate family" means a spouse, parent,
85 stepparent, mother-in-law, father-in-law, child, stepchild,
86 sibling, or any person who regularly resides in the
87 household or within the prior six months regularly resided
88 in the household; and

89 (6) "Repeatedly" means on two or more occasions.

90 (i) Any person convicted under the provisions of this
91 section who is granted probation or for whom execution or
92 imposition of a sentence or incarceration is suspended, shall
93 have as a condition of probation or suspension of sentence
94 that he or she participate in counseling or medical treatment
95 as directed by the court.

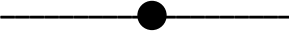
96 (j) Upon conviction, the court may issue an order
97 restraining the defendant from any contact with the victim
98 for a period not to exceed 10 years. The length of any

99 restraining order shall be based upon the seriousness of the
100 violation before the court, the probability of future
101 violations, and the safety of the victim or his or her
102 immediate family. The duration of the restraining order may
103 be longer than five years only in cases when a longer
104 duration is necessary to protect the safety of the victim or
105 his or her immediate family.

106 (k) It is a condition of bond for any person accused of
107 the offense described in this section that the person is to
108 have no contact, direct or indirect, verbal or physical, with
109 the alleged victim.

110 (l) Nothing in this section may be construed to preclude
111 a sentencing court from exercising its power to impose
112 home confinement with electronic monitoring as an
113 alternative sentence.

114 (m) The Governor's Committee on Crime,
115 Delinquency, and Correction, after consultation with
116 representatives of labor, licensed domestic violence
117 programs, and rape crisis centers which meet the standards
118 of the West Virginia Foundation for Rape Information and
119 Services, is authorized to promulgate legislative rules and
120 emergency rules pursuant to §29A-3-1 *et seq.* of this code,
121 establishing appropriate standards for the enforcement of
122 this section by state, county, and municipal law-
123 enforcement officers and agencies.



CHAPTER 84

**(Com. Sub. for S. B. 261 - By Senators Ihlenfeld,
Baldwin, Stollings and Maynard)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §61-3C-3 and §61-3C-4 of the Code of West Virginia, 1931, as amended, all relating to contaminating a computer with ransomware; creating criminal offense of introducing ransomware into any computer, computer system, or computer network with the intent to extort money or other consideration; setting forth the elements of the offense; defining terms; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-3. Definitions.

1 As used in this article, unless the context clearly
2 indicates otherwise:

3 (1) “Access” means to instruct, communicate with, store
4 data in, retrieve data from, intercept data from, or otherwise
5 make use of any computer, computer network, computer
6 program, computer software, computer data, or other
7 computer resources.

8 (2) “Authorization” means the express or implied
9 consent given by a person to another to access or use said
10 person’s computer, computer network, computer program,

11 computer software, computer system, password, identifying
12 code, or personal identification number.

13 (3) “Computer” means an electronic, magnetic, optical,
14 electrochemical, or other high-speed data processing device
15 performing logical, arithmetic, or storage functions and
16 includes any data storage facility or communication facility
17 directly related to, or operating in conjunction with, such
18 device. The term “computer” includes any connected or
19 directly related device, equipment, or facility which enables
20 the computer to store, retrieve, or communicate computer
21 programs, computer data, or the results of computer
22 operations to or from a person, another computer, or another
23 device, file servers, mainframe systems, desktop personal
24 computers, laptop personal computers, tablet personal
25 computers, cellular telephones, game consoles, and any
26 other electronic data storage device or equipment, but such
27 term does not include an automated typewriter or typesetter,
28 a portable hand-held calculator, or other similar device.

29 (4) “Computer contaminant” means any set of computer
30 instructions that are designed to damage or destroy
31 information within a computer, computer system, or
32 computer network without the consent or permission of the
33 owner of the information. They include, but are not limited
34 to, a group of computer instructions commonly called
35 viruses or worms that are self-replicating or self-
36 propagating and are designed to contaminate other
37 computer programs or computer data, consume computer
38 resources, or damage or destroy the normal operation of the
39 computer.

40 (5) “Computer data” means any representation of
41 knowledge, facts, concepts, instruction, or other
42 information computed, classified, processed, transmitted,
43 received, retrieved, originated, stored, manifested,
44 measured, detected, recorded, reproduced, handled, or
45 utilized by a computer, computer network, computer
46 program, or computer software, and may be in any medium,
47 including, but not limited to, computer printouts, microfilm,

48 microfiche, magnetic storage media, optical storage media,
49 punch paper tape, or punch cards, or it may be stored
50 internally in read-only memory or random access memory
51 of a computer or any other peripheral device.

52 (6) “Computer network” means a set of connected
53 devices and communication facilities, including more than
54 one computer, with the capability to transmit computer data
55 among them through such communication facilities.

56 (7) “Computer operations” means arithmetic, logical,
57 storage, display, monitoring, or retrieval functions or any
58 combination thereof and includes, but is not limited to,
59 communication with, storage of data in or to, or retrieval of
60 data from any device, and the human manual manipulation
61 of electronic magnetic impulses. A “computer operation”
62 for a particular computer shall also mean any function for
63 which that computer was designed.

64 (8) “Computer program” means an ordered set of
65 computer data representing instructions or statements, in a
66 form readable by a computer, which controls, directs, or
67 otherwise influences the functioning of a computer or
68 computer network.

69 (9) “Computer software” means a set of computer
70 programs, procedures, and associated documentation
71 concerned with computer data or with the operation of a
72 computer, computer program, or computer network.

73 (10) “Computer services” means computer access time,
74 computer data processing, or computer data storage, and the
75 computer data processed or stored in connection therewith.

76 (11) “Computer supplies” means punch cards, paper
77 tape, magnetic tape, magnetic disks or diskettes, optical
78 disks or diskettes, disk or diskette packs, paper, microfilm,
79 and any other tangible input, output, or storage medium
80 used in connection with a computer, computer network,
81 computer data, computer software, or computer program.

82 (12) "Computer resources" includes, but is not limited
83 to, information retrieval; computer data processing,
84 transmission, and storage; and any other functions
85 performed, in whole or in part, by the use of a computer,
86 computer network, computer software, or computer
87 program.

88 (13) "Financial instrument" includes, but is not limited
89 to, a check, draft, warrant, money order, note, certificate of
90 deposit, letter of credit, bill of exchange, credit or debit card,
91 transaction authorization mechanism, marketable security,
92 or any computerized representation thereof.

93 (14) "Owner" means any person who owns or leases or
94 is a licensee of a computer, computer network, computer
95 data, computer program, computer software, computer
96 resources, or computer supplies.

97 (15) "Person" means any natural person, general
98 partnership, limited partnership, trust, association,
99 corporation, joint venture, or any state, county, or municipal
100 government and any subdivision, branch, department, or
101 agency thereof.

102 (16) "Property" includes:

103 (A) Real property;

104 (B) Computers and computer networks;

105 (C) Financial instruments, computer data, computer
106 programs, computer software, and all other personal
107 property regardless of whether they are:

108 (i) Tangible or intangible;

109 (ii) In a format readable by humans or by a computer;

110 (iii) In transit between computers or within a computer
111 network or between any devices which comprise a
112 computer; or

113 (iv) Located on any paper or in any device on which it
114 is stored by a computer or by a human; and

115 (D) Computer services.

116 (17) “Ransomware” means a computer contaminant, or
117 lock placed or introduced without authorization into a
118 computer, computer system, or computer network that
119 restricts access by an authorized user to the computer,
120 computer system, computer network, or any data therein
121 under circumstances in which the person responsible for the
122 placement or introduction of the ransomware demands
123 payment of money or other consideration to remove the
124 computer contaminant, restore access to the computer,
125 computer system, computer network, or data, or otherwise
126 remediate the impact of the computer contaminant or lock.

127 (18) “Value” means having any potential to provide any
128 direct or indirect gain or advantage to any person.

129 (19) “Value of property or computer services” shall be:
130 (A) The market value of the property or computer services
131 at the time of a violation of this article; or (B) if the property
132 or computer services are unrecoverable, damaged, or
133 destroyed as a result of a violation of §61-3C-6 or §61-3C-
134 7 of this code, the cost of reproducing or replacing the
135 property or computer services at the time of the violation.

§61-3C-4. Computer fraud; access to Legislature computer; criminal penalties.

1 (a) Any person who, knowingly and willfully, directly
2 or indirectly, accesses or causes to be accessed any
3 computer, computer services, or computer network for the
4 purpose of: (1) Executing any scheme or artifice to defraud;
5 or (2) obtaining money, property, or services by means of
6 fraudulent pretenses, representations, or promises is guilty
7 of a felony and, upon conviction thereof, shall be fined not
8 more than \$10,000 or imprisoned in a state correctional
9 facility for a determinate sentence of not more than 10 years,
10 or both fined and imprisoned.

11 (b) Any person who, with intent to extort money or other
12 consideration from another, introduces ransomware into any
13 computer, computer system, or computer network is guilty
14 of a felony and, upon conviction thereof, shall be fined not
15 more than \$100,000 or imprisoned in a state correctional
16 facility for a determinate sentence of not more than 10 years,
17 or both fined and imprisoned.

18 (c) A person is criminally responsible for placing or
19 introducing ransomware into a computer, computer system,
20 or computer network if the person directly places or
21 introduces the ransomware or directs or induces another
22 person to do so, with the intent of demanding payment or
23 other consideration for removing, restoring access, or other
24 remediation of the impact of the ransomware.

25 (d) (1) Any person who, knowingly and willfully,
26 directly or indirectly, accesses, attempts to access, or causes
27 to be accessed any data stored in a computer owned by the
28 Legislature without authorization is guilty of a felony and,
29 upon conviction thereof, shall be fined not more than \$5,000
30 or imprisoned in a state correctional facility for a
31 determinate sentence of not more than five years, or both
32 fined and imprisoned.

33 (2) Notwithstanding the provisions of §61-3C-17 of this
34 code to the contrary, in any criminal prosecution under this
35 subsection against an employee or member of the
36 Legislature, it shall not be a defense: (A) That the defendant
37 had reasonable grounds to believe that he or she had
38 authorization to access the data merely because of his or her
39 employment or membership; or (B) that the defendant could
40 not have reasonably known he or she did not have
41 authorization to access the data: *Provided*, That the Joint
42 Committee on Government and Finance shall promulgate
43 rules for the respective houses of the Legislature regarding
44 appropriate access of members and staff and others to the
45 legislative computer system.

CHAPTER 85

**(Com. Sub. for S. B. 308 - By Senators Weld,
Ihlenfeld and Jeffries)**

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §55-7J-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-2-29b of said code, all relating to creating the criminal offense of violating the terms of protection orders issued for the protection of persons who are victims or potential victims of financial exploitation; requiring orders of protection to state that violations of such orders may result in criminal prosecution; and establishing penalties for such offenses.

Be it enacted by the Legislature of West Virginia:

CHAPTER 55. ACTIONS, SUITS, AND ARBITRATION; JUDICIAL SALE.

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

§55-7J-5. Action to freeze assets; burden of proof; options the court may exercise.

- 1 (a) An elderly person, protected person, or incapacitated
- 2 adult may bring an action to enjoin the alleged commission
- 3 of financial exploitation and may petition the court to freeze
- 4 the assets of the person allegedly committing the financial
- 5 exploitation in an amount equal to, but not greater than, the
- 6 alleged value of lost property or assets for purposes of
- 7 restoring to the victim the value of the lost property or

8 assets. The burden of proof required to freeze the assets of
9 a person allegedly committing financial exploitation shall
10 be a preponderance of the evidence. Upon a finding that the
11 elderly person, protected person, or incapacitated adult has
12 been formally exploited, the court may:

13 (1) Grant injunctive relief;

14 (2) Order the violator to, in escrow an amount of money
15 equivalent to the value of the misappropriated assets for
16 distribution to the aggrieved elderly person, protected
17 person, or incapacitated adult;

18 (3) Order the violator to return to the elderly person,
19 protected person, or incapacitated person any real or
20 personal property which was misappropriated; or

21 (4) Provide for the appointment of a receiver.

22 (b) In an action under §55-7J-1 of this code, the court
23 may void or limit the application of contracts or clauses
24 resulting from the financial exploitation.

25 (c) In an action brought under this article, upon the filing
26 of the complaint or on the appearance of any defendant,
27 claimant, or other party, or at any later time, the court may
28 require the plaintiff, defendant, claimant, or other party or
29 parties to post security, or additional security, in a sum the
30 court directs to pay all costs, expenses, and disbursements
31 that are awarded against that party or that the party may be
32 directed to pay by any interlocutory order, by the final
33 judgment or after appeal.

34 (d) An order entered under this section shall state that a
35 violation of the order may result in criminal prosecution
36 under §61-2-29b of this code and state the penalties
37 therefor.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-29b. Financial exploitation of an elderly person, protected person, or incapacitated adult; penalties; definitions.

1 (a) Any person who financially exploits an elderly
2 person, protected person, or an incapacitated adult in the
3 amount of less than \$1,000 is guilty of a misdemeanor and,
4 upon conviction thereof, shall be fined not more than \$1,000
5 or confined in jail for not more than one year, or both fined
6 and confined.

7 (b) Any person who financially exploits an elderly
8 person, protected person, or an incapacitated adult in the
9 amount of \$1,000 or more is guilty of a felony and, upon
10 conviction thereof, shall be fined not more than \$10,000 and
11 imprisoned in a state correctional facility not less than two
12 nor more than 20 years.

13 (c) Any person convicted of a violation of this section
14 shall, in addition to any other penalties at law, be subject to
15 an order of restitution.

16 (d) In determining the value of the money, goods,
17 property, or services referred to in subsection (a) of this
18 section, it shall be permissible to cumulate amounts or
19 values where such money, goods, property, or services were
20 fraudulently obtained as part of a common scheme or plan.

21 (e) Financial institutions and their employees, as
22 defined by §31A-2A-1 of this code and as permitted by
23 §31A-2A-4 of this code, others engaged in financially
24 related activities, as defined by §31A-8C-1 of this code,
25 caregivers, relatives, and other concerned persons are
26 permitted to report suspected cases of financial exploitation
27 to state or federal law-enforcement authorities, the county
28 prosecuting attorney, and to the Department of Health and
29 Human Resources, Adult Protective Services Division, or
30 Medicaid Fraud Division, as appropriate. Public officers
31 and employees are required to report suspected cases of
32 financial exploitation to the appropriate entities as stated

33 above. The requisite agencies shall investigate or cause the
34 investigation of the allegations.

35 (f) When financial exploitation is suspected and to the
36 extent permitted by federal law, financial institutions and
37 their employees or other business entities required by
38 federal law or regulation to file suspicious activity reports
39 and currency transaction reports shall also be permitted to
40 disclose suspicious activity reports or currency transaction
41 reports to the prosecuting attorney of any county in which
42 the transactions underlying the suspicious activity reports or
43 currency transaction reports occurred.

44 (g) Any person or entity that in good faith reports a
45 suspected case of financial exploitation pursuant to this
46 section is immune from civil liability founded upon making
47 that report.

48 (h) For the purposes of this section:

49 (1) “Incapacitated adult” means a person as defined by
50 §61-2-29 of this code;

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

53 (3) “Financial exploitation” or “financially exploit”
54 means the intentional misappropriation or misuse of funds
55 or assets of an elderly person, protected person, or
56 incapacitated adult, but shall not apply to a transaction or
57 disposition of funds or assets where the accused made a
58 good-faith effort to assist the elderly person, protected
59 person, or incapacitated adult with the management of his
60 or her money or other things of value; and

61 (4) “Protected person” means any person who is defined
62 as a “protected person” in §44A-1-4 of this code and who is
63 subject to the protections of chapter 44A or 44C of this code.

64 (i) Notwithstanding any provision of this code to the
65 contrary, acting as guardian, conservator, trustee, or

66 attorney for, or holding power of attorney for, an elderly
67 person, protected person, or incapacitated adult shall not,
68 standing alone, constitute a defense to a violation of
69 subsection (a) of this section.

70 (j) Any person who willfully violates a material term of
71 an order entered pursuant to §55-7J-5 of this code is guilty
72 of a misdemeanor and, upon conviction thereof, shall:

73 (1) For the first offense, be fined not more than \$1,000
74 or confined in jail not more than 90 days, or both fined and
75 confined; and

76 (2) For a second or subsequent offense, be fined not
77 more than \$2,500 or confined in jail not more than one year,
78 or both fined and confined.



CHAPTER 86

**(Com. Sub. for S. B. 490 - By Senators Sypolt, Smith,
Rucker, Beach, Baldwin, Jeffries and Pitsenbarger)**

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §61-3B-7,
relating to creating the offenses of trespass upon an animal or
crop facility and conspiracy to trespass upon an animal or crop
facility; defining terms; establishing criminal penalties;
creating an enhanced felony offense for second and
subsequent violations; authorizing double damages for
injuries to animal and crop facilities; and allowing injunctive
relief.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3B. TRESPASS.**§61-3B-7. Animal or crop facilities trespass; penalties; injunctive relief.**

1 (a) As used in this section:

2 (1) “Animal” means poultry, livestock, domestic
3 animals, and captive cervids owned and possessed by
4 persons licensed pursuant to §19-2H-1 *et seq.* of this code.
5 The term does not include an animal used for illegal gaming.

6 (2) “Animal or crop facility” means a facility that is
7 used in the production, management, sale, or processing of
8 animals or crops. The term includes, but is not limited to:

9 (A) A building, greenhouse, structure, laboratory,
10 pasture, field, paddock, pond, impoundment, or premises
11 where animals or crops are located;

12 (B) A managed bee colony;

13 (C) A livestock market;

14 (D) A facility used for the preparation of, or processing
15 of, animals, crops, or value-added foods for sale; and

16 (E) A facility used to carry out any agritourism activity,
17 as that term is defined and used in §19-36-1 *et seq.* of this
18 code.

19 (3) “Crop” means a shrub, vine, tree, seedling, shoot,
20 slip, or other plant capable of producing food, fiber,
21 medicine, nursery stock, floral products, or aesthetic beauty.

22 (b) Any person who willfully trespasses on the property
23 of another which constitutes an animal or crop facility with
24 the intent to commit larceny, destroy property, or disrupt the
25 operation of the facility is guilty of willful trespass upon an
26 animal or crop facility.

27 (c) Any person who conspires with one or more persons
28 to violate subsection (b) of this section and commits an overt
29 act in furtherance thereof is guilty of conspiracy to willfully
30 trespass upon an animal or crop facility.

31 (d) Any person who violates subsection (b) of this
32 section is guilty of a misdemeanor and, upon conviction
33 thereof, shall be fined not less than \$500 nor more than
34 \$1,000 or confined in jail not more than 30 days, or both
35 fined and confined.

36 (e) Notwithstanding the provisions of subsection (d) of this
37 section, any person convicted of a second or subsequent
38 violation of subsection (b) or a violation of subsection (c) of
39 this section is guilty of a felony and, upon conviction thereof,
40 shall be fined not less than \$5,000 nor more than \$10,000 or
41 imprisoned in a state correctional facility for not less than one
42 nor more than five years, or both fined and imprisoned.

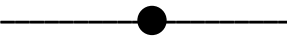
43 (f) Notwithstanding and in addition to any other penalties
44 provided by law, any person who performs, or causes damage
45 to property in the course of, a willful trespass in violation of
46 this section is liable to the owner or operator of the animal or
47 crop facility in the amount of twice any damage caused.

48 (g) The owner or operator of an animal or crop facility
49 may bring an action for injunctive relief against a person
50 who engages in, or threatens to engage in, conduct that
51 constitutes a violation of this section:

52 (1) The action may be brought in the circuit court of any
53 county in which any part of the conduct or threatened
54 conduct occurs or is threatened to occur.

55 (2) The circuit court may grant any appropriate
56 injunctive relief to prevent or abate the conduct or
57 threatened conduct, including a temporary restraining order,
58 preliminary injunction, or permanent injunction.

59 (3) The circuit court may issue injunctive relief without
60 the owner or operator of an animal or crop facility giving
61 security for its issuance.



CHAPTER 87

(S. B. 562 - By Senators Trump, Stollings, Woelfel and Facemire)

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §61-11-26 and §61-11-26a of the Code of West Virginia, 1931, as amended, all relating generally to expungement of certain criminal convictions; allowing a person seeking expungement of convictions in multiple counties to file the petition in his or her county of residence; clarifying that prosecuting attorneys in any county of conviction wherein expungement is sought be provided notice of petition; eliminating the requirement that the chief law-enforcement officer or head of a municipal law-enforcement agency where the offense for which expungement is sought be given notice where such agency was not the arresting agency; modifying non-expungable offenses to allow expungement of burglaries of buildings which are not dwellings; allowing expungement of an unrelated felony if person has a conviction for driving under the influence if said driving under the influence conviction is at least five years old at the time the petition is filed; clarifying that Commissioner of Corrections be served with a copy of the petition for expungement if the petitioner was confined or imprisoned for the offense for which expungement is sought; clarifying that petitioner's burden of proof as to convictions for which expungement is sought are the only convictions against him or her in the state; defining "expungement"; and directing that upon the granting of an order of expungement all public records other than those under court seal are moved and destroyed.

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 involving a
68 structure regularly used as a dwelling;

69 (13) Any conviction for which the sentencing judge
70 made a written finding that the offense was sexually
71 motivated;

72 (14) Any offense which violates §17E-1-13(g) of this
73 code; and

74 (15) Any offense of conspiracy or attempt to commit a
75 felony set forth in subdivisions (1) through (11) and (13),
76 inclusive, of this subsection.

77 Provided, That a conviction for driving under the
78 influence of alcohol, controlled substances, or drugs shall
79 not preclude expungement of an unrelated and otherwise
80 expungable felony if the conviction for driving under the
81 influence of alcohol, controlled substances, or drugs is at
82 least five years old at the time the petition for expungement
83 is filed.

84 (d) Content of petition for expungements. — Each
85 petition to expunge a conviction or convictions pursuant to
86 this section shall be verified under oath and include the
87 following information: *Provided*, That a petition for the
88 expungement of multiple misdemeanors shall identify and
89 group such information by circuit court, as applicable, from

90 which expungement of a particular conviction or
91 convictions is being sought:

92 (1) The petitioner's current name and all other legal
93 names or aliases by which the petitioner has been known at
94 any time;

95 (2) All of the petitioner's addresses from the date of the
96 offense in connection with which an expungement order is
97 sought to date of the petition;

98 (3) The petitioner's date of birth and Social Security
99 number;

100 (4) The petitioner's date of arrest, the court of
101 jurisdiction, and criminal complaint, indictment, summons,
102 or case number;

103 (5) The statute or statutes and offense or offenses for
104 which the petitioner was charged and of which the petitioner
105 was convicted;

106 (6) The names of any victim or victims, or a statement
107 that there were no identifiable victims;

108 (7) Whether there is any current order for restitution,
109 protection, restraining order, or other no contact order
110 prohibiting the petitioner from contacting the victim or
111 whether there has ever been a prior order for restitution,
112 protection, or restraining order prohibiting the petitioner
113 from contacting the victim. If there is a current order, the
114 petitioner shall attach a copy of that order to his or her
115 petition;

116 (8) The disposition of the matter and sentence imposed,
117 if any;

118 (9) The grounds on which expungement is sought,
119 including, but not limited to, employment or licensure
120 purposes;

121 (10) The steps the petitioner has taken since the time of
122 the offense or offenses toward personal rehabilitation,
123 including treatment, work, or other personal history that
124 demonstrates rehabilitation;

125 (11) Whether petitioner has ever been granted
126 expungement or similar relief regarding a criminal
127 conviction by any court in this state, by the court of any
128 other state, or by any federal court; and

129 (12) Any supporting documents, sworn statements,
130 affidavits, or other information supporting the petition for
131 expungement.

132 (e) *Service of petition for expungement.* — The
133 petitioner shall serve a copy of the petition, with any
134 supporting documentation, pursuant to the rules of the trial
135 court upon the following persons or entities:

136 (1) The Superintendent of the State Police;

137 (2) The prosecuting attorney of the county or counties
138 of conviction;

139 (3) The chief law-enforcement officer of the law-
140 enforcement agency which arrested the petitioner;

141 (4) The superintendent, warden, or the Commissioner of
142 Corrections of any institution in which the petitioner was
143 confined or imprisoned pursuant to the conviction; and

144 (5) The circuit court, magistrate court, or municipal
145 court which disposed of the petitioner's criminal charge.

146 (f) The prosecuting attorney of the county in which
147 expungement is sought shall serve the petition for
148 expungement, accompanying documentation, and any
149 proposed expungement order by first class mail to any
150 identified victims.

151 (g) *Notice of opposition.* —

152 (1) Upon receipt of a petition for expungement, the
153 persons and entities listed in subsection (e) of this section,
154 and any other interested person or agency that desires to
155 oppose the expungement may, within 30 days of receipt of
156 the petition, file a notice of opposition with the court with
157 supporting documentation and sworn statements setting
158 forth the reasons for resisting the petition for expungement.

159 (2) A copy of any notice of opposition with supporting
160 documentation and sworn statements shall be served upon
161 the petitioner in accordance with trial court rules.

162 (3) The petitioner may file a reply to a notice of
163 opposition no later than 30 days after service of any notice
164 of opposition to the petition for expungement.

165 (h) *Burden of proof.* — The burden of proof shall be on
166 the petitioner seeking an order of expungement to prove by
167 clear and convincing evidence:

168 (1) That the conviction or convictions for which
169 expungement is sought are the only convictions for that
170 specified offense or offenses against the petitioner in this
171 state and that the conviction or convictions are not excluded
172 from expungement by the provisions of this section;

173 (2) That the requisite time has passed since the
174 conviction or convictions or the completion of any sentence
175 of incarceration or period of supervision as set forth in
176 subsection (b) of this section;

177 (3) That the petitioner has no criminal charges pending
178 against him or her;

179 (4) That the expungement is consistent with the public
180 welfare;

181 (5) That the petitioner has, by his or her behavior since
182 the conviction or convictions, evidenced that he or she has
183 been rehabilitated and is law-abiding; and

184 (6) Any other facts considered appropriate or necessary
185 by the court to make a determination regarding the petition
186 for expungement.

187 (i) *Court procedure for petition for expungement.* —
188 Within 60 days of the filing of a petition for expungement
189 the circuit court shall:

190 (1) Summarily grant the petition;

191 (2) Return the petition to the petitioner to supply
192 incomplete information or correct obvious errors in order to
193 permit consideration of the petition on its merits;

194 (3) Set the matter for hearing; or

195 (4) Summarily deny the petition if the court determines
196 the petition discloses on its face or, based upon supporting
197 documentation and sworn statements filed in opposition to
198 the petition, discloses that the petitioner, as a matter of law,
199 is not entitled to expungement.

200 (j) *Hearing on petition for expungement.* —

201 If the court sets the matter for hearing, all interested
202 parties who have filed a notice of opposition shall be
203 notified. At the hearing, the court may inquire into the
204 background of the petitioner and shall have access to any
205 reports or records relating to the petitioner that are on file
206 with any law-enforcement authority, the institution of
207 confinement, if any, and parole authority or other agency
208 which was in any way involved with the petitioner's arrest,
209 conviction, sentence, and post-conviction supervision,
210 including any record of arrest or conviction in any other
211 state or federal court. The court may hear testimony of
212 witnesses and any other matter the court considers proper
213 and relevant to its determination regarding the petition. The
214 court shall enter an order reflecting its ruling on the petition
215 for expungement with appropriate findings of fact and
216 conclusions of law.

217 (k) *Sealing of records.* — If the court grants the petition
218 for expungement, it shall order the sealing of all records in
219 the custody of the court and expungement of any records in
220 the custody of any other agency or official, including law-
221 enforcement records. Every agency with records relating to
222 the arrest, charge, or other matters arising out of the arrest
223 or conviction that is ordered to expunge records shall certify
224 to the court within 60 days of the entry of the expungement
225 order that the required expungement has been completed.
226 All orders enforcing the expungement procedure shall also
227 be sealed.

228 (l) *Disclosure of expunged matters.* —

229 (1) Subject to the exceptions set forth in this section,
230 upon expungement, the proceedings in the matter shall be
231 considered, as a matter of law, never to have occurred. The
232 court and other agencies shall reply to any inquiry that no
233 record exists on the matter. The person whose record is
234 expunged shall not have to disclose the fact of the record or
235 any matter relating to the record on an application for
236 employment, credit, or other type of application: *Provided,*
237 That any person applying for a position in which he or she
238 would be engaging in the prevention, detection,
239 investigation, prosecution, or incarceration of persons for
240 violations of the law shall disclose any and all convictions
241 to his or her prospective employer, regardless of whether the
242 conviction or convictions have been expunged pursuant to
243 this section.

244 (2) A person for whom an order of expungement has
245 been entered pursuant to this section may not be found
246 guilty of perjury or otherwise giving a false statement, under
247 any provision of this code, because of that person's failure
248 to recite or acknowledge the arrest, indictment, information,
249 trial, or conviction, as long as the person is in compliance
250 with subdivision (1) of this subsection.

251 (3) Notwithstanding any provisions of this code to the
252 contrary, any person required by state or federal law to

253 obtain a criminal history record check on a prospective
254 employee are authorized to have knowledge of any
255 convictions expunged under this section.

256 (m) *Inspection of sealed records.* — Inspection of the
257 sealed records in the court’s possession may thereafter be
258 permitted by the court only upon a motion by the person
259 who is the subject of the records or upon a petition filed by
260 a prosecuting attorney that inspection and possible use of
261 the records in question are necessary to the investigation or
262 prosecution of a crime in this state or another jurisdiction. If
263 the court finds that there is a legitimate reason for access
264 and the interests of justice will be served by granting a
265 petition to inspect the sealed record, it may grant access
266 under the terms and conditions determined by the court.

267 (n) *Fees for filing petition for expungement and*
268 *processing orders of expungement.* — The clerk of the
269 circuit court shall charge and collect in advance the same
270 fee for a petition for expungement as is charged for
271 instituting a civil action pursuant to §59-1-11(a)(1) of this
272 code. A person obtaining an order of expungement pursuant
273 to the provisions of this section shall pay a fee of \$100 to
274 the records division of the West Virginia State Police for the
275 cost of processing the order of expungement deposited into
276 a special revenue account within the State Treasurer’s office
277 to be known as the West Virginia State Police Criminal
278 History Account.

279 (o) Notwithstanding any provision of this code to the
280 contrary, a person may only obtain the relief of
281 expungement afforded by the provisions of this section and
282 §61-11-26a of this code once.

283 (p) For the purposes of this section:

284 (1) “Court record” means an official record of a court
285 about a proceeding that the clerk of the court or other court
286 personnel maintains. “Court record” includes an index, a
287 docket entry, a petition or other pleading, a memorandum, a

288 transcription of proceedings, an electronic recording, an
289 order, and a judgment.

290 (2) “Expungement” means the removal from all public
291 records, other than those specifically exempted therefrom
292 by the provisions of this section and §61-11-26a of this
293 code, all evidence that a person has been charged or
294 convicted of a crime.

295 (3) “Felony crime of violence against the person” means
296 those felony offenses set forth in §61-2-1 *et seq.*, §61-3E-1
297 *et seq.*, §61-8B-1 *et seq.*, and §61-8D-1 *et seq.* of this code.

298 (4) “Felony offenses in which the victim was a minor”
299 means felony violations of §61-3C-14b, §61-8-1 *et seq.*,
300 §61-8A-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of
301 this code.

302 (5) “Nonviolent felony” means a felony that:

303 (A) Is not an offense listed in subsection (c) of this
304 section;

305 (B) Is not an offense involving the intentional infliction
306 of serious bodily injury;

307 (C) Is an offense the conviction of which is based on
308 facts and circumstances of which the circuit court finds to
309 be consistent with the purposes of this article; and

310 (D) Is an offense the conviction of which the circuit
311 court finds does not involve violence or potential violence
312 to another person or the public.

313 (6) “Records” do not include the records of the
314 Governor, the Legislature, or the Secretary of State that
315 pertain to a grant of pardon. Records that pertain to a grant
316 of pardon are not subject to an order of expungement.

317 (7) “Seal” means removing information from public
318 inspection in accordance with this section.

319 (8) “Sealing” means:

320 (A) For a record kept in a courthouse, removing the
321 record to a separate, secure area to which persons who do
322 not have a legitimate reason for access are denied access;

323 (B) For electronic information about a proceeding on
324 the website maintained by a magistrate court, circuit court,
325 or the Supreme Court of Appeals, removing the record from
326 the public website; and

327 (C) For a record maintained by any law-enforcement
328 agency, removing the record to a separate, secure area to
329 which persons who do not have a legitimate reason for
330 access are denied access.

331 (q) *Statutory construction.* — Nothing in this section
332 may be construed to allow a person obtaining relief pursuant
333 to this section to be eligible for reinstatement of any
334 retirement or employment benefit which he or she lost or
335 forfeited due to the conviction or convictions expunged.

336 (r) The enactment of this section during the 2019 regular
337 session of the Legislature includes the repeal of the
338 provisions of §61-11B-1 *et seq.* of this code. Any person
339 that had a sentence reduction pursuant to the provisions of
340 §61-11B-1 *et seq.* of this code may petition the court of
341 record to have the criminal offense reduction order
342 converted into an order of expungement. Upon verification
343 by the court that the petitioner qualifies, the court shall enter
344 an order of 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 of

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.

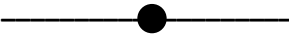
36 (3) Any person who has been convicted of a nonviolent
37 felony offense that would be eligible for expungement
38 pursuant to §61-11-26 of this code and satisfies the
39 requirements of this section is not eligible for expungement
40 pursuant to §61-11-26(a)(2) of this code until three years
41 after 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 job
52 readiness adult training course.

53 (c) The fee of \$100 to the records division of the West
54 Virginia State Police for the cost of processing the order of
55 expungement required in §61-11-26(n) of this code is
56 waived for petitions of expungement filed pursuant to the
57 provisions of this section.



CHAPTER 88

(S. B. 765 - By Senators Weld and Woelfel)

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §61-11-18 and §61-11-19 of the Code of West Virginia, 1931, as amended, all relating to provisions of the Habitual Offender statute; modifying provisions addressing eligibility of certain crimes for consideration; listing offenses which qualify to enhance a sentence; maintaining penalty for persons having two or more prior qualifying offenses; treating crimes arising from the same transaction or series of transactions as one offense; requiring the most recent prior conviction to be less than 20 years old to be counted; and requiring plea agreements to address applicability of habitual offender provisions.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 11. GENERAL PROVISIONS CONCERNING
CRIMES.**

§61-11-18. Punishment for second or third offense of felony.

- 1 (a) For purposes of this section, “qualifying offense”
2 means any offenses or an attempt or conspiracy to commit
3 any of the offenses in the following provisions of this code:
- 4 (1) §60A-4-401(i) and §60A-4-401(ii);
- 5 (2) §60A-4-406;
- 6 (3) §60A-4-409(b)(1), §60A-4-409(2), and §60A-4-
7 409(3);
- 8 (4) §60A-4-411;
- 9 (5) §60A-4-414;
- 10 (6) §60A-4-415;
- 11 (7) §60A-4-416(a);
- 12 (8) §61-2-1;
- 13 (9) §61-2-4;
- 14 (10) §61-2-7;
- 15 (11) §61-2-9(a);
- 16 (12) §61-2-9a(d) and §61-2-9a(e);
- 17 (13) §61-2-9b;
- 18 (14) §61-2-9d;
- 19 (15) §61-2-10;
- 20 (16) §61-2-10b(b) and §61-2-10b(c);

- 21 (17) Felony provisions of §61-2-10b(d);
- 22 (18) §61-2-12;
- 23 (19) Felony provisions of §61-2-13;
- 24 (20) §61-2-14;
- 25 (21) §61-2-14a(a) and §61-2-14a(d);
- 26 (22) §61-2-14c;
- 27 (23) §61-2-14d(a) and §61-2-14d(b);
- 28 (24) §61-2-14f;
- 29 (25) §61-2-14h(a), §61-2-14h(b), and §61-2-14h(c);
- 30 (26) §61-2-16a(a) and §61-2-16a(b);
- 31 (27) Felony provisions of §61-2-16a(c);
- 32 (28) §61-2-28(d);
- 33 (29) §61-2-29(d) and §61-2-29(e);
- 34 (30) §61-2-29a;
- 35 (31) §61-3-1;
- 36 (32) §61-3-2;
- 37 (33) §61-3-3;
- 38 (34) §61-3-4;
- 39 (35) §61-3-5;
- 40 (36) §61-3-6;
- 41 (37) §61-3-7;
- 42 (38) §61-3-11;

- 43 (39) §61-3-13(a);
- 44 (40) §61-3-27;
- 45 (41) §61-3C-14b;
- 46 (42) §61-3E-5;
- 47 (43) §61-5-17(b), §61-5-17(f), §61-5-17(h), and §61-5-
48 17(i);
- 49 (44) §61-5-27;
- 50 (45) §61-6-24;
- 51 (46) Felony provisions of §61-7-7;
- 52 (47) §61-7-12;
- 53 (48) §61-7-15;
- 54 (49) §61-7-15a;
- 55 (50) §61-8-12;
- 56 (51) §61-8-19(b);
- 57 (52) §61-8B-3;
- 58 (53) §61-8B-4;
- 59 (54) §61-8B-5;
- 60 (55) §61-8B-7;
- 61 (56) §61-8B-10;
- 62 (57) §61-8C-2;
- 63 (58) §61-8C-3;
- 64 (59) §61-8C-3a;
- 65 (60) §61-8D-2;

66 (61) §61-8D-2a;

67 (62) §61-8D-3;

68 (63) §61-8D-3a;

69 (64) §61-8D-4;

70 (65) §61-8D-4a;

71 (66) §61-8D-5;

72 (67) §61-8D-6;

73 (68) §61-10-31;

74 (69) §61-11-8;

75 (70) §61-11-8a;

76 (71) §61-14-2; and

77 (72) §17C-5-2(b), driving under the influence causing
78 death.

79 (b) Except as provided by subsection (c) of this section,
80 when any person is convicted of a qualifying offense and is
81 subject to confinement in a state correctional facility
82 therefor, and it is determined, as provided in §61-11-19 of
83 this code, that such person had been before convicted in the
84 United States of a crime punishable by confinement in a
85 penitentiary, the court shall, if the sentence to be imposed is
86 for a definite term of years, add five years to the time for
87 which the person is or would be otherwise sentenced.
88 Whenever in such case the court imposes an indeterminate
89 sentence, the minimum term shall be twice the term of years
90 otherwise provided for under such sentence.

91 (c) Notwithstanding any provision of this code to the
92 contrary, when any person is convicted of first degree
93 murder or second degree murder or a violation of §61-8B-3
94 of this code and it is determined, as provided in §61-11-19

95 of this code, that such person had been before convicted in
96 this state of first degree murder, second degree murder, or a
97 violation of section three, §61-8B-3 of this code or has been
98 so convicted under any law of the United States or any other
99 state for an offense which has the same elements as any
100 offense described in this subsection, such person shall be
101 punished by confinement in a state correctional facility for
102 life and is not eligible for parole.

103 (d) When it is determined, as provided in §61-11-19 of
104 this code, that such person shall have been twice before
105 convicted in the United States of a crime punishable by
106 confinement in a penitentiary which has the same elements
107 as a qualifying offense, the person shall be sentenced to
108 imprisonment in a state correctional facility for life:
109 *Provided*, That prior convictions arising from the same
110 transaction or series of transactions shall be considered a
111 single offense for purposes of this section: *Provided*,
112 *however*, That an offense which would otherwise constitute
113 a qualifying offense for purposes of this subsection and
114 subsection (b) of this section shall not be considered if more
115 than 20 years have elapsed between that offense and the
116 conduct underlying the current charge.

§61-11-19. Procedure in trial of persons for second or third offense.

1 A prosecuting attorney, when he or she has knowledge
2 of a former sentence or sentences to the penitentiary of any
3 person convicted of an offense punishable by confinement
4 in the penitentiary, may give information thereof to the
5 court immediately upon conviction and before sentence.
6 Said court shall, before expiration of the next term at which
7 such person was convicted, cause such person or prisoner to
8 be brought before it, and upon an information filed by the
9 prosecuting attorney, setting forth the records of conviction
10 and sentence, or convictions and sentences, as the case may
11 be, and alleging the identity of the prisoner with the person
12 named in each, shall require the prisoner to say whether he
13 or she is the same person or not. If he or she says he or she
14 is not, or remains silent, his or her plea, or the fact of his or
15 her silence, shall be entered of record, and a jury shall be

16 impaneled to inquire whether the prisoner is the same
17 person mentioned in the several records. If the jury finds
18 that he or she is not the same person, he or she shall be
19 sentenced upon the charge of which he or she was convicted
20 as provided by law; but if they find that he or she is the same,
21 or after being duly cautioned if he or she acknowledged in
22 open court that he or she is the same person, the court shall
23 sentence him or her to such further confinement as is
24 prescribed by §61-11-18 of this code on a second or third
25 conviction as the case may be: *Provided*, That where the
26 person is convicted pursuant to a plea agreement, the
27 agreement shall address whether or not the provisions of this
28 section and §61-11-18 of this code are to be invoked.

29 The clerk of such court shall transmit a copy of said
30 information to the Commissioner of the Division of
31 Corrections and Rehabilitation, together with the other
32 papers required by the provisions of §62-8-10 of this code.

33 Nothing contained herein shall be construed as
34 repealing the provisions of §62-8-4 of this code, but no
35 proceeding shall be instituted by the warden, as provided
36 therein, if the trial court has determined the fact of former
37 conviction or convictions as provided herein.



CHAPTER 89

**(Com. Sub. for H. B. 2602 - By Delegates Miller,
Canestraro, N. Brown, D. Kelly, Foster and Steele)**

[Passed February 13, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 24, 2020.]

AN ACT to amend and reenact §61-3-18 of the Code of West Virginia, 1931, as amended, relating to criminalizing possession of property when a person knows or has reason to know it is stolen; making possession of stolen property

larceny; and clarifying that possession of stolen property while acting in cooperation with law enforcement or at law enforcement's request is not a crime.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-18. Receiving or transferring stolen goods.

1 If any person buys or receives from another person, or
2 aids in concealing, or transfers to a person other than the
3 owner thereof, or possesses any stolen goods or other thing
4 of value, which he or she knows or has reason to believe has
5 been stolen, that person is guilty of the larceny thereof, and
6 may be prosecuted although the principal offender has not
7 been convicted: *Provided*, That possession of stolen goods
8 while acting at the request of law enforcement or in
9 cooperation with law enforcement does not constitute a
10 violation of this section.



CHAPTER 90

**(Com. Sub. for H. B. 4362 - By Delegates Bibby,
Hardy, Kump, Waxman, Espinosa, Householder,
Barrett, Wilson, Barnhart, S. Brown and Hanna)**

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8D-5a, relating to creating the offense of verbal abuse of a noncommunicative child; setting forth elements of the offense; establishing criminal penalties; and defining terms.

Be it enacted by the Legislature of West Virginia:

§61-8D-5a. Verbal abuse of noncommunicative child; penalties.

1 The amendments made to this section during the 2020
2 Regular Session of the Legislature shall be known as
3 “Adri’s, Owen’s, and Emma’s Law”.

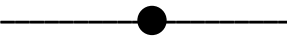
4 (a) Any person, 18 years of age or older, who has
5 supervisory responsibility over a noncommunicative minor
6 child, who repeatedly engages in verbal conduct toward the
7 child in an insulting, demeaning or threatening manner, is
8 guilty of a misdemeanor and, upon conviction thereof, shall
9 be fined not less that \$500 nor more that \$2,500 or confined
10 in jail not more than six months, or both fined and confined.

11 (b) As used in section (a) of this section:

12 (1) “Noncommunicative child” means a child who, due
13 to physical or developmental disabilities is unable to
14 communicate verbally, in writing, or through a recognized
15 sign language;

16 (2) “Repeatedly” means on two or more occasions;

17 (3) “Supervisory responsibility” means any situation
18 where an adult has direct supervisory decision-making,
19 oversight, instructive, academic, evaluative, or advisory
20 responsibilities regarding the child. Supervisory
21 responsibility can occur in a residence, in or out of a school
22 setting, institutional setting, and in curricular, co-curricular,
23 or extra-curricular settings.



CHAPTER 91

**(H. B. 4393 - By Delegates Rohrbach, Lovejoy,
Linville, Maynard and Porterfield)**

[Passed February 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 14, 2020.]

AN ACT to amend and reenact §61-2-9d of the Code of West Virginia, 1931, as amended, relating to creating the criminal offenses of suffocation and asphyxiation; and establishing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9d. Strangulation; suffocation and asphyxiation; definitions; penalties.

1 (a) As used in this section:

2 “Bodily injury” means substantial physical pain, illness
3 or any impairment of physical condition;

4 “Strangle” means knowingly and willfully restricting
5 another person’s air intake or blood flow by the application
6 of pressure on the neck or throat;

7 “Suffocate” means knowingly and willfully restricting
8 the normal breathing or circulation of blood by blocking the
9 nose or mouth of another; and

10 “Asphyxiate” means knowingly and willfully restricting
11 the normal breathing or circulation of blood by the
12 application of pressure on the chest or torso.

13 (b) Any person who strangles, suffocates or asphyxiates
14 another without that person's consent and thereby causes
15 the other person bodily injury or loss of consciousness is
16 guilty of a felony and, upon conviction thereof, shall be
17 fined not more than \$2,500 or imprisoned in a state
18 correctional facility not less than one year or more than five
19 years, or both fined and imprisoned.



CHAPTER 92

**(Com. Sub. for H. B. 4615 - By Delegates J. Kelly,
Anderson, D. Kelly, Westfall, Azinger, Sypolt,
Jennings, Atkinson and Barnhart)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-10-34, relating to establishing the West Virginia Critical Infrastructure Protection Act; defining terms; creating criminal offenses of trespass upon property containing a critical infrastructure facility, trespassing upon property containing a critical infrastructure facility with intent to interrupt the lawful operations of the facility, and for trespass with the intent to willfully cause damage to a critical infrastructure facility; defining elements of offenses; establishing criminal offense of conspiracy to commit various trespass; establishing criminal penalties; creating exceptions and defenses; providing for civil liability; and providing nothing in this section will be construed to prevent lawful assembly and petition for redress of grievances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.**§61-10-34. Critical Infrastructure Protection Act; prohibiting certain acts, including trespass and conspiracy to trespass against property designated a critical Infrastructure facility; criminal penalties; and civil action.**

1 (a) This section may be referred to as the “West Virginia
2 Critical Infrastructure Protection Act”.

3 (b) For purposes of this section:

4 “Critical Infrastructure” means systems
5 and assets, whether physical or virtual, so vital to the
6 United States of America or the State of West Virginia that
7 the incapacity or destruction of such systems and assets
8 would have a debilitating impact on security, national
9 economic security, state economic security, national public
10 health or safety, state public health or safety, or any
11 combination of those matters, whether such systems or
12 assets are in operation or are under any state of construction.

13 “Critical infrastructure facility” means one of the
14 following, if completely enclosed by a fence or other
15 physical barrier that is obviously designed to exclude
16 intruders, or if clearly marked with a sign or signs that are
17 posted on the property that are reasonably likely to come to
18 the attention of intruders and indicate that entry is forbidden
19 without site authorization:

20 (1) A petroleum or alumina refinery;

21 (2) An electrical power generating facility, substation,
22 switching station, electrical control center or electric power
23 lines and associated equipment infrastructure;

24 (3) A chemical, polymer or rubber manufacturing
25 facility;

26 (4) A water intake structure, water treatment facility,
27 wastewater treatment plant or pump station;

- 28 (5) A natural gas compressor station;
- 29 (6) A liquid natural gas terminal or storage facility;
- 30 (7) Wireline and wireless telecommunications
31 infrastructure;
- 32 (8) A port, railroad switching yard, trucking terminal, or
33 other freight transportation facility;
- 34 (9) A gas processing plant, including a plant used in the
35 processing, treatment, or fractionation of natural gas or
36 natural gas liquids;
- 37 (10) A transmission facility used by a federally licensed
38 radio or television station;
- 39 (11) A steelmaking facility that uses an electric arc
40 furnace to make steel;
- 41 (12) A facility identified and regulated by the United
42 States Department of Homeland Security Chemical Facility
43 Anti-Terrorism Standards (CFATS) program;
- 44 (13) A dam that is regulated by the state or federal
45 government;
- 46 (14) A natural gas distribution utility facility including,
47 but not limited to, pipeline interconnections, a city gate or
48 town border station, metering station, below- or above-
49 ground pipeline or piping and truck loading or offloading
50 facility, a natural gas storage facility, a natural gas
51 transmission facility, or a natural gas utility distribution
52 facility;
- 53 (15) A crude oil or refined products storage and
54 distribution facility including, but not limited to, valve sites,
55 pipeline interconnections, pump station, metering station,
56 below- or above-ground pipeline or piping, and truck
57 loading or offloading facility;

58 (16) Military facilities, including national guard
59 facilities and equipment storage areas where non-military
60 personnel are prohibited;

61 (17) Department of Highways facilities and locations
62 near or on roads or highways where the public is prohibited;

63 (18) Health care facilities;

64 (19) Any above-ground portion of an oil, gas, hazardous
65 liquid or chemical pipeline, tank, or other storage facility
66 that is enclosed by a fence, other physical barrier or is
67 clearly marked with signs prohibiting trespassing, that are
68 obviously designed to exclude intruders; or

69 (20) A commercial service airport as defined by the
70 Federal Aviation Administration.

71 (c)(1) Any person who willfully and knowingly
72 trespasses or enters property containing a critical
73 infrastructure facility without permission by the owner of
74 the property or lawful occupant thereof is guilty of a
75 misdemeanor and, upon conviction thereof, shall be
76 punished by a fine of not less than \$250 nor more than
77 \$1,000, or confined in jail not less than 30 days nor more
78 than one year, or both fined and confined. If the intent of the
79 trespasser is to willfully damage, destroy, vandalize, deface,
80 tamper with equipment, or impede or inhibit operations of
81 the critical infrastructure facility, the person is guilty of a
82 misdemeanor and, upon conviction thereof, shall be fined
83 not less than \$100 nor more than \$1,000, or confined in a
84 jail for not more than one year, or both fined and confined.

85 (2) Any person who willfully damages, destroys,
86 vandalizes, defaces, or tampers with equipment in a critical
87 infrastructure facility causing damage in excess of \$2,500 is
88 guilty of a felony and, upon conviction thereof, shall be
89 fined not less than \$1,000 nor more than \$5,000, or
90 imprisoned in a state correctional facility for a term of not

91 less than one year nor more than five years, or both fined
92 and imprisoned.

93 (3) Any person who conspires with any person to
94 commit the offense of trespass against a critical
95 infrastructure facility in violation of subdivision (1) of
96 subsection (c) of this section and the trespass actually occurs
97 is guilty of a misdemeanor and, upon conviction thereof,
98 shall be fined in an amount of not less than \$2,500 nor more
99 than \$10,000. Any person who conspires with any person to
100 willfully damage, destroy, vandalize, deface, or tamper with
101 equipment in a critical infrastructure facility and the
102 damage, destruction, vandalization, defacing or tampering
103 causes damage in excess of \$2,500 is guilty of a felony and,
104 shall, upon conviction thereof, be fined not less than \$5,000
105 nor more than \$20,000.

106 (d)(1) Any person who is arrested for or convicted of an
107 offense under this section may be held civilly liable for any
108 damages to personal or real property while trespassing, in
109 addition to the penalties imposed by this section.

110 (2) Any person or entity that compensates, provides
111 consideration to, or remunerates a person for trespassing as
112 described in subdivision (1) of subsection (c) of this section
113 may also be held liable for damages to personal or real
114 property committed by the person compensated or
115 remunerated for trespassing.

116 (e) The provisions of this section do not apply to:

117 (1) Any person or organization:

118 (i) Monitoring or attentive to compliance with public or
119 worker safety laws, or, wage and hour requirements;

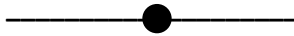
120 (ii) Picketing at the workplace that is otherwise lawful
121 and arises out of a bona fide labor dispute, including any
122 controversy concerning wages, salaries, hours, working
123 conditions, or benefits, including health and welfare, sick
124 leave, insurance, and pension or retirement provisions, the

125 managing or maintenance of collective bargaining
126 agreements, and the terms to be included in those
127 agreements;

128 (iii) Engaging in union organizing or recruitment
129 activities, including attempting to reach workers verbally, in
130 writing with pamphlets and investigation of non-union
131 working conditions, or both.

132 (2) The right to free speech or assembly, including, but
133 not limited to, protesting and picketing.

134 (3) A contractor who has a contractual relationship with
135 a critical infrastructure facility and the contractor's
136 employees are acting within their scope of employment
137 performing work at a critical infrastructure facility.



CHAPTER 93

**(H. B. 4618 - By Delegates Steele, Dean, Howell,
Householder, Summers, Pack, Phillips, Kessinger, J.
Jeffries, Foster and Graves)**

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §61-7-10 of the Code of West Virginia, 1931, as amended, relating to removing from the code, language prohibiting the public display and offering for rent or sale to a passersby on a street, road or alley, any deadly weapon, machine gun, submachine gun or other fully automatic weapon, any rifle, shotgun, or ammunition for same.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-10. Deadly weapons for sale or hire; sale to prohibited persons; penalties.

1 (a) Any person who violates the provisions of
2 subsection (b) of this section is guilty of a misdemeanor and,
3 upon conviction thereof, shall be fined not more than \$5,000
4 or confined in jail for not more than one year, or both fined
5 and confined, except that where the person violating
6 subsection (b) is other than a natural person, the person shall
7 be fined not more than \$10,000.

8 (b) A person may not knowingly sell, rent, give or lend,
9 or, where the person is other than a natural person,
10 knowingly permit an employee thereof to knowingly sell,
11 rent, give or lend, any deadly weapon other than a firearm
12 to a person prohibited from possessing a deadly weapon
13 other than a firearm by any provision of this article.

14 (c) A person may not knowingly sell, rent, give or lend,
15 or where the person is other than a natural person,
16 knowingly permit an employee thereof to knowingly sell,
17 rent, give or lend a firearm or ammunition to a person
18 prohibited by any provision of this article or the provisions
19 of 18 U.S.C. §922.

20 (d) Any person who violates any of the provisions of
21 subsection (c) of this section is guilty of a felony and, upon
22 conviction thereof, shall be fined not more than \$100,000,
23 imprisoned in a state correctional facility for a definite term
24 of years of not less than three years nor more than 10 years,
25 or both fined and imprisoned, except that where the person
26 committing an offense punishable under this subsection is
27 other than a natural person, the person shall be fined not
28 more than \$250,000.

29 (e) Any person who knowingly solicits, persuades,
30 encourages or entices a licensed dealer or private seller of
31 firearms or ammunition to transfer a firearm or ammunition
32 under circumstances which the person knows would violate
33 the laws of this state or the United States is guilty of a

34 felony. Any person who willfully procures another to
35 engage in conduct prohibited by this subsection shall be
36 punished as a principal. This subsection does not apply to a
37 law-enforcement officer acting in his or her official
38 capacity. Any person who violates the provisions of this
39 subsection is guilty of a felony and, upon conviction thereof,
40 shall be fined not more than \$5,000, imprisoned in a state
41 correctional facility for a definite term or not less than one
42 year nor more than five years, or both fined and imprisoned.

CHAPTER 94

**(Com. Sub. for H. B. 4668 - By Delegates Miley,
Lovejoy, Evans, Caputo, Waxman, Rohrbach,
Worrell and Pushkin)**

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §61-3B-2 of the Code of West Virginia, 1931, as amended, relating to creating the misdemeanor crime of trespass for entering a structure that has been clearly marked as condemned by a municipality as unfit for human habitation; providing criminal penalty; removing inconsistent language as to intent; and providing that for a first offense, a municipal judge or magistrate may impose community service or pretrial diversion in lieu of a fine or confinement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3B. TRESPASS.

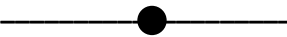
§61-3B-2. Trespass in structure or conveyance.

1 (a) Any person who knowingly enters in, upon, or under
2 a structure or conveyance without being authorized,

3 licensed, or invited, or having been authorized, licensed, or
4 invited is requested to depart by the owner, tenant, or the
5 agent of the owner or tenant, and refuses to do so, is guilty
6 of a misdemeanor, and, upon conviction thereof, shall be
7 fined not more than \$100.

8 (b) Notwithstanding the provisions of subsection (a) of
9 this section, any person who, without permission, knowingly
10 and willfully enters a structure which has a clear posting that
11 the structure has been condemned by any municipal or county
12 government as unfit for human habitation or use, is guilty of
13 a misdemeanor and, upon conviction thereof, shall be fined
14 not more than \$100, or confined in jail not more than six
15 months, or both fined and confined: *Provided*, That for any
16 first violation of this subsection offense of trespass on
17 condemned property, a court may substitute community
18 service or pretrial diversion in lieu of a fine or confinement
19 for trespassing on condemned property.

20 (c) If the offender is armed with a firearm or other
21 dangerous weapon while in the structure or conveyance,
22 with the intent to do bodily injury to a human being in the
23 structure or conveyance at the time the offender knowingly
24 trespasses, the offender, notwithstanding the provisions of
25 §61-7-1 of this code, is guilty of a misdemeanor, and, upon
26 conviction thereof, shall be fined not less than \$100 nor
27 more than \$500, or be confined in jail for not more than one
28 year, or both fined and confined.



CHAPTER 95

**(Com. Sub. for S. B. 125 - By Senators Trump,
Ihlenfeld and Woelfel)**

[Passed March 4, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §61-8B-11 of the Code of West Virginia, 1931, as amended, relating generally to evidence in prosecution for sexual offenses; prohibiting a victim from being subjected to certain physical examinations; providing that a victim's refusal to undergo certain physical examinations does not preclude admission of evidence regarding other physical examinations; and defining the term "sexual offense".

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-11. Sexual offenses; evidence.

1 (a) In any prosecution under this article in which the
2 victim's lack of consent is based solely on the incapacity to
3 consent because such victim was below a critical age,
4 evidence of specific instances of the victim's sexual
5 conduct, opinion evidence of the victim's sexual conduct,
6 and reputation evidence of the victim's sexual conduct shall
7 not be admissible. In any other prosecution under this
8 article, evidence of specific instances of the victim's prior
9 sexual conduct with the defendant shall be admissible on the
10 issue of consent: *Provided*, That such evidence heard first
11 out of the presence of the jury is found by the judge to be
12 relevant.

13 (b) In any prosecution under this article evidence of
14 specific instances of the victim's sexual conduct with
15 persons other than the defendant, opinion evidence of the
16 victim's sexual conduct, and reputation evidence of the
17 victim's sexual conduct shall not be admissible: *Provided*,
18 That such evidence shall be admissible solely for the
19 purpose of impeaching credibility, if the victim first makes
20 his or her previous sexual conduct an issue in the trial by
21 introducing evidence with respect thereto.

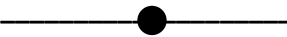
22 (c) In any prosecution under this article, neither age nor
23 mental capacity of the victim shall preclude the victim from
24 testifying.

25 (d) At any stage of the proceedings, in any prosecution
26 under this article, the court may permit a child who is 11
27 years old or less to use anatomically correct dolls,
28 mannequins, or drawings to assist such child in testifying.

29 (e)(1) A court may not order or otherwise require an
30 alleged victim in a prosecution for a sexual offense to
31 submit to or undergo a gynecological or physical
32 examination of the breasts, buttocks, anus, or any part of the
33 sex organs.

34 (2) The refusal of an alleged victim to undergo an
35 examination described in subdivision (1) of this subsection
36 may not serve as the basis to exclude evidence obtained
37 from other relevant examinations of the victim, except
38 where constitutionally required.

39 (3) For the purposes of this subsection, the term "sexual
40 offense" means any offense in which sexual intercourse,
41 sexual contact, or sexual intrusion is an element of the
42 offense, and includes any prosecution under this article,
43 §61-8-12, or §61-8D-5 of this code.



CHAPTER 96

**(Com. Sub. for S. B. 311 - By Senators Clements,
Trump, Cline, Hamilton, Woelfel, Baldwin and
Maynard)**

[Passed February 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 14, 2020.]

AN ACT to amend and reenact §62-4-16 of the Code of West Virginia, 1931, as amended, relating to court-ordered community service; designating supervisor of person sentenced to court-ordered community service; and providing state and political subdivisions immunity from certain suits from individuals participating in court-ordered community service.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.

§62-4-16. Community service work may be substituted in lieu of a fine in municipal court and magistrate court; immunity from suit.

1 (a) Notwithstanding any provision of this code to the
2 contrary, a municipal judge or a magistrate may substitute,
3 in lieu of the imposition of a sentence of incarceration or
4 imposition of a fine, community service work for such
5 incarceration or fine. Where community service work is
6 ordered as a substitute on a sentence of incarceration, an
7 eight-hour work day shall extinguish one day of any
8 sentence of incarceration. The minimum wage established
9 by the prevailing federal minimum wage in effect at the time
10 sentencing is imposed shall be used to compute the amount
11 of community service work necessary to extinguish the fine.

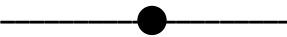
12 In the discretion of the court, the sentence credits may run
13 concurrently or consecutively.

14 (b) Any community service ordered pursuant to the
15 provisions of this section shall be performed for government
16 entities or charitable or nonprofit entities.

17 (c) Any person who is sentenced to court-ordered
18 community service under this section by a municipal court
19 shall be supervised by the chief of police, or his or her
20 designee. Any person who is sentenced to court-ordered
21 community service under this section by a magistrate shall
22 be supervised by the sheriff or other person designated by
23 the county commission.

24 (d) Persons sentenced under the provisions of this
25 section remain under the jurisdiction of the sentencing
26 court. The court may withdraw the community service
27 sentence at any time by order entered with or without notice
28 and order a person previously sentenced to community
29 service to serve the term of incarceration or to pay the fine
30 available to the court upon the person's conviction:
31 *Provided*, That any community service work performed
32 before the community service sentence is withdrawn shall
33 be credited against any term of incarceration or fine
34 imposed.

35 (e) This section does not create any additional cause of
36 action for individuals who appear in municipal or magistrate
37 court. Any person who participates in court-ordered
38 community service is limited to the remedies contained in
39 §29-12A-1 *et seq.* of this code, subject to any defenses,
40 immunities, and limitations of liability contained therein.



CHAPTER 97

(S. B. 848 - By Senators Azinger, Baldwin, Beach, Clements, Cline, Hardesty, Jeffries, Lindsay, Maynard, Pitsenbarger, Romano, Rucker, Smith, Weld, Woelfel and Trump)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §62-16-5 of the Code of West Virginia, 1931, as amended, relating to providing that persons charged with certain offenses related to driving under the influence of alcohol or drugs are not eligible to participate in the Military Service Members Court.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. THE MILITARY SERVICE MEMBERS COURT ACT.

§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;

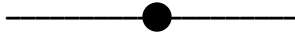
25 (6) If he or she has previously been convicted in this
26 state, another state, or in a federal court for any of the
27 offenses enumerated above; or

28 (7) A violation of §17C-5-2 of this code.

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: *Provided*, That a military
48 service member court may not enter an order or take any
49 action to mask a charge or conviction, divert a charge, or
50 modify the records of a charge or conviction in a manner
51 that would prevent an offense from appearing on an
52 offender's commercial driving record.



CHAPTER 98

**(Com. Sub. for H. B. 2419 - By Delegates Shott,
Householder and Porterfield)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §62-1C-1a of the Code of West Virginia, 1931, as amended, relating to bail generally; authorizing the release of a person charged with a misdemeanor criminal violation when first appearing before a judicial officer; establishing that a judicial officer shall release a person charged with a misdemeanor offense on his or her own recognizance unless charged with certain offenses; establishes that in certain instances and with certain conditions the arrested person is entitled to the least restrictive bail conditions determined to be reasonably necessary to assure appearance as well as ensure safety of persons in the community and maintenance of evidence; establishing that in certain circumstances the arrested person is entitled to bail under least restrictive further conditions; identifying least restrictive further conditions; establishing considerations to determine whether to release an individual without bail, the reasonable amount of bail, or imposition of other conditions of release; establishing that in all misdemeanor cases, cash bail cannot exceed the maximum fine for the offense;

requiring review of bail of an incarcerated person unable to meet the requirements of a secured bond; requiring the presence of a prosecuting attorney and, if not waived, defense counsel at hearings, other than the hearing at which conditions of release are initially set, where bail is at issue; prohibiting judicial officer recommending the services of a surety who is a relative; and, further providing that a judicial officer may modify the conditions of release at any time.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. BAIL.

§62-1C-1a. Pretrial release; types of release; conditions for release; considerations as to conditions of release.

1 (a) Subject to the provisions of §62-1C-1 of this code,
2 when a person charged with a violation or violations of the
3 criminal laws of this state first appears before a judicial
4 officer:

5 (1) Except for good cause shown, a judicial officer shall
6 release a person charged with a misdemeanor offense on his
7 or her own recognizance unless that person is charged with:

8 (A) A misdemeanor offense of actual violence or threat
9 of violence against a person;

10 (B) A misdemeanor offense where the victim was a
11 minor, as defined in §61-8C-1 of this code;

12 (C) A misdemeanor offense involving the use of a
13 deadly weapon, as defined in §61-7-2 of this code;

14 (D) A misdemeanor offense of the Uniform Controlled
15 Substances Act as set forth in chapter 60A of this code;

16 (E) Misdemeanor offenses of sexual abuse;

17 (F) A serious misdemeanor traffic offense set forth in
18 §17C-5-1 or §17C-5-2 of this code; or

19 (G) A misdemeanor offense involving auto tampering,
20 petit larceny or possession, transfer or receiving of stolen
21 property when alleged value on the property involved
22 exceeds \$250.

23 (2) For the misdemeanor offenses specified in
24 subsection (a) of this section and all other offenses which
25 carry a penalty of incarceration, the arrested person is
26 entitled to be admitted to bail subject to the least restrictive
27 condition or combination of conditions that the judicial
28 officer determines reasonably necessary to assure that
29 person will appear as required, and which will not
30 jeopardize the safety of the arrested person, victims,
31 witnesses, or other persons in the community or the safety
32 and maintenance of evidence. Further conditions may
33 include that the person charged shall:

34 (A) Not violate any criminal law of this state, another
35 state, or the United States;

36 (B) Remain in the custody of a person designated by the
37 judicial officer, who agrees to assume supervision and to
38 report any violation of a release condition to the court, if the
39 designated person is reasonably able to assure the judicial
40 officer that the person will appear as required and will not
41 pose a danger to himself or herself or to the safety of any
42 other person or the community;

43 (C) Participate in home incarceration pursuant to §62-
44 11B-1 *et seq.* of this code;

45 (D) Participate in an electronic monitoring program if
46 one is available where the person is charged or will reside.

47 (E) Maintain employment, or, if unemployed, actively
48 seek employment;

49 (F) Avoid all contact with an alleged victim of the
50 alleged offense and with potential witnesses and other
51 persons as directed by the court;

52 (G) Refrain from the use or excessive use of alcohol, or
53 any use of a narcotic drug or other controlled substance, as
54 defined in §60A-1-1 *et seq.* of this code without a
55 prescription from a licensed medical practitioner;

56 (H) Execute an agreement to forfeit, upon failing to
57 appear as required, property of a sufficient unencumbered
58 value, including money, as is reasonably necessary to assure
59 the appearance of the person as required. The person
60 charged shall provide the court with proof of ownership, the
61 value of the property, and information regarding existing
62 encumbrances of the property as, in the discretion of the
63 judicial officer, is reasonable and necessary collateral to
64 ensure the subsequent appearance of the person as required;

65 (I) Post a cash bond, or execute a bail bond with solvent
66 sureties who will execute an agreement to forfeit an amount
67 reasonably necessary to assure appearance of the person as
68 required. If other than an approved surety, the surety shall
69 provide the court with information regarding the value of its
70 assets and liabilities and the nature and extent of
71 encumbrances against the surety's property. The surety
72 shall have a net worth of sufficiently unencumbered value
73 to pay the amount of the bail bond; or

74 (J) Satisfy any other condition that is reasonably
75 necessary to assure the appearance of the person as required
76 and to assure the safety of the arrested person, victims,
77 witnesses, other persons in the community, or the safety and
78 maintenance of evidence.

79 (3) Proper considerations in determining whether to
80 release the arrested person on an unsecured bond, fixing a
81 reasonable amount of bail, or imposing other reasonable
82 conditions of release are:

83 (A) The ability of the arrested person to give bail;

84 (B) The nature, number, and gravity of the offenses;

85 (C) The potential penalty the arrested person faces;

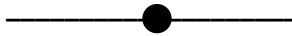
- 86 (D) Whether the alleged acts were violent in nature;
- 87 (E) The arrested person's prior record of criminal
88 convictions and delinquency adjudications, if any;
- 89 (F) The character, health, residence, and reputation of
90 the arrested person;
- 91 (G) The character and strength of the evidence which
92 has been presented to the judicial officer:
- 93 (H) Whether the arrested person is currently on
94 probation, extended supervision, or parole;
- 95 (I) Whether the arrested person is already on bail or
96 subject to other release conditions in other pending cases;
- 97 (J) Whether the arrested person has been bound over for
98 trial after a preliminary examination;
- 99 (K) Whether the arrested person has in the past forfeited
100 bail or violated a condition of release or was ever a fugitive
101 from justice; and
- 102 (L) The policy against unnecessary incarceration of
103 arrested persons pending trial set forth in this section.
- 104 (b) In all misdemeanors, cash bail may not exceed three
105 times the maximum fine provided for the offense. If the
106 person is charged with more than one misdemeanor, cash
107 bail may not exceed three times the highest maximum fine
108 of the charged offenses.
- 109 (c) Notwithstanding any provisions of this article to the
110 contrary, whenever a person not subject to the provisions of
111 §62-1C-1 of this code remains incarcerated after his or her
112 initial appearance, due to the inability to meet the
113 requirements of a secured bond, the magistrate or judge who
114 set the secured bond shall hold a hearing within 72 hours of
115 setting the initial bail to determine if there is a condition or
116 combination of conditions which can meet the

117 considerations set forth in subdivision (2), subsection (a) of
118 this section.

119 (d) A judicial officer may upon notice and hearing
120 modify the conditions of release at any time by imposing
121 additional or different conditions.

122 (e) A prosecuting attorney and defense counsel, unless
123 expressly waived by the defendant, shall appear at all
124 hearings in which bail or bond conditions are at issue other
125 than the proceeding at which the conditions of release are
126 initially set.

127 (f) No judicial officer may recommend the services of a
128 surety who is his or her relative as that term is defined in
129 §6B-1-3 of this code.



CHAPTER 99

**(Com. Sub. for H. B. 2892 - By Delegates Canestraro,
Miller, D. Kelly, N. Brown, Steele and Fast)**

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §62-1A-2 of the Code of West Virginia, 1931, as amended, relating to including electronic and digital information in the definition of property that can be searched and seized by a search warrant and clarifying that a search warrant issued for a computer, computer network, or other device containing electronic or digital information includes the search of the contents of that device; requiring particularity regarding items, applications, property and information to be served; clarifying that search warrants for electronic or digital information may be served or executed in any county of this state or in any state where the information

to be seized is stored or where the person or entity storing the information does business or resides.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. SEARCH AND SEIZURE.

§62-1A-2. Same — Grounds for issuance; property defined.

1 (1) A warrant may be issued under this article to search
2 for and seize any property

3 (a) Stolen, embezzled, or obtained by false pretenses;

4 (b) Designed or intended for use or which is or has been
5 used as a means of committing a criminal offense; or

6 (c) Manufactured, sold, kept, concealed, possessed,
7 controlled, or designed or intended for use or which is or
8 has been used, in violation of the criminal laws of this state.

9 (2) As used in this section, the term “property” includes
10 documents, books, papers, electronic and digital
11 information, including, but not limited to, social media
12 accounts, and any other tangible objects.

13 (a) For purposes of this section, “electronic and digital
14 information” means any transfer of signs, signals, writing,
15 images, sounds, data, or intelligence of any nature
16 transmitted in whole or in part by a wire, radio,
17 electromagnetic, photoelectronic, or photo-optical system,
18 but does not include (1) any wire or oral communication;
19 (2) any communication made through a tone-only paging
20 device; or (3) the radio portion of a cordless telephone
21 communication that is transmitted between the cordless
22 telephone handset and the base unit.

23 (b) A search warrant issued for the search and seizure of
24 a computer, computer network, or other device containing
25 electronic or digital information shall state with particularity
26 the item, application, program, or information sought.

27 (c) A search warrant issued pursuant to this section or
 28 Rule 41 of the Rules of Criminal Procedure may be executed
 29 or served to the extent it is constitutionally permissible
 30 anywhere the electronic or digital information is stored,
 31 capable of being produced or where the person or entity in
 32 possession of the electronic or digital information does
 33 business or resides.

CHAPTER 100

**(H. B. 4166 - By Delegates Foster, Phillips, Bibby,
 Steele, Butler, Waxman, Espinosa, Porterfield,
 Kessinger, Lovejoy and Bartlett)**

[Passed February 17, 2020; in effect ninety days from passage.]
 [Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §62-12-26 of the Code of West Virginia, 1931, as amended, relating to prohibiting certain sex offenders from being in a supervisory position over children.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.

1 (a) Notwithstanding any other provision of this code to
 2 the contrary, any defendant convicted after the effective
 3 date of this section of a violation of §61-8-12 of this code or
 4 a felony violation of the provisions of §61-8B-1 *et seq.*, §61-
 5 8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code shall, as part
 6 of the sentence imposed at final disposition, be required to
 7 serve, in addition to any other penalty or condition imposed
 8 by the court, a period of supervised release of up to 50 years:

9 *Provided*, That the period of supervised release imposed by
10 the court pursuant to this section for a defendant convicted
11 after the effective date of this section as amended and
12 reenacted during the first extraordinary session of the
13 Legislature, 2006, of a violation of §61-8B-3 or §61-8B-7
14 of this code and sentenced pursuant to §61-8B-9a* of this
15 code, shall be no less than 10 years: *Provided, however*,
16 That a defendant designated after the effective date of this
17 section as amended and reenacted during the first
18 extraordinary session of the Legislature, 2006, as a sexually
19 violent predator pursuant to the provisions of §15-12-2a of
20 this code shall be subject, in addition to any other penalty or
21 condition imposed by the court, to supervised release for
22 life: *Provided further*, That pursuant to the provisions of
23 §62-12-26(h) of this code, a court may modify, terminate,
24 or revoke any term of supervised release imposed pursuant
25 to §62-12-26(a) of this code.

26 (b) Any person required to be on supervised release
27 between the minimum term of 10 years and life pursuant to
28 the provisos of §62-12-26(a) of this code also shall be
29 further prohibited from:

30 (1) Establishing a residence or accepting employment
31 within one thousand feet of a school or child care facility or
32 within one thousand feet of the residence of a victim or
33 victims of any sexually violent offenses for which the
34 person was convicted;

35 (2) Loitering within 1,000 feet of a school or child care
36 facility or within 1,000 feet of the residence of a victim or
37 victims of any sexually violent offenses for which the
38 person was convicted: *Provided*, That the imposition of this
39 prohibition shall apply to a defendant convicted after the
40 effective date of this section as amended and reenacted
41 during the regular session of the Legislature, 2015:
42 *Provided, however*, That as used herein “loitering” means
43 to enter or remain on property while having no legitimate
44 purpose or, if a legitimate purpose exists, remaining on that
45 property beyond the time necessary to fulfill that purpose:

*NOTE: Correction of apparent word to number translation error.

46 *Provided further*, That nothing in this subdivision shall be
47 construed to prohibit or limit a person's presence within
48 1,000 feet of a location or facility referenced in this
49 subdivision if the person is present for the purposes of
50 supervision, counseling, or other activity in which the
51 person is directed to participate as a condition of supervision
52 or where the person has the express permission of his
53 supervising officer to be present;

54 (3) Establishing a residence or any other living
55 accommodation in a household in which a child under 16
56 resides if the person has been convicted of a sexually violent
57 offense against a child, unless the person is one of the
58 following:

59 (i) The child's parent;

60 (ii) The child's grandparent; or

61 (iii) The child's stepparent and the person was the
62 stepparent of the child prior to being convicted of a sexually
63 violent offense, the person's parental rights to any children
64 in the home have not been terminated, the child is not a
65 victim of a sexually violent offense perpetrated by the
66 person, and the court determines that the person is not likely
67 to cause harm to the child or children with whom such
68 person will reside: *Provided*, That nothing in this subsection
69 shall preclude a court from imposing residency or
70 employment restrictions as a condition of supervised release
71 on defendants other than those subject to the provision of
72 this subsection.

73 (c) In addition to any other prohibitions, any person
74 found guilty of violating the provisions of §61-8B-3 or §61-
75 8B-7 of this code is also prohibited from being in a
76 supervisory position, playing a supervisory role or being
77 responsible for groups of children, including, but not limited
78 to, religious organizations, Boy Scouts, Girl Scouts, 4H
79 organizations, sporting and scholastic teams, music,

80 sporting, and theatre groups and camps, and summer day
81 camps.

82 (d) The period of supervised release imposed by the
83 provisions of this section shall begin upon the expiration of
84 any period of probation, the expiration of any sentence of
85 incarceration or the expiration of any period of parole
86 supervision imposed or required of the person so convicted,
87 whichever expires later.

88 (e) Any person sentenced to a period of supervised
89 release pursuant to the provisions of this section shall be
90 supervised by a multijudicial circuit probation officer, if
91 available. Until such time as a multijudicial circuit
92 probation officer is available, the offender shall be
93 supervised by the probation office of the sentencing court or
94 of the circuit in which he or she resides.

95 (f) A defendant sentenced to a period of supervised
96 release shall be subject to any or all of the conditions
97 applicable to a person placed upon probation pursuant to the
98 provisions of §62-12-9 of this code: *Provided*, That any
99 defendant sentenced to a period of supervised release
100 pursuant to this section shall be required to participate in
101 appropriate offender treatment programs or counseling
102 during the period of supervised release unless the court
103 deems the offender treatment programs or counseling to no
104 longer be appropriate or necessary and makes express
105 findings in support thereof.

106 Within 90 days of the effective date of this section as
107 amended and reenacted during the first extraordinary
108 session of the Legislature, 2006, the Secretary of the
109 Department of Health and Human Resources shall propose
110 rules and emergency rules for legislative approval in
111 accordance with the provisions of §29A-3-1 *et seq.* of this
112 code establishing qualifications for sex offender treatment
113 programs and counselors based on accepted treatment
114 protocols among licensed mental health professionals.

115 (g) The sentencing court may, based upon defendant's
116 ability to pay, impose a supervision fee to offset the cost of
117 supervision. Said fee shall not exceed \$50 per month. Said
118 fee may be modified periodically based upon the
119 defendant's ability to pay.

120 (h) *Modification of conditions or revocation.* — The
121 court may:

122 (1) Terminate a term of supervised release and
123 discharge the defendant released at any time after the
124 expiration of two years of supervised release, pursuant to
125 the provisions of the West Virginia Rules of Criminal
126 Procedure relating to the modification of probation, if it is
127 satisfied that such action is warranted by the conduct of the
128 defendant released and the interests of justice;

129 (2) Extend a period of supervised release if less than the
130 maximum authorized period was previously imposed or
131 modify, reduce, or enlarge the conditions of supervised
132 release, at any time prior to the expiration or termination of
133 the term of supervised release, consistent with the
134 provisions of the West Virginia Rules of Criminal
135 Procedure relating to the modification of probation and the
136 provisions applicable to the initial setting of the terms and
137 conditions of post-release supervision;

138 (3) Revoke a term of supervised release and require the
139 defendant to serve in prison all or part of the term of
140 supervised release without credit for time previously served
141 on supervised release if the court, pursuant to the West
142 Virginia Rules of Criminal Procedure applicable to
143 revocation of probation, finds by clear and convincing
144 evidence that the defendant violated a condition of
145 supervised release, except that a defendant whose term is
146 revoked under this subdivision may not be required to serve
147 more than the period of supervised release;

148 (4) Order the defendant to remain at his or her place of
149 residence during nonworking hours and, if the court so

150 directs, to have compliance monitored by telephone or
151 electronic signaling devices, except that an order under this
152 paragraph may be imposed only as an alternative to
153 incarceration.

154 (i) *Written statement of conditions.* — The court shall
155 direct that the probation officer provide the defendant with
156 a written statement at the defendant's sentencing hearing
157 that sets forth all the conditions to which the term of
158 supervised release is subject and that it is sufficiently clear
159 and specific to serve as a guide for the defendant's conduct
160 and for such supervision as is required.

161 (j) *Supervised release following revocation.* — When a
162 term of supervised release is revoked and the defendant is
163 required to serve a term of imprisonment that is less than the
164 maximum term of supervised release authorized under §62-
165 12-26(a) of this code, the court may include a requirement
166 that the defendant be placed on a term of supervised release
167 after imprisonment. The length of such term of supervised
168 release shall not exceed the term of supervised release
169 authorized by this section less any term of imprisonment
170 that was imposed upon revocation of supervised release.

171 (k) *Delayed revocation.* — The power of the court to
172 revoke a term of supervised release for violation of a
173 condition of supervised release and to order the defendant
174 to serve a term of imprisonment and, subject to the
175 limitations in §62-12-26(j) of this code a further term of
176 supervised release extends beyond the expiration of the term
177 of supervised release for any period necessary for the
178 adjudication of matters arising before its expiration if,
179 before its expiration, a warrant or summons has been issued
180 on the basis of an allegation of such a violation.

●

CHAPTER 101

(S. B. 51 - By Senators Cline, Baldwin, Romano, Jeffries and Pitsenbarger)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §48-10-802 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §48-10-803, all relating to specifying forms of grandparent visitation; allowing daytime and overnight visits as well as electronic communication; and defining the term “electronic communication”.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. GRANDPARENT VISITATION.

§48-10-802. Grandparent visitation orders.

1 In the court’s discretion, an order granting visitation
2 privileges to a grandparent may provide for daytime visits,
3 overnight visits and electronic communications. For the
4 purposes of this section, the term “electronic
5 communications” includes, but is not limited to,
6 communications by telephone, email, Skype, Facetime, text
7 messaging and instant messaging.

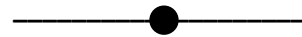
§48-10-803. Supervised visitation; conditions on visitation.

1 In the court’s discretion, an order granting visitation
2 privileges to a grandparent may require supervised
3 visitation or may place such conditions on visitation that it
4 finds are in the best interests of the child, including, but not
5 limited to, the following:

6 (1) That the grandparent not attempt to influence any
7 religious beliefs or practices of the children in a manner
8 contrary to the preferences of the child's parents;

9 (2) That the grandparent not engage in, permit or
10 encourage activities, or expose the grandchild to conditions
11 or circumstances that are contrary to the preferences of the
12 child's parents; or

13 (3) That the grandparent not otherwise act in a manner
14 to contradict or interfere with child-rearing decisions made
15 by the child's parents.



CHAPTER 102

**(H. B. 3039 - By Delegates Foster, Phillips, D. Jeffries,
Mandt, Wilson and Williams)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §44-10-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §48-9-206 and §48-9-402 of said code, all relating to a court's consideration of the right of a minor to nominate his or her guardian and to a court's consideration of the expression of a preference by a child in certain child custody matters; and giving the court discretion to consider the preferences of a child under the age of fourteen years who is sufficiently matured that he or she can intelligently express a voluntary preference.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 44. ADMINISTRATION OF ESTATES AND
TRUSTS.**

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.**§44-10-4. Right of minor to nominate guardian.**

1 (a) If the minor is above the age of fourteen years, he or
2 she may in the presence of the circuit or family court, or in
3 writing acknowledged before any officer authorized to take
4 the acknowledgment of a deed, nominate his or her own
5 guardian, who, if approved by the court, shall be appointed
6 accordingly.

7 (b) If the minor is below the age of fourteen years and,
8 if the court determines it is in the best interests of the minor,
9 the court may consider the firm and reasonable preferences
10 of a minor who, in the discretion of the court, is sufficiently
11 matured that he or she can intelligently express a preference.
12 He or she may in the presence of the circuit or family court,
13 or in writing acknowledged before any officer authorized to
14 take the acknowledgment of a deed, nominate his or her own
15 guardian, who, if approved by the court, after giving that
16 preference the weight warranted by the circumstances, shall
17 be appointed accordingly.

18 (c) If the guardian nominated by the minor is not
19 appointed by the court, or if the minor resides outside the
20 state, or if, after being summoned, the minor neglects to
21 nominate a suitable person, the court may appoint the
22 guardian in the same manner as if the minor were under the
23 age of fourteen years.

CHAPTER 48. DOMESTIC RELATIONS.**ARTICLE 9. ALLOCATION OF CUSTODIAL
RESPONSIBILITY AND DECISION-MAKING
RESPONSIBILITY OF CHILDREN.****§48-9-206. Allocation of custodial responsibility.**

1 (a) Unless otherwise resolved by agreement of the
2 parents under §48-9-201 of this code or unless harmful to
3 the child, the court shall allocate custodial responsibility so

4 that, except to the extent required under §48-9-209 of this
5 code, the custodial time the child spends with each parent
6 may be expected to achieve any of the following objectives:

7 (1) To permit the child to have a meaningful relationship
8 with each parent who has performed a reasonable share of
9 parenting functions;

10 (2) To accommodate, if the court determines it is in the
11 best interests of the child, the firm and reasonable
12 preferences of a child who is 14 years of age or older; and
13 to accommodate, if the court determines it is in the best
14 interests of the child, the firm and reasonable preferences of
15 a child under 14 years of age, but sufficiently matured that
16 he or she can intelligently express a voluntary preference for
17 one parent;

18 (3) To keep siblings together when the court finds that
19 doing so is necessary to their welfare;

20 (4) To protect the child's welfare when, under an
21 otherwise appropriate allocation, the child would be harmed
22 because of a gross disparity in the quality of the emotional
23 attachments between each parent and the child, or in each
24 parent's demonstrated ability or availability to meet a
25 child's needs;

26 (5) To take into account any prior agreement of the
27 parents that, under the circumstances as a whole, including
28 the reasonable expectations of the parents in the interest of
29 the child, would be appropriate to consider;

30 (6) To avoid an allocation of custodial responsibility
31 that would be extremely impractical or that would interfere
32 substantially with the child's need for stability in light of
33 economic, physical, or other circumstances, including the
34 distance between the parents' residences, the cost and
35 difficulty of transporting the child, the parents' and child's
36 daily schedules, and the ability of the parents to cooperate
37 in the arrangement;

38 (7) To apply the principles set forth in §48-9-403(d) of
39 this code if one parent relocates or proposes to relocate at a
40 distance that will impair the ability of a parent to exercise
41 the amount of custodial responsibility that would otherwise
42 be ordered under this section;

43 (8) To consider the stage of a child's development; and

44 (9) To consider which parent will encourage and accept
45 a positive relationship between the child and the other
46 parent, including which parent is more likely to keep the
47 other parent involved in the child's life and activities.

48 (b) The court may consider the allocation of custodial
49 responsibility arising from temporary agreements made by
50 the parties after separation if the court finds, by a
51 preponderance of the evidence, that such agreements were
52 consensual. The court shall afford those temporary
53 consensual agreements the weight the court believes the
54 agreements are entitled to receive, based upon the
55 evidence. The court may not consider the temporary
56 allocation of custodial responsibility imposed by a court
57 order on the parties.

58 (c) If the court is unable to allocate custodial
59 responsibility under §48-9-206(a) of this code because the
60 allocation under §48-9-206(a) of this code would be
61 harmful to the child, or because there is no history of past
62 performance of caretaking functions, as in the case of a
63 newborn, or because the history does not establish a pattern
64 of caretaking sufficiently dispositive of the issues of the
65 case, the court shall allocate custodial responsibility based
66 on the child's best interest, taking into account the factors
67 in considerations that are set forth in this section and in §48-
68 9-209 and §48-9-403(d) of this code and preserving to the
69 extent possible this section's priority on the share of past
70 caretaking functions each parent performed.

71 (d) In determining how to schedule the custodial time
72 allocated to each parent, the court shall take account of the

73 economic, physical, and other practical circumstances such
74 as those listed in §48-9-206(a)(6) of this code.

§48-9-402. Modification without showing of changed circumstances.

1 (a) The court shall modify a parenting plan in
2 accordance with a parenting agreement, unless it finds that
3 the agreement is not knowing and voluntary or that it would
4 be harmful to the child.

5 (b) The court may modify any provisions of the
6 parenting plan without the showing of change
7 circumstances required by §48-9-401(a) if the modification
8 is in the child's best interests, and the modification:

9 (1) Reflects the de facto arrangements under which the
10 child has been receiving care from the petitioner, without
11 objection, in substantial deviation from the parenting plan,
12 for the preceding six months before the petition for
13 modification is filed, provided the arrangement is not the
14 result of a parent's acquiescence resulting from the other
15 parent's domestic abuse;

16 (2) Constitutes a minor modification in the plan; or

17 (3) Is necessary to accommodate the reasonable and
18 firm preferences of a child who, has attained the age of
19 fourteen; or

20 (4) Is necessary to accommodate the reasonable and
21 firm preferences of a child who, is under the age of fourteen
22 and, in the discretion of the court, is sufficiently matured
23 that he or she can intelligently express a voluntary
24 preference.

25 (c) Evidence of repeated filings of fraudulent reports of
26 domestic violence or child abuse is admissible in a domestic
27 relations action between the involved parties when the
28 allocation of custodial responsibilities is in issue, and the
29 fraudulent accusations may be a factor considered by the
30 court in making the allocation of custodial responsibilities.

CHAPTER 103

**(Com. Sub. for H. B. 4129 - By Delegates Summers,
Hill, Pack, Espinosa, Hanna, Rowan, Worrell, Estep-
Burton, Fleischauer, C. Thompson and Walker)**

[Passed February 12, 2020; in effect ninety days from passage.]

[Approved by the Governor on February 24, 2020.]

AN ACT to amend and reenact §48-22-201 and §48-22-501 of the Code of West Virginia, 1931, as amended, all relating to adoption; providing for the location of the adoption hearing; and eliminating a waiting period.

Be it enacted by the Legislature of West Virginia:

CHAPTER 48. DOMESTIC RELATIONS.

PART 2. PERSONS WHO MAY ADOPT.

ARTICLE 22. ADOPTION.

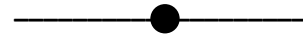
§48-22-201. Persons who may petition for decree of adoption.

1 Any person not married or any person, with his or her
 2 spouse's consent, or any husband and wife jointly, may
 3 petition a circuit court of the county wherein such person or
 4 persons reside for a decree of adoption of any minor child
 5 or person who may be adopted by the petitioner or
 6 petitioners: *Provided*, That if the minor child to be adopted
 7 has been removed from a prior home due to an abuse or
 8 neglect proceeding, the petition may be filed in the same
 9 county as the original abuse and neglect proceeding
 10 regarding the minor child.

PART 5. PETITION FOR ADOPTION.

§48-22-501. Filing of petition for adoption.

1 The petition for adoption may be filed at any time after
2 the child who is the subject of the adoption is born, the
3 adoptive placement determined and all consents or
4 relinquishments that can be obtained have been executed.
5 The hearing on the petition may be held only after the child
6 has lived with the adoptive parent or parents for a period of
7 six months, proper notice of the petition has been given and
8 all necessary consents or relinquishments have been
9 executed and submitted or the rights of all nonconsenting
10 birth parents have otherwise been terminated.

**CHAPTER 104**

**(Com. Sub. for H. B. 4001 - By Delegates Hanshaw
(Mr. Speaker), Mandt, Atkinson, Toney, Pack,
Linville, Espinosa, Williams, Skaff, Miley and Bates)**

[Passed March 5, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §12-6E-1, §12-6E-2, §12-6E-3, §12-6E-4, §12-6E-5, §12-6E-6, §12-6E-7, §12-6E-8, §12-6E-9, §12-6E-10, and §12-6E-11, all relating to creating West Virginia Impact Fund, Investment Committee and Mountaineer Impact Office to invest funds in certain projects with the goal of furthering economic development, infrastructure development, and job creation in the State of West Virginia, generally; providing definitions; creating West Virginia Impact Fund; providing for the transfer of funds to Investment Committee and the purposes for the expenditure of the funds; providing purpose and goal and investment standards; creating Investment Committee and providing for its membership, appointments, terms, removals, vacancies,

and quorums; providing for powers and duties of Investment Committee; requiring disclosures of interest; establishing standard of care; creating Mountaineer Impact Office and providing for powers, duties, staffing, management, and processes for proposing and administering investments in projects approved by Investment Committee; providing for audits and reports; providing opportunity for consultation with West Virginia Investment Management Board; providing for immunities and exemptions; prohibiting political activities; and providing for confidentiality of information.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6E. WEST VIRGINIA IMPACT FUND.

§12-6E-1. Definitions.

1 As used in this article, unless a different meaning clearly
2 appears from the context:

3 “Approved investment” means a proposed investment
4 in a final project as approved by the Investment Committee.

5 “Approved project proposal” means a project proposal
6 that has been approved by the Investment Committee.

7 “Final project” means the final project or investment
8 product developed by a selected manager.

9 “Investment Committee” means the committee
10 established in §12-6E-4 of this code.

11 “Investment Management Board” means the West
12 Virginia Investment Management Board established under
13 §12-6-1, *et seq.* of this code.

14 “Mountaineer Impact Office” means the agency and
15 government instrumentality of the State of West Virginia
16 established under §12-6E-6 of this code to implement,
17 invest and administer the assets transferred from the West
18 Virginia Impact Fund to the Investment Committee.

19 “Project proposal” means a proposal for a particular
20 project identified by the Mountaineer Impact Office to
21 implement the goal of the West Virginia Impact Fund
22 described in §12-6E-3 of this code.

23 “Selected manager” means one or more asset or project
24 managers selected by the Mountaineer Impact Office under
25 §12-6E-6 of this code.

26 “West Virginia Impact Fund” means the fund
27 established in §12-6E-2 of this code.

§12-6E-2. West Virginia Impact Fund.

1 (a) There is hereby created within the State Treasury a
2 special revenue account, designated the “West Virginia
3 Impact Fund” to be administered by the Governor for the
4 purposes set forth in this article.

5 (b) The fund shall consist of all moneys made available
6 for the purposes of this article from any source, including,
7 but not limited to, any moneys that may be appropriated and
8 designated for those purposes by the Legislature; all interest
9 or other return earned or received from investment of the
10 fund; any moneys which the fund is authorized to receive
11 under any provision of this code for the purposes of this
12 article; all gifts, grants, bequests or transfers made to the
13 fund from any source; all interest or other return received
14 from the Investment Committee’s deposits or investments,
15 as provided by this article; and any other funds which the
16 Investment Committee directs to be deposited into the fund.
17 Expenditures from the fund shall be made by transfer to the
18 Investment Committee solely for the purposes set forth in
19 this article pursuant to resolution of the Investment
20 Committee adopted under §12-6E-3 of this code. Any
21 balance, including accrued interest and other returns,
22 remaining in the fund at the end of each fiscal year shall not
23 revert to the General Revenue Fund but shall remain in the
24 fund and be expended as provided by this article. The funds

25 contained in the fund shall be available for appropriation by
26 the Legislature.

§12-6E-3. Purpose and goal; investment standards.

1 (a) The purpose of this article is to continue the efforts
2 of this state to further economic development, infrastructure
3 development, and job creation in the State of West Virginia
4 for the public benefit. It is not the intent of this article that
5 the state compete with private entities by investing in
6 projects to further economic development, infrastructure
7 development and job creation for the public benefit where
8 private capital investment is available for that purpose, but
9 where private capital is not available for major investments
10 to further that purpose, it is in the public interest that the
11 state act to facilitate those major investments. To that end,
12 it is necessary that the state provide the opportunity and
13 support for major investments of capital in this state for
14 projects that would not otherwise be expected to attract
15 private investment in the usual course of business
16 transactions without state sponsorship of and partnership in
17 the investments. The establishment and functions of the
18 West Virginia Impact Fund, the Investment Committee, and
19 the Mountaineer Impact Office as provided in this article are
20 intended to facilitate these investments.

21 (b) The assets of the West Virginia Impact Fund, upon
22 transfer to the Investment Committee as provided by this
23 article, may be:

24 (1) Invested in any final project presented by the
25 Mountaineer Impact Office under this article that is
26 approved by resolution of the Investment Committee that
27 requires an aggregate investment of moneys in the project
28 of not less than \$25 million by either the Investment
29 Committee, as sole investor, or by the Investment
30 Committee and one or more co-investors, public or private,
31 with the goal of furthering economic development,
32 infrastructure development and job creation in the State of
33 West Virginia; and

34 (2) Expended by the Investment Committee in such
35 amounts necessary to provide for the payment of expenses
36 incurred in the administration of this article.

37 (c) The Mountaineer Impact Office shall identify
38 specific project proposals for projects, which may be single
39 target companies, blind pool investment funds or other, to
40 implement the goal of the West Virginia Impact Fund.

41 (d) The Mountaineer Impact Office shall present such
42 project proposals for approval or disapproval to the
43 Investment Committee pursuant to §12-6E-6 of this code.

44 (e) When determining whether to approve a final
45 project, the Investment Committee shall take into
46 consideration:

47 (1) The ability of the project to leverage other sources
48 of funding;

49 (2) Whether investment funding for the project from
50 other sources, public or private, is available or could
51 otherwise reasonably be expected to be available without
52 the state's participation in the investment made under this
53 article;

54 (3) The ability of the project to create or retain jobs,
55 considering the number of jobs, the type of jobs, whether
56 benefits are or will be paid, the type of benefits involved,
57 and the compensation reasonably anticipated to be paid to
58 persons filling new jobs or the compensation currently paid
59 to persons whose jobs would be retained;

60 (4) Whether, and the extent to which, the project will
61 promote economic development, infrastructure development,
62 and job creation in the state; and

63 (5) Whether the project is in the best interest of the
64 public.

65 (f) The Investment Committee may not approve a
66 project or accept funding from or participation in any
67 investment by a potential partner, investor, or entity when
68 such approval or participation would violate the laws of the
69 United States or the laws of the State of West Virginia, or
70 where such approval or participation would provide aid or
71 comfort to any designated enemy of the United States or the
72 agent of any regime determined by the United States
73 Government to be a narcotics trafficking, human trafficking,
74 sponsor of terrorism, totalitarian, or other criminal regime.

**§12-6E-4. Establishment of the Investment Committee;
appointments; removal; vacancy; quorum.**

1 (a) There is hereby created the Investment Committee,
2 as an agency of the State of West Virginia, to manage the
3 investment of the assets transferred to the Investment
4 Committee from the West Virginia Impact Fund.

5 (b) The Investment Committee shall consist of seven
6 voting members. The President of the Senate and the
7 Speaker of the House of Delegates shall serve ex officio as
8 non-voting members. The voting members shall consist of:

9 (1) The Governor and the Secretary of the Department
10 of Commerce, or their designees shall serve as members of
11 the Investment Committee. They shall serve by virtue of
12 their office and are not entitled to compensation under the
13 provisions of this article. The Governor and the Secretary of
14 the Department of Commerce or their designees are subject
15 to all duties, responsibilities and requirements of the
16 provisions of this article, including, but not limited to, the
17 provisions of paragraph (A), subdivision (2) of this
18 subsection and subdivision (3) of this subsection.

19 (2)(A) Five members of the Investment Committee shall
20 be appointed by the Governor, with the advice and consent
21 of the Senate. The terms of the appointed members shall be
22 three years, subject to the following: The initial appointment
23 of one member shall be for a term of one year; the initial

24 appointment of two members shall be for terms of two
25 years; and the initial appointment of two members shall be
26 for terms of three years. At the end of each member's term,
27 the Governor may reappoint, or appoint a successor, who
28 shall serve for a term ending on the thirty-first day of
29 January in the third year following the year of his or her
30 appointment. Except for vacancy appointments made
31 pursuant to this paragraph, all subsequent appointments
32 shall be for terms ending on the thirty-first day of January
33 in the third year following the expiration of the prior term
34 for the position to which the appointment is made. No more
35 than three of the five appointed members may belong to the
36 same political party. In the event of a vacancy among the
37 trustees, the Governor shall promptly make an appointment
38 to fill the unexpired term.

39 (B) The Governor may remove any appointed member
40 in case of gross negligence or misfeasance and may declare
41 that position vacant and may appoint a person for the
42 vacancy as provided in this subsection. A removal by the
43 Governor must be in writing and must state the reason for
44 the removal. A member who is removed by the Governor
45 may not participate in Investment Committee business and
46 may not be counted for purposes of establishing a quorum
47 after the member receives written notice of removal from
48 the Governor.

49 (C) The appointed members may not hold any other
50 state or federal office, position or employment, either
51 elective or appointive, except as a member of the armed
52 forces of either the United States or of this state or as a
53 member of a governing board of an institution of higher
54 education of this state, and must have recognized
55 competence and experience in finance, investments, or other
56 business management-related fields.

57 (3) Each appointed member is entitled to receive and, at
58 the member's option, the Investment Committee shall pay
59 to the member compensation in the amount of \$400 for each
60 day on which the member attended a meeting of the

61 Investment Committee. In addition, all appointed members
62 shall receive reasonable and necessary expenses actually
63 incurred in discharging member duties pursuant to this
64 article.

65 (c) The Investment Committee may continue to act
66 notwithstanding any vacancy.

67 (d) The presence of four voting members of the
68 Investment Committee shall constitute a quorum for the
69 exercise of any authority granted to the Investment
70 Committee in this article. Action may be taken only upon
71 affirmative vote of four voting members of the Investment
72 Committee, which vote may be in person or in writing.

**§12-6E-5. Powers and duties of Investment Committee;
disclosure of interests; standard of care.**

1 (a) The Investment Committee shall have the authority
2 to (1) appoint the managing director of the Mountaineer
3 Impact Office, (2) approve or disapprove project proposals,
4 (3) approve or disapprove the negotiated terms of any
5 proposed investment of funds held by the Investment
6 Committee in any final project, (4) approve or disapprove
7 of the managing director's appointment of employees and
8 retention of consultants to carry out the duties of the
9 Mountaineer Impact Office, (5) initiate the formation of
10 legal entities with their own governance structure to
11 facilitate the development of projects; and (6) participate in
12 the formation of legal entities with their own governance
13 structure to facilitate the development of projects.

14 (b) The Investment Committee shall approve or
15 disapprove project proposals and the negotiated terms of a
16 proposed investment in any final project solely pursuant to
17 its determination of whether the projects or the negotiated
18 terms of the proposed investment in the final project meet
19 the goal prescribed in §12-6E-3 of this code.

20 (c) The Investment Committee may, in its own right or
21 through the Mountaineer Impact Office:

- 22 (1) Adopt and use a common seal and alter it at pleasure;
- 23 (2) Sue and be sued;
- 24 (3) Enter into contracts and execute and deliver
25 instruments;
- 26 (4) Acquire (by purchase, gift or otherwise), hold, use
27 and dispose of real and personal property, deeds, mortgages,
28 and other instruments;
- 29 (5) Notwithstanding any other provision of law, retain
30 and employ legal, accounting, financial and investment
31 advisors, and consultants;
- 32 (6) Maintain accounts with banks, securities dealers,
33 and financial institutions both within and outside this state;
- 34 (7) Exercise all powers generally granted to and
35 exercised by the holders of investment securities with
36 respect to management of the investment securities;
- 37 (8) Contract with one or more banking institutions in or
38 outside the state for the custody, safekeeping and
39 management of securities held by the committee;
- 40 (9) Make and, from time to time, amend and repeal
41 bylaws, rules and procedures consistent with the provisions
42 of this article;
- 43 (10) Hire its own employees, consultants, managers,
44 and advisors as it considers necessary and fix their
45 compensation and prescribe their duties;
- 46 (11) Develop, implement and maintain its own banking
47 accounts and investments; and
- 48 (12) Do all things necessary to implement and operate
49 the Investment Committee and the Mountaineer Impact
50 Office and carry out the intent of this article.

51 (d) *Disclosure of interests.* — If a member of the
52 Investment Committee acquires, owns, or controls an
53 interest, direct or indirect, in any final project in which West
54 Virginia Impact Fund assets are invested or proposed to be
55 invested, the member shall immediately disclose the interest
56 to the Investment Committee and shall be recused from
57 voting on the matter in accordance with the provisions of
58 the West Virginia Governmental Ethics Act. The disclosure
59 is a matter of public record and shall be included in the
60 minutes of the Investment Committee meeting next
61 following the disclosure.

62 (e) *Standard of care.* — When making decisions, the
63 Investment Committee shall exercise the judgment and care
64 under the circumstances then prevailing that an institutional
65 investor of ordinary prudence, discretion, and intelligence
66 exercises in the designation and management of large
67 investments entrusted to it, not in regard to speculation, but
68 in regard to the permanent disposition of funds, considering
69 preservation of the purchasing power of the West Virginia
70 Impact Fund over time, while maximizing the expected total
71 return from both income and the appreciation of capital and
72 accomplishing the goal of the West Virginia Impact Fund as
73 set forth in §12-6E-3 of this code.

**§12-6E-6. Establishment of the Mountaineer Impact Office;
managing director; project proposals; monitoring
performance; consultation with Investment Management
Board; insurance.**

1 (a) There is hereby created the Mountaineer Impact
2 Office. The Mountaineer Impact Office is an agency and
3 instrumentality of the State of West Virginia managed by
4 the Investment Committee. The purpose of the Mountaineer
5 Impact Office is to implement, invest and administer the
6 assets transferred to the Investment Committee from the
7 West Virginia Impact Fund.

8 (b) The Investment Committee shall appoint a
9 managing director, as a state employee, to manage the

10 affairs of the Mountaineer Impact Office. The managing
11 director shall have a strong background in business and
12 significant experience in investments and the development
13 of projects.

14 (c) The salary of the managing director is not restricted
15 by state compensation rules but shall be determined by the
16 Governor in accordance with customary salaries for officers
17 and directors with similar responsibilities and experience in
18 the private sector.

19 (d) The managing director may, with the approval of the
20 Investment Committee, appoint permanent or temporary
21 employees and/or retain consultants to carry out the duties
22 of the Mountaineer Impact Office. An employee of the
23 Mountaineer Impact Office, including the managing
24 director, may not be a member of the Investment
25 Committee.

26 (e) The Mountaineer Impact Office shall identify
27 specific proposals for projects, which may be single target
28 companies, blind pool investment funds or other, to
29 implement the goal prescribed in §12-6E-3 of this code.

30 (f) The Mountaineer Impact Office shall present such
31 project proposals for approval or disapproval to the
32 Investment Committee.

33 (g) The Mountaineer Impact Office shall establish a
34 procurement process for selecting one or more selected
35 managers to develop final projects in accordance with each
36 approved project proposal. This procurement process shall
37 be streamlined and efficient and is not required to comply
38 with §5A-3-1 *et seq.* of this code. Pursuant to the
39 procurement process, the Mountaineer Impact Office shall
40 identify, procure and enter into a non-binding memorandum
41 of understanding with a selected manager to develop a final
42 project in accordance with each approved project proposal.

43 (h) The Mountaineer Impact Office shall, with the
44 selected manager, negotiate the terms and amount of any
45 proposed investment of funds held by the Investment
46 Committee in any final project.

47 (i) The Mountaineer Impact Office shall present such
48 final negotiated terms and amount of a proposed investment
49 in a final project for approval or disapproval to the
50 Investment Committee, together with any disclosures of
51 conflicts of interest in the proposed investment as required
52 pursuant to §12-6E-5(d) of this code.

53 (j) The Mountaineer Impact Office shall monitor the
54 qualitative and quantitative performance of each approved
55 investment on an ongoing basis, with respect to the goal of
56 investments prescribed in §12-6E-3 of this code, including
57 without limitation, the exit and termination of each
58 approved investment.

59 (k) The Mountaineer Impact Office may consult the
60 Investment Management Board about investments made or
61 proposed under this article.

62 (l) The Mountaineer Impact Office may exercise all
63 powers necessary or appropriate to carry out the duties or
64 responsibilities conferred upon it by law or the Investment
65 Committee under the provisions of this article.

66 (m) The Mountaineer Impact Office shall procure and
67 maintain in effect, for the benefit of the members of the
68 Investment Committee, commercially customary property,
69 liability, crime, and other insurance to cover risks of loss
70 from the operations of the Investment Committee. The
71 types and amounts of the insurance coverages shall be
72 determined by the Mountaineer Impact Office, from time to
73 time, in its reasonable discretion, with reference to the types
74 and amounts of insurance coverages purchased or
75 maintained by other public institutions performing
76 functions similar to those performed by the Investment
77 Committee, and in an amount of not less than \$10 million.

78 The Investment Committee may require that appropriate
79 types and amounts of insurance be procured and maintained
80 by, or a fiduciary or surety bond from a surety company
81 qualified to do business in this state for, any person who has
82 charge of, or access to, any securities, funds or other moneys
83 held by the Investment Committee and the amount of the
84 fiduciary or surety bond shall be fixed by the Investment
85 Committee. The premiums payable on any insurance or
86 fiduciary or surety bonds that the Committee may require,
87 from time to time, shall be an expense of the Committee.

§12-6E-7. Computation of income; audits; annual report.

1 (a) The Mountaineer Impact Office shall cause the
2 income from investments made by the Investment
3 Committee to be deposited back into the West Virginia
4 Impact Fund, net of amounts determined by the Investment
5 Committee to be necessary to provide for the payment of
6 expenses incurred in the administration of this article.

7 (b) The Mountaineer Impact Office shall compute the
8 net income of the Investment Committee's investments
9 annually as of the last day of the fiscal year in accordance
10 with generally accepted accounting principles, excluding
11 any unrealized gains or losses.

12 (c) The Mountaineer Impact Office shall annually cause
13 combined annual financial and compliance audits of the
14 assets in the West Virginia Impact Fund, and of the moneys
15 transferred to and held by the Investment Committee, to be
16 made by a certified public accounting firm which has a
17 minimum staff of ten certified public accountants and which
18 is a member of the American Institute of Certified Public
19 Accountants and, if doing business in West Virginia, a
20 member of the West Virginia Society of Certified Public
21 Accountants. The Mountaineer Impact Office shall cause
22 copies of the audits report to be furnished to the Governor,
23 State Treasurer, State Auditor, President of the Senate, and
24 the Speaker of the House of Delegates.

25 (d) By December 1 of each year, the Mountaineer
26 Impact Office shall publish a report of the Investment
27 Committee investments for distribution to the Governor, the
28 President of the Senate, the Speaker of the House of
29 Delegates, and the public. The Mountaineer Impact Office
30 shall notify the Legislature that the report is available and
31 otherwise comply with §4-1-23 and §5-1-20 of this code.

32 (e) The report published pursuant to subsection (d) of
33 this section must include financial statements audited by
34 independent outside auditors, a statement of the amount of
35 money received by the Investment Committee and the West
36 Virginia Impact Fund from each investment during the
37 period covered, a statement of investments by the
38 Investment Committee, including an appraisal at market
39 value, a description of investment activities during the
40 period covered by the report, a comparison of the
41 investment performance with the intended goal contained in
42 §12-6E-3 of this code and any other information the
43 Mountaineer Impact Office determines would be in the
44 public interest upon which the efforts of the Investment
45 Committee and the Mountaineer Impact Office to meet the
46 goals and objectives of this article may be measured.

47 (f) The reports described in this section shall be public
48 record.

**§12-6E-8. Role of the Investment Management Board;
immunity from liability.**

1 The Investment Committee or the Mountaineer Impact
2 Office may consult the Investment Management Board
3 regarding their activities. To the extent the Investment
4 Management Board determines that to do so is not
5 inconsistent with its duties and responsibilities imposed by
6 this code, it may consult with Investment Committee or the
7 Mountaineer Impact Office regarding those activities. The
8 Investment Management Board's trustees, advisors, officers
9 and employees are not liable personally, either jointly or
10 severally, for any debt or obligation created by the

11 Investment Committee or the Mountaineer Impact Office,
12 nor shall the Investment Management Board or its trustees,
13 advisors, officers or employees be liable for any
14 consultative advice, guidance or services that it may provide
15 from time to time under this article.

**§12-6E-9. Immunities of Investment Committee and
Mountaineer Impact Office; exemptions.**

1 (a) The doctrine and principles of sovereign immunity
2 extend to the West Virginia Impact Fund, the Mountaineer
3 Impact Office, the Investment Committee and their
4 operations.

5 (b) The members, advisors, officers, and employees of
6 the Investment Committee and the Mountaineer Impact
7 Office are not liable personally, either jointly or severally,
8 for any debt or obligation created by the Investment
9 Committee or the Mountaineer Impact Office: *Provided*,
10 That the members, advisors, officers, and employees are
11 liable for acts of misfeasance or gross negligence.

12 (c) The assets held by the Investment Committee in any
13 account are exempt from all taxes and assessments in the
14 State of West Virginia. All security instruments issued by
15 the Investment Committee or the Mountaineer Impact
16 Office, their transfer, and their income are exempt from all
17 taxes and assessments in the State of West Virginia. No
18 provision of this section may be construed to exempt from
19 taxation any property, real or personal, that may be owned
20 or otherwise held as a result of an investment made under
21 this article. No provision of this section may be construed
22 to exempt from taxation any income or other return derived
23 by any entity other than the state as the result of an
24 investment made under this article. No provision of this
25 section may be construed to exempt from taxation any
26 business activities resulting from an investment made under
27 this article.

§12-6E-10. Political activities.

1 (a) The resources of the West Virginia Impact Fund, the
2 Investment Committee and the Mountaineer Impact Office
3 may not be used to finance or influence political activities.

4 (b) A public official, or an immediate family member
5 thereof, shall not intentionally or knowingly hold a financial
6 interest in any project pursuant to this article, or hold a
7 financial interest in a holding company, affiliate,
8 intermediary or subsidiary thereof that owns an interest in a
9 project authorized pursuant to this article, while the
10 individual is a public official and for one year following
11 termination of the individual's status as a public official.
12 For the purposes of this section, the term "financial interest"
13 does not include ownership of shares of mutual funds or
14 other similar investment instruments in which the owner of
15 such shares of mutual fund or other similar investment
16 instrument has no decision making authority to what
17 business decisions are made by those managing the
18 investment.

§12-6E-11. Confidential information.

1 The reports described in §12-6E-7 of this code shall be
2 public record. If the standard confidentiality agreements,
3 policies or procedures of a private enterprise or investor
4 with which an investment in a project is proposed or made
5 prohibit, restrict or limit the disclosure of information
6 pertaining to the investment, the information is confidential
7 and shall not form part of the public record and is exempt
8 from disclosure under the provisions of chapter twenty-
9 nine-b of this code. Such information may be publicly
10 disclosed only for the purposes of an official law
11 enforcement investigation or when its production is required
12 in a court proceeding.

●

CHAPTER 105

**(Com. Sub. for H. B. 4634 - By Delegates Evans,
Bates, Toney, Dean, Paynter and Porterfield)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-1B-1, §5B-1B-2, §5B-1B-3 and §5B-1B-4, all relating to establishing the Southern West Virginia Lake Development Study Commission; providing legislative findings; establishing the commission and designating its membership; defining components of commission study; authorizing the commission to create committees and utilize university and other state government resources; providing for expense reimbursement for certain commission members; and requiring reports to the Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. SOUTHERN WEST VIRGINIA LAKE DEVELOPMENT STUDY COMMISSION.

§5B-1B-1. Southern West Virginia Lake Development Study Commission Act.

1 This article shall be known as the “Southern West
2 Virginia Lake Development Study Commission Act.”

§5B-1B-2. Legislative findings.

1 (a) The Legislature finds that the southern coalfields of
2 West Virginia, long one of the most productive coal
3 producing areas of the world, having provided untold
4 millions of dollars to the state economy, and having been

5 the financial backbone of the state's economy for over a
6 century, is now in the midst of a long decline in coal
7 production and population, and because of rugged terrain
8 and remoteness from surrounding regions, suffers from high
9 unemployment and deteriorating infrastructure and
10 economic base, and requires innovative and alternative
11 approaches to revitalization; and therefore demands the
12 Legislature look at innovative ideas and alternatives for new
13 industries and businesses that provide sustainable long term
14 development for southern West Virginia.

15 (b) The natural beauty of the mountainous regions, now
16 popular with outdoor enthusiasts for its Hatfield McCoy
17 Trail System, would be an ideal location for a large
18 recreational lake or lakes, constructed with hundreds of
19 miles of lake front property, tens of thousands of acres of
20 lake surface, near a four lane highway and situated near
21 large tracts of developable property, with carefully
22 considered design and development, could create a new and
23 exciting recreational area of the state, and provide a myriad
24 of opportunities for further development and with creative
25 initiative could revitalize this area of our state. Such a
26 proposal is worthy of careful study and marshalling the
27 forces of our state and federal governments to thoroughly
28 evaluate and consider this development, maximizing the
29 design and use of a lake or lake system to provide a variety
30 of benefits, potentially including hydro-electric generation,
31 resort developments, housing, and economic opportunities
32 that would create diversity and renewal to this long
33 neglected and deserving area of our state.

§5B-1B-3. Commission created; undertake study; report to the Legislature.

1 (a) There is hereby created the Southern West Virginia
2 Lake Development Study Commission within the West
3 Virginia Development Office. The commission shall consist
4 of the following members:

5 (1) The president of the West Virginia Economic
6 Development Council, who will serve as chair of the
7 commission;

8 (2) Six members designated by each of the county
9 commissions of Boone, Logan, McDowell, Mercer, Mingo,
10 and Wyoming Counties;

11 (3) One member representing the Department of
12 Environmental Protection, to be appointed by the Governor;

13 (4) One member representing the Division of Natural
14 Resources, to be appointed by the Governor;

15 (5) One member representing and having expertise in
16 each of the following fields, to be appointed by the
17 Governor:

18 (A) Geology;

19 (B) Land use planning;

20 (C) Law;

21 (D) Natural resource management;

22 (E) Tourism development;

23 (F) Public recreation;

24 (G) Hydrology; and

25 (H) Ecology; and

26 (6) Six citizen members representing Boone, Logan,
27 McDowell, Mercer, Mingo, and Wyoming to be appointed
28 by the Governor.

29 (b) The West Virginia University Bureau of Business
30 and Economic Research and the Marshall University Center
31 for Business and Economic Research shall assist the
32 commission by undertaking the study of topics as directed

33 by this section and by the commission. Working with the
34 commission, the two research groups shall investigate lake
35 developments across the region and country to identify what
36 makes large lake developments successful, types of unique
37 amenities and development sites that would promote
38 economic growth, alternative uses for the lake and its
39 resources in power generation, regional resource
40 preservation and integration, enhancement of the Hatfield
41 and McCoy ATV Trail System, and other outdoor
42 recreational opportunities.

43 (c) The commission shall oversee studies that evaluate
44 where a lake can be located to maximize economic benefits
45 and assess environmental impacts, property ownership
46 assessment and purchasing costs, impacts to mineral
47 ownership and development impacts, and other issues as
48 identified by the commission. The commission is
49 empowered to form specialized committees of experts in
50 various fields of law, science, economic development,
51 geological, mineral, and natural resources to make
52 recommendations and provide expertise in their respective
53 fields regarding viability and implications of lake
54 construction, road location, and resource preservation.

55 (d) The commission is directed to undertake the
56 inclusion of federal resources for assistance in the study of
57 the feasibility and implementation recommendations. The
58 commission shall pursue federal funding for undertaking the
59 study and the subsequent construction of this project upon
60 the finding of viability of the study project.

61 (e) The commission may call upon other officers,
62 departments, and agencies of state government to assist in
63 its investigation. Upon the request of the commission, the
64 Attorney General of the state shall render legal research and
65 analysis on legal issues associated with developing
66 recommendations for lawful land development construction
67 and compliance with state and federal laws associated with
68 land acquisition and lake construction, to the commission.

69 (f) All actual and necessary travel expenses of the
70 members of the commission shall be reimbursed by the
71 member's employing agency. All other expenses incurred
72 by the commission shall be paid by the Development Office.

§5B-1B-4. Report to the Legislature.

1 The commission shall provide regular updates to the
2 Legislature, through the Joint Committee on Government
3 and Finance, and shall complete this study and its
4 recommendations by July 1, 2022. The report shall include
5 at a minimum, recommendations for any necessary
6 legislation, funding recommendations, and analysis of the
7 implications and costs associated with the development
8 project provided in this article.



CHAPTER 106

**(H. B. 4959 - By Delegates Howell, C. Martin,
Staggers, Jennings, Tomblin and Barnhart)**

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §31-15-5 and §31-15-6 of the Code of West Virginia, 1931, as amended, relating to clarifying the ability of the Economic Development Authority Board of Directors to enter into any contracts necessary to carry out its duties; clarifying the ability of the Board of Directors to delegate to the Executive Director the authority to enter into said contracts; and to clarify the exemption from the requirements to use the Purchasing Division for contracts made in furtherance of the agency's statutory purpose.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by chairman; voting; compensation and expenses.

1 (a) The West Virginia economic development authority
2 is continued as a body corporate and politic, constituting a
3 public corporation and government instrumentality.

4 (b) The authority shall be composed of a board of
5 members consisting of a chairman, who shall be the
6 Governor, or his or her designated representative, the Tax
7 Commissioner and seven members who shall be appointed
8 by the Governor, by and with the advice and consent of the
9 Senate, and who shall be broadly representative of the
10 geographic regions of the state. One member of the House
11 of Delegates to be appointed by the Speaker and one
12 member of the Senate to be appointed by the President shall
13 serve on the board in an advisory capacity as ex officio,
14 nonvoting members. The board shall direct the exercise of
15 all the powers given to the authority in this article. The
16 Governor shall also be the chief executive officer of the
17 authority, and shall designate the treasurer and the secretary
18 of the board.

19 (c) As appointments expire, each subsequent
20 appointment shall be for a full four-year term. Any member
21 whose term has expired shall serve until his or her successor
22 has been duly appointed and qualified. Any person
23 appointed to fill a vacancy shall serve only for the unexpired
24 term. Any member is eligible for reappointment.

25 (d) The Governor may, by written notice filed with the
26 secretary of the authority, from time to time, delegate to any
27 subordinate the power to represent him or her at any meeting
28 of the authority. In that case, the subordinate has the same
29 power and privileges as the Governor and may vote on any
30 question.

31 (e) Members of the authority are not entitled to
32 compensation for services performed as members, but are
33 entitled to reimbursement for all reasonable and necessary
34 expenses actually incurred in the performance of their
35 duties.

36 (f) A majority of the members constitutes a quorum for
37 the purpose of conducting business. Except in the case of a
38 loan or insurance application or unless the bylaws require a
39 larger number, action may be taken by majority vote of the
40 members present. Approval or rejection of a loan or
41 insurance application shall be made by majority vote of the
42 full membership of the board.

43 (g) The board shall manage the property and business of
44 the authority and may prescribe, amend, adopt and repeal
45 bylaws and rules and regulations governing the manner in
46 which the business of the authority is conducted.

47 (h) The board shall, without regard to the provisions of
48 civil service laws applicable to officers and employees of
49 the State of West Virginia, appoint any necessary managers,
50 assistant managers, officers, employees, attorneys and
51 agents for the transaction of its business, fix their
52 compensation, define their duties and provide a system of
53 organization to fix responsibility and promote efficiency.
54 Any appointee of the board may be removed at the
55 discretion of the board. The authority may reimburse any
56 state spending unit for any special expense actually incurred
57 in providing any service or the use of any facility to the
58 authority.

59 (i) The board may delegate to the Executive Director the
60 authority to make and execute all contracts and other
61 agreements or instruments necessary for the exercise of its
62 powers or to carry out its corporate purpose.

63 (j) In cases of any vacancy in the office of a voting
64 member, the vacancy shall be filled by the Governor. Any
65 member appointed to fill a vacancy in the board occurring

66 prior to the expiration of the term for which his or her
67 predecessor was appointed shall be appointed for the
68 remainder of the term.

69 (k) The Governor may remove a member in the case of
70 incompetence, neglect of duty, gross immorality or
71 malfeasance in office, and may declare the member's office
72 vacant and appoint a person for the vacancy as provided in
73 other cases of vacancy.

74 (l) The secretary of the board shall keep a record of the
75 proceedings of the board and perform any other duties
76 determined appropriate by the board. The treasurer shall be
77 custodian of all funds of the authority and shall be bonded
78 in the amount designated by other members of the board.

§31-15-6. General powers of authority.

1 The authority, as a public corporation and governmental
2 instrumentality exercising public powers of the state, shall
3 have and may exercise all powers necessary or appropriate
4 to carry out the purposes of this article, including the power:

5 (a) To cooperate with industrial development agencies
6 in efforts to promote the expansion of industrial,
7 commercial, manufacturing and tourist activity in this state.

8 (b) To determine, upon the proper application of an
9 industrial development agency or an enterprise, whether the
10 declared public purposes of this article have been or will be
11 accomplished by the establishment by such agency or
12 enterprise of a project in this state.

13 (c) To conduct examinations and investigations and to
14 hear testimony and take proof, under oath or affirmation, at
15 public or private hearings, on any matter relevant to this
16 article and necessary for information on the establishment
17 of any project.

18 (d) To issue subpoenas requiring the attendance of
19 witnesses and the production of books and papers relevant

20 to any hearing before such authority or one or more
21 members appointed by it to conduct any hearing.

22 (e) To apply to the circuit court having venue of such
23 offense to have punished for contempt any witness who
24 refuses to obey a subpoena, to be sworn or affirmed or to
25 testify or who commits any contempt after being summoned
26 to appear.

27 (f) To authorize any member of the authority to conduct
28 hearings, administer oaths, take affidavits and issue
29 subpoenas.

30 (g) To financially assist projects by insuring obligations
31 in the manner provided in this article through the use of the
32 insurance fund.

33 (h) To finance any projects by making loans to industrial
34 development agencies or enterprises upon such terms as the
35 authority shall deem appropriate: *Provided*, That nothing
36 contained in this subsection (h) or under any other provision
37 in this article shall be construed as permitting the authority
38 to make loans for working capital: *Provided, however*, That
39 nothing contained in this article shall be construed as
40 prohibiting the authority from insuring loans for working
41 capital made to industrial development agencies or to
42 enterprises by financial institutions: *Provided further*, That
43 nothing contained in this subsection or any other provision
44 of this article shall be construed as permitting the authority
45 to refinance existing debt except when such refinancing will
46 result in the expansion of the enterprise whose debt is to be
47 refinanced or in the creation of new jobs.

48 (i) To issue revenue bonds or notes to fulfill the
49 purposes of this article, and to secure the payment of such
50 bonds or notes, all as hereinafter provided.

51 (j) To issue and deliver revenue bonds or notes in
52 exchange for a project.

53 (k) To borrow money for its purposes and issue bonds
54 or notes for the money and provide for the rights of the
55 holders of the bonds or notes or other negotiable
56 instruments, to secure the bonds or notes by a deed of trust
57 on, or an assignment or pledge of, any or all of its property
58 and property of the project, including any part of the
59 security for loans, and the authority may issue and sell its
60 bonds and notes, by public or private sale, in such principal
61 amounts as it shall deem necessary to provide funds for any
62 purposes under this article, including the making of loans
63 for the purposes set forth in this article.

64 (l) To maintain such sinking funds and reserves as the
65 board shall determine appropriate for the purposes of
66 meeting future monetary obligations and needs of the
67 authority.

68 (m) To sue and be sued, implead and be impleaded, and
69 complain and defend in any court.

70 (n) To adopt, use and alter at will a corporate seal.

71 (o) To make, amend, repeal and adopt both bylaws and
72 rules and regulations for the management and regulation of
73 its affairs.

74 (p) To appoint officers, agents and employees and to
75 contract for and engage the services of consultants.

76 (q) To make contracts of every kind and nature to
77 execute all instruments necessary or convenient for carrying
78 on its business: *Provided*, That the provisions of §5A-3-3 of
79 this code do not apply to contracts made pursuant to this
80 subdivision.

81 (r) To accept grants and loans from and enter into
82 contracts and other transactions with any federal agency.

83 (s) To take title by conveyance or foreclosure to any
84 project where acquisition is necessary to protect any loan
85 previously made by the authority and to sell, by public or

86 private sale, transfer, lease or convey such project to any
87 enterprise.

88 (t) To participate in any reorganization proceeding
89 pending pursuant to the United States Code (being the act
90 of Congress establishing a uniform system of bankruptcy
91 throughout the United States, as amended) or in any
92 receivership proceeding in a state or federal court for the
93 reorganization or liquidation of an enterprise. The authority
94 may file its claim against any such enterprise in any of the
95 foregoing proceedings, vote upon any questions pending
96 therein which requires the approval of the creditors
97 participating in any reorganization proceeding or
98 receivership, exchange any evidence of such indebtedness
99 for any property, security or evidence of indebtedness
100 offered as a part of the reorganization of such enterprise or
101 of any other entity formed to acquire the assets thereof and
102 may compromise or reduce the amount of any indebtedness
103 owing to it as a part of any such reorganization.

104 (u) To acquire, construct, maintain, improve, repair,
105 replace and operate projects within this state, as well as
106 streets, roads, alleys, sidewalks, crosswalks and other means
107 of ingress and egress to and from projects located within this
108 state.

109 (v) To acquire, construct, maintain, improve, repair and
110 replace and operate pipelines, electric transmission lines,
111 waterlines, sewer lines, electric power substations,
112 waterworks systems, sewage treatment and disposal
113 facilities and any combinations thereof for the use and
114 benefit of any enterprise located within this state.

115 (w) To acquire watersheds, water and riparian rights,
116 rights-of-way, easements, licenses and any and all other
117 property, property rights and appurtenances for the use and
118 benefit of any enterprise located within this state.

119 (x) To acquire, by purchase, lease, donation or eminent
120 domain, any real or personal property, or any right or

121 interest therein, as may be necessary or convenient to carry
122 out the purposes of the authority. Title to all property,
123 property rights and interests acquired by the authority shall
124 be taken in the name of the authority.

125 (y) To issue renewal notes, or security interests, to issue
126 bonds to pay notes or security interests and, whenever it
127 deems refunding expedient, to refund any bonds or notes by
128 the issuance of new bonds or notes, whether the bonds or
129 notes to be refunded have or have not matured and whether
130 or not the authority originally issued the bonds or notes to
131 be refunded.

132 (z) To apply the proceeds from the sale of renewal notes,
133 security interests or refunding bonds or notes to the
134 purchase, redemption or payment of the notes, security
135 interests or bonds or notes to be refunded.

136 (aa) To accept gifts or grants of property, funds, security
137 interests, money, materials, labor, supplies or services from
138 the United States of America or from any governmental unit
139 or any person, firm or corporation, and to carry out the terms
140 or provisions of, or make agreements with respect to, or
141 pledge, any gifts or grants, and to do any and all things
142 necessary, useful, desirable or convenient in connection
143 with the procuring, acceptance or disposition of gifts or
144 grants.

145 (bb) To the extent permitted under its contracts with the
146 holders of bonds, security interests or notes of the authority,
147 to consent to any modification of the rate of interest, time of
148 payment of any installment of principal or interest, security
149 or any other term of any bond, security interests, note or
150 contract or agreement of any kind to which the authority is
151 a party.

152 (cc) To sell loans, security interests or other obligations
153 in the loan portfolio of the authority. Such security interests
154 shall be evidenced by instruments issued by the authority.
155 Proceeds from the sale of loans, security interests, or other

156 obligations may be used in the same manner and for the
157 same purposes as bond and note revenues.

158 (dd) To procure insurance against any losses in
159 connection with its property, operations or assets in such
160 amounts and from such insurers as the authority deems
161 desirable.

162 (ee) To sell, license, lease, mortgage, assign, pledge or
163 donate its property, both real and personal, or any right or
164 interest therein to another or authorize the possession,
165 occupancy or use of such property or any right or interest
166 therein by another, in such manner and upon such terms as
167 it deems appropriate.

168 (ff) To participate with the state and federal agencies in
169 efforts to promote the expansion of commercial and
170 industrial development in this state.

171 (gg) To finance, organize, conduct, sponsor, participate
172 and assist in the conduct of special institutes, conferences,
173 demonstrations and studies relating to the stimulation and
174 formation of business, industry and trade endeavors.

175 (hh) To conduct, finance and participate in
176 technological, business, financial and other studies related
177 to business and economic development.

178 (ii) To conduct, sponsor, finance, participate and assist
179 in the preparation of business plans, financing plans and
180 other proposals of new or established businesses suitable for
181 support by the authority.

182 (jj) To prepare, publish and distribute, with or without
183 charge as the authority may determine, such technical
184 studies, reports, bulletins and other materials as it deems
185 appropriate, subject only to the maintenance and respect for
186 confidentiality of client proprietary information.

187 (kk) To exercise such other and additional powers as
188 may be necessary or appropriate for the exercise of the
189 powers herein conferred.

190 (ll) To exercise all of the powers which a corporation
191 may lawfully exercise under the laws of this state.

192 (mm) To contract for the provision of legal services by
193 private counsel, and notwithstanding the provisions of
194 article three, chapter five, such counsel may, but is not
195 limited to, represent the authority in court, negotiate
196 contracts and other agreements on behalf of the authority,
197 render advice to the authority on any matter relating thereto,
198 prepare contracts and other agreements, and provide such
199 other legal services as may be requested by the authority.

200 (nn) To develop, maintain, operate and apply for the
201 establishment of foreign trade zones pursuant to and in
202 accordance with all applicable provisions of federal law.

203 (oo) To exercise the powers and responsibilities
204 previously vested in the state building commission by
205 section eleven-a, article six, chapter five including, but not
206 limited to, the authority to refund bonds issued in
207 accordance with that section.



CHAPTER 107

(S. B. 42 - By Senators Maynard and Cline)

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18-2-7b of the Code of West Virginia, 1931, as amended, relating to permitting the county boards of education to include faith-based and nonfaith-based

electives for drug awareness in classrooms; and requiring the State Board of Education to promulgate a rule.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7b. Programs in drug prevention and violence reduction.

1 (a) In order for the schools to become healthy learning
2 environments and to provide a strong defense against drug
3 use and violence, the State Board of Education shall
4 prescribe programs within the existing health and physical
5 education program which teach resistance and life skills to
6 counteract societal and peer pressure to use drugs, alcohol,
7 and tobacco, and shall include counselors, teachers, and
8 staff in full implementation of the program. The board shall
9 also prescribe programs to coordinate violence reduction
10 efforts in schools and between schools and their
11 communities and to train students, teachers, counselors, and
12 staff in conflict resolution skills. The program shall be
13 comprehensive, interdisciplinary, and shall begin in
14 elementary school.

15 (b) No later than the start of the 2018-2019 school year,
16 a county board shall implement comprehensive drug
17 awareness and prevention programs for students in grades
18 K through 12 to receive instruction regarding the dangers of
19 substance abuse. The purpose of the drug awareness and
20 prevention program is to:

21 (1) Keep students from illegally using alcohol, tobacco,
22 or other drugs;

23 (2) Reduce or eliminate the incidence and prevalence of
24 student's alcohol, tobacco, and other drug abuse;

25 (3) Reduce the factors that place students at risk of
26 abusing alcohol, tobacco, or other drugs through school and
27 a community-based planning processes;

28 (4) Contribute to the development of school
29 environments and alternative activities that are alcohol,
30 tobacco, and drug-free;

31 (5) Increase the knowledge and skills of students, staff,
32 and community members for avoiding the harmful effects
33 of alcohol, tobacco, and drug use, and of blood borne
34 pathogens;

35 (6) Actively involve staff, students, parents, and
36 community members in the development and
37 implementation of the drug awareness and prevention
38 program plans;

39 (7) Facilitate an understanding and appreciation of the
40 risks to, duties of, and likely actions by law-enforcement
41 officers when conducting investigations; and

42 (8) Instruct how to respond to an officer during a
43 vehicular or other stop or police interaction, including
44 problematic or dangerous action and behaviors that could
45 result in a person being detained or arrested.

46 (c) The county board shall coordinate the delivery of
47 instruction to meet the purposes of subsection (b) of this
48 section with educators, drug rehabilitation specialists, and
49 law-enforcement agencies to periodically provide age
50 appropriate student education on their experiences with the
51 impacts of illegal alcohol and drug use.

52 (d) Beginning with the 2018-2019 school year,
53 instruction required pursuant to §18-2-9 of this code in the
54 subject of health education in any of the grades six through
55 12 as considered appropriate by the county board shall
56 include at least 60 minutes of instruction for each student on
57 the dangers of opioid use, the additive characteristics of
58 opioids, and safer alternatives to treat pain.

59 (e) Beginning with the 2020-2021 school year,
60 comprehensive drug awareness and prevention programs
61 for students in grades K through 12 may include faith-based

62 electives, along with nonfaith-based electives, for drug
63 awareness in classrooms. The state board shall promulgate
64 a rule on how the faith-based electives can be offered in a
65 way that is consistent with constitutional requirements.

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CHAPTER 108

**(Com. Sub. for S. B. 230 - By Senators Weld, Cline,
Baldwin, Lindsay, Roberts, Stollings, Jeffries and
Maroney)**

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §18-2-40 of the Code of West Virginia, 1931, as amended, relating to suicide prevention awareness training and dissemination of information; providing findings; requiring State Board of Education to provide routine education in suicide prevention under guidelines established by board; requiring dissemination of information; and naming provisions of section “Jamie’s Law.”

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-40. Suicide prevention awareness training; dissemination of information.

1 (a)(1) *Legislative findings.* — The Legislature
2 recognizes that the state of West Virginia has one of the
3 highest rates of suicide in the nation, and that suicide serves
4 as one of the leading causes of death in our state.

5 (2) The Legislature further finds that nationwide,
6 suicide rates amongst adolescents and young adults are on
7 the rise. As a result of disrupted families, poverty, and the

8 opioid crises which have severely affected a significant
9 number of families across this state, West Virginia's
10 students face a number of issues which may increase their
11 risk of suicide.

12 (3) Consequently, the Legislature finds that it is
13 imperative that those in our education system closest to our
14 students receive training to increase their ability to better
15 recognize students who may be exhibiting signs that they
16 are at risk of suicide.

17 (b) On or before September 1, 2020, and each year
18 thereafter, the State Board of Education shall provide for the
19 routine education of all professional educators, including
20 principals and administrators, and those service personnel
21 having direct contact with students on warning signs and
22 resources to assist in suicide prevention under guidelines
23 established by the state board. The education may be
24 accomplished through self-review of suicide prevention
25 materials and resources approved by the state board.

26 (c) On or before September 1, 2020, and each year
27 thereafter, a public middle and high school administrator
28 shall disseminate and provide opportunities to discuss
29 suicide prevention awareness information to all middle and
30 high school students. The information may be obtained
31 from the Bureau for Behavioral Health and Health Facilities
32 or from a commercially developed suicide prevention
33 training program approved by the State Board of Education
34 in consultation with the bureau to assure the accuracy and
35 appropriateness of the information.

36 (d) The provisions of this section shall be known as
37 "Jamie's Law."

●

CHAPTER 109

(Com. Sub. for S. B. 241 - By Senators Baldwin, Roberts, Rucker and Stollings)

[Passed February 29, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-9A-7a, relating to requiring State Board of Education to propose revisions to calculation of allowance for service personnel to provide additional positions to meet student transportation needs of certain lower population density districts; and requiring a report to the Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-7a. Report on alternate method for funding student transportation costs required.

1 (a) The Legislature finds that the present method of
2 calculating the allowance for service personnel in §18-9A-
3 5 may not provide sufficient funding to meet the student
4 transportation needs of lower-population density districts
5 covering a large geographic area.

6 (b) The State Board of Education shall propose
7 revisions to the calculation of the allowance for service
8 personnel in §18-9A-5 to provide additional funded service
9 personnel positions for the districts described in subsection
10 (a) of this section and shall report the proposal to the
11 Legislature before September 1, 2020.

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CHAPTER 110

(Com. Sub. for S. B. 303 - By Senators Rucker and Cline)

[Passed March 7, 2020; in effect January 1, 2021.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-10P-1, §18-10P-2, §18-10P-3, §18-10P-4, §18-10P-5, and §18-10P-6, all relating to enacting the Students' Right-to-Know Act; declaring purpose of helping high school students make more informed decisions about their futures and ensuring they are adequately aware of the cost and benefits of certificate programs, vocational programs, two-year college, four-year college, and other alternative career paths; requiring the State Board of Education to collect and the State Superintendent of Schools to distribute certain career landscape information; allowing the State Board of Education to execute a memorandum of understanding with any department, agency, or division for information required to be collected; requiring any department, agency, or division that possesses certain required information to provide that information to the State Board of Education annually; and establishing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10P. STUDENTS' RIGHT-TO-KNOW ACT.

§18-10P-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 Students' Right-to-Know Act.

§18-10P-2. Purpose.

1 The purpose of this article is to help high school
2 students make more informed decisions about their futures
3 and ensure they are adequately aware of the costs and
4 benefits of certificate programs, vocational programs, two-
5 year college, four-year college, and other alternative career
6 paths.

§18-10P-3. Career landscape information collection.

1 The following information, to the extent available, shall
2 be collected and compiled by the State Board of Education,
3 in collaboration with the Higher Education Policy
4 Commission and the Council for Community and Technical
5 College Education, on an annual basis:

6 (1) The most in-demand occupations in the state,
7 including entry wage and common degree levels (e.g.,
8 associate's, bachelor's, or master's) for entering the
9 occupation;

10 (2) The average cost of two and four-year colleges,
11 universities, and vocational schools in the state by type of
12 institution;

13 (3) The federal and state scholarship, merit, and need-
14 based aid programs available for attending two and four-
15 year colleges, universities, and vocational schools in the
16 state by type of institution;

17 (4) The average monthly student loan payment and the
18 average total amount of student loans for individuals who
19 attend all two and four-year colleges, universities, and
20 vocational schools in the state by the type of institution;

21 (5) The average student loan default rate for two and
22 four-year colleges, universities, and vocational schools in
23 the state by type of institution;

24 (6) Information relating to the availability of paid
25 internship and externship opportunities for students
26 attending two and four-year colleges, universities, and
27 vocational schools in the state by type of institution;

28 (7) The average graduation rate for two and four-year
29 colleges, universities, and vocational schools in the state by
30 type of institution;

31 (8) The completion rates for apprenticeship programs,
32 high school credential programs, and career and technical
33 education programs;

34 (9) The percentage of college graduates working in an
35 occupation that does not require a college degree for each
36 major;

37 (10) Median annual wages for public college/university
38 graduates by degree level and degree area;

39 (11) The average starting salary of career-technical
40 education completers;

41 (12) The number of military first-term enlistments and
42 each branch's starting salary;

43 (13) Contact information for each of the two and four-
44 year colleges, universities, and vocational schools in the
45 state, and each branch of the U.S. armed forces, National
46 Guard, and reserves; and

47 (14) Any other information the State Board of
48 Education, the Higher Education Policy Commission, or the
49 Council for Community and Technical College Education
50 deem appropriate to assist high school students in weighing
51 the costs and benefits of post-high school training and
52 education.

§18-10P-4. Information distribution.

1 No later than October 15 of each year, the State
2 Superintendent shall distribute the information collected by
3 the State Board of Education in §18-10P-3 of this code:

4 (1) To every public high school in the state for
5 distribution to students by school guidance counselors; and

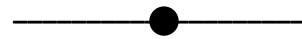
6 (2) To the public by making it readily available through
7 publishing on the Department of Education's website.

§18-10P-5. Data sharing.

1 The State Board of Education may execute a
2 memorandum of understanding with any department,
3 agency, or division for information required to be collected
4 by this article. Any department, agency, or division that
5 possesses information required to be collected by this
6 article, at least including the Department of Commerce and
7 the Higher Education Policy Commission, shall provide that
8 information to the State Board of Education annually.

§18-10P-6. Effective date.

1 The requirements of this article are effective on January
2 1, 2021.



CHAPTER 111

**(Com. Sub. for S. B. 614 - By Senators Rucker, Cline,
Roberts and Maynard)**

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18-5-48 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-20-11 of said code, all relating to giving county boards of education, during a specified time period, flexibility to spend the safe schools allocation at any school within the district requiring cameras in special education classrooms; requiring the West Virginia Department of Education, during a

specified time period, to first allocate the funding appropriated for the Safe Schools Fund based on the remaining need for video cameras in each district; removing appropriation of funds by the Legislature as a prerequisite to the requirement for video cameras in self-contained classrooms; and clarifying that any available funds may be used to comply with the camera requirements.

Be it enacted by the Legislature of West Virginia:

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.

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: *Provided*
41 *further*, That for any distributions for the 2019-2020 year
42 and continuing until such time that all districts have fully
43 complied with the special education video camera
44 requirements, county boards shall have the flexibility to
45 spend the safe schools allocation at any school within the
46 district requiring cameras in special education classrooms.
47 The West Virginia Department of Education shall first
48 allocate the funding appropriated for the Safe Schools Fund
49 for the 2020-2021 year based on the remaining need for
50 video cameras in each district. After all districts have been
51 provided sufficient funds to meet the special education
52 video camera requirements, the funding distribution shall
53 return to the previously specified method based on the
54 number of public schools. Any moneys remaining in the
55 fund at the close of the fiscal year shall be carried forward
56 for use in the next fiscal year. Fund balances shall be
57 invested with the state's Consolidated Investment Fund and
58 any and all interest shall be used solely for the purposes that
59 moneys deposited in the fund may be used pursuant to this
60 article.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-11. Video cameras required in certain special education classrooms.

1 (a) A county board of education shall ensure placement
2 of video cameras in self-contained classrooms as defined in
3 state board policy.

4 (b) As used in this section:

5 (1) “Incident” means a raised suspicion by a teacher,
6 aide, parent, or guardian of a child, of bullying, abuse, or
7 neglect of a child or of harm to an employee of a public
8 school by:

9 (A) An employee of a public school or school district;
10 or

11 (B) Another student;

12 (2) “Self-contained classroom” means a classroom at a
13 public school in which a majority of the students in regular
14 attendance are provided special education instruction and as
15 further defined in state board policy; and

16 (3) “Special education” means the same as defined
17 in §18-20-1 *et seq.* of this code.

18 (c) A county board of education shall provide a video
19 camera to a public school for each self-contained classroom
20 that is a part of that school which shall be used in every self-
21 contained classroom. The principal of the school shall be the
22 custodian of the video camera, all recordings generated by
23 the video camera, and access to those recordings pursuant
24 to this section.

25 (d)(1) Every public school that receives a video camera
26 under this section shall operate and maintain the video
27 camera in every self-contained classroom that is part of that
28 school.

29 (2) If there is an interruption in the operation of the
30 video camera for any reason, a written explanation should

31 be submitted to the school principal and the county board
32 explaining the reason and length for which there was no
33 recording. The explanation shall be maintained at the
34 county board office for at least one year.

35 (e)(1) A video camera placed in a self-contained
36 classroom shall be capable of:

37 (A) Monitoring all areas of the self-contained
38 classroom, including, without limitation, a room attached to
39 the self-contained classroom and used for other purposes;
40 and

41 (B) Recording audio from all areas of the self-contained
42 classroom, including, without limitation, a room attached to
43 the self-contained classroom and used for other purposes;

44 (2) A video camera placed in a self-contained classroom
45 shall not monitor a restroom or any other area in the self-
46 contained classroom where a student changes his or her
47 clothes except for incidental monitoring of a minor portion
48 of a restroom or other area where a student changes his or
49 her clothes because of the layout of the self-contained
50 classroom.

51 (3) A video camera placed in a self-contained classroom
52 is not required to be in operation during the time in which
53 students are not present in the self-contained classroom.

54 (f) Before a public school initially places a video camera
55 in a self-contained classroom pursuant to this section, the
56 public school shall provide written notice of the placement
57 to:

58 (1) The parent or legal guardian of a student who is
59 assigned to the self-contained classroom;

60 (2) The county board; and

61 (3) The school employee(s) who is assigned to work
62 with one or more students in the self-contained classroom.

63 (g)(1) A public school shall retain video recorded from
64 a camera placed under this section for at least three months
65 after the date the video was recorded, after which the
66 recording shall be deleted or otherwise made unretrievable.

67 (2) If a person requests to view a recording under
68 subsection (k) of this section, the public school shall retain
69 the recording from the date of the request until:

70 (A)(i) Except as provided in §18-20-11(g)(2)(A)(ii) of
71 this code, the person views the recording;

72 (ii) A person who requests to view a recording shall
73 make himself or herself available for viewing the recording
74 within 30 days after being notified by the public school that
75 the person's request has been granted; and

76 (B) Any investigation and any administrative or legal
77 proceedings that result from the recording have been
78 completed, including, without limitation, the exhaustion of
79 all appeals.

80 (h) This section does not:

81 (1) Waive any immunity from liability of a public
82 school district or employee of a public school district; or

83 (2) Create any liability for a cause of action against a
84 public school or school district or employee of a public
85 school or school district.

86 (i) A public school or school district shall not:

87 (1) Allow regular, continuous, or continual monitoring
88 of video recorded under this section; or

89 (2) Use video recorded under this section for:

90 (A) Teacher evaluations; or

91 (B) Any purpose other than the promotion of the health,
92 wellbeing, and safety of students receiving special

93 education and related services in a self-contained
94 classroom.

95 (j) Except as provided under subsections (k) and (l) of
96 this section, a video recording of a student made under this
97 section is confidential and shall not be released or viewed.

98 (k) Within seven days of receiving a request, a public
99 school or school district shall allow viewing of a video
100 recording by:

101 (1) A public school or school district employee who is
102 involved in an alleged incident that is documented by the
103 video recording and has been reported to the public school
104 or school district;

105 (2) A parent or legal guardian of a student who is
106 involved in an alleged incident that is documented by the
107 video recording and has been reported to the public school
108 or school district;

109 (3) An employee of a public school or school district as
110 part of an investigation into an alleged incident that is
111 documented by the video recording and has been reported
112 to the public school or school district;

113 (4) A law-enforcement officer as part of an investigation
114 into an alleged incident that is documented by the video
115 recording and has been reported to the law-enforcement
116 agency; or

117 (5) The Department of Health and Human Resources as
118 part of a child abuse and neglect investigation: *Provided,*
119 That any access provided to the Department of Health and
120 Human Resources pursuant to this subdivision shall comply
121 with the Family Educational Rights and Privacy Act of
122 1974, 20 U.S.C. §1232g.

123 (l) When a video is under review as part of the
124 investigation of an alleged incident, and the video reveals a
125 student violating a disciplinary code or rule of the school,

126 which violation is not related to the alleged incident for
127 which the review is occurring, and which violation is not
128 already the subject of a disciplinary action against the
129 student, the student is not subject to disciplinary action by
130 the school for such unrelated violation unless it reveals a
131 separate incident as described in §18-20-11(b)(1) of this
132 code.

133 (m) It is not a violation of subsection (j) of this section
134 if a contractor or other employee of a public school or
135 school district incidentally views a video recording under
136 this section if the contractor or employee of a public school
137 or school district is performing job duties related to the:

138 (1) Installation, operation, or maintenance of video
139 equipment; or

140 (2) Retention of video recordings.

141 (n) This section does not limit the access of a student's
142 parent or legal guardian to a video recording regarding the
143 student under the Family Educational Rights and Privacy
144 Act of 1974, 20 U.S.C. §1232g, or any other law.

145 (o) A public school or school district shall:

146 (1) Take necessary precautions to conceal the identity
147 of a student who appears in a video recording but is not
148 involved in the alleged incident documented by the video
149 recording for which the public school allows viewing under
150 subsection (j) of this section, including, without limitation,
151 blurring the face of the uninvolved student; and

152 (2) Provide procedures to protect the confidentiality of
153 student records contained in a video recording in
154 accordance with the Family Educational Rights and Privacy
155 Act of 1974, 20 U.S.C. §1232g, or any other law.

156 (p)(1) Any aggrieved person may appeal to the State
157 Board of Education an action by a public school or school

158 district that the person believes to be in violation of this
159 section.

160 (2) The state board shall grant a hearing on an appeal
161 under this subsection within 45 days of receiving the appeal.

162 (q)(1) A public school or school district may use funds
163 distributed from the Safe Schools Fund created in §18-5-48
164 of this code or any other available funds to meet the
165 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 112

**(Com. Sub. for S. B. 707 - By Senators Rucker, Cline,
Maroney, Plymale, Takubo and Stollings)**

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-11a, relating to making a nursing career pathway available to students statewide; setting forth legislative findings; requiring that a nursing career pathway workgroup be convened; charging the workgroup with developing a career pathway to address the unmet need for nursing assistants, licensed practical nurses, registered nurses, and registered nurses with

a bachelor's degree in nursing; requiring the nursing career pathway to be made available to students statewide; requiring report to the Legislative Oversight Commission on Education Accountability, as requested, but at least annually, on the progress in implementing the career pathway; and requiring consideration of certain specified ideas in establishing the pathway.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-11a. Nursing career pathway.

1 (a) The Legislature finds that:

2 (1) There are numerous reports relating that the nursing
3 shortage is causing currently employed nurses to be
4 overworked and that hospitals are bringing in travel nurses
5 from other states;

6 (2) While the recent passage of the Advance Career
7 Education and West Virginia Invests Grant programs
8 legislation would address nursing shortages along with
9 addressing other shortage areas, having a sufficient number
10 of qualified nurses is of such importance to the health of the
11 citizens of the state that additional efforts should be made to
12 ensure that there is an adequate number of nurses to meet
13 the state's health care needs as soon as possible; and

14 (3) Providing a seamless process for students pursuing
15 careers in nursing from high school through attainment of a
16 nursing credential or degree would assist in ensuring an
17 adequate nursing workforce.

18 (b) The State Superintendent of Schools, the Chancellor
19 for the Higher Education Policy Commission, and the
20 Chancellor for the Community and Technical College
21 System shall convene the West Virginia Nursing Career
22 Pathway Workgroup consisting of:

23 (1) Representatives of health care providers that need
24 nurses and could potentially provide clinical space. Due to
25 the importance of health care providers providing clinical
26 space, as many representatives of health care providers as
27 possible, especially the largest health care providers, shall
28 be invited to be members of the workgroup, provide input,
29 and be encouraged to provide clinical space. Invitations to
30 join the workgroup at least shall be extended to the West
31 Virginia Health Care Association and the West Virginia
32 Hospital Association;

33 (2) A representative of the West Virginia Department of
34 Education;

35 (3) A representative of the Higher Education Policy
36 Commission;

37 (4) A representative of the Council for Community and
38 Technical College Education;

39 (5) Representatives of institutions of higher education
40 in West Virginia;

41 (6) A representative of the Board for Registered
42 Professional Nurses;

43 (7) A representative of the Board of Examiners for
44 Licensed Practical Nurses; and

45 (8) Any other persons that the State Superintendent, the
46 Chancellor for Higher Education, and the Chancellor for
47 Community and Technical College Education determine
48 beneficial.

49 (c) The West Virginia Nursing Career Pathway
50 Workgroup shall be charged with developing a career
51 pathway to address the unmet need for nursing assistants,
52 licensed practical nurses, registered nurses, and registered
53 nurses with a bachelor's degree in nursing. The nursing
54 program of study will begin in high school and progress
55 through college, providing employment opportunity with

56 industry partners and pathway re-entry at specified student
57 attainment points: Nursing assistant certification, licensed
58 practical nurse diploma and licensure, registered nurse
59 associate degree and licensure, and bachelor of science in
60 nursing completion. The career pathway shall align
61 affordable, effective, and sustainable secondary to post-
62 secondary nursing programs to increase credential
63 attainment for a broad and diverse student population.

64 (1) The career pathway shall include participating high
65 school students enrolling in a specified curriculum of
66 college preparatory, career and technical health science
67 courses, or dual college-high school credit courses, as well
68 as participating in career experiences through a health care
69 provider or a work-based learning clinical experience.

70 (2) Students shall have the opportunity to apply for
71 admission to a practical nursing program at a community
72 and technical college or career and technical education
73 center.

74 (3) Upon completion of a practical nursing program,
75 students shall have the opportunity to apply for admission
76 to a licensed practical nursing to registered nurse associate
77 degree program.

78 (4) Upon completion of a licensed practical nursing to
79 registered nurse associate degree program, students then
80 shall have the opportunity to apply for admission to a
81 registered nurse to bachelor of science in nursing program.

82 (5) The career pathway shall be made available to
83 students statewide beginning with the cohort of students
84 entering ninth grade during the 2021-2022 school year.

85 (d) The State Superintendent, the Chancellor for Higher
86 Education, the Chancellor for Community and Technical
87 College Education, or any combination thereof, shall report
88 to the Legislative Oversight Commission on Education
89 Accountability, as requested, but at least annually, on the

90 progress in implementing the career pathway up until such
91 time as the career pathway is fully implemented statewide.

92 (e) In establishing the nursing career pathway, the State
93 Superintendent, the Chancellor for Higher Education, the
94 Chancellor of Community and Technical College
95 Education, and the workgroup created pursuant to
96 subsection (c) of this section shall consider the following:

97 (1) If the career pathway is difficult to implement due to
98 nursing programs being at full capacity, the workgroup shall
99 explore the use of online programs currently in existence or
100 the creation of new online programs in overcoming any lack
101 of capacity in the current nursing programs and to make
102 programs more accessible to students; and

103 (2) The nursing career pathway shall include the use of
104 any available financial assistance in order to minimize, or if
105 possible, eliminate tuition costs for students and their
106 families. This assistance can include, if a student is eligible,
107 the Federal Pell Grant Program, the Higher Education Grant
108 Program, the PROMISE Scholarship Program, the West
109 Virginia Invests Grant Program, and any other grants or
110 scholarships that might be available. Health care providers
111 in need of nurses also shall be encouraged to establish
112 scholarship programs to help cover tuition costs.

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CHAPTER 113

(S. B. 723 - By Senators Rucker, Cline, Stollings and Roberts)

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-43, relating to requiring Department of Education to analyze statewide data collected on school disciplinary action and, based on the findings of this data, develop a statewide program intended to address the number of disciplinary actions taken by school personnel and county boards; requiring information by subgroups; requiring county board implementation with goal of improving disciplinary outcomes; requiring the Department of Education to prepare a report on the findings and provide a summary of the progress of the statewide and individual county programs; and present these findings to the Legislative Oversight Commission on Education Accountability every two years.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-43. Addressing disciplinary action in West Virginia schools.

1 (a) The Department of Education shall analyze
2 statewide data collected on school disciplinary action and,
3 based on the findings of this data, develop a statewide
4 program intended to address the number of disciplinary
5 actions taken by school personnel and county school boards
6 against students enrolled in grades K-12. This program will

7 include information by subgroup, including, but not limited
8 to, race, gender, and disability.

9 (b) County boards of education shall implement the
10 program outlined in subsection (a) of this section with the
11 ultimate goal of improving disciplinary outcomes.

12 (c) The Department of Education shall prepare a report
13 on the findings of statewide disciplinary data and, in
14 addition to these findings, provide a summary of the
15 progress of the statewide program and individual county
16 programs, evaluating the extent to which the programs have
17 successfully led to making a positive impact in disciplinary
18 actions in West Virginia school systems. The Department of
19 Education shall present these findings to the Legislative
20 Oversight Commission on Education Accountability every
21 two years starting in the year 2022.

CHAPTER 114

(S. B. 750 - By Senators Rucker and Cline)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated †§18-2-7f, relating to establishing alternative educational opportunities for elective course credit; setting forth legislative findings; requiring the state board to promulgate a rule requiring county boards to develop alternative educational opportunities policies; requiring county boards to adopt alternative educational opportunities policies and setting forth parameters therefore; authorizing county boards to approve or deny alternative educational programs and to audit the same; and requiring the Department of Education to report to the Legislative Oversight Commission on Education Accountability after three years of implementation.

† Redesignated

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

†§18-2-7f. Alternative educational opportunities for elective course credit.

1 (a) The Legislature finds and declares that:

2 (1) Programs outside of the traditional classroom have
3 educational value;

4 (2) Many entities, including, but not limited to,
5 nonprofit organizations, afterschool programs, businesses,
6 and trade associations, may have an interest in offering
7 programs outside of the traditional classroom that are
8 attractive to students and contain educational value;

9 (3) Learning opportunities that are designed to address
10 the interests and aptitudes of the individual student will
11 enable students to discover, develop, and apply their
12 individual talents to realize their full potential;

13 (4) Policies that allow for educational opportunities
14 outside of the traditional classroom exist in other states;

15 (5) Providing credit for alternative educational
16 opportunities will enrich the learning environment of
17 students and develop well-rounded individuals ready for a
18 life of learning, productive work, and community
19 involvement.

20 (b) The State Board of Education shall promulgate a rule
21 requiring county boards of education to develop an
22 alternative educational opportunities policy that provides
23 students involved in educational opportunities outside of the
24 traditional classroom to receive elective course credit.

25 (c) The county boards of education shall adopt an
26 alternative educational opportunities policy that recognizes
27 learning opportunities outside of the traditional classroom
28 and grants elective course credit. The policy shall:

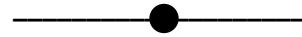
† Redesignated

- 29 (1) Provide for an application process for entities to
30 submit proposals for alternative educational programs that
31 will qualify for elective course credit;
- 32 (2) Define which entities are eligible to submit
33 applications for alternative educational programs: *Provided*,
34 That entities which are deemed eligible shall be broadly
35 defined and shall include, but not be limited to:
- 36 (A) Nonprofit organizations;
- 37 (B) Businesses with established locations in the state;
- 38 (C) Trade associations;
- 39 (D) Parents of students involved in programs that may
40 otherwise qualify as an alternative educational program;
- 41 (E) Teachers involved in programs outside of the
42 traditional classroom; and
- 43 (F) School personnel involved in programs outside of
44 the traditional classroom;
- 45 (3) Provide for the criteria to be used to evaluate the
46 alternative educational program;
- 47 (4) Describe any communication and collaboration
48 needed between the local school, county board, or State
49 Board of Education to implement alternative educational
50 opportunities;
- 51 (5) Place requirements on the entity, such as background
52 checks for key personnel, and minimum accountability
53 standards; and
- 54 (6) Provide a process for student credit transfer.
- 55 (d) The county boards of education shall have the
56 authority to approve or deny an application for an
57 alternative educational program: *Provided*, That if the
58 application is denied, the county board shall provide a

59 detailed explanation of the reasons for its denial and suggest
60 ways to improve the application that will assist its more
61 favorable view by the county board.

62 (e) The county boards of education shall have the
63 authority to audit approved alternative educational
64 programs at any time. If the audit results in findings that an
65 approved program is not meeting the provisions of this
66 section or the policy outlined in subsection (c) of this
67 section, then the county board may disqualify the program
68 immediately.

69 (f) The Department of Education shall prepare a report
70 of data analysis and an overview of the alternative learning
71 opportunities to the Legislative Oversight Commission on
72 Education Accountability after three years of
73 implementation.



CHAPTER 115

**(S. B. 842 - By Senators Azinger, Baldwin, Boley,
Cline, Pitsenbarger, Plymale, Roberts, Romano,
Stollings, Trump, Unger, Weld and Rucker)**

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-3-13, relating to requiring the State Superintendent of Schools to immediately establish a Behavior Interventionist Pilot Program in limited number of county school districts for the duration of three years; making findings; setting forth criteria to be used in the selection of the county school districts; allowing the county school districts to immediately create a new behavior interventionist position; requiring the county

superintendent to convene an advisory committee consisting of certain school personnel and the education organizations to advise on qualifications and hiring; requiring behavior interventionists to be designated by the county board as either a professional person or a service person; setting a minimum pay grade in case of service person position; requiring the designated county school districts to establish the qualifications and training requirements; and requiring annual report and final report with certain information to the Legislative Oversight Commission on Education Accountability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-13. Behavior Interventionist Pilot Program.

1 (a) The Legislature finds that:

2 (1) Behavior problems of special education students can
3 be better addressed by personnel who specialize in
4 addressing student behavior issues;

5 (2) With the advent of the opioid crisis in recent years
6 in West Virginia, behavior problems in the state's
7 elementary and secondary education system have increased
8 significantly;

9 (3) Behavior problems impact not just the student who
10 is misbehaving, but also other students at the school;

11 (4) The state should explore various ways to address this
12 issue;

13 (5) One such method of successfully addressing
14 behavioral problems could be through the use of behavior
15 interventionists; and

16 (6) A behavior interventionist who is trained to address
17 student behavior issues at a school could free classroom
18 teachers from having to address behavior issues and allow

19 them to focus exclusively on teaching students which could
20 result in academic achievement increases for other students
21 in the classroom.

22 (b) The state superintendent shall immediately establish
23 a Behavior Interventionist Pilot Program to be implemented
24 in not less than two nor more than 10 county school districts
25 for the duration of three years. In selecting the county
26 school districts, the state superintendent shall select districts
27 meeting the following criteria:

28 (1) The districts shall have among the highest number
29 in the state of students with an individual education
30 program;

31 (2) The districts designated by the state superintendent
32 for the pilot program shall have schools that have a
33 significant number of students enrolled with behavior
34 issues; and

35 (3) The districts shall have the resources to hire and train
36 personnel who specialize in addressing students with
37 behavior issues.

38 (c) The county school districts designated for the pilot
39 programs pursuant to this section may immediately create a
40 new employment position, entitled “behavior
41 interventionist”, which is a school-based position that
42 specializes in addressing behavior issues at a school. Once
43 the counties are chosen, the county superintendent shall
44 convene an advisory committee consisting of principals,
45 teachers, classroom aides, and the education organizations
46 to advise the county superintendent and county board on
47 qualifications and hiring. Behavior interventionists shall be
48 designated by the county board as either a professional
49 person or a service person. If the behavior interventionist is
50 designated as a service person, he or she shall be assigned a
51 pay grade D, at a minimum, for the purpose of the salary
52 schedule set forth in §18A-4-8a of this code. The county
53 school districts designated for the pilot programs shall

54 establish the qualifications for personnel employed in the
55 behavior interventionist position and shall establish the
56 initial and continuing training requirements for the
57 personnel employed in the position.

58 (d) Annually, for the duration of the pilot programs and
59 once after the conclusion of the pilot programs, the county
60 superintendents of the county school districts designated for
61 the pilot programs shall report to the Legislative Oversight
62 Commission on Education Accountability on:

63 (1) Progress toward and methods of implementation of
64 the pilot programs, including the required qualifications and
65 training for personnel employed in the behavior
66 interventionist position;

67 (2) Indicators of the success of the pilot programs,
68 which may include reductions in disciplinary actions and
69 increases in student achievement at the schools in which the
70 behavior interventionists are assigned;

71 (3) Their recommendation on whether the pilot
72 programs should continue beyond the current duration of
73 the pilot programs; and

74 (4) Their recommendation on whether the pilot
75 programs should be replicated in other school districts that
76 have a high percentage of students with an individual
77 education program, that have schools with significant
78 student behavior problems, or both, and if so, how the pilot
79 programs could best be replicated based on the experience
80 and knowledge gained from the pilot programs established
81 pursuant to this section.

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CHAPTER 116

**(Com. Sub. for H. B. 3127 - By Delegates Ellington,
Porterfield, Kessinger, Fast, Wilson, Jennings and
Worrell)**

[Passed March 2, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18-2-25 of the Code of West Virginia, 1931, as amended, relating to the Secondary School Activities Commission and participation by home schooled students in extracurricular activities; setting forth eligibility requirements for home schooled students to participate in extracurricular activities at member schools under certain circumstances; providing that member-to-member transfer protocols apply and providing that reasonable fees may be charged.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

***§18-2-25. Authority of county boards to regulate athletic and other extracurricular activities of secondary schools; delegation of authority to West Virginia Secondary School Activities Commission; authority of commission; approval of rules by state board; incorporation; funds; participation by private and parochial schools and by home-schooled students.**

1 The county boards of education shall exercise the
2 control, supervision and regulation of all interscholastic
3 athletic events, and other extracurricular activities of the
4 students in public secondary schools, and of those schools

***NOTE:** This section was also amended by H. B. 4925 (Chapter 123), which passed subsequent to this act.

5 of their respective counties. The county board of education
6 may delegate control, supervision and regulation of
7 interscholastic athletic events and band activities to the
8 West Virginia Secondary School Activities Commission.

9 The West Virginia Secondary School Activities
10 Commission is composed of the principals, or their
11 representatives, of those secondary schools whose county
12 boards of education have certified in writing to the State
13 Superintendent of Schools that they have elected to delegate
14 the control, supervision and regulation of their
15 interscholastic athletic events and band activities of the
16 students in the public secondary schools in their respective
17 counties to the commission. The West Virginia Secondary
18 School Activities Commission may exercise the control,
19 supervision and regulation of interscholastic athletic events
20 and band activities of secondary schools, delegated to it
21 pursuant to this section. The rules of the West Virginia
22 Secondary School Activities Commission shall contain a
23 provision for a proper review procedure and review board
24 and be promulgated in accordance with the provisions of
25 chapter 29A of this code, but shall, in all instances be
26 subject to the prior approval of the state board. The West
27 Virginia Secondary School Activities Commission, may,
28 with the consent of the State Board of Education,
29 incorporate under the name of West Virginia Secondary
30 School Activities Commission, Inc., as a nonprofit,
31 nonstock corporation under the provisions of chapter 31 of
32 this code. County boards of education may expend moneys
33 for and pay dues to the West Virginia Secondary School
34 Activities Commission, and all moneys paid to the
35 commission, as well as moneys derived from any contest or
36 other event sponsored by the commission, are quasi-public
37 funds as defined in §18-5-1 *et seq.*, of this code, and the
38 funds of the commission are subject to an annual audit by
39 the State Tax Commissioner.

40 The West Virginia Secondary School Activities
41 Commission shall promulgate reasonable rules providing

42 for the control, supervision and regulation of the
43 interscholastic athletic events and other extracurricular
44 activities of private and parochial secondary schools as elect
45 to delegate to the commission control, supervision and
46 regulation, upon the same terms and conditions, subject to
47 the same rules and requirements and upon the payment of
48 the same fees and charges as those provided for public
49 secondary schools. Any such private or parochial secondary
50 school shall receive any monetary or other benefits in the
51 same manner and in the same proportion as any public
52 secondary school.

53 Notwithstanding any other provision of this section or
54 the commission's rules, the commission shall consider
55 eligible for participation in interscholastic athletic events
56 and other extracurricular activities of secondary schools a
57 student who is receiving home instruction pursuant to §18-
58 8-1(c) of this code and who:

59 (1) Has demonstrated satisfactory evidence of academic
60 progress for one year in compliance with the provisions of
61 that subsection: *Provided*, That the student's average test
62 results are within or above the fourth stanine in all subject
63 areas;

64 (2) Is enrolled in at least one virtual instructional course
65 per semester, consistent with the applicable virtual
66 instruction policy of the county board in which the home-
67 schooled student lives and the State Board;

68 (3) Has not reached the age of 19 by August 1 of the
69 current school year;

70 (4) Is an amateur who receives no compensation, but
71 participates solely for the educational, physical, mental and
72 social benefits of the activity;

73 (5) Agrees to comply with all disciplinary rules of the
74 West Virginia Secondary School Activities Commission

75 and the county board in which the home-schooled student
76 lives; and

77 (6) Agrees to obey all rules of the West Virginia
78 Secondary School Activities Commission governing
79 awards, all-star games, parental consents, physical
80 examinations and vaccinations applicable to all high school
81 athletes.

82 Eligibility is limited to participation in interscholastic
83 athletic events and other extracurricular activities at the
84 public secondary school serving the attendance zone in
85 which the student lives: *Provided*, That home-schooled
86 students who leave a member school during the school year
87 are subject to the same transfer protocols that apply to
88 member-to-member transfers. Reasonable fees may be
89 charged to the student to cover the costs of participation in
90 interscholastic athletic events and other extracurricular
91 activities.



CHAPTER 117

**(Com. Sub. for H. B. 4069 - By Delegates Howell, D.
Kelly, Sypolt, Pack, Atkinson, Hill, Butler, Boggs,
Rowan and Summers)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §18-33-1, §18-33-
2, §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, and
§18-33-8, all relating to creating the West Virginia Student
Religious Liberties Act; providing that public school district
shall not discriminate against students or parents on the basis
of a religious viewpoint or religious expression; providing that

students may express their beliefs about religion in homework, artwork and other written assignments without being penalized or rewarded; providing that students in public schools may pray or engage in religious activities or religious expression before, during or after the school day; setting forth how a school district is to treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject; allowing students to express their beliefs about religion in assignments free from discrimination based on the religious content; allowing students to organize prayer groups, religious clubs, and religious gatherings to the same extent that students are permitted to organize other noncurricular student activities and groups; allowing public school students to wear certain items that display religious messages or religious symbols in the same manner and to the same extent that other types of those items that display messages or symbols are permitted; providing that the act may not require participation in religious activity or violate a person's constitutional rights; ensuring that public schools may still maintain order and discipline, protect the safety of students, employees, and visitors of the public school, and adopt and enforce policies and procedures; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 33. STUDENT RELIGIOUS LIBERTIES.

§18-33-1. West Virginia Student Religious Liberties Act.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Student Religious Liberties Act."

§18-33-2. Student expression.

- 1 A public school district shall not discriminate against
- 2 students or parents on the basis of a religious viewpoint or
- 3 religious expression. A school district shall treat a student's
- 4 voluntary expression of a religious viewpoint, if any, on an
- 5 otherwise permissible subject in the same manner the
- 6 district treats a student's voluntary expression of a secular

7 or other viewpoint on an otherwise permissible subject and
8 may not discriminate against the student based on a
9 religious viewpoint expressed by the student on an
10 otherwise permissible subject.

§18-33-3. Religious expression in class assignments.

1 As more fully set forth in §18-33-5(b) of this code,
2 students may express their beliefs about religion in
3 homework, artwork, and other written and oral assignments
4 free from discrimination and may not be penalized or
5 rewarded on account of the religious content of their work:
6 *Provided*, That a student may express disagreement and
7 offer opposing views regarding any issue based on religious
8 beliefs, but may not be excused from answering a test
9 question or other assignment correctly because the answer
10 to that question that was provided in course content is
11 counter to the religious beliefs of the student.

§18-33-4. Freedom to organize and advertise religious groups and activities.

1 As more fully set forth in §18-33-5(c) and §18-33-5(d)
2 of this code, students in public schools may pray or engage
3 in religious activities or religious expression before, during,
4 and after the school day in the same manner and to the same
5 extent that students may engage in nonreligious activities or
6 expression.

§18-33-5. Student expression of religious viewpoints; religious expression in class assignments; freedom to organize and advertise religious groups and activities; displaying religious messages or symbols.

1 (a) *Student expression of religious viewpoints.* — The
2 school district shall treat a student's voluntary expression of
3 a religious viewpoint, if any, on an otherwise permissible
4 subject in the same manner the district treats a student's
5 voluntary expression of a secular or other viewpoint on an
6 otherwise permissible subject and may not discriminate

7 against the student based on a religious viewpoint expressed
8 by the student on an otherwise permissible subject.

9 (b) *Religious expression in class assignments.* —
10 Students may express their beliefs about religion in
11 homework, artwork, and other written and oral assignments
12 free from discrimination based on the religious content of
13 the students' submissions. Homework and classroom work
14 shall be judged by ordinary academic standards of substance
15 and relevance and against other legitimate pedagogical
16 concerns identified by the school. Students may not be
17 penalized or rewarded on account of religious content. If a
18 teacher's assignment involves writing a poem, the work of
19 a student who submits a poem in the form of a prayer (for
20 example, a psalm) should be judged on the basis of
21 academic standards, including literary quality, and not
22 penalized or rewarded on account of its religious content.

23 (c) *Freedom to organize and advertise religious groups*
24 *and activities.* — Students may organize prayer groups,
25 religious clubs, "see you at the pole" gatherings, and other
26 religious gatherings before, during, and after school to the
27 same extent that students are permitted to organize other
28 noncurricular student activities and groups. Religious
29 groups must be given the same access to school facilities for
30 assembling as is given to other noncurricular groups,
31 without discrimination based on the religious content of the
32 group's expression. If student groups that meet for
33 nonreligious activities are permitted to advertise or
34 announce the groups' meetings, for example, by advertising
35 in a student newspaper, putting up posters, making
36 announcements on a student activities bulletin board or
37 public address system, religious groups must also be
38 permitted to advertise or announce group meetings.

39 (d) *Displaying religious messages or symbols.* —
40 Students in public schools may wear clothing, accessories,
41 and jewelry that display religious messages or religious
42 symbols in the same manner and to the same extent that

43 other types of clothing, accessories, and jewelry that display
44 messages or symbols are permitted.

§18-33-6. Certain acts restricted.

1 This act may not be construed to authorize this state or
2 any of its political subdivisions to do either of the following:

3 (1) Require any person to participate in prayer or in any
4 other religious activity; or

5 (2) Violate the constitutional rights of any person.

§18-33-7. Certain authority may not be limited.

1 This act shall not be construed to limit the authority of
2 any public school to do any of the following:

3 (1) Maintain order and discipline on the campus of the
4 public school in a content- and viewpoint-neutral manner;

5 (2) Protect the safety of students, employees, and
6 visitors of the public school; and

7 (3) Adopt and enforce policies and procedures regarding
8 student speech at school, provided that the policies and
9 procedures do not violate the rights of students as
10 guaranteed by the United States and West Virginia
11 constitutions and laws.

§18-33-8. First school year affected.

1 This act shall be in force beginning with the 2020-2021
2 school year.

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CHAPTER 118

(Com. Sub. for H. B. 4165 - By Delegates Hanna, Higginbotham, Jennings, Bibby and Waxman)

[Passed March 5, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-8b, relating to public education; establishing the West Virginia Remembers Program; and authorizing the State Board of Education to promulgate a rule providing for maintaining of lists by county boards of veteran volunteers to speak in the public schools.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-8b. West Virginia Remembers Program; rulemaking.

1 (a) There is hereby created the “West Virginia
2 Remembers Program” whereby children in the public
3 schools may learn about military service, patriotism and
4 courage in the defense of our country from veterans who
5 volunteer to share their experiences in the educational
6 setting. Participation in the program by classroom teachers
7 is voluntary and may not be considered a course
8 requirement or mandatory in any other way.

9 (b) The state board may promulgate a rule in accordance
10 with §29A-3B-1 *et seq.* of this code to implement this
11 section with regard to solicitation of speakers from
12 veterans’ groups and maintenance of lists by county boards
13 of available speakers.

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CHAPTER 119

**(Com. Sub. for H. B. 4497 - By Delegates Mandt,
Atkinson, Criss, Hill, Lovejoy, Miller, Linville,
Worrell, Hornbuckle, Rohrbach and Ellington)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-25c, relating to requiring the West Virginia Secondary School Activities Commission to require that an automated external defibrillator device, as well as a posted emergency action plan, be present on the school or event grounds during the duration of all athletic events and practices under the control, supervision and regulation of the commission, and that appropriate school sports personnel be trained in the use of the device; requiring that rules be proposed for promulgation by the state board of education; providing that no individual or entity be held liable for civil damages when the individual or entity in good faith attempted to comply with certain requirements; and naming the law The Alex Miller Law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-25c. Defibrillator required at certain events.

- 1 (a) In memory of Alex Miller, a Roane County football
- 2 player who collapsed and died during a school football
- 3 game, this law shall be known as The Alex Miller Law.

- 4 (b) By the 2021-2022 school year, the West Virginia
- 5 Secondary School Activities Commission shall require that
- 6 an automated external defibrillator device, as well as a

7 posted emergency action plan, be present on the school or
8 event grounds during the duration of all athletic events and
9 practices under the control, supervision, and regulation of
10 the commission, and that appropriate school sports
11 personnel be trained in the use of the device.

12 (c) The commission shall propose rules for
13 promulgation by the State Board in accordance with §29A-
14 3B-1 *et seq.* of this code to implement the provisions of this
15 section including proximity.

16 (d) No individual, school, county board of education, or
17 other entity shall be held liable for civil damages when such
18 individual, school, county board of education, or other
19 entity in good faith attempted to comply with the
20 requirements of this section or rules promulgated pursuant
21 thereto.

CHAPTER 120

**(H. B. 4519 - By Delegates Espinosa, Hanna,
Higginbotham, Ellington and Mandt)**

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2D-8; and to amend said code by adding thereto a new section, designated §18-2-7e, all relating to partnerships for improving student engagement and preparation in the changing world of work; establishing a summer youth intern pilot program within Department of Commerce; authorizing diverse stakeholder working group and external champions for development and support of future-ready graduate profile for success in occupations and entrepreneurship; suggesting action steps; and suggesting roles for local school improvement councils.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF
1985.**

**ARTICLE 2D. WEST VIRGINIA GUARANTEED WORK
FORCE PROGRAM.**

§5B-2D-8. Summer youth intern pilot program.

1 A summer youth intern pilot program is established
2 within the Department of Commerce to provide high school
3 students with internship opportunities that allow these
4 youths to explore and prepare for high-demand careers, gain
5 work experience, and develop the life characteristics
6 necessary for success in occupations and entrepreneurship.
7 The Department of Commerce shall work with employers,
8 nonprofit organizations, and educational institutions to
9 provide for the placement of youth in internships primarily
10 in high-demand career fields with a prioritization of offering
11 equitable opportunities for all students. Subject to an
12 appropriation by the Legislature for this purpose, the
13 Department of Commerce may award grants to assist
14 employers with costs of the summer youth intern pilot
15 projects on a competitive basis subject to the following:

16 (1) The Department of Commerce shall annually issue a
17 request for proposals to the public, specifying the
18 expectations, requirements, and qualifications for the
19 summer youth intern pilot program grant, including, but not
20 limited to, the provision of facilities, programming, staffing,
21 and outcomes; and

22 (2) The Department of Commerce shall give full and fair
23 consideration to each proposal submitted under subdivision
24 (1) of this subsection and shall award grants after
25 considering, at a minimum, the following:

26 (A) The bidder's history and experience in the
27 community;

28 (B) The capacity to serve a substantial number of
29 youths;

30 (C) The suitability of the available facilities;

31 (D) The bidder's contacts and partnerships in the
32 community that can be leveraged to maximize opportunity
33 for project participants; and

34 (E) The capacity to provide employability skills,
35 including but not limited to training relating to soft skills,
36 financial literacy, and career development.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7e. Business and community partnerships for improving student engagement and preparation; roles of school district leadership and local school improvement councils; future-ready graduate profile.

1 (a) The purpose of this section is to complement the
2 delivery of programs in workforce preparation set forth in
3 §18-2-7d of this code by providing a framework for schools,
4 school systems, and communities to:

5 (1) Engage their local stakeholders in developing a
6 shared vision of the knowledge, college, and career skills,
7 and life characteristics that a future-ready graduate of their
8 school system will need for success in occupations and
9 entrepreneurship in the changing world of work;

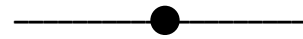
10 (2) Build strategic partnerships that instill within
11 students an awareness of the changing world of work, build
12 an appreciation of the relevancy of academic subject matter
13 for future success, nurture the whole child, and promote
14 student acquisition of the knowledge, skills, and
15 characteristics needed for success; and

16 (3) Provide an opportunity for students to gain valuable
17 experience and skills in a workplace environment while still
18 exploring their interests and abilities.

19 (b) A county board may establish a diverse stakeholder
20 working group which may include, but is not limited, to
21 educators from both public and higher education, businesses
22 and business organizations, associations and authorities,
23 families, students, community leaders, and any other
24 stakeholders they may choose. Working with the school
25 system leadership, the purpose of the stakeholder working
26 group is to assist in the development of a succinct profile of
27 a future-ready graduate of the school system containing the
28 knowledge, college and career skills, and life characteristics
29 that they agree are needed for success in occupations and
30 entrepreneurship in the changing world of work. The school
31 system leadership may include the stakeholders in creating
32 visibility and support for their unique, shared vision of a
33 future-ready graduate and in setting the stage for planning
34 and action steps that may be necessary to prepare future-
35 ready graduates. The school system leadership may engage
36 external champions who are committed to the shared vision
37 of a future-ready graduate to help generate community
38 awareness and support for the project and to build strategic
39 partnerships for program implementation. The action steps
40 should include clearly articulating the profile of the future-
41 ready graduate to participating schools, parents and the
42 community, nurturing the whole child, and beginning the
43 development of foundational knowledge, skills, and
44 characteristics beginning in the early years of school, and
45 establishing multiple paths toward college and career
46 readiness for students that include internships, externships,
47 and credentialing.

48 (c) Local school improvement councils can play a key
49 role in the implementation of programs at the age
50 appropriate grade levels by engaging the school's business
51 and community partners, including two-year and four-year
52 institutions of higher education, to help develop within

53 students an awareness of the changing world of work and an
54 appreciation of the relevancy of academic subject matter for
55 success in various occupations and entrepreneurship. This
56 may include, but is not limited to, presentations by guest
57 speakers, demonstrations, hands-on creative projects,
58 virtual or on-site visits to work places, and internships,
59 externships, and credentialing appropriate for the grade
60 levels of the school to reinforce the competencies students
61 will need for success. Local school improvement councils
62 may exercise their authority pursuant to §18-5A-3 of this
63 code to seek waivers from rules, policies, interpretations,
64 and statutes for plan implementation.



CHAPTER 121

**(Com. Sub. for H. B. 4780 - By Delegates Bartlett, D.
Jeffries, Fast, P. Martin, Dean, C. Martin,
Porterfield, Waxman, Foster, Butler and Rodighiero)**

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-9a, relating to allowing county boards of education to offer students in grade nine or above an elective social studies course on Hebrew Scriptures, Old Testament of the Bible, New Testament of the Bible, or Hebrew Scriptures and New Testament of the Bible; setting forth the purposes of the course; permitting students to use a translation of their choice; requiring county board of education to submit to the West Virginia Department of Education the course standards, including the teacher qualifications and required professional development; and imposing requirements applicable to the course, the county board of education, and the State Board of Education.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-9a. Elective courses of instruction on the Bible.

1 (a) County boards of education may offer to students in
2 grade nine or above:

3 (1) An elective social studies course on the Hebrew
4 Scriptures, Old Testament of the Bible;

5 (2) An elective social studies course on the New
6 Testament of the Bible; or

7 (3) An elective social studies course on the Hebrew
8 Scriptures and the New Testament of the Bible.

9 (b) The purpose of a course under this section is to:

10 (1) Teach students knowledge of biblical content,
11 characters, poetry, and narratives that are prerequisites to
12 understanding the development of American society and
13 culture, including literature, art, music, mores, oratory, and
14 public policy; and

15 (2) Familiarize students with, as applicable:

16 (A) The contents of the Hebrew Scriptures or New
17 Testament;

18 (B) The history of the Hebrew Scriptures or New
19 Testament;

20 (C) The literary style and structure of the Hebrew
21 Scriptures or New Testament; and

22 (D) The influence of the Hebrew Scriptures or New
23 Testament on law, history, government, literature, art,
24 music, customs, morals, values, and culture.

25 (c) A student may not be required to use a specific
26 translation as the sole text of the Hebrew Scriptures or New

27 Testament and may use as the basic textbook a different
28 translation of the Hebrew Scriptures or New Testament
29 from that chosen by the county board or school.

30 (d) The county board of education shall submit to the
31 West Virginia Department of Education the course
32 standards for any elective to be offered pursuant to
33 subsection (a), of this section including the teacher
34 qualifications and required professional development.

35 (e) A course offered under this section shall follow
36 applicable law and all federal and state guidelines in
37 maintaining religious neutrality and accommodating the
38 diverse religious views, traditions, and perspectives of
39 students in the school. A course under this section may not
40 endorse, favor, promote, disfavor, or show hostility
41 toward, any particular religion or nonreligious faith or
42 religious perspective. Any county board offering a course
43 under this section, shall not violate any provision of the
44 United States Constitution or federal law, the West Virginia
45 Constitution or any state law, any administrative regulations
46 of the United States Department of Education, or any rule
47 of the state board. The state board shall provide guidance
48 to the county boards on complying with the requirements of
49 this subsection.

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CHAPTER 122

**(H. B. 4790 - By Delegates Ellington, Higginbotham,
Atkinson, Hanna, Toney, Waxman, Hornbuckle,
Campbell, Lavender-Bowe, R. Thompson and
Zukoff)**

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §18-2-7d of the Code of West Virginia, 1931, as amended, relating to Career Technical Education for middle school students; broadening workforce preparedness information to be communicated to students to include the knowledge, skills and characteristics needed for success in occupations and entrepreneurship; integration with career exploration beginning in middle school grades; and requiring county boards to provide elective Career Technical Education courses for middle school students beginning 2022-2023 school year.

Be it enacted by the Legislature of West Virginia:

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 knowledge, college and career
21 skills and life characteristics needed for success in
22 occupations and entrepreneurship in the changing world of
23 work. At the middle school level, the program may be
24 integrated with comprehensive career exploration which
25 also may include, but is not limited to, Career Technical
26 Education foundational courses, stand-alone Career
27 Exploration courses and mini courses, field trips, guest
28 speakers, and career mentors as provided in the state board
29 rule.

30 (c) Beginning with the school year 2022-2023, county
31 boards of education shall provide elective Career Technical
32 Education courses for middle school students that may
33 include, but are not limited to, foundational Career
34 Technical Education courses, Career Technical Education
35 courses developed with a focus on high need occupational
36 areas within the area or region, agriculture, industrial arts
37 and family and consumer sciences.

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CHAPTER 123

**(Com. Sub. for H. B. 4925 - By Delegates Kessinger,
Hornbuckle, Maynard and Campbell)**

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18-2-25 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Secondary School Activities Commission; providing for participation by home schooled students in extracurricular activities; setting forth eligibility requirements for home schooled students to participate in extracurricular activities at member schools under certain circumstances; providing that member-to-member transfer protocols apply and providing that reasonable fees may be charged; and requiring the West Virginia Secondary School Activities Commission to recognize certain preparatory athletic programs as nonparticipating members of the commission solely for the purpose of competing on the national level.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

***§18-2-25. Authority of county boards to regulate athletic and other extracurricular activities of secondary schools; delegation of authority to West Virginia Secondary School Activities Commission; authority of commission; approval of rules by state board; incorporation; funds; participation by private and parochial schools and by home-schooled students.**

- 1 (a) The county boards of education shall exercise the
- 2 control, supervision, and regulation of all interscholastic

***NOTE:** This section was also amended by H. B. 3127 (Chapter 116), which passed prior to this act.

3 athletic events, and other extracurricular activities of the
4 students in public secondary schools, and of those schools
5 of their respective counties. The county board of education
6 may delegate control, supervision, and regulation of
7 interscholastic athletic events and band activities to the
8 West Virginia Secondary School Activities Commission.

9 (b) The West Virginia Secondary School Activities
10 Commission is composed of the principals, or their
11 representatives, of those secondary schools whose county
12 boards of education have certified in writing to the State
13 Superintendent of Schools that they have elected to delegate
14 the control, supervision, and regulation of their
15 interscholastic athletic events and band activities of the
16 students in the public secondary schools in their respective
17 counties to the commission. The West Virginia Secondary
18 School Activities Commission may exercise the control,
19 supervision, and regulation of interscholastic athletic events
20 and band activities of secondary schools, delegated to it
21 pursuant to this section. The rules of the West Virginia
22 Secondary School Activities Commission shall contain a
23 provision for a proper review procedure and review board
24 and be promulgated in accordance with the provisions of
25 chapter 29A of this code, but shall, in all instances, be
26 subject to the prior approval of the state board. The West
27 Virginia Secondary School Activities Commission, may,
28 with the consent of the State Board of Education,
29 incorporate under the name of West Virginia Secondary
30 School Activities Commission, Inc., as a nonprofit,
31 nonstock corporation under the provisions of chapter 31 of
32 this code. County boards of education may expend moneys
33 for and pay dues to the West Virginia Secondary School
34 Activities Commission, and all moneys paid to the
35 commission, as well as moneys derived from any contest or
36 other event sponsored by the commission, are quasi-public
37 funds as defined in §18-5-1 *et seq.* of this code, and the
38 funds of the commission are subject to an annual audit by
39 the State Tax Commissioner.

40 (c) The West Virginia Secondary School Activities
41 Commission shall promulgate reasonable rules providing
42 for the control, supervision, and regulation of the
43 interscholastic athletic events and other extracurricular
44 activities of private and parochial secondary schools as elect
45 to delegate to the commission control, supervision, and
46 regulation, upon the same terms and conditions, subject to
47 the same rules and requirements and upon the payment of
48 the same fees and charges as those provided for public
49 secondary schools. Any such private or parochial secondary
50 school shall receive any monetary or other benefits in the
51 same manner and in the same proportion as any public
52 secondary school.

53 (d) Notwithstanding any other provision of this section,
54 or the commission's rules, the commission shall consider
55 eligible for participation in interscholastic athletic events
56 and other extracurricular activities of secondary schools a
57 student who is receiving home instruction pursuant to §18-
58 8-1(c) of this code and who:

59 (1) Has demonstrated satisfactory evidence of academic
60 progress for one year in compliance with the provisions of
61 that subsection: *Provided*, That the student's average test
62 results are within or above the fourth stanine in all subject
63 areas;

64 (2) Is enrolled in at least one virtual instructional course
65 per semester, consistent with the applicable virtual
66 instruction policy of the county board in which the home-
67 schooled student lives and the State Board;

68 (3) Has not reached the age of 19 by August 1 of the
69 current school year;

70 (4) Is an amateur who receives no compensation but
71 participates solely for the educational, physical, mental and
72 social benefits of the activity;

73 (5) Agrees to comply with all disciplinary rules of the
74 West Virginia Secondary School Activities Commission
75 and the county board in which the home-schooled student
76 lives; and

77 (6) Agrees to obey all rules of the West Virginia
78 Secondary School Activities Commission governing
79 awards, all-star games, parental consents, physical
80 examinations, and vaccinations applicable to all high school
81 athletes.

82 Eligibility is limited to participation in interscholastic
83 athletic events and other extracurricular activities at the
84 public secondary school serving the attendance zone in
85 which the student lives: *Provided*, That home-schooled
86 students who leave a member school during the school year
87 are subject to the same transfer protocols that apply to
88 member-to-member transfers. Reasonable fees may be
89 charged to the student to cover the costs of participation in
90 interscholastic athletic events and other extracurricular
91 activities.

92 (e) The West Virginia Secondary School Activities
93 Commission shall recognize preparatory athletic programs,
94 whose participants attend a secondary school in West
95 Virginia for academic instruction, as nonparticipating
96 members of the commission solely for the purpose of
97 competing on the national level: *Provided*, That the
98 preparatory athletic program shall pay the same fees as
99 member schools. Such recognition does not entitle the
100 preparatory athletic program to compete against a member
101 school during the regular season or in any commission state
102 championship events. The commission may promulgate an
103 emergency rule pursuant to subsection (b) of this section, if
104 necessary, to carry out the intent of this subsection.

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CHAPTER 124

**(Com. Sub. for S. B. 94 - By Senators Trump, Weld,
Azinger, Baldwin, Beach, Clements, Cline, Hardesty,
Jeffries, Lindsay, Maynard, Pitsenbarger, Romano,
Rucker, Smith, Takubo, Woelfel, Hamilton, Stollings,
Ihlenfeld and Sypolt)**

[Passed January 24, 2020; in effect from passage.]

[Approved by the Governor on February 3, 2020.]

AN ACT to amend and reenact §3-3-1, §3-3-2, §3-3-2b, §3-3-4, §3-3-5, and §3-3-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §3-3-1a, all relating generally to absentee voting; clarifying that voters with disabilities prevented from voting in person may vote by mail-in absentee ballot; providing that voters with physical disabilities may vote by electronic absentee ballot; clarifying that certain overseas military members and citizens may vote by electronic absentee ballot; defining terms; providing that a voter with a physical disability may electronically submit an application to vote absentee; establishing that a voter may be on the special absentee voting list while the voter has a physical disability; providing that the information collected in the application to be placed on the special absentee voting list include whether a voter with a physical disability requests an electronic absentee ballot; clarifying that a voter with a physical disability can receive assistance to vote in certain circumstances; establishing requirements and deadlines for transmission, submission, and acceptance of electronic absentee ballots; and updating obsolete terms.

Be it enacted by the Legislature of West Virginia:

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) Disability, 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 are authorized to vote an electronic absentee ballot
53 in the following circumstances:

54 (1) The voter has a physical disability, as defined in §3-
55 3-1a of this code; or

56 (2) The voter is absent from the county throughout the
57 period and available hours for voting in person and is an
58 absent uniformed services voter or overseas voter, as
59 defined by 42 U.S.C. §1973, *et seq.*, the Uniformed and
60 Overseas Citizens Absentee Voting Act of 1986, including
61 members of the uniformed services on active duty, members
62 of the merchant marine, spouses and dependents of those
63 members on active duty, and persons who reside outside the

64 United States and are qualified to vote in the last place in
65 which the person was domiciled before leaving the United
66 States.

67 (d) Registered voters and other qualified voters in the
68 county may, in the following circumstances, vote an
69 emergency absentee ballot, subject to the availability of the
70 services as provided in this article:

71 (1) Any voter who is confined or expects to be confined
72 in a hospital or other duly licensed health care facility within
73 the county of residence or other authorized area, as provided
74 in this article, on the day of the election;

75 (2) Any voter who resides in a nursing home within the
76 county of residence and would be otherwise unable to vote
77 in person, providing the county commission has authorized
78 the services if the voter has resided in the nursing home for
79 a period of less than 30 days;

80 (3) Any voter who becomes confined, on or after the
81 seventh day preceding an election, to a specific location
82 within the county because of illness, injury, physical
83 disability, immobility due to advanced age, or another
84 medical reason: *Provided*, That the county clerk may
85 require a written confirmation by a licensed physician,
86 physician's assistant, or advanced practice registered nurse
87 that the voter meets the criteria of this subdivision before
88 permitting such voter to vote an emergency absentee ballot;
89 and

90 (4) Any voter who is working as a replacement poll
91 worker and is assigned to a precinct out of his or her voting
92 district, if the assignment was made after the period for
93 voting an absentee ballot in person has expired.

§3-3-1a. Definitions.

1 For the purposes of this article, the following terms have
2 the following definitions:

3 (1) "Disability" means a physical or mental impairment
4 that substantially limits one or more major life activities.

5 (2) "Physical disability" means a physical impairment
6 that substantially limits one or more major life activities and
7 renders a person unable to vote in person, at the polls,
8 without assistance.

**§3-3-2. Authority to conduct absentee voting; absentee voting
application; form.**

1 (a) Absentee voting is to be supervised and conducted
2 by the proper official for the political division in which the
3 election is held, in conjunction with the ballot
4 commissioners appointed from each political party, as
5 follows:

6 (1) For any election held throughout the county, within
7 a political subdivision or territory other than a municipality,
8 or within a municipality when the municipal election is
9 conducted in conjunction with a county election, the clerk
10 of the county commission; or

11 (2) The municipal recorder or other officer authorized
12 by charter or ordinance provisions to conduct absentee
13 voting, for any election held entirely within the
14 municipality, or in the case of annexation elections, within
15 the area affected. The terms "clerk" or "clerk of the county
16 commission" or "official designated to supervise and
17 conduct absentee voting" used elsewhere in this article
18 means municipal recorder or other officer in the case of
19 municipal elections.

20 (b) A person authorized and desiring to vote a mail-in
21 absentee ballot or an electronic absentee ballot in any
22 primary, general, or special election is to make application
23 in the proper form to the proper official as follows:

24 (1) The completed application is to be on a form
25 prescribed by the Secretary of State and is to contain the
26 name, date of birth, and political affiliation of the voter,

27 residence address within the county, the address to which
28 the ballot is to be mailed, the authorized reason, if any, for
29 which the absentee ballot is requested and, if the reason is
30 illness or hospitalization, the name and telephone number of
31 the attending physician, the signature of the voter to a
32 declaration made under the penalties for false swearing as
33 provided in §3-3-9 of this code that the statements and
34 declarations contained in the application are true, any
35 additional information which the voter is required to supply,
36 any affidavit which may be required, and an indication as to
37 whether it is an application for voting in person, by mail, or
38 electronically;

39 (2) For any person authorized to vote an absentee ballot
40 under the provisions of 42 U.S.C. §1973, *et seq.*, the
41 Uniformed and Overseas Citizens Absentee Voting Act of
42 1986, the completed application may be on the federal
43 postcard application for absentee ballot form issued under
44 authority of that act, submitted by mail or electronically;
45 and

46 (3) For any voter with a physical disability, the
47 completed application may be submitted by mail or
48 electronically, in a form prescribed by the Secretary of
49 State;

50 (4) For any person unable to obtain the official form for
51 absentee balloting at a reasonable time before the deadline
52 by which an application for an absentee ballot is to be
53 received by the proper official, the completed application
54 may be in a form set out by the voter, containing all
55 information that would otherwise be required on the
56 appropriate application and the signature of the voter
57 requesting the ballot; or

58 (5) For any person authorized to vote an absentee ballot
59 who is participating in the Address Confidentiality Program
60 as established by §48-28A-103 of this code, application may
61 be made to the program manager within the office of the
62 Secretary of State to vote a mail-in absentee ballot. The

63 program manager will notify the designated county contact
64 to coordinate the application and the provision of an
65 absentee ballot to the program participant.

§3-3-2b. Special absentee voting list.

1 (a) Any person who is registered and otherwise
2 qualified to vote and who is physically disabled and unable
3 to vote in person at the polls in an election may apply to the
4 official designated to supervise and conduct absentee voting
5 for placement on the special absentee voting list.

6 (b) Any person who is registered and otherwise
7 qualified to vote and who is participating in the Address
8 Confidentiality Program, as established by §48-28A-103 of
9 this code, may apply to the program manager within the
10 office of the Secretary of State for placement on the special
11 absentee voting list. The program manager will notify the
12 designated county contact to coordinate the provision of an
13 absentee ballot to the program participant.

14 (c) The application is to be on a form prescribed by the
15 Secretary of State which is to include:

16 (1) The voter's name and signature;

17 (2) The voter's residence address, unless the applicant
18 is a participant in the Address Confidentiality Program as
19 established by §48-28A-103 of this code;

20 (3) (A) A statement that the voter has a physical
21 disability and would be unable to vote in person at the polls
22 in any election, a description of the nature of that disability,
23 and a statement signed by a physician to that effect; or

24 (B) A statement that the voter is a program participant
25 in the Address Confidentiality Program; and

26 (4) If the voter has a physical disability, whether the
27 voter requests a mail-in absentee ballot or an electronic
28 absentee ballot.

29 (d) Upon receipt of a properly completed application,
30 the official designated to supervise and conduct absentee
31 voting shall enter the name on the special absentee voting
32 list which is to be maintained in a secure and permanent
33 record. The person's name will remain active on the list
34 until: (1) The person requests in writing that his or her name
35 be removed; (2) the person is no longer a resident of the
36 county, is purged from the voter registration books, or
37 otherwise becomes ineligible to vote; (3) a ballot mailed to
38 the address provided on the application is returned
39 undeliverable by the United States Postal Service; (4) the
40 person no longer has a physical disability; (5) the person
41 dies; or (6) in the case of an Address Confidentiality
42 Program participant, the person withdraws or is removed
43 from that program.

44 (e) The official designated to supervise and conduct
45 absentee voting shall, not later than 46 days before each
46 election:

47 (1) Deliver an absentee ballot by mail to each voter
48 active on the special absentee voting list due to a physical
49 disability who requested a mail-in absentee ballot on the
50 application; and

51 (2) Electronically transmit an absentee ballot to each
52 voter on the special absentee voting list due to a physical
53 disability who requested an electronic absentee ballot on the
54 application.

55 (f) The Address Confidentiality Program manager shall,
56 in coordination with the designated county contact, mail to
57 each person on the special absentee voting list due to
58 participation in the Address Confidentiality Program an
59 absentee ballot by mail not later than 46 days before each
60 election.

**§3-3-4. Assistance to voter in voting an absentee ballot by
personal appearance; penalties.**

1 (a) Any registered voter who requires assistance to vote
2 by reason of blindness, physical disability, advanced age, or
3 inability to read and write may be given assistance by a
4 person of the voter's choice: *Provided*, That the assistance
5 may not be given by the voter's present or former employer
6 or agent of that employer, by the officer or agent of a labor
7 union of which the voter is a past or present member, or by
8 a candidate on the ballot.

9 (b) Any voter who requests assistance in voting an
10 absentee ballot but who is determined by the official
11 designated to supervise and conduct absentee voting not to
12 be qualified for assistance under the provisions of this
13 section and §3-1-34 of this code may vote a provisional
14 absentee ballot with the assistance of any person authorized
15 to render assistance pursuant to this section. The official
16 designated to supervise and conduct absentee voting shall,
17 in this case, challenge the absentee ballot on the basis of his
18 or her determination that the voter is not qualified for
19 assistance.

20 (c) Any one or more of the election commissioners or
21 poll clerks in the precinct to which an absentee ballot has
22 been sent may challenge the ballot on the grounds that the
23 voter received assistance in voting the ballot when in his or
24 their opinion: (1) The person who received the assistance in
25 voting the absentee ballot did not require assistance; or (2)
26 the person who provided the assistance in voting did not
27 make an affidavit as required by this section. The election
28 commissioner or poll clerk or commissioners or poll clerks
29 making a challenge shall enter the challenge and reason for
30 the challenge on the form and in the manner prescribed or
31 authorized by this article.

32 (d) Before entering the voting booth or compartment,
33 the person who intends to provide a voter assistance in
34 voting by personal appearance shall make an affidavit, the
35 form of which is to be prescribed by the Secretary of State,
36 that he or she will not in any manner request, seek to
37 persuade, or induce the voter to vote any particular ticket or

38 for any particular candidate or for or against any public
39 question; that he or she will not keep or make any
40 memorandum or entry of anything occurring within the
41 voting booth or compartment; and that he or she will not,
42 directly or indirectly, reveal to any person the name of any
43 candidate voted for by the voter, which ticket the voter
44 voted, how the voter voted on any public question, or
45 anything occurring within the voting booth, compartment,
46 or voting machine booth, except when required, pursuant to
47 law, in a judicial proceeding.

48 (e) In accordance with instructions issued by the
49 Secretary of State, the official designated to supervise and
50 conduct absentee voting shall complete a form entitled "List
51 of Assisted Voters", which list is to be divided into two
52 parts, as follows:

53 (1) Part A is to be entitled "Unchallenged Assisted
54 Voters"; and Part B is to be entitled "Challenged Assisted
55 Voters".

56 (2) Under Part A, the official designated to supervise
57 and conduct absentee voting shall enter the name of each
58 voter receiving unchallenged assistance in voting an
59 absentee ballot, the address of the voter assisted, the nature
60 of the disability which qualified the voter for assistance in
61 voting an absentee ballot, the name of the person providing
62 the voter with assistance in voting an absentee ballot, the
63 fact that the person rendering the assistance in voting made
64 and subscribed the affidavit required by this section, and the
65 signature of the official designated to supervise and conduct
66 absentee voting, certifying to the fact that he or she had
67 determined that the voter who received assistance in voting
68 an absentee ballot was qualified to receive the assistance
69 under the provisions of this section.

70 (3) Under Part B, the official designated to supervise
71 and conduct absentee voting shall enter the name of each
72 voter receiving challenged assistance in voting, the address
73 of the voter receiving challenged assistance, the reason for

74 the challenge, and the name of the person providing the
75 challenged voter with assistance in voting. At the close of
76 the period provided for voting an absentee ballot by
77 personal appearance, the official designated to supervise
78 and conduct absentee voting shall make and subscribe to an
79 oath on the list that the list is correct in all particulars.

80 (4) If no voter has been assisted in voting an absentee
81 ballot as provided in this section, the official designated to
82 supervise and conduct absentee voting shall make and
83 subscribe to an oath of that fact on the list.

84 (5) The "List of Assisted Voters" is to be available for
85 public inspection in the office of the official designated to
86 supervise and conduct absentee voting during regular
87 business hours throughout the period provided for voting an
88 absentee ballot by personal appearance and, unless
89 otherwise directed by the Secretary of State, the official
90 shall transmit the list, together with the affidavits,
91 applications, and absentee ballots, to the precincts on
92 election day.

93 (f) Following the election, the affidavits required by this
94 section from persons providing assistance in voting,
95 together with the "List of Assisted Voters", are to be
96 returned by the election commissioners to the clerk of the
97 county commission, along with the election supplies,
98 records, and returns. The clerk shall make the oaths and the
99 "List of Assisted Voters" available for public inspection and
100 shall preserve the oaths and list for 22 months or, if under
101 order of the court, until their destruction or other disposition
102 is authorized or directed by the court.

103 (g) Any person making an affidavit required under the
104 provisions of this section who knowingly swears falsely in
105 the affidavit or any person who counsels or advises, aids, or
106 abets another in the commission of false swearing under this
107 section is guilty of a misdemeanor and, upon conviction
108 thereof, shall be fined not more than \$1,000 or confined in

109 jail for a period of not more than one year, or both fined and
110 confined.

111 (h) Any person who provides a voter assistance in
112 voting an absentee ballot in the office of the official
113 designated to supervise and conduct absentee voting who is
114 not qualified or permitted by this section to provide
115 assistance is guilty of a misdemeanor and, upon conviction
116 thereof, shall be fined not more than \$1,000 or confined in
117 jail for a period of not more than one year, or both fined and
118 confined.

119 (i) Any official designated to supervise and conduct
120 absentee voting, election commissioner, or poll clerk who
121 authorizes or allows a voter to receive or to have received
122 unchallenged assistance in voting an absentee ballot when
123 the voter is known to the official designated to supervise and
124 conduct absentee voting or election commissioner or poll
125 clerk not to be or have been authorized by the provisions of
126 this section to receive or to have received assistance in
127 voting is guilty of a misdemeanor and, upon conviction
128 thereof, shall be fined not more than \$1,000 or confined in
129 jail for a period of not more than one year, or both fined and
130 confined.

**§3-3-5. Voting an absentee ballot by mail or electronically;
penalties.**

1 (a) Upon oral or written request, the official designated
2 to supervise and conduct absentee voting shall provide to
3 any voter of the county, in person, by mail, or electronically,
4 the appropriate application for voting absentee as provided
5 in this article. The voter shall complete and sign the
6 application in his or her own handwriting or, if the voter is
7 unable to complete the application because of illiteracy or
8 physical disability:

9 (1) The person assisting the voter and witnessing the
10 mark of the voter shall sign his or her name in the space
11 provided; or

12 (2) The person, if eligible to vote by electronic absentee
13 ballot due to physical disability, may complete and verify
14 the application by available electronic means prescribed by
15 the Secretary of State.

16 (b) Completed applications for voting an absentee ballot
17 by mail are to be accepted when received by the official
18 designated to supervise and conduct absentee voting in
19 person, by mail, or electronically within the following
20 times:

21 (1) For persons eligible to vote an absentee ballot under
22 the provisions of §3-3-1(b)(3) of this code, relating to absent
23 uniformed services and overseas voters, not earlier than
24 January 1 of an election year or 84 days preceding the
25 election, whichever is earlier, and not later than the sixth
26 day preceding the election, which application is to, upon the
27 voter's request, be accepted as an application for the ballots
28 for all elections in the calendar year; and

29 (2) For all other persons eligible to vote an absentee
30 ballot by mail or electronically, not earlier than January 1 of
31 an election year or 84 days preceding the election,
32 whichever is earlier, and not later than the sixth day
33 preceding the election.

34 (c) Upon acceptance of a completed application, the
35 official designated to supervise and conduct absentee voting
36 shall determine whether the following requirements have
37 been met:

38 (1) The application has been completed as required by
39 law;

40 (2) The applicant is duly registered to vote in the
41 precinct of his or her residence and, in a primary election, is
42 qualified to vote the ballot of the political party requested;

43 (3) The applicant is authorized for the reasons given in
44 the application to vote an absentee ballot by mail or
45 electronically;

46 (4) The address to which a ballot is to be mailed is an
47 address outside the county if the voter is applying to vote by
48 mail under the provisions of §3-3-1(b)(2)(A), §3-3-
49 1(b)(2)(B), §3-3-1(b)(3), or §3-3-1(b)(4) of this code;

50 (5) The applicant is not making his or her first vote after
51 having registered by postcard registration or, if the applicant
52 is making his or her first vote after having registered by
53 postcard registration, the applicant is subject to one of the
54 exceptions provided in §3-2-10 of this code; and

55 (6) No regular and repeated pattern of applications for
56 an absentee ballot by mail for the reason of being out of the
57 county during the entire period of voting in person exists to
58 suggest that the applicant is no longer a resident of the
59 county.

60 (d) (1) If the official designated to supervise and
61 conduct absentee voting determines that the required
62 conditions have been met for voting an absentee ballot by
63 mail, two representatives that are registered to vote with
64 different political party affiliations shall sign their names in
65 the places indicated on the back of the official ballot. If the
66 official designated to supervise and conduct absentee voting
67 determines the required conditions have not been met or has
68 evidence that any of the information contained in the
69 application is not true, the official shall give notice to the
70 voter that the voter's absentee ballot will be challenged as
71 provided in this article and shall enter that challenge.

72 (2) If the official designated to supervise and conduct
73 electronic voting determines that a voter is eligible to submit
74 an electronic ballot because the voter is an absent uniformed
75 services voter or overseas voter or a person with a physical
76 disability, the official designated to supervise absentee
77 voting shall cause the absentee ballot to be transmitted
78 electronically in the manner required for the electronic
79 ballot marking tool or other electronic means.

80 (e)(1) Beginning on the 46th day prior to election day,
81 within one day after the official designated to supervise and
82 conduct absentee voting has both the completed application
83 and the ballot, the official shall provide to the voter at the
84 address given on the application, or by the appropriate
85 electronic delivery method, the following items as required
86 and as prescribed by the Secretary of State:

87 (A) One of each type of official absentee ballot the voter
88 is eligible to vote, prepared according to law;

89 (B) For persons voting absentee ballot by mail, one
90 envelope, unsealed, which may have no marks except the
91 designation "Absent Voter's Ballot Envelope No. 1" and
92 printed instructions to the voter;

93 (C) For persons voting absentee ballot by mail, one
94 postage paid envelope, unsealed, designated "Absent
95 Voter's Ballot Envelope No. 2";

96 (D) Instructions for voting absentee by mail or
97 electronically;

98 (E) For electronic systems or transmission, an electronic
99 means by which eligible voters with physical disabilities
100 may mark the absentee ballot without assistance, as
101 prescribed by the Secretary of State; and

102 (F) Notice that a list of write-in candidates is available
103 upon request.

104 (2) If the voter is an absent uniformed services voter or
105 overseas voter, as defined by 42 U.S.C. §1973, *et seq.*, the
106 Uniformed and Overseas Citizens Absentee Voting Act of
107 1986, the official designated to supervise and conduct
108 absentee voting shall transmit the ballot to the voter via
109 mail, or electronically, as requested by the voter. If the voter
110 does not designate a preference for transmittal, the clerk
111 may select either method of transmittal for the ballot. If the
112 ballot is transmitted electronically pursuant to this

113 subdivision, the official designated to supervise and conduct
114 absentee voting shall also transmit electronically:

115 (A) A waiver of privacy form, to be promulgated by the
116 Secretary of State;

117 (B) Instructions for voting absentee by mail or
118 electronically;

119 (C) Notice that a list of write-in candidates is available
120 upon request; and

121 (D) A statement of the voter affirming the voter's
122 current name and address and whether or not he or she
123 received assistance in voting.

124 (f) The voter shall mark the ballot alone: *Provided*, That
125 the voter may have assistance in voting according to the
126 provisions of §3-3-6 of this code.

127 (1) After the voter has voted the ballot or ballots to be
128 returned by mail, the voter shall:

129 (A) Place the ballot or ballots in envelope no. 1 and seal
130 that envelope;

131 (B) Place the sealed envelope no. 1 in envelope no. 2
132 and seal that envelope;

133 (C) Complete and sign the forms on envelope no. 2; and

134 (D) Return that envelope to the official designated to
135 supervise and conduct absentee voting.

136 (2) If the ballot was transmitted electronically as
137 provided in subdivisions (1) or (2), subsection (e) of this
138 section, the voter shall return the ballot electronically, in the
139 manner prescribed by the Secretary of State, or the voter
140 may return the ballot by United States mail, along with a
141 signed privacy waiver form.

142 (g) Except as provided in subsection (h) of this section,
143 absentee ballots returned by United States mail or other
144 express shipping service are to be accepted if:

145 (1) The ballot is received by the official designated to
146 supervise and conduct absentee voting no later than the day
147 after the election; or

148 (2) The ballot bears a postmark of the United States
149 Postal Service dated no later than election day and the ballot
150 is received by the official designated to supervise and
151 conduct absentee voting no later than the hour at which the
152 board of canvassers convenes to begin the canvass.

153 (h) Absentee ballots received through the United States
154 mail from persons eligible to vote an absentee ballot under
155 the provisions of §3-3-1(b)(3) of this code, relating to
156 uniform services and overseas voters, are to be accepted if
157 the ballot is received by the official designated to supervise
158 and conduct absentee voting no later than the hour at which
159 the board of canvassers convenes to begin the canvass.

160 (i) Voted ballots submitted electronically are to be
161 accepted if the ballot is received by the official designated
162 to supervise and conduct absentee voting no later than the
163 close of polls on election day: *Provided*, That for uniform
164 services and overseas voters, the Secretary of State's office
165 shall enter into an agreement with the Federal Voting
166 Assistance Program of the United States Department of
167 Defense to transmit the ballots to the county clerks at a time
168 when two individuals of opposite political parties are
169 available to process the received ballots. For persons casting
170 absentee ballots electronically due to physical disability, the
171 county clerk shall designate two individuals of opposite
172 political parties to process the received ballots in the manner
173 required by the particular electronic ballot marking tool or
174 other electronic means of returning the electronic absentee
175 ballot.

176 (j) Ballots received after the proper time which cannot
177 be accepted are to be placed unopened in an envelope
178 marked for the purpose and kept secure for 22 months
179 following the election, after which time they are to be
180 destroyed without being opened.

181 (k) Absentee ballots which are hand delivered are to be
182 accepted if they are received by the official designated to
183 supervise and conduct absentee voting no later than the day
184 preceding the election: *Provided*, That no person may hand
185 deliver more than two absentee ballots in any election and
186 any person hand delivering an absentee ballot is required to
187 certify that he or she has not examined or altered the ballot.
188 Any person who makes a false certification violates the
189 provisions of §3-9-1 *et seq.* of this code and is subject to
190 those provisions.

191 (l) Upon receipt of the sealed envelope, the official
192 designated to supervise and conduct absentee voting shall:

193 (1) Enter onto the envelope any other required
194 information;

195 (2) Enter the challenge, if any, to the ballot;

196 (3) Enter the required information into the permanent
197 record of persons applying for and voting an absentee ballot
198 in person; and

199 (4) Place the sealed envelope into a ballot box that is
200 secured by two locks with a key to one lock kept by the
201 president of the county commission and a key to the other
202 lock kept by the county clerk.

203 (m) Upon receipt of a ballot submitted electronically
204 pursuant to subdivision (2), subsection (f) of this section,
205 the official designated to supervise and conduct absentee
206 voting shall place the ballot in an envelope marked
207 "Absentee by Electronic Means" with the completed waiver
208 when appropriate: *Provided*, That no ballots are to be

209 processed without the presence of two individuals of
210 opposite political parties.

211 (n) All ballots received electronically prior to the close
212 of the polls on election day are to be tabulated in the manner
213 prescribed for tabulating absentee ballots submitted by mail
214 to the extent that those procedures are appropriate for the
215 applicable voting system. The clerk of the county
216 commission shall keep a record of absentee ballots sent and
217 received electronically.

§3-3-6. Assistance to voter in voting an absentee ballot by mail.

1 (a) No voter shall receive any assistance in voting an
2 absentee ballot by mail unless he or she shall make a
3 declaration at the time he or she makes application for an
4 absentee ballot that because of blindness, physical
5 disability, advanced age, or inability to read or write he or
6 she requires assistance in voting an absentee ballot.

7 (b) Upon receipt of an absentee ballot by mail, the voter
8 who requires assistance in voting such ballot and who has
9 indicated he or she requires such assistance and the reasons
10 therefor on the application may select any eligible person to
11 assist him or her in voting.

12 (c) The person providing assistance in voting an
13 absentee ballot by mail shall make an affidavit on a form as
14 may be prescribed by the Secretary of State, that he or she
15 will not in any manner request, seek to persuade, or induce
16 the voter to vote any particular ticket or for any particular
17 candidate or for or against any public question; that he or
18 she will not keep or make any memorandum or entry of
19 anything occurring within the voting booth or compartment;
20 and that he or she will not, directly or indirectly, reveal to
21 any person the name of any candidate voted for by the voter,
22 which ticket the voter voted, or how the voter voted on any
23 public question, or anything occurring within the voting

24 booth, compartment, or voting machine booth, except when
25 required, pursuant to law, in a judicial proceeding.

26 (d) The term “assistance in voting”, as used in this
27 section, means assistance in physically marking the official
28 absentee ballot for a voter or reading or directing the voter’s
29 attention to any part of the official absentee ballot.

●

CHAPTER 125

**(Com. Sub. for S. B. 785 - By Senators Trump and
Cline)**

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §3-3-2a of the Code of West Virginia, 1931, as amended, relating generally to early voting locations; exempting the county commission from public notice requirements regarding the intent to designate a community voting location under certain circumstances if the location has been previously designated; and prohibiting electioneering activities within 100 feet from the outside entrance of community voting locations during early voting periods.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2a. Early voting areas; prohibition against display of campaign material.

1 (a) The county commission shall designate the
2 courthouse or annex to the courthouse as the primary
3 location for early in-person voting and, in addition, the

4 commission may designate other locations as provided in
5 subsection (b) of this section.

6 (b) The county commission may, with the approval of
7 the county clerk or other official charged with the
8 administration of elections, designate community voting
9 locations for early in-person voting, other than the county
10 courthouse or courthouse annex, by a majority of the
11 members of the county commission voting to adopt the
12 same at a public meeting called for that purpose.

13 (1) The county commission shall publish a notice of its
14 intent to designate a community voting location at least 30
15 days prior to the designation. Notice shall be by publication
16 as a Class II-0 legal advertisement in compliance with
17 provisions of §59-3-1 *et seq.* of this code. The publication
18 area is the county in which the community voting location
19 or locations are designated;

20 (2) Community voting locations shall comply with
21 requirements of this article for early in-person voting,
22 criteria prescribed by the Secretary of State, and the
23 following criteria:

24 (A) The location can be scheduled for use during the
25 early voting period;

26 (B) The location has the physical facilities necessary to
27 accommodate early voting requirements;

28 (C) The location has adequate space for voting
29 equipment, poll workers, and voters; and

30 (D) The location has adequate security, public
31 accessibility, and parking.

32 (3) The county executive committees of the two major
33 political parties may nominate sites to be used as
34 community voting locations during the early voting period;

35 (4) Upon the designation of a community voting
36 location, the county clerk shall, not less than 30 days prior
37 to an election, give notice of the community voting location
38 address and the dates and times when the location will be
39 open for early voting by publication as a Class II-0 legal
40 advertisement in compliance with provisions of §59-3-1 *et*
41 *seq.* of this code;

42 (5) Voting shall be conducted at each designated
43 community voting location for a period of not less than five
44 consecutive days during the early in-person voting period
45 authorized by §3-3-3 of this code, but need not be conducted
46 at each location for the entire period of early in-person
47 voting;

48 (6) The county commission, with the approval of the
49 county clerk, may authorize community voting locations on
50 a rotating basis, wherein a community voting location may
51 be used for less than the full period of early in-person
52 voting.

53 (7) If more than one community voting location is
54 designated, each location shall be used for an equal number
55 of voting days and permit voting for the same number of
56 hours per day; and

57 (8) Once a community voting location is designated it
58 may continue to be used in subsequent elections without
59 complying with the public notice requirements of
60 subdivision (1) of this subsection if the county commission
61 finds, and the county clerk agrees, at least 50 days, but not
62 more than 80 days prior to the election, that the location
63 continues to qualify under this section.

64 (c) The Secretary of State shall propose legislative and
65 emergency rules in accordance with the provisions of
66 §29A-3-1 *et seq.* of this code as may be necessary to
67 implement the provisions of this section. The rules shall
68 include establishment of criteria to assure neutrality and
69 security in the selection of community voting locations.

70 (d) Throughout the period of early in-person voting, the
71 official designated to supervise and conduct early in-person
72 voting shall make the following provisions for voting:

73 (1) The official shall provide a sufficient number of
74 voting booths or devices appropriate to the voting system at
75 which voters may prepare their ballots. The booths or
76 devices are to be in an area separate from, but within clear
77 view of, the public entrance area of the official's office or
78 other area designated by the county commission for early
79 in-person voting and are to be arranged to ensure the voter
80 complete privacy in casting the ballot.

81 (2) The official shall make the voting area secure from
82 interference with the voter and shall ensure that voted and
83 unvoted ballots are at all times secure from tampering. No
84 person, other than a person lawfully assisting the voter
85 according to the provisions of this chapter, may be
86 permitted to come within five feet of the voting booth while
87 the voter is voting. No person, other than the officials or
88 employees of the official designated to supervise and
89 conduct early in-person voting or members of the board of
90 ballot commissioners assigned to conduct early in-person
91 voting, may enter the area or room set aside for voting.

92 (3) (A) The official designated to supervise and conduct
93 early in-person voting shall request the county commission
94 designate another area within the county courthouse, any
95 annex of the courthouse or any other designated as early
96 in-person community voting locations within the county, as
97 a portion of the official's office, for the purpose of early
98 in-person voting in the following circumstances:

99 (i) If the voting area is not accessible to voters with
100 physical disabilities;

101 (ii) If the voting area is not within clear view of the
102 public entrance of the office of the official designated to
103 supervise and conduct early in-person voting; or

104 (iii) If there is no suitable area for early in-person voting
105 within the office.

106 (B) Any designated area is subject to the same
107 requirements as the primary location for early in-person
108 voting.

109 (4) The official designated to supervise and conduct
110 early in-person voting shall have at least two representatives
111 to assist with early in-person voting: *Provided*, That the two
112 representatives may not be registered with the same political
113 party affiliation or be two persons registered with no
114 political party affiliation. The representatives may be
115 full-time employees, temporary employees hired for the
116 period of early in-person voting in person, or volunteers.

117 (5) No person may do any electioneering nor may any
118 person display or distribute in any manner, or authorize the
119 display or distribution of, any literature, posters, or material
120 of any kind which tends to influence the voting for or
121 against any candidate or any public question on the property
122 of the county courthouse, any annex facilities, or within 100
123 feet of the outside entrance of any other designated early
124 voting locations within the county during the entire period
125 of regular early in-person voting. The official designated to
126 supervise and conduct early in-person voting is authorized
127 to remove the material and to direct the sheriff of the county
128 to enforce the prohibition.

●

CHAPTER 126

**(Com. Sub. for H. B. 4137 - By Delegates
Higginbotham, Hamrick, Barnhart, Hanna and
Foster)**

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §3-2-4, §3-2-5, and §3-2-29 of the Code of West Virginia, 1931, as amended, relating to allowing counties to store and maintain voter registration records in a digital format; directing the clerk of the county commission to follow designated statutory record destruction process and digital copy creation requirements; providing that physical voter registration records may be destroyed under designated statutory process; and, providing that following approval of the Secretary of State the clerk of the county commission may destroy original registration records, if digital or facsimile copies are made and stored in an electronic format in a designated secure manner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-4. Authority and responsibility of the clerk of the county commission and of the county commission relating to voter registration.

1 (a) Subject to the authority of the Secretary of State, the
2 clerk of the county commission shall be the chief
3 registration authority in each respective county and all
4 subdivisions therein, and shall supervise their deputies,
5 employees, and registrars in the performance of their
6 respective duties.

7 (b) The county commission of each county shall allocate
8 sufficient resources for the proper and efficient performance
9 of duties relating to voter registration as required by law,
10 and shall provide for temporary clerical assistance
11 necessary for systematic purging procedures or other duties
12 of short duration required by the provisions of this article.

13 (c) The county commission shall have authority on its
14 own motion to summon and examine any person concerning
15 the registration of voters, to investigate any irregularities in
16 registration, to summon and examine witnesses, to require
17 the production of any relevant books and papers, and to
18 conduct hearings on any matters relating to the registration
19 of voters.

20 (d) The clerk of the county commission shall be
21 responsible for the administration of voter registration
22 within the county and shall establish procedures and
23 practices which ensure the full implementation of the
24 requirements of federal and state laws and rules relating to
25 voter registration, and which ensure nondiscriminatory
26 practices. The clerk of the county commission, at his or her
27 discretion, may maintain and store all voter registration
28 records in a digital format: *Provided*, That prior to
29 destroying any physical voter registration records, the clerk
30 of the county commission shall follow the records
31 destruction process and digital copy creation requirements
32 set forth in W.Va. Code § 3-2-29.

**§3-2-5. Forms for application for registration; information
required and requested; types of application forms;
notices.**

1 (a) (1) All state forms for application for voter
2 registration shall be prescribed by the Secretary of State and
3 shall conform with the requirements of 42 U. S. C. § 1973gg,
4 *et seq.*, the National Voter Registration Act of 1993 and the
5 requirements of the provisions of this article. Separate
6 application forms may be prescribed for voter registration
7 conducted by the clerk of the county commission,

8 registration by mail, registration in conjunction with an
9 application for motor vehicle driver's license and
10 registration at designated agencies. These forms may
11 consist of one or more parts, may be combined with other
12 forms for use in registration by designated agencies or in
13 conjunction with driver licensing and may be revised and
14 reissued as required by the Secretary of State to provide for
15 the efficient administration of voter registration.

16 (2) Notwithstanding any provisions of subdivision (1)
17 of this subsection to the contrary, the federal postcard
18 application for voter registration issued pursuant to 42 U. S.
19 C.§1973, *et seq.*, the Uniformed and Overseas Citizens
20 Absentee Voting Act of 1986 and the mail voter registration
21 application form prescribed by the Federal Election
22 Commission pursuant to 42 U. S. C.§1973gg, *et seq.*, the
23 National Voter Registration Act of 1993, are accepted as
24 valid forms of application for registration pursuant to the
25 provisions of this article.

26 (3) The Secretary of State is authorized to promulgate
27 procedures to permit persons to register to vote through a
28 secure electronic voter registration system.

29 (b) Each application form for registration shall include:

30 (1) A statement specifying the eligibility requirements
31 for registration and an attestation that the applicant meets
32 each eligibility requirement;

33 (2) Any specific notice or notices required for a specific
34 type or use of application by 42 U. S. C.§1973gg, *et seq.*,
35 the National Voter Registration Act of 1993;

36 (3) A notice that a voter may be permitted to vote the
37 partisan primary election ballot of a political party only if
38 the voter has designated that political party on the
39 application for registration unless the political party has
40 determined otherwise;

41 (4) The applicant's driver's license number or an
42 identification number issued by the Division of Motor
43 Vehicles. If the applicant does not have a driver's license or
44 an identification card issued by the Division of Motor
45 Vehicles, then the last four digits of the applicant's Social
46 Security number; and

47 (5) Any other instructions or information essential to
48 complete the application process.

49 (c) Each application form shall require that the
50 following be provided by the applicant, under oath, and an
51 application which does not contain each of the following is
52 incomplete:

53 (1) The applicant's legal name, including the first name,
54 middle or premarital name, if any, and last name;

55 (2) The month, day, and year of the applicant's birth;

56 (3) The applicant's residence address including the
57 number and street or route and city and county of residence
58 except:

59 (A) In the case of a person eligible to register under the
60 provisions of 42 U. S. C. §1973ff, *et seq.*, the Uniformed and
61 Overseas Citizens Absentee Voting Act, the address at
62 which he or she last resided before leaving the United States
63 or entering the uniformed services, or if a dependent child
64 of such a person, the address at which his or her parent last
65 resided;

66 (B) In the case of a homeless person having no fixed
67 residence address who nevertheless resides and remains
68 regularly within the county, the address of a shelter,
69 assistance center or family member with whom he or she
70 has regular contact or other specific location approved by
71 the clerk of the county commission for the purposes of
72 establishing a voting residence; or

73 (C) In the case of a participant in the Address
74 Confidentiality Program administered by the Secretary of
75 State in accordance with section one hundred three, article
76 twenty-eight (a), chapter forty-eight of this code, the
77 designated address assigned to the participant by the
78 Secretary of State; and

79 (4) The applicant's signature, under penalty of perjury
80 as provided in section thirty-six of this article, to the
81 attestation of eligibility to register to vote and to the truth of
82 the information given. The clerk may accept the
83 electronically transmitted signature kept on file with another
84 approved state database for an applicant who applies to
85 register to vote using an approved electronic voter
86 registration system in accordance with procedures
87 promulgated by the Secretary of State.

88 (d) The applicant shall be requested to provide the
89 following information but no application may be rejected
90 for lack of this information:

91 (1) An indication whether the application is for a new
92 registration, change of address, change of name or change
93 of party affiliation;

94 (2) The applicant's choice of political party affiliation,
95 if any, or an indication of no affiliation. An applicant who
96 does not enter a choice of political party affiliation is listed
97 as having no party affiliation on the voting record;

98 (3) The applicant's residence mailing address if
99 different than the residence street address;

100 (4) The last four digits of the applicant's Social Security
101 number;

102 (5) The applicant's telephone number;

103 (6) The applicant's e-mail address;

104 (7) The address where the applicant was last registered
105 to vote, if any, for the purpose of cancelling or transferring
106 the previous registration; and

107 (8) The applicant's gender.

108 (e) The Secretary of State shall prescribe the printing
109 specifications of each type of voter registration application
110 and the voter registration application portion of any form
111 which is part of a combined agency form: *Provided*, That
112 any physical voter registration records created under this
113 article may be destroyed under the process described in
114 W.Va. Code §3-2-29.

115 (f) Application forms prescribed in this section may
116 refer to various public officials by title or official position
117 but in no case may the actual name of an officeholder be
118 printed on the voter registration application or on any
119 portion of a combined application form.

120 (g) No later than July 1 of each odd-numbered year, the
121 Secretary of State shall submit the specifications of the voter
122 registration application by mail for statewide bidding for a
123 contract period beginning September 1 of each odd-
124 numbered year and continuing for two calendar years. The
125 successful bidder shall produce and supply the required mail
126 voter registration forms at the contract price to all
127 purchasers of the form for the period of the contract.

§3-2-29. Custody of original registration records.

1 (a) All original registration records in paper format shall
2 remain in the custody of the county commission, by its
3 clerk, or, electronically, in the statewide voter registration
4 database and shall not be removed except for use in an
5 election or by the order of a court of record or in compliance
6 with a subpoena duces tecum issued by the Secretary of
7 State pursuant to the provisions of section six, article one-a
8 of this chapter.

9 (b) All original voter registration records shall be
10 retained for a minimum of five years following the last
11 recorded activity relating to the record, except that any
12 application which duplicates and does not alter an existing
13 registration shall be retained for a minimum of two years
14 following its receipt: *Provided*, That following approval by
15 the Secretary of State pursuant to subsection (c) of this
16 section, the clerk of the county commission may destroy
17 original registration records that have been retained for a
18 period of time if an exact digital or facsimile copy of each
19 of the records is made and stored in an electronic format in
20 a secure manner on one or more servers under the control of
21 the clerk of the county commission. Digital or facsimile
22 copies may include but are not limited to PDF or JPEG
23 formats. The Secretary of State shall promulgate rules
24 pursuant to the provisions of chapter twenty-nine-a of this
25 code for the specific retention times and procedures
26 required for original voter registration records.

27 (c) Prior to the destruction of original voter registration
28 applications or registration cards of voters whose
29 registration has been canceled at least five years previously,
30 the clerk of the county commission shall notify the
31 Secretary of State of the intention to destroy those records.
32 If the Secretary of State determines, within ninety days of
33 the receipt of the notice, that those records are of sufficient
34 historical value that microfilm or other permanent data
35 storage is desirable, the Secretary of State may require that
36 the records be delivered to a specified location for
37 processing at state expense.

38 (d) Active, inactive, pending, rejected, and canceled
39 registration records shall be maintained as a permanent
40 record, as follows:

41 (1) Individual canceled registration records shall be
42 maintained in the statewide voter registration database for a
43 period of at least five years following cancellation. Upon the
44 expiration of five years, those individual records may be
45 removed from the statewide voter registration database and

46 disposed of in accordance with the appropriate document
47 retention policy.

48 (2) Rejected registration records shall be maintained in
49 the same manner as provided for cancelled registration
50 records.

CHAPTER 127

**(Com. Sub. for H. B. 4593 - By Delegate
Higginbotham)**

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §3-1-5 and §3-1-30 of the Code of West Virginia, 1931, as amended, all relating to authorizing the assignment of members of a standard receiving board to serve on the standard receiving board for more than one precinct in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.

1 (a) The precinct is the basic territorial election unit. The
2 county commission shall divide each magisterial district of
3 the county into election precincts, shall number the
4 precincts, shall determine and establish the boundaries
5 thereof and shall designate one voting place in each
6 precinct, which place shall be established as nearly as
7 possible at the point most convenient for the voters of the
8 precinct. Each magisterial district shall contain at least one

9 voting precinct and each precinct shall have but one voting
10 place therein.

11 Each precinct within any urban center shall contain not
12 less than three hundred nor more than one thousand five
13 hundred registered voters. Each precinct in a rural or less
14 thickly settled area shall contain not less than two hundred
15 nor more than seven hundred registered voters. A county
16 commission may permit the establishment or retention of a
17 precinct less than the minimum numbers allowed in this
18 subsection upon making a written finding that to do
19 otherwise would cause undue hardship to the voters. If, at
20 any time the number of registered voters exceeds the
21 maximum number specified, the county commission shall
22 rearrange the precincts within the political division so that
23 the new precincts each contain a number of registered voters
24 within the designated limits: *Provided*, That any precincts
25 with polling places that are within a one mile radius of each
26 other on or after July 1, 2014, may be consolidated, at the
27 discretion of the county clerk and county commission into
28 one or more new precincts that contain not more than three
29 thousand registered voters in any urban center, nor more
30 than one thousand five hundred registered voters in a rural
31 or less thickly settled area: *Provided, however*, That no
32 precincts may be consolidated pursuant to this section if the
33 consolidation would create a geographical barrier or path of
34 travel between voters in a precinct and their proposed new
35 polling place that would create an undue hardship to voters
36 of any current precinct.

37 If a county commission fails to rearrange the precincts
38 as required, any qualified voter of the county may apply for
39 a writ of mandamus to compel the performance of this duty:
40 *Provided*, That when in the discretion of the county
41 commission, there is only one place convenient to vote
42 within the precinct and when there are more than seven
43 hundred registered voters within the existing precinct, the
44 county commission may designate two or more precincts
45 with the same geographic boundaries and which have voting
46 places located within the same building. The county

47 commission shall designate alphabetically the voters who
48 are eligible to vote in each precinct so created. Each precinct
49 shall be operated separately and independently with
50 separate voting booths, ballot boxes, election
51 commissioners and clerks, and whenever possible, in
52 separate rooms. No two precincts may use the same
53 standard receiving board, except as permitted by the
54 provisions of §3-1-30(j) of this code.

55 (b) In order to facilitate the conduct of local and special
56 elections and the use of election registration records therein,
57 precinct boundaries shall be established to coincide with the
58 boundaries of any municipality of the county and with the
59 wards or other geographical districts of the municipality
60 except in instances where found by the county commission
61 to be wholly impracticable so to do. Governing bodies of all
62 municipalities shall provide accurate and current maps of
63 their boundaries to the clerk of any county commission of a
64 county in which any portion of the municipality is located.

65 (c) To facilitate the federal and state redistricting
66 process, precinct boundaries shall be comprised of
67 intersecting geographic physical features or municipal
68 boundaries recognized by the U. S. Census Bureau. For
69 purposes of this subsection, geographic physical features
70 include streets, roads, streams, creeks, rivers, railroad tracks
71 and mountain ridge lines. The county commission of every
72 county shall modify precinct boundaries to follow
73 geographic physical features or municipal boundaries and
74 submit changes to the Joint Committee on Government and
75 Finance by June 30, 2007, and by June 30, every ten
76 calendar years thereafter. The county commission shall also
77 submit precinct boundary details to the U.S. Census Bureau
78 upon request.

79 (d) The county commission shall keep available at all
80 times during business hours in the courthouse at a place
81 convenient for public inspection a map or maps of the
82 county and municipalities with the current boundaries of all
83 precincts.

§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.

1 (a) For any primary, general or special election held
2 throughout a county, poll clerks and election commissioners
3 may be nominated as follows:

4 (1) The county executive committee for each of the two
5 major political parties may, by a majority vote of the
6 committee at a duly called meeting, nominate one qualified
7 person for each team of poll clerks and one qualified person
8 for each team of election commissioners to be appointed for
9 the election;

10 (2) The appointing body shall select one qualified
11 person as the additional election commissioner for each
12 board of election officials;

13 (3) Each county executive committee shall also
14 nominate qualified persons as alternates for at least 10
15 percent of the poll clerks and election commissioners to be
16 appointed in the county and is authorized to nominate as
17 many qualified persons as alternates as there are precincts
18 in the county to be called upon to serve in the event any of
19 the persons originally appointed fail to accept appointment
20 or fail to appear for the required training or for the
21 preparation or execution of their duties;

22 (4) When an executive committee nominates qualified
23 persons as poll clerks, election commissioners or alternates,
24 the committee, or its chair or secretary on its behalf, shall
25 file in writing with the appointing body, no later than the
26 70th day before the election, a list of those persons
27 nominated and the positions for which they are designated.

28 (b) For any municipal primary, general or special
29 election, the poll clerks and election commissioners may be
30 nominated as follows:

31 (1) In municipalities which have municipal executive
32 committees for the two major political parties in the
33 municipality, each committee may nominate election
34 officials in the manner provided for the nomination of
35 election officials by county executive committees in
36 subsection (a) of this section;

37 (2) In municipalities which do not have executive
38 committees, the governing body shall provide by ordinance
39 for a method of nominating election officials or shall
40 nominate as many eligible persons as are required, giving
41 due consideration to any recommendations made by voters
42 of the municipality or by candidates on the ballot.

43 (c) The governing body responsible for appointing
44 election officials is:

45 (1) The county commission for any primary, general or
46 special election ordered by the county commission and any
47 joint county and municipal election;

48 (2) The board of education for any special election
49 ordered by the board of education conducted apart from any
50 other election;

51 (3) The municipal governing body for any primary,
52 general or special municipal election ordered by the
53 governing body.

54 (d) The qualifications for persons nominated to serve as
55 election officials may be confirmed prior to appointment by
56 the clerk of the county commission for any election ordered
57 by the county commission or for any joint county and
58 municipal election and by the official recorder of the
59 municipality for a municipal election.

60 (e) The appropriate governing body shall appoint the
61 election officials for each designated election board no later
62 than the 49th day before the election as follows:

63 (1) Those eligible persons whose nominations for poll
64 clerk and election commissioner were timely filed by the
65 executive committees and those additional persons selected
66 to serve as an election commissioner are to be appointed;

67 (2) The governing body shall fill any positions for which
68 no nominations were filed.

69 (f) At the same time as the appointment of election
70 officials or at a subsequent meeting the governing body
71 shall appoint persons as alternates. However, no alternate
72 may be eligible for compensation for election training
73 unless the alternate is subsequently appointed as an election
74 official or is instructed to attend and actually attends
75 training as an alternate and is available to serve on election
76 day. Alternates shall be appointed and serve as follows:

77 (1) Those alternates nominated by the executive
78 committees shall be appointed;

79 (2) The governing body may appoint additional
80 alternates who may be called upon to fill vacancies after all
81 alternates designated by the executive committees have
82 been assigned, have declined to serve or have failed to
83 attend training; and

84 (3) The governing body may determine the number of
85 persons who may be instructed to attend training as
86 alternates.

87 (g) The clerk of the county commission shall appoint
88 qualified persons to fill all vacancies existing after all
89 previously appointed alternates have been assigned, have
90 declined to serve or have failed to attend training.

91 (h) Within seven days following appointment, the clerk
92 of the county commission shall notify, by first-class mail,
93 all election commissioners, poll clerks and alternates of the
94 fact of their appointment and include with the notice a
95 response notice form for the appointed person to return

96 indicating whether or not he or she agrees to serve in the
97 specified capacity in the election.

98 (i) The position of any person notified of appointment
99 who fails to return the response notice or otherwise confirm
100 to the clerk of the county commission his or her agreement
101 to serve within 14 days following the date of appointment is
102 considered vacant and the clerk shall proceed to fill the
103 vacancies according to the provisions of this section.

104 (j) If the governing body and the clerk of the county
105 commission are unable to nominate a sufficient number of
106 qualified persons agreeing to serve on a standard receiving
107 board for each precinct, the clerk may assign members of
108 one precinct's standard receiving board to serve
109 simultaneously on the standard receiving board of another
110 precinct where the polling places of both precincts are
111 located within the same physical building or facility:
112 *Provided*, That no more than three precincts within the same
113 building or facility may share board members in this
114 manner.

115 (k) If an appointed election official fails to appear at the
116 polling place by 45 minutes past five o'clock a.m. on
117 election day, the election officials present shall contact the
118 office of the clerk of the county commission for assistance
119 in filling the vacancy. The clerk shall proceed as follows:

120 (1) The clerk may attempt to contact the person
121 originally appointed, may assign an alternate nominated by
122 the same political party as the person absent if one is
123 available or, if no alternate is available, may appoint another
124 eligible person;

125 (2) If the election officials present are unable to contact
126 the clerk within a reasonable time, they shall diligently
127 attempt to fill the position with an eligible person of the
128 same political party as the party that nominated the person
129 absent until a qualified person has agreed to serve;

130 (3) If two teams of election officials, as defined in §3-1-
131 29 of this code, are present at the polling place, the person
132 appointed to fill a vacancy in the position of the additional
133 commissioner may be of either political party.

134 (l) In a municipal election, the recorder or other official
135 designated by charter or ordinance to perform election
136 responsibilities shall perform the duties of the clerk of the
137 county commission as provided in this section.



CHAPTER 128

(Com. Sub. for H. B. 2086 - By Delegate Storch)

[Amended and again passed February 28, 2020; as a result of the objections
of the Governor; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §39A-4-1, §39A-4-2, §39A-4-3, §39A-4-4, §39A-4-5, §39A-4-6, and §39A-4-7, all relating to creating the Uniform Real Property Electronic Recording Act; providing short title; defining terms; clarifying validity of electronic documents and electronic signatures; providing for recording of electronic documents; requiring any county clerk implementing the provisions of the act to comply with established standards; authorizing county clerks to receive, index, store, archive and transmit electronic documents; authorizing county clerks to allow public access, search and retrieval of electronic documents; allowing county clerks to convert paper documents accepted for recording into electronic documents; authorizing county clerks to collect electronically any tax or fee relating to electronic recording of real property documents they are authorized by law to collect; authorizing county clerks to agree with other jurisdictions on procedures or processes necessary for electronic recording of

documents; creating the Real Property Electronic Recording Standards Advisory Committee to develop the standards necessary to electronically record real property documents; authorizing a legislative rule; providing for a report and recommendations to the Legislature; providing that members of the Real Property Electronic Recording Standards Advisory Committee pay their own expenses; setting forth areas for consideration when adopting or changing standards; providing for uniformity of application and construction of the act; and providing that the article modifies, limits and supersedes certain parts of the federal Electronic Signatures in Global and National Commerce Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT.

§39A-4-1. Short title.

1 This article may be cited as the Uniform Real Property
2 Electronic Recording Act.

§39A-4-2. Definitions.

1 For purposes of this article, the following terms shall
2 have the meanings stated below:

3 (1) “Document” means information that is:

4 (A) Inscribed on a tangible medium or that is stored in
5 an electronic or other medium and is retrievable in
6 perceivable form; and

7 (B) Eligible to be recorded in the land records
8 maintained by the clerk of the county commission, herein
9 after “county clerk” or “clerk”.

10 (2) “Electronic” means relating to technology having
11 electrical, digital, magnetic, wireless, optical,
12 electromagnetic, or similar capabilities.

13 (3) “Electronic document” means a document that is
14 received by the county clerk in an electronic form.

15 (4) “Electronic signature” means an electronic sound,
16 symbol, or process attached to or logically associated with
17 a document and executed or adopted by a person with the
18 intent to sign the document.

19 (5) “Person” means an individual, corporation, business
20 trust, estate, trust, partnership, limited liability company,
21 association, joint venture, public corporation, government
22 or governmental subdivision, agency, instrumentality or any
23 other legal or commercial entity.

24 (6) “State” means a state of the United States, the
25 District of Columbia, Puerto Rico, the United States Virgin
26 Islands, or any territory or insular possession subject to the
27 jurisdiction of the United States.

§39A-4-3. Validity of electronic documents.

1 (a) If a law requires, as a condition for recording, that a
2 document be an original, be on paper or another tangible
3 medium or be in writing, the requirement is satisfied by an
4 electronic document satisfying the requirements of this
5 article.

6 (b) If a law requires, as a condition for recording, that a
7 document be signed, the requirement is satisfied by an
8 electronic signature.

9 (c) A requirement that a document or a signature
10 associated with a document be notarized, acknowledged,
11 verified, witnessed, or made under oath is satisfied if the
12 electronic signature of the person authorized to perform that
13 act, and all other information required to be included, is
14 attached to or logically associated with the document or
15 signature. A physical or electronic image of a stamp,
16 impression, or seal need not accompany an electronic
17 signature on a document that complies with the electronic

18 notarization procedure under §39-4-19 of this code and
19 §153 CSR 45.

§39A-4-4. Recording of documents.

1 (a) In this section, “paper document” means a document
2 that is received by the county clerk in a form that is not
3 electronic.

4 (b) A county clerk:

5 (1) Who implements any of the functions listed in this
6 section shall do so in compliance with standards established
7 by the Real Property Electronic Recording Standards
8 Advisory Committee pursuant to §39A-4-5 of this code;

9 (2) May receive, index, store, archive, and transmit
10 electronic documents;

11 (3) May provide for access to, and search and retrieval
12 of, documents and information by electronic means;

13 (4) Who accepts electronic documents for recording
14 shall continue to accept paper documents as authorized by
15 state law and shall place entries for both types of documents
16 in the same index;

17 (5) May convert paper documents accepted for
18 recording into electronic form;

19 (6) May convert information recorded before the clerk
20 began to record electronic documents into electronic form;

21 (7) May accept electronically any fee or tax relating to
22 electronic recording of real property documents that the
23 clerk is authorized to collect; and

24 (8) May agree with other officials of a state or a political
25 subdivision thereof, or of the United States, on procedures
26 or processes to facilitate the electronic satisfaction of prior
27 approvals and conditions precedent to recording and the
28 electronic payment of fees and taxes.

§39A-4-5. Administration and standards.

1 (a) For the purpose of keeping the standards and
2 practices of county clerks in this state in harmony with the
3 standards and practices of recording offices in other
4 jurisdictions that enact substantially the Uniform Real
5 Property Electronic Recording Act, and to keep the
6 technology used by clerks in this state compatible with
7 technology used by recording offices in other jurisdictions
8 that enact substantially this act, the Secretary of State shall
9 establish the Real Property Electronic Recording Standards
10 Advisory Committee, developed pursuant to this article, to
11 assist in the adoption, amendment, and repeal of standards
12 and practices.

13 (b) The Secretary of State shall appoint at least 18
14 persons to serve on the committee. In selecting persons to
15 serve on the committee, the Secretary of State shall appoint:

16 (1) At least one person who is an attorney who
17 specializes in title work;

18 (2) At least one person who is a specialist in geographic
19 information system (GIS) mapping;

20 (3) A representative of the Division of Highways;

21 (4) A representative of the County Clerks' Association;

22 (5) A representative of the County Commissioners'
23 Association;

24 (6) A representative of the State Auditor;

25 (7) A representative of the Governor's Office of
26 Technology;

27 (8) A representative of the Division of Culture and
28 History;

29 (9) A representative of the Community Bankers of West
30 Virginia;

31 (10) A representative of the West Virginia Bankers'
32 Association;

33 (11) A representative of the West Virginia Housing
34 Development Fund;

35 (12) A representative of the Real Estate Division of the
36 Department of Administration;

37 (13) A representative of the Property Tax Division of
38 the Department of Tax and Revenue;

39 (14) A representative of the West Virginia Board of
40 Professional Surveyors;

41 (15) A representative of the West Virginia Real Estate
42 Commission;

43 (16) At least one representative representing the mineral
44 extraction industry;

45 (17) A representative of the West Virginia University
46 College of Law with experience in real property law; and

47 (18) A representative of the Real Estate Lawyers
48 Division of the West Virginia State Bar Association.

49 (c) In establishing, amending, and repealing standards
50 and practices for the recording of documents in electronic
51 form, storing electronic records, and setting up systems for
52 searching for and retrieving these land records, the
53 committee shall consider:

54 (1) Standards and practices of other jurisdictions;

55 (2) The most recent standards promulgated by national
56 standard-setting bodies such as the Property Records
57 Industry Association;

58 (3) The views of interested persons and governmental
59 officials and entities;

60 (4) The needs of counties of varying size, population,
61 and resources; and

62 (5) Standards requiring adequate information security
63 protection to ensure that electronic documents are accurate,
64 authentic, adequately preserved, and resistant to tampering.

65 (d) The Secretary of State, or his or her designee, shall
66 serve as chair of the Real Property Electronic Recording
67 Standards Advisory Committee.

68 (e) The Secretary of State shall:

69 (1) Provide administrative support to the committee;
70 and

71 (2) Propose rules for legislative approval in accordance
72 with the provisions of §29A-3-1 *et seq.* of this code that
73 contain the standards to implement this article.

74 (f) Each person, agency, board, and organization on the
75 committee shall cover his or her own expenses necessitated
76 by participation on the committee.

77 (g) The Secretary of State shall submit a report to the
78 Joint Committee on Government and Finance on or before
79 January 1 of each year until its tasks are complete. The
80 report shall include its efforts to adopt standards in
81 accordance with the requirements of this article and
82 recommendations for further legislative action necessary to
83 effectuate the purposes of this article.

§39A-4-6. Uniformity of application and construction.

1 In applying and construing the Uniform Real Property
2 Electronic Recording Act, consideration must be given to
3 the need to promote uniformity of the law with respect to its
4 subject matter among states that enact it.

§39A-4-7. Relation to electronic signatures in global and national commerce act.

1 This article modifies, limits, and supersedes the federal
2 Electronic Signatures in Global and National Commerce
3 Act (15 U.S.C. §7001, *et seq.*) but does not modify, limit or
4 supersede §101(c) of that act (15 U.S.C. §7001(c)) or
5 authorize electronic delivery of any of the notices described
6 in §103(b) of that act (15 U.S.C. §7003(b)).

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CHAPTER 129

**(Com. Sub. for S. B. 120 - By Senators Romano and
Facemire, *original sponsors**)**

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §22-10-6 of the Code of West Virginia, 1931, as amended, relating to the establishment of priorities for expenditures for plugging abandoned oil and gas wells; requiring that a bond posted for a well shall first be used to plug the well and mitigate environmental issues related to oil and gas development on the land where the well is located, if the bond is forfeited as a result of failure to plug the abandoned well, repair the well that is causing immediate threat to the environment, or which hinders or impedes the development of mineral resources of this state, or the well operator was cited for and then failed to correct an immediate threat to the environment or hinderance or impediment to the development of mineral resources of this state, or the operator failed to reclaim the surface disturbance causing immediate threat to the environment or which hinders or impedes the development of mineral resources of this state.

***NOTE:** Senators Jeffries and Rucker were also sponsors of this bill.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. ABANDONED WELL ACT.

§22-10-6. Establishment of priorities for plugging expenditures.

1 (a) The director shall promulgate legislative rules
2 establishing a priority system by which available funds from
3 the Oil and Gas Reclamation Fund, established pursuant to
4 §22-6-29 of this code, will be expended to plug abandoned
5 wells. The rules shall, at a minimum, establish three primary
6 classifications to be as follows:

7 (1) Wells which are an immediate threat to the
8 environment or which may hinder or impede the
9 development of mineral resources of this state so as to
10 require immediate plugging;

11 (2) Wells which are not an immediate threat to the
12 environment or which do not hinder or impede the
13 development of mineral resources of this state, but which
14 should be plugged consistent with available resources; and

15 (3) Wells which are not a threat to the environment and
16 which do not hinder or impede the development of mineral
17 resources of this state and for which plugging may be
18 deferred for an indefinite period.

19 (b) The classifications shall, among other things, take
20 into consideration the following factors, as appropriate:

21 (1) The age of the well;

22 (2) The length of time the well has been abandoned;

23 (3) The casing remaining in the well;

24 (4) The presence of any leaks either at the surface or
25 underground;

26 (5) The possibility or existence of groundwater
27 contamination;

28 (6) Whether the well is located in an area to be
29 developed for enhanced recovery;

30 (7) Whether the well hinders or impedes mineral
31 development; and

32 (8) Whether the well is located in close proximity to
33 population.

34 (c) Notwithstanding the other provisions of this section,
35 the bond posted for the well shall first be used to plug the
36 well and mitigate environmental issues related to oil and gas
37 development on the land where the well is located if:

38 (1) The bond is forfeited as a result of failure to plug the
39 abandoned well, repair the well that is causing immediate
40 threat to the environment, or which hinders or impedes the
41 development of mineral resources of this state; or

42 (2) The well operator was cited for and then failed to
43 correct an immediate threat to the environment or
44 hinderance or impediment to the development of mineral
45 resources of this state; or

46 (3) The operator failed to reclaim the surface
47 disturbance causing immediate threat to the environment or
48 which hinders or impedes the development of mineral
49 resources of this state.

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CHAPTER 130

(S. B. 552 - By Senators Maynard and Cline)

[Passed February 28, 2020; in effect from passage.]

[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §22C-1-6 of the Code of West Virginia, 1931, as amended, relating to requiring contracts of \$25,000 or more to be competitively bid.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-6. Powers, duties, and responsibilities of authority generally.

1 The Water Development Authority has and may
2 exercise all powers necessary or appropriate to carry out and
3 effectuate its corporate purpose. The authority has the
4 power and capacity to:

5 (1) Adopt and, from time-to-time, amend and repeal
6 bylaws necessary and proper for the regulation of its affairs
7 and the conduct of its business and rules to implement and
8 make effective its powers and duties, such rules to be
9 promulgated in accordance with the provisions of chapter
10 29A of this code.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office and, if necessary,
13 regional suboffices at locations properly designated or
14 provided.

15 (4) Sue and be sued in its own name and plead and be
16 impleaded in its own name and particularly to enforce the
17 obligations and covenants made under §22C-1-9, §22C-1-
18 10, and §22C-1-16 of this code. Any actions against the
19 authority shall be brought in the circuit court of Kanawha
20 County in which the principal office of the authority shall
21 be located.

22 (5) Make loans and grants to governmental agencies for
23 the acquisition or construction of water development
24 projects by any such governmental agency and, in
25 accordance with the provisions of chapter 29A of this code,
26 adopt rules and procedures for making such loans and
27 grants.

28 (6) Acquire, construct, reconstruct, enlarge, improve,
29 furnish, equip, maintain, repair, operate, lease or rent to, or
30 contract for operation by a governmental agency or person,
31 water development projects and, in accordance with the
32 provisions of chapter 29A of this code, adopt rules for the
33 use of such projects.

34 (7) Make available the use or services of any water
35 development project to one or more persons, one or more
36 governmental agencies, or any combination thereof.

37 (8) Issue water development revenue bonds and notes
38 and water development revenue refunding bonds of the
39 state, payable solely from revenues as provided in §22C-1-
40 9 of this code unless the bonds are refunded by refunding
41 bonds, for the purpose of paying all or any part of the cost
42 of, or financing by loans to governmental agencies, one or
43 more water development projects or parts thereof.

44 (9) Acquire by gift or purchase, hold and dispose of real
45 and personal property in the exercise of its powers and the
46 performance of its duties as set forth in this article.

47 (10) Acquire in the name of the state, by purchase or
48 otherwise, on such terms and in such manner as it deems

49 proper, or by the exercise of the right of eminent domain in
50 the manner provided in chapter 54 of this code, such public
51 or private lands, or parts thereof or rights therein, rights-of-
52 way, property, rights, easements, and interests it deems
53 necessary for carrying out the provisions of this article, but
54 excluding the acquisition by the exercise of the right of
55 eminent domain of any public water facilities, stormwater
56 systems, or wastewater facilities, operated under permits
57 issued pursuant to the provisions of §22-11-1 *et seq.* of this
58 code and owned by any person or governmental agency, and
59 compensation shall be paid for public or private lands so
60 taken.

61 (11) Make and enter into all contracts and agreements
62 and execute all instruments necessary or incidental to the
63 performance of its duties and the execution of its powers.
64 When the cost under any such contract or agreement, other
65 than compensation for personal services, involves an
66 expenditure of more than \$25,000, the authority shall make
67 a written contract with the lowest responsible bidder after
68 public notice published as a Class II legal advertisement in
69 compliance with the provisions of §59-3-1 *et seq.* of this
70 code, the publication area for such publication to be the
71 county wherein the work is to be performed or which is
72 affected by the contract, which notice shall state the general
73 character of the work and the general character of the
74 materials to be furnished, the place where plans and
75 specifications therefor may be examined, and the time and
76 place of receiving bids, but a contract or lease for the
77 operation of a water development project constructed and
78 owned by the authority or an agreement for cooperation in
79 the acquisition or construction of a water development
80 project pursuant to §22C-1-16 of this code is not subject to
81 the foregoing requirements and the authority may enter into
82 such contract or lease or such agreement pursuant to
83 negotiation and upon such terms and conditions and for such
84 period as it finds to be reasonable and proper under the
85 circumstances and in the best interests of proper operation
86 or of efficient acquisition or construction of such project.

87 The authority may reject any and all bids. A bond with good
88 and sufficient surety, approved by the authority, is required
89 of all contractors in an amount equal to at least 50 percent
90 of the contract price, conditioned upon the faithful
91 performance of the contract.

92 (12) Employ managers, superintendents, and other
93 employees, who are covered by the state civil service
94 system, and retain or contract with consulting engineers,
95 financial consultants, accounting experts, architects,
96 attorneys, and such other consultants and independent
97 contractors as are necessary in its judgment to carry out the
98 provisions of this article and fix the compensation or fees
99 thereof. All expenses thereof are payable solely from the
100 proceeds of water development revenue bonds or notes
101 issued by the authority, from revenues, and from funds
102 appropriated for such purpose by the Legislature.

103 (13) Receive and accept from any federal agency,
104 subject to the approval of the Governor, grants for or in aid
105 of the construction of any water development project or for
106 research and development with respect to public water
107 facilities, stormwater systems, or wastewater facilities and
108 receive and accept aid or contributions from any source of
109 money, property, labor, or other things of value to be held,
110 used and applied only for the purposes for which such grants
111 and contributions are made.

112 (14) Engage in research and development with respect
113 to public water facilities, stormwater systems, or wastewater
114 facilities.

115 (15) Purchase property coverage and liability insurance
116 for any water development project and for the principal
117 office and suboffices of the authority, insurance protecting
118 the authority and its officers and employees against liability,
119 if any, for damage to property or injury to or death of
120 persons arising from its operations and any other insurance
121 the authority may agree to provide under any resolution

122 authorizing the issuance of water development revenue
123 bonds or in any trust agreement securing the same.

124 (16) Charge, alter, and collect rentals and other charges
125 for the use or services of any water development project as
126 provided in this article and charge and collect reasonable
127 interest, fees, and charges in connection with the making
128 and servicing of loans to governmental agencies in the
129 furtherance of the purposes of this article.

130 (17) Establish or increase reserves from moneys
131 received or to be received by the authority to secure or to
132 pay the principal of and interest on the bonds and notes
133 issued by the authority pursuant to this article.

134 (18) Administer on behalf of the Department of
135 Environmental Protection the Dam Safety Rehabilitation
136 Revolving Fund Loan Program pursuant to the provisions
137 of §22-14-1 *et seq.* of this code. Revenues or moneys
138 designated by this code or otherwise appropriated for use by
139 the authority pursuant to the provisions of this article may
140 not be used for the Dam Safety Rehabilitation Revolving
141 Fund Loan Program and moneys in the Dam Safety
142 Rehabilitation Revolving Fund shall be kept separate from
143 all revenues and moneys of the authority.

144 (19) Do all acts necessary and proper to carry out the
145 powers expressly granted to the authority in this article.

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CHAPTER 131

**(S. B. 727 - By Senators Clements, Ihlenfeld,
Maroney, Romano, Hardesty, Roberts, Stollings and
Plymale)**

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §22-15-11 of the Code of West Virginia, 1931, as amended, relating to disbursement of the funds in the Gas Field Highway Repair and Horizontal Drilling Waste Study Fund for highway road repair; providing that money from the fund is to be expended within the district where gas field and horizontal drilling waste is deposited; and updating grammatical style throughout the section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-11. Solid waste assessment fee; penalties.

1 (a) *Imposition.* — A solid waste assessment fee is
2 hereby imposed upon the disposal of solid waste at any solid
3 waste disposal facility in this state in the amount of \$1.75
4 per ton or part thereof of solid waste. The fee imposed by
5 this section is in addition to all other fees and taxes levied
6 by law and shall be added to and constitute part of any other
7 fee charged by the operator or owner of the solid waste
8 disposal facility.

9 (b) *Collection, return, payment, and records.* — The
10 person disposing of solid waste at the solid waste disposal
11 facility shall pay the fee imposed by this section, whether or
12 not the person owns the solid waste, and the fee shall be

13 collected by the operator of the solid waste facility who shall
14 remit it to the Tax Commissioner.

15 (1) The fee imposed by this section accrues at the time
16 the solid waste is delivered to the solid waste disposal
17 facility.

18 (2) The operator shall remit the fee imposed by this
19 section to the Tax Commissioner on or before the 15th day
20 of the month next succeeding the month in which the fee
21 accrued. Upon remittance of the fee, the operator is required
22 to file returns on forms and in the manner as prescribed by
23 the Tax Commissioner.

24 (3) The operator shall account to the state for all fees
25 collected under this section and shall hold them in trust for
26 the state until remitted to the Tax Commissioner.

27 (4) If any operator fails to collect the fee imposed by
28 this section, he or she is personally liable for the amount as
29 he or she failed to collect, plus applicable additions to tax,
30 penalties, and interest imposed by §11-10-1 *et seq.* of this
31 code.

32 (5) Whenever any operator fails to collect, truthfully
33 account for, remit the fee, or file returns with the fee as
34 required in this section, the Tax Commissioner may serve
35 written notice requiring the operator to collect the fees
36 which become collectible after service of the notice, to
37 deposit the fees in a bank approved by the Tax
38 Commissioner, in a separate account, in trust for and
39 payable to the Tax Commissioner, and to keep the amount
40 of the fees in the account until remitted to the Tax
41 Commissioner. The notice remains in effect until a notice of
42 cancellation is served on the operator or owner by the Tax
43 Commissioner.

44 (6) Whenever the owner of a solid waste disposal
45 facility leases the solid waste facility to an operator, the
46 operator is primarily liable for collection and remittance of

47 the fee imposed by this section and the owner is secondarily
48 liable for remittance of the fee imposed by this section.
49 However, if the operator fails, in whole or in part, to
50 discharge his or her obligations under this section, the
51 owner and the operator of the solid waste facility are jointly
52 and severally responsible and liable for compliance with the
53 provisions of this section.

54 (7) If the operator or owner responsible for collecting
55 the fee imposed by this section is an association or
56 corporation, the officers thereof are liable, jointly and
57 severally, for any default on the part of the association or
58 corporation, and payment of the fee and any additions to tax,
59 penalties, and interest imposed by §11-10-1 *et seq.* of this
60 code may be enforced against them as against the
61 association or corporation which they represent.

62 (8) Each person disposing of solid waste at a solid waste
63 disposal facility and each person required to collect the fee
64 imposed by this section shall keep complete and accurate
65 records in the form as the Tax Commissioner may require
66 in accordance with the rules of the Tax Commissioner.

67 (c) *Regulated motor carriers.* — The fee imposed by
68 this section and §7-5-22 of this code is considered a
69 necessary and reasonable cost for motor carriers of solid
70 waste subject to the jurisdiction of the Public Service
71 Commission under chapter 24A of this code.
72 Notwithstanding any provision of law to the contrary, upon
73 the filing of a petition by an affected motor carrier, the
74 Public Service Commission shall, within 14 days, reflect the
75 cost of said fee in said motor carrier's rates for solid waste
76 removal service. In calculating the amount of said fee to said
77 motor carrier, the commission shall use the national average
78 of pounds of waste generated per person per day as
79 determined by the United States Environmental Protection
80 Agency.

81 (d) *Definition of solid waste disposal facility.* — For
82 purposes of this section, the term “solid waste disposal

83 facility” means any approved solid waste facility or open
84 dump in this state, and includes a transfer station when the
85 solid waste collected at the transfer station is not finally
86 disposed of at a solid waste disposal facility within this state
87 that collects the fee imposed by this section. Nothing herein
88 authorizes in any way the creation or operation of or
89 contribution to an open dump.

90 (e) *Exemptions.* — The following transactions are
91 exempt from the fee imposed by this section:

92 (1) Disposal of solid waste at a solid waste disposal
93 facility by the person who owns, operates, or leases the solid
94 waste disposal facility if the facility is used exclusively to
95 dispose of waste originally produced by the person in his or
96 her regular business or personal activities or by persons
97 utilizing the facility on a cost-sharing or nonprofit basis;

98 (2) Reuse or recycling of any solid waste;

99 (3) Disposal of residential solid waste by an individual
100 not in the business of hauling or disposing of solid waste on
101 the days and times as designated by the secretary is exempt
102 from the solid waste assessment fee; and

103 (4) Disposal of solid waste at a solid waste disposal
104 facility by a commercial recycler which disposes of 30
105 percent or less of the total waste it processes for recycling.
106 In order to qualify for this exemption each commercial
107 recycler must keep accurate records of incoming and
108 outgoing waste by weight. The records must be made
109 available to the appropriate inspectors from the division,
110 upon request.

111 (f) *Procedure and administration.* — Notwithstanding
112 §11-10-3 of this code, each and every provision of the West
113 Virginia Tax Procedure and Administration Act set forth in
114 §11-10-1 *et seq.* of this code shall apply to the fee imposed
115 by this section with like effect as if said act were applicable

116 only to the fee imposed by this section and were set forth in
117 extenso herein.

118 (g) *Criminal penalties.* — Notwithstanding §11-9-2 of
119 this code, §11-3-3 through §11-3-17, inclusive, of this code
120 shall apply to the fee imposed by this section with like effect
121 as if said sections were applicable only to the fee imposed
122 by this section and were set forth in extenso herein.

123 (h) *Dedication of proceeds.* — The net proceeds of the
124 fee collected by the Tax Commissioner pursuant to this
125 section shall be deposited at least monthly in an account
126 designated by the secretary. The secretary shall allocate 25
127 cents for each ton of solid waste disposed of in this state
128 upon which the fee imposed by this section is collected and
129 shall deposit the total amount so allocated into the Solid
130 Waste Reclamation and Environmental Response Fund to
131 be expended for the purposes hereinafter specified. The first
132 \$1 million of the net proceeds of the fee imposed by this
133 section collected in each fiscal year shall be deposited in the
134 Solid Waste Enforcement Fund and expended for the
135 purposes hereinafter specified. The next \$250,000 of the net
136 proceeds of the fee imposed by this section collected in each
137 fiscal year shall be deposited in the Solid Waste
138 Management Board Reserve Fund, and expended for the
139 purposes hereinafter specified: *Provided*, That in any year
140 in which the Water Development Authority determines that
141 the Solid Waste Management Board Reserve Fund is
142 adequate to defer any contingent liability of the fund, the
143 Water Development Authority shall so certify to the
144 secretary and the secretary shall then cause no less than
145 \$50,000 nor more than \$250,000 to be deposited to the fund:
146 *Provided, however*, That in any year in which the Water
147 Development Authority determines that the Solid Waste
148 Management Board Reserve Fund is inadequate to defer any
149 contingent liability of the fund, the Water Development
150 Authority shall so certify to the secretary and the secretary
151 shall then cause not less than \$250,000 nor more than
152 \$500,000 to be deposited in the fund: *Provided further*, That

153 if a facility owned or operated by the State of West Virginia
154 is denied site approval by a county or regional solid waste
155 authority, and if the denial contributes, in whole or in part,
156 to a default, or drawing upon a reserve fund, on any
157 indebtedness issued or approved by the Solid Waste
158 Management Board, then in that event the Solid Waste
159 Management Board or its fiscal agent may withhold all or
160 any part of any funds which would otherwise be directed to
161 the county or regional authority and shall deposit the
162 withheld funds in the appropriate reserve fund. The
163 secretary shall allocate the remainder, if any, of said net
164 proceeds among the following three special revenue
165 accounts for the purpose of maintaining a reasonable
166 balance in each special revenue account, which are hereby
167 continued in the State Treasury:

168 (1) The Solid Waste Enforcement Fund which shall be
169 expended by the secretary for administration, inspection,
170 enforcement, and permitting activities established pursuant
171 to this article;

172 (2) The Solid Waste Management Board Reserve Fund
173 which shall be exclusively dedicated to providing a reserve
174 fund for the issuance and security of solid waste disposal
175 revenue bonds issued by the Solid Waste Management
176 Board pursuant to §22C-3-1 *et seq.* of this code; and

177 (3) The Solid Waste Reclamation and Environmental
178 Response Fund which may be expended by the secretary for
179 the purposes of reclamation, cleanup, and remedial actions
180 intended to minimize or mitigate damage to the
181 environment, natural resources, public water supplies, water
182 resources, and the public health, safety, and welfare which
183 may result from open dumps or solid waste not disposed of
184 in a proper or lawful manner.

185 (i) *Findings.* — In addition to the purposes and
186 legislative findings set forth in §22-15-1 of this code, the
187 Legislature finds as follows:

188 (1) In-state and out-of-state locations producing solid
189 waste should bear the responsibility of disposing of said
190 solid waste or compensate other localities for costs
191 associated with accepting the solid waste;

192 (2) The costs of maintaining and policing the streets and
193 highways of the state and its communities are increased by
194 long distance transportation of large volumes of solid waste;
195 and

196 (3) Local approved solid waste facilities are being
197 prematurely depleted by solid waste originating from other
198 locations.

199 (j) The Gas Field Highway Repair and Horizontal
200 Drilling Waste Study Fund is hereby created as a special
201 revenue fund in the State Treasury to be administered by the
202 West Virginia Division of Highways and to be expended
203 only on the improvement, maintenance, and repair of public
204 roads of three lanes or less located in the Division of
205 Highways district where the waste is deposited that are
206 identified by the Commissioner of Highways as having been
207 damaged by trucks and other traffic associated with
208 horizontal well drilling sites or the disposal of waste
209 generated by the sites, and that experience congestion
210 caused, in whole or in part, by the trucks and traffic that
211 interferes with the use of said roads by residents in the
212 vicinity of the roads: *Provided*, That up to \$750,000 from
213 the fund shall be made available to the Department of
214 Environmental Protection from the same fund to offset
215 contracted costs incurred by the Department of
216 Environmental Protection while undertaking the horizontal
217 drilling waste disposal studies mandated by the provisions
218 of §22-15-8(j) of this code. Any balance remaining in the
219 special revenue account at the end of any fiscal year shall
220 not revert to the General Revenue Fund but shall remain in
221 the special revenue account and shall be used solely in a
222 manner consistent with this section. The fund shall consist
223 of the fee provided for in subsection (k) of this section.

224 (k) *Horizontal drilling waste assessment fee.* — An
225 additional solid waste assessment fee is hereby imposed
226 upon the disposal of drill cuttings and drilling waste
227 generated by horizontal well sites in the amount of \$1 per
228 ton, which fee is in addition to all other fees and taxes levied
229 by this section or otherwise and shall be added to and
230 constitute part of any other fee charged by the operator or
231 owner of the solid waste disposal facility: *Provided*, That
232 the horizontal drilling waste assessment fee shall be
233 collected and administered in the same manner as the solid
234 waste assessment fee imposed by this section, but shall be
235 imposed only upon the disposal of drill cuttings and drilling
236 waste generated by horizontal well sites.

CHAPTER 132

(Com. Sub. for S. B. 810 - By Senators Smith and
Cline)

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §22-5-20 of the Code of West Virginia, 1931, as amended, relating to adoption of a state plan implementing the federal Affordable Clean Energy rule pursuant to section 111(d) of the federal Clean Air Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-20. Development of a state plan relating to carbon dioxide emissions from existing fossil fuel-fired electric generating units.

1 The West Virginia Department of Environmental
2 Protection shall propose a legislative rule for promulgation

3 in accordance with §29A-3-1 of this code to implement the
4 Affordable Clean Energy rule, consisting of Emission
5 Guidelines for Greenhouse Gas, Emissions from Existing
6 Electric Utility Generating Units (EGUs) pursuant to the
7 federal Clean Air Act, section 111(d). The proposed rule
8 shall be filed with the Secretary of State in time for
9 consideration during the 2021 legislative session.
10 Notwithstanding any provision to the contrary, the agency
11 shall submit a complete or partial state compliance plan to
12 the federal Environmental Protection Agency no later than
13 September 1, 2020, which may be comprised of one or more
14 EGU facilities that are voluntarily prepared to move
15 forward with a compliance plan for one or more of their
16 EGUs.



CHAPTER 133

**(Com. Sub. for H. B. 4090 - By Delegates Anderson, J.
Kelly, Graves, Boggs, Pethel, Hartman, Evans,
Porterfield, Hott, Nelson and Cadle)**

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2020.]

AN ACT to amend and reenact §11-13A-3a of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §22-6-29a, all relating to creating and funding the Oil and Gas Abandoned Well Plugging Fund for use by the West Virginia Department of Environmental Protection to plug abandoned oil and gas wells without responsible operators; lowering the severance tax collected on production from certain defined marginal oil and natural gas wells; requiring the collected lower severance taxes to be deposited in the fund; providing for a cap on the balance of the fund which can trigger a further reduction in

the severance taxes on these certain defined marginal wells; providing an effective date for the lower tax rate; maintaining prior exemptions from the severance tax; providing for administration of the fund; providing specific purposes and limitations for use of the fund; providing reporting requirements for two funds, the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund; deleting a subsection of the code which expired by its own terms; and providing a short title.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil.

1 (a) *Imposition of tax.* — For the privilege of engaging or
2 continuing within this state in the business of severing
3 natural gas or oil for sale, profit or commercial use, there
4 is levied and shall be collected from every person
5 exercising the privilege an annual privilege tax at the rate
6 and measure provided in subsection (b) of this
7 section: *Provided*, That effective for all taxable periods
8 beginning on or after January 1, 2000, there is an exemption
9 from the imposition of the tax provided in this article on the
10 following: (1) Free natural gas provided to any surface
11 owner; (2) natural gas produced from any well which
12 produced an average of less than 5,000 cubic feet of natural
13 gas per day during the calendar year immediately preceding
14 a given taxable period; (3) oil produced from any oil well
15 which produced an average of less than one-half barrel of
16 oil per day during the calendar year immediately preceding
17 a given taxable period; and (4) for a maximum period of 10
18 years, all natural gas or oil produced from any well which
19 has not produced marketable quantities of natural gas or oil
20 for five consecutive years immediately preceding the year

21 in which a well is placed back into production and thereafter
22 produces marketable quantities of natural gas or oil.

23 (b) *Rate and measure of tax.* — The tax imposed in
24 subsection (a) of this section is five percent of the gross
25 value of the natural gas or oil produced by the producer as
26 shown by the gross proceeds derived from the sale thereof
27 by the producer, except as otherwise provided in this article:
28 *Provided*, That effective for taxable periods beginning on or
29 after January 1, 2020:

30 (1) For all natural gas produced from any well which
31 produced an average in excess of 60,000 cubic feet of
32 natural gas per day during the calendar year immediately
33 preceding a given taxable year, and for oil produced from
34 any well which produced an average in excess of 10 barrels
35 of oil per day, during the calendar year immediately
36 preceding the beginning date of a given taxable year, the
37 rate of tax is five percent of the gross value of the natural
38 gas or oil produced as shown by the gross proceeds derived
39 from the sale thereof by the producer;

40 (2) For all natural gas produced from any well,
41 excluding wells utilizing horizontal drilling techniques
42 targeting shale formations, which produced an average
43 between 5,000 cubic feet of natural gas per day and 60,000
44 cubic feet of natural gas per day during the calendar year
45 immediately preceding the beginning date of a given taxable
46 year, and for oil produced from any well, excluding wells
47 utilizing horizontal drilling techniques targeting shale
48 formations, which produced an average between one-half
49 barrel per day and 10 barrels per day, during the calendar
50 year immediately preceding the beginning date of a given
51 taxable year, the rate of tax is two and five tenths percent of
52 the gross value of the natural gas or oil produced as shown
53 by the gross proceeds derived from the sale thereof by the
54 producer; and

55 (3) For all natural gas produced from wells utilizing
56 horizontal drilling techniques targeting shale formations,

57 which produced an average between 5,000 cubic feet of
58 natural gas per day and 60,000 cubic feet of natural gas per
59 day during the calendar year immediately preceding the
60 beginning date of a given taxable year, and for oil produced
61 from wells utilizing horizontal drilling techniques targeting
62 shale formations, which produced an average between one-
63 half barrel per day and 10 barrels per day, during the
64 calendar year immediately preceding the beginning date of
65 a given taxable year, the rate of tax is five percent of the
66 gross value of the natural gas or oil produced as shown by
67 the gross proceeds derived from the sale thereof by the
68 producer.

69 (c) *Tax in addition to other taxes.* — The tax imposed
70 by this section applies to all persons severing gas or oil in
71 this state, and is in addition to all other taxes imposed by
72 law.

73 (d) For purposes of this section, in determining the
74 average amount of production of gas and oil in any given
75 calendar year, a taxpayer must calculate the actual
76 production of such well in the calendar year and divide the
77 same by the number of days the well was in operation and
78 producing gas or oil in such calendar year.

79 (e) After the dedication in §11-13A-5a is made, the
80 remaining proceeds collected from the tax imposed at the
81 rate prescribed under subdivision (2), subsection (b) of this
82 section are dedicated to the Oil and Gas Abandoned Well
83 Plugging Fund created under §22-6-29a of this code:
84 *Provided*, That if on June 1, 2023, or on June 1 of any year
85 thereafter, there exists in the Oil and Gas Abandoned Well
86 Plugging Fund an amount equal to or exceeding the sum of
87 \$6 million then the special rate of tax imposed under
88 subdivision (2), subsection (b) of this section is reduced to
89 zero for the taxable year beginning on and after the next
90 succeeding January 1. The Tax Commissioner shall issue an
91 Administrative Notice by July 1 of each year indicating the
92 balance in the fund as of the immediately preceding June 1
93 and the rate of tax on wells pursuant to this subsection.

CHAPTER 22. ENVIRONMENTAL RESOURCES.**ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS.****§22-6-29a. Oil and Gas Abandoned Well Plugging Fund.**

1 (a)(1) This section may be referred to as the Oil and Gas
2 Abandoned Well Plugging Fund Act. There is established
3 within the Treasury of the State of West Virginia the special
4 use fund known as the Oil and Gas Abandoned Well
5 Plugging Fund.

6 (2) The Oil and Gas Abandoned Well Plugging Fund
7 shall be administered by the secretary solely for the
8 purposes of carrying out the provisions of this section.

9 (3) Any balance remaining in the Oil and Gas
10 Abandoned Well Plugging Fund at the end of any state fiscal
11 year does not revert to the General Revenue Fund but shall
12 remain in the special revenue account and may be used only
13 as provided in this section. The revenues deposited in the
14 Oil and Gas Abandoned Well Plugging Fund may not be
15 designated as nonaligned state special revenue funds
16 under §11B-2-32 of this code.

17 (b)(1) Using funds from the Oil and Gas Reclamation
18 Fund and the Oil and Gas Abandoned Well Plugging Fund,
19 the secretary shall plug and reclaim abandoned oil and gas
20 wells without a responsible operator in accordance with
21 plans and specifications developed pursuant to the
22 provisions of this article relating to the plugging and
23 reclamation of wells, and the rules establishing well
24 plugging standards adopted thereunder.

25 (2) Funds from the Oil and Gas Abandoned Well
26 Plugging Fund may only be used to plug abandoned oil and
27 gas wells without a responsible operator and to reclaim the
28 property disturbed from the plugging.

29 (3) On or before July 1 of each year, the secretary shall
30 make an annual report to the Governor and the Legislature
31 as to the use of the Oil and Gas Abandoned Well Plugging
32 Fund and the Oil and Gas Reclamation Fund. The report
33 shall include the balance in both funds on June 1 of each
34 year. The secretary's annual report shall set forth the
35 number of wells reclaimed or plugged through the use of the
36 Oil and Gas Reclamation Fund and the Oil and Gas
37 Abandoned Well Plugging Fund in the previous year. The
38 report shall identify each reclamation and plugging project,
39 state the number of wells plugged thereby, show the county
40 in which the wells are located, and make a detailed
41 accounting of all expenditures from the Oil and Gas
42 Reclamation Fund and from the Oil and Gas Abandoned
43 Well Plugging Fund. The annual report shall also include a
44 five-year plan detailing current and future projects and
45 activities to plug and reclaim wells.

46 (4) Wells shall be plugged, and plugged wells reclaimed
47 by contract entered into by the secretary on a competitive
48 bid basis as provided for under the provisions of §5A-3-1 *et*
49 *seq.* of this code and the rules promulgated thereunder.



CHAPTER 134

**(Com. Sub. for H. B. 4091 - By Delegates Anderson, J.
Kelly, Porterfield, Hartman, Pethtel, Boggs, Evans,
Tomblin, Phillips, Azinger and Hott)**

[Passed February 5, 2020; in effect ninety days from passage.]

[Approved by the Governor on February 17, 2020.]

AN ACT to amend and reenact §22-6A-7 of the Code of West Virginia, 1931, as amended, relating to allowing for expedited oil and gas well permitting for certain wells under the Natural Gas Horizontal Well Control Act upon payment of applicable

expedited fees; allowing expedited oil and gas well permit modifications under the same Act upon the payment of applicable expedited fees; permitting one half of any residual fees to be deposited in the Oil and Gas Operating Permit and Processing Fund; permitting one half of any residual fees to be deposited in the Oil and Gas Reclamation Fund; providing for the daily pro rata refund of the horizontal well expedited fee if the permit is not approved between day 45 and day 60 after the submission of a permit application; providing for the daily pro rata refund of the modification fees between day 20 and day 30 after the submission of a permit modification application; providing for a maximum cap amount of \$1 million for all residual fees from this article to be deposited in the Oil and Gas Operating Permit and Processing Fund; and providing that any balance in the Oil and Gas Reclamation Fund at the end of a fiscal year remain in the special revenue account and not be remitted to the General Revenue Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-7. Horizontal well permit required; permit fee; application; soil erosion control plan; well site safety plan; site construction plan; water management plan; permit fee; installation of permit number; suspension and transfer of a permit.

1 (a) It is unlawful for any person to commence any well
2 work, including site preparation work which involves any
3 disturbance of land, for a horizontal well without first
4 securing from the secretary a well work permit pursuant to
5 this article.

6 (b) Every permit application filed under this section
7 shall be on a form as may be prescribed by the secretary,
8 shall be verified, and shall contain the following
9 information:

10 (1) The names and addresses of: (A) The well operator;
11 (B) the agent required to be designated under subsection (k)
12 of this section; and (C) every person whom the applicant
13 shall notify under any section of this article, together with a
14 certification and evidence that a copy of the application and
15 all other required documentation has been delivered to all
16 such persons;

17 (2) The names and addresses of every coal operator
18 operating coal seams under the tract of land on which the
19 well is or may be located, and the coal seam owner of record
20 and lessee of record required to be given notice by §22-6A-
21 5(a)(6) of this code, if any, if the owner or lessee is not yet
22 operating the coal seams;

23 (3) The number of the well or other identification the
24 secretary may require;

25 (4) The well work for which a permit is requested;

26 (5) The approximate total depth to which the well is to
27 be drilled or deepened, or the actual depth if the well has
28 been drilled; the proposed angle and direction of the well;
29 the actual depth or the approximate depth at which the well
30 to be drilled deviates from vertical, the angle, and direction
31 of the nonvertical well bore until the well reaches its total
32 target depth or its actual final depth; and the length and
33 direction of any actual or proposed horizontal lateral or well
34 bore;

35 (6) Each formation in which the well will be completed
36 if applicable;

37 (7) A description of any means used to stimulate the
38 well;

39 (8) If the proposed well work will require casing or
40 tubing to be set, the entire casing program for the well,
41 including the size of each string of pipe, the starting point
42 and depth to which each string is to be set and the extent to
43 which each such string is to be cemented;

44 (9) If the proposed well work is to convert an existing
45 well, all information required by this section, all formations
46 from which production is anticipated, and any plans to plug
47 any portion of the well;

48 (10) If the proposed well work is to plug or replug the
49 well, all information necessary to demonstrate compliance
50 with the legislative rules promulgated by the secretary in
51 accordance with §22-6A-13 of this code;

52 (11) If the proposed well work is to stimulate a
53 horizontal well, all information necessary to demonstrate
54 compliance with the requirements of §22-6A-5(a)(7) of this
55 code;

56 (12) The erosion and sediment control plan required
57 under subsection (c) of this section for applications for
58 permits to drill;

59 (13) A well site safety plan to address proper safety
60 measures to be employed for the protection of persons on
61 the site as well as the general public. The plan shall
62 encompass all aspects of the operation, including the actual
63 well work for which the permit was obtained, completion
64 activities and production activities, and shall provide an
65 emergency point of contact for the well operator. The well
66 operator shall provide a copy of the well site safety plan to
67 the local emergency planning committee established
68 pursuant to §15-5A-7 of this code for the emergency
69 planning district in which the well work will occur at least
70 seven days before commencement of well work or site
71 preparation work that involves any disturbance of land;

72 (14) A certification from the operator that: (A) It has
73 provided the owners of the surface described in §22-6A-
74 10(b)(1), §22-6A-10(b)(2), and §22-6A-10(b)(4) of this
75 code, the information required by §22-6A-16(b) and §22-
76 6A-16(c) of this code; (B) that the requirement was deemed
77 satisfied as a result of giving the surface owner notice of
78 entry to survey pursuant to §22-6A-10(a) of this code; or

79 (C) the notice requirements of §22-6A-16(b) of this code
80 were waived in writing by the surface owner; and

81 (15) Any other relevant information which the secretary
82 may reasonably require.

83 (c)(1) An erosion and sediment control plan shall
84 accompany each application for a well work permit under
85 this article. The plan shall contain methods of stabilization
86 and drainage, including a map of the project area indicating
87 the amount of acreage disturbed. The erosion and sediment
88 control plan shall meet the minimum requirements of the
89 West Virginia Erosion and Sediment Control Manual as
90 adopted and from time to time amended by the department.
91 The erosion and sediment control plan shall become part of
92 the terms and conditions of any well work permit that is
93 issued pursuant to this article and the provisions of the plan
94 shall be carried out where applicable in the operation. The
95 erosion and sediment control plan shall set out the proposed
96 method of reclamation which shall comply with the
97 requirements of §22-6A-14 of this code.

98 (2) For well sites that disturb three acres or more of
99 surface, excluding pipelines, gathering lines and roads, the
100 erosion and sediment control plan submitted in accordance
101 with this section shall be certified by a registered
102 professional engineer.

103 (d) For well sites that disturb three acres or more of
104 surface, excluding pipelines, gathering lines and roads, the
105 operator shall submit a site construction plan that shall be
106 certified by a registered professional engineer and contains
107 information that the secretary may require by rule.

108 (e) In addition to the other requirements of this section,
109 if the drilling, fracturing, or stimulating of the horizontal
110 well requires the use of water obtained by withdrawals from
111 waters of this state in amounts that exceed 210,000 gallons
112 during any 30-day period, the application for a well work
113 permit shall include a water management plan, which may

114 be submitted on an individual well basis or on a watershed
115 basis, and which shall include the following information:

116 (1) The type of water source, such as surface or
117 groundwater, the county of each source to be used by the
118 operation for water withdrawals and the latitude and
119 longitude of each anticipated withdrawal location;

120 (2) The anticipated volume of each water withdrawal;

121 (3) The anticipated months when water withdrawals will
122 be made;

123 (4) The planned management and disposition of
124 wastewater after completion from fracturing, refracturing,
125 stimulation, and production activities;

126 (5) A listing of the anticipated additives that may be
127 used in water utilized for fracturing or stimulating the well.
128 Upon well completion, a listing of the additives that were
129 actually used in the fracturing or stimulating of the well
130 shall be submitted as part of the completion log or report
131 required by §22-6A-5(a)(14) of this code;

132 (6) For all surface water withdrawals, a water
133 management plan that includes the information requested in
134 subdivisions (1) through (5) of this subsection and the
135 following:

136 (A) Identification of the current designated and existing
137 water uses, including any public water intakes within one
138 mile downstream of the withdrawal location;

139 (B) For surface waters, a demonstration, using methods
140 acceptable to the secretary, that sufficient in-stream flow
141 will be available immediately downstream of the point of
142 withdrawal. A sufficient in-stream flow is maintained when
143 a pass-by flow that is protective of the identified use of the
144 stream is preserved immediately downstream of the point of
145 withdrawal; and

146 (C) Methods to be used for surface water withdrawal to
147 minimize adverse impact to aquatic life; and

148 (7) This subsection is intended to be consistent with and
149 does not supersede, revise, repeal, or otherwise modify §22-
150 11-1 *et seq.*, §22-12-1 *et seq.*, or §22-26-1 *et seq.* of this
151 code and does not revise, repeal, or otherwise modify the
152 common law doctrine of riparian rights in West Virginia
153 law.

154 (f) An application may propose and a permit may
155 approve two or more activities defined as well work;
156 however, a separate permit shall be obtained for each
157 horizontal well drilled.

158 (g) The application for a permit under this section shall
159 be accompanied by the applicable bond as required by §22-
160 6A-15 of this code, the applicable plat required by §22-6A-
161 5(a)(6) of this code, and a permit fee of \$10,000 for the
162 initial horizontal well drilled at a location and a permit fee
163 of \$5,000 for each additional horizontal well drilled on a
164 single well pad at the same location.

165 (h)(1) An applicant may enter into an expedited permit
166 application process with the secretary for a well permit and
167 pay an additional expedited permit fee of \$20,000 for the
168 initial horizontal well drilled at a location and an additional
169 expedited permit fee of \$10,000 for each additional
170 horizontal well drilled on a single well pad at the same
171 location: *Provided*, That deep well permitting is excluded
172 from this expedited permit process due to the independent
173 board review and approval requirement which is outside the
174 secretary's control.

175 (2) Upon entering into an expedited permit process and
176 meeting all the criteria set forth in this article, the secretary
177 shall issue or deny a permit within 45 days of the submission
178 of a permit application under this article, unless the
179 secretary seeks additional information or modification from
180 the applicant, which would toll the 45 day period until the

181 secretary receives the required responsive information from
182 the applicant.

183 (3) Each day the agency exceeds: (A) The 45-day
184 deadline for approval or denial of an expedited initial
185 horizontal well drilled, the secretary shall refund \$1,333.33
186 per day up to and including day 60 after the submission of a
187 permit application until the expedited fee is reduced to the
188 normal permit fee amount; or (B) the 45-day deadline for
189 approval or denial of an expedited permit for any additional
190 horizontal well drilled on a single well pad at the same
191 location, the secretary shall be required to refund \$666.66
192 per day up to and including day 60 after the submission of a
193 permit application, until the expedited fee is reduced to the
194 normal permit fee amount.

195 (4)(A) After all refunds are paid by the secretary, one
196 half of the additional expedited permit fee shall be deposited
197 in the Oil and Gas Operating Permit and Processing Fund
198 and shall be used by the agency to cover costs to review,
199 process, and approve or deny the applicable horizontal well
200 permit applications and modifications pending before the
201 agency, but not to exceed \$1 million annually in
202 combination with proceeds received through §22-6A-
203 7(i)(4)(A) of this code and any residuary fee proceeds to be
204 distributed as set forth in §22-6A-7(h)(4)(B) of this code.

205 (B) After all refunds are paid by the secretary, one half
206 of the additional expedited permit fee, plus any residuary as
207 set forth in §22-6A-7(h)(4)(A) of this code, shall be
208 deposited in the Oil and Gas Reclamation Fund and used
209 specifically for the reclamation and plugging of orphaned
210 oil or gas wells.

211 (i)(1) An applicant may enter into an expedited permit
212 modification application process with the secretary for a
213 well permit and pay an expedited permit modification fee of
214 \$5,000 for the modification of the permit for any horizontal
215 well drilled at a location: *Provided*, That deep well permit
216 modifications are excluded from this expedited permit

217 modification process if the modification is subject to
218 independent board review and approval.

219 (2) Upon entering into an expedited permit modification
220 process and meeting all the criteria set forth in this article,
221 the secretary shall issue or deny a permit modification
222 within 20 days of the submission of a permit modification
223 application under this article, unless the secretary seeks
224 additional information or further modification from the
225 applicant, which would toll the 20 day period until the
226 secretary receives the required responsive information from
227 the applicant.

228 (3) Each day the agency exceeds the 20-day deadline for
229 approval or denial of an expedited horizontal well permit
230 modification, the secretary shall refund \$500 per day up to
231 and including day 30 after the submission of an expedited
232 permit modification application, until the expedited permit
233 modification fee of \$5,000 is reduced to zero.

234 (4)(A) After all refunds are paid by the secretary, one
235 half of the expedited permit modification fee shall be
236 deposited in the Oil and Gas Operating Permit and
237 Processing Fund and shall be used by the agency to cover
238 costs to review, process, and approve or deny the applicable
239 horizontal well permit applications and modifications
240 pending before the agency, but not to exceed \$1 million
241 annually in combination with proceeds received through
242 §22-6A-7(h)(4)(A) of this code and any residuary fee
243 proceeds to be distributed as set forth in §22-6A-7(i)(4)(B)
244 of this code.

245 (B) After all refunds are paid by the secretary, one half
246 of the expedited permit modification fee, plus any residuary
247 as set forth in §22-6A-7(i)(4)(A) of this code, shall be
248 deposited in the Oil and Gas Reclamation Fund and used
249 specifically for the reclamation and plugging of orphaned
250 oil or gas wells.

251 (j) Any balance in the Oil and Gas Reclamation Fund,
252 earmarked specifically for the reclamation and plugging of
253 orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B)
254 and §22-6A-7(i)(4)(B) of this code, which remains at the
255 end of any state fiscal year does not revert to the General
256 Revenue Fund but shall remain in the special revenue
257 account as indicated and may be used only as provided in
258 §22-6-29(b) of this code. The revenues deposited in the Oil
259 and Gas Reclamation Fund, earmarked specifically for the
260 reclamation and plugging of orphaned oil or gas wells
261 pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of
262 this code may not be designated as nonaligned state special
263 revenue funds under §11B-2-32 of this code.

264 (k) The well operator named in the application shall
265 designate the name and address of an agent for the operator
266 who is the attorney-in-fact for the operator and who is a
267 resident of the State of West Virginia upon whom notices,
268 orders, or other communications issued pursuant to this article
269 or §22-11-1 *et seq.* of this code may be served, and upon whom
270 process may be served. Every well operator required to
271 designate an agent under this section shall, within five days
272 after the termination of the designation, notify the secretary of
273 the termination and designate a new agent.

274 (l) The well owner or operator shall install the permit
275 number as issued by the secretary and a contact telephone
276 number for the operator in a legible and permanent manner
277 to the well upon completion of any permitted work. The
278 dimensions, specifications, and manner of installation shall
279 be in accordance with the rules of the secretary.

280 (m) The secretary may waive the requirements of this
281 section and §22-6A-8, §22-6A-10, §22-6A-11, and §22-6A-
282 24 of this code in any emergency situation if the secretary
283 considers the action necessary. In that case the secretary
284 may issue an emergency permit which is effective for not
285 more than 30 days, unless reissued by the secretary.

286 (n) The secretary shall deny the issuance of a permit if the
287 secretary determines that the applicant has committed a
288 substantial violation of a previously issued permit for a

289 horizontal well, including the applicable erosion and sediment
290 control plan associated with the previously issued permit, or a
291 substantial violation of one or more of the rules promulgated
292 under this article, and in each instance has failed to abate or
293 seek review of the violation within the time prescribed by the
294 secretary pursuant to the provisions of §22-6A-5(a)(1) and
295 §22-6A-5(a)(2) of this code and the rules promulgated
296 hereunder, which time may not be unreasonable.

297 (o) If the secretary finds that a substantial violation has
298 occurred and that the operator has failed to abate or seek
299 review of the violation in the time prescribed, the secretary
300 may suspend the permit on which the violation exists, after
301 which suspension the operator shall forthwith cease all well
302 work being conducted under the permit. However, the
303 secretary may reinstate the permit without further notice, at
304 which time the well work may be continued. The secretary
305 shall make written findings of the suspension and may
306 enforce the same in the circuit courts of this state. The
307 operator may appeal a suspension pursuant to the provisions
308 of §22-6A-5(a)(23) of this code. The secretary shall make a
309 written finding of any such determination.

310 (p) Any well work permit issued in accordance with this
311 section may be transferred with the prior written approval of
312 the secretary upon his or her finding that the proposed
313 transferee meets all requirements for holding a well work
314 permit, notwithstanding any other provision of this article or
315 rule adopted pursuant to this article. Application for the
316 transfer of any well work permit shall be upon forms
317 prescribed by the secretary and submitted with a permit
318 transfer fee of \$500. Within 90 days of the receipt of approval
319 by the secretary, the transferee shall give notice of the transfer
320 to those persons entitled to notice in §22-6A-10(b) of this
321 code by personal service or by registered mail or by any
322 method of delivery that requires a receipt or signature
323 confirmation, and shall further update the emergency point of
324 contact provided pursuant to subdivision (13), subsection (b)
325 of this section.

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CHAPTER 135

**(Com. Sub. for H. B. 4484 - By Delegates Anderson,
J. Kelly, Hansen, Miley, Evans, Pethtel, Westfall,
Azinger, Cadle, Porterfield and Pyles)**

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §22-18-22 of the Code of West Virginia, 1931, as amended, relating to the Hazardous Waste Management Fund; extending the termination date from June 30, 2020, to June 30, 2025, thereby allowing the continuance of the annual certification fees for facilities that manage hazardous waste and allowing the continuance of the fund into which the fees are deposited.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.

§22-18-22. Appropriation of funds; Hazardous Waste Management Fund.

1 (a) The net proceeds of all fines, penalties and
2 forfeitures collected under this article shall be appropriated
3 as directed by section five, article XII of the Constitution of
4 West Virginia. For the purposes of this section, the net
5 proceeds of the fines, penalties and forfeitures are
6 considered the proceeds remaining after deducting
7 therefrom those sums appropriated by the Legislature for
8 defraying the cost of administering this article. All permit
9 application fees collected under this article shall be paid into
10 the State Treasury into a special fund designated the
11 Hazardous Waste Management Fund. In making the
12 appropriation for defraying the cost of administering this

13 article, the Legislature shall first take into account the sums
14 included in that special fund prior to deducting additional
15 sums as may be needed from the fines, penalties and
16 forfeitures collected pursuant to this article.

17 (b) Effective on July 1, 2003, there is imposed an annual
18 certification fee for facilities that manage hazardous waste,
19 as defined by the federal Resource Conservation and
20 Recovery Act, as amended. The secretary shall propose a
21 rule for legislative approval in accordance with the
22 provisions of §29A-3-1 *et seq.* of this code to establish the
23 certification fee. The rule shall be a product of a negotiated
24 rule-making process with the facilities subject to the rule.
25 The rule shall, at a minimum, establish different fee rates
26 for facilities based on criteria established in the rule. The
27 total amount of fees generated raise no more funds than are
28 necessary and adequate to meet the matching requirements
29 for all federal grants which support the hazardous waste
30 management program, but shall not exceed \$700,000 per
31 year.

32 (c) The revenues collected from the annual certification
33 fee shall be deposited in the State Treasury to the credit of
34 the Hazardous Waste Management Fee Fund, which is
35 continued. Moneys of the fund, together with any interest or
36 other return earned on the fund, shall be expended to meet
37 the matching requirements of federal grant programs which
38 support the hazardous waste management program.
39 Expenditures from the fund are for the purposes set forth in
40 this article and are not authorized from collections, but are
41 to be made only in accordance with appropriation by the
42 Legislature and in accordance with the provisions of §12-3-
43 1 *et seq.* of this code and upon the fulfillment of the
44 provisions set forth in §5A-2-1 *et seq.* of this code. Amounts
45 collected which are found, from time to time, to exceed the
46 funds needed for purposes set forth in this article may be
47 transferred to other accounts by appropriation of the
48 Legislature.

49 (d) The fee provided in subsection (b) of this section and
50 the fund established in subsection (c) of this section shall
51 terminate on June 30, 2025. The department shall, by
52 December 31 of each year, report to the Joint Committee on
53 Government and Finance regarding moneys collected into
54 the Hazardous Waste Management Fee Fund and
55 expenditures by the agency, including any federal matching
56 moneys received and providing an accounting on the
57 collection of the fee by type of permit activity, funds being
58 expended and current and future projected balances of the
59 fund.

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CHAPTER 136

(Com. Sub. for S. B. 195 - By Senator Sypolt)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §44-1-29 of the Code of West Virginia, 1931, as amended, relating to authorization for a personal representative, trustee, administrator, or executor of a deceased person's estate to transfer or amend deeds of conservation or preservation easements; removing authorization to execute deeds of conservation and preservation easements where a decedent did not sign or complete the deed or easement; defining the duty of the personal representative, trustee, administrator, or executor; and establishing conditions for the exercise of the authority to transfer or amend.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-29. Authority of personal representative concerning conservation and preservation easements.

1 (a) Subject to the requirements and conditions of
2 subsection (b) of this section, a personal representative,
3 trustee, administrator, or executor of a decedent or a
4 decedent's estate is hereby granted the authority to:

5 (1) Sell a conservation or preservation easement under
6 §8A-12-1 *et seq.* of this code or §20-12*-1 *et seq.* of this
7 code;

8 (2) Donate a conservation or preservation easement
9 under §8A-12-1 *et seq.* of this code or §20-12*-1 *et seq.* of
10 this code; or

11 (3) Amend a conservation or preservation easement
12 created prior to the decedent's death under §8A-12-1 *et seq.*
13 of this code or §20-12*-1 *et seq.* of this code and recorded
14 on the decedent's real property as may be permitted by
15 applicable law and the conservation or preservation
16 easement.

17 (b) The personal representative, trustee, administrator,
18 or executor shall ensure that the sale, donation, amendment,
19 or transfer, of a conservation or preservation easement
20 complies with the following:

21 (1) The proposed sale, donation, transfer or amendment
22 satisfies the requirements set forth in the provisions of §8A-
23 12-1* *et seq.* of this code or §20-12-1* *et seq.* of this code,
24 as applicable to the particular easement;

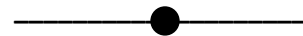
25 (2) The proposed sale, donation, transfer, or amendment
26 is to a qualified conservation organization or holder and the
27 organization or holder agrees to accept the conservation or
28 preservation easement; and

29 (3) The sale, donation, transfer, or amendment must
30 meet one of the following conditions:

30 (A) In the case of an administrator of a decedent's
31 intestate estate, all heirs with interests in the real estate
32 affected provide written consent which shall be recorded
33 with the easement; or

34 (B) In the case of a personal representative or executor
35 of a decedent's testate estate, or the trustee of a trust, the
36 will, trust, or other governing instrument authorizes or
37 directs the personal representative, executor, or trustee to
38 sell or donate a conservation or preservation easement; or

39 (C) The sale, donation, transfer, or amendment of the
40 conservation or preservation easement is authorized
41 pursuant to a legal proceeding in a court of law with
42 jurisdiction over the property.



CHAPTER 137

(Com. Sub. for S. B. 213 - By Senator Trump)

[Passed March 7, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §44D-1-103, §44D-1-105, and §44D-1-108 of the Code of West Virginia, 1931, as amended; to amend and reenact §44D-6-603 of said code; to amend and reenact §44D-7-703 of said code; to amend and reenact §44D-8-808 of said code; and to amend said code by adding thereto a new article, designated §44D-8A-801, §44D-8A-802, §44D-8A-803, §44D-8A-804, §44D-8A-805, §44D-8A-806, §44D-8A-807, §44D-8A-808, §44D-8A-809, §44D-8A-810, §44D-8A-811, §44D-8A-812, §44D-8A-813, §44D-8A-814, §44D-8A-815, §44D-8A-816, and §44D-8A-817, all relating to the administration of trusts; providing definitions; establishing default and mandatory rules; establishing when terms of a trust designating the principal place of administration are

valid; permitting a trustee to follow a direction contrary to the terms of a trust instrument; enacting the West Virginia Uniform Directed Trust Act; specifying applicability; setting forth exclusions; establishing powers, duties and liabilities of a trust director; providing limitations on trust director power; establishing duties and liabilities of a directed trustee; establishing duty of trustees and trust directors to provide certain information to a trust director or trustee; providing limitations on duties of trustee's and trust directors; providing that the terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power; providing limitations on actions against a trust director; establishing defenses in actions against a trust director; establishing personal jurisdiction of West Virginia courts over a trust director; providing that certain statutory rules apply to a trust director; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§44D-1-103. Definitions.

1 In this chapter:

2 (a) "Action", with respect to an act of a trustee, includes
3 a failure to act.

4 (b) "Ascertainable standard" means a standard relating
5 to an individual's health, education, support, or
6 maintenance within the meaning of Section 2041(b)(1)(A)
7 or 2514(c)(1) of the Internal Revenue Code.

8 (c) "Beneficiary" means a person that:

9 (1) Has a present or future beneficial interest in a trust,
10 vested or contingent;

11 (2) In a capacity other than that of trustee, holds a power
12 of appointment over trust property; or

13 (3) A charitable organization that is expressly
14 designated in the terms of the trust instrument to receive
15 distributions.

16 (d) “Charitable trust” means a trust, or portion of a trust,
17 created for a charitable purpose described in §44D-4-405 of
18 this code.

19 (e) “Conservator” means a person appointed by the
20 court to administer the estate and financial affairs of a
21 protected person.

22 (f) “Court” means a court of this state having proper
23 jurisdiction under §44D-2-203 of this code, and venue under
24 §44D-2-204 of this code.

25 (g) “Current beneficiary” means a beneficiary that, on
26 the date the beneficiary’s qualification is determined, is a
27 distributee or permissible distributee of trust income or
28 principal.

29 (h) “Environmental law” means a federal, state, or local
30 law, rule, regulation, or ordinance relating to protection of
31 the environment.

32 (i) “Grantor” means a person, including a testator, who
33 creates, or contributes property to a trust. If more than one
34 person creates or contributes property to a trust, each person
35 is a grantor of the portion of the trust property attributable
36 to that person’s contribution except to the extent another
37 person has the power to revoke or withdraw that portion.

38 (j) “Guardian” means a person appointed by the court
39 who is responsible for the personal affairs of a protected
40 person or a parent to make decisions regarding the support,
41 care, education, health, and welfare of a minor. The term
42 does not include a guardian ad litem.

43 (k) “Interested person” means heirs, devisees, children,
44 spouses, creditors, beneficiaries and any others having a
45 property right in or claim against a trust or the property in a

46 trust. It also includes persons having priority for
47 appointment as personal representative and other fiduciaries
48 representing interested persons. The meaning as it relates
49 to particular persons may vary from time to time and must
50 be determined according to the particular purposes of, and
51 matter involved, in any proceeding.

52 (l) “Interests of the beneficiaries” means the beneficial
53 interests provided in the terms of the trust.

54 (m) “Internal Revenue Code” or “Internal Revenue
55 Code of 1986” has the same meaning as when used in a
56 comparable context in the laws of the United States then in
57 effect relating to income, estate, generation-skipping
58 transfer and other taxes including all amendments made to
59 the laws of the United States and amendments which have
60 been adopted and incorporated into West Virginia law by
61 the West Virginia Legislature in §11-21-9 of this code.

62 (n) “Jurisdiction” with respect to a geographic area,
63 includes a state or country.

64 (o) “Person” means an individual, corporation, business
65 trust, estate, trust, partnership, limited liability company,
66 association, joint venture, unincorporated nonprofit
67 association, charitable organization, government,
68 governmental subdivision, agency, or instrumentality,
69 public corporation, or any other legal or commercial entity.

70 (p) “Power of withdrawal” means a presently
71 exercisable general power of appointment other than a
72 power:

73 (1) Exercisable by a trustee and limited by an
74 ascertainable standard; or

75 (2) Exercisable by another person only upon consent of
76 the trustee or a person holding an adverse interest.

77 (q) “Property” means anything that may be the subject
78 of ownership, whether real or personal, legal or equitable or
79 any interest therein.

80 (r) “Qualified beneficiary” means a beneficiary who, on
81 the date the beneficiary’s qualification is determined:

82 (1) Is a distributee or permissible distributee of trust
83 income or principal;

84 (2) Would be a distributee or permissible distributee of
85 trust income or principal if the interests of the distributees
86 described in paragraph (1) of this subdivision terminated on
87 that date without causing the trust to terminate; or

88 (3) Would be a distributee or permissible distributee of
89 trust income or principal if the trust terminated on that date.

90 (s) “Revocable”, as applied to a trust, means revocable
91 by the grantor without the consent of the trustee or a person
92 holding an adverse interest.

93 (t) “Spendthrift provision” means a term of a trust which
94 restrains both voluntary and involuntary transfer of a
95 beneficiary’s interest.

96 (u) “State” means a state of the United States, the
97 District of Columbia, Puerto Rico, the United States Virgin
98 Islands or any territory or insular possession subject to the
99 jurisdiction of the United States. The term includes an
100 Indian tribe or band recognized by federal law or formally
101 acknowledged by a state.

102 (v) “Terms of a trust” means:

103 (1) Except as otherwise provided in subparagraph (2);
104 and the manifestation of the grantor’s intent regarding a
105 trust’s provisions as:

106 (A) Expressed in the trust instrument; or

107 (B) Established by other evidence that would be
108 admissible in a judicial proceeding; or

109 (2) The trust's provisions as established, determined, or
110 amended by:

111 (i) A trustee or trust director in accordance with
112 applicable law;

113 (ii) A court order; or

114 (iii) A nonjudicial settlement agreement under §44D-1-
115 111 of this code.

116 (w) "Trust instrument" means a writing, including a
117 will, executed by the grantor that contains terms of the trust,
118 including any amendments thereto.

119 (x) "Trustee" includes an original, additional, successor
120 trustee and a cotrustee.

121 (y) "Writing" or "written instrument" does not include
122 an electronic record or electronic signature as provided in
123 §39A-1-1 *et seq.* of this code.

§44D-1-105. Default and mandatory rules.

1 (a) Except as otherwise provided in the terms of the trust
2 instrument, this chapter governs the duties and powers of a
3 trustee, relations among trustees, and the rights and interests
4 of a beneficiary.

5 (b) The terms of a trust prevail over any provision of
6 this chapter except:

7 (1) The requirements for creating a trust;

8 (2) The duty of a trustee to act in good faith and in
9 accordance with the terms and purposes of the trust but
10 subject to the provisions of §44D-8A-901, §44D-8A-1101,
11 and §44D-8A-1201 of this code;

12 (3) The requirement that a trust and its terms have a
13 purpose that is lawful, not contrary to public policy, and
14 possible to achieve;

15 (4) The power of the court to modify or terminate a trust
16 under §44D-4-410 through §44D-4-416 of this code;

17 (5) The effect of a spendthrift provision and the rights
18 of certain creditors and assignees to reach a trust as provided
19 in §44D-5-501 *et seq.* of this code;

20 (6) The power of the court under §44D-7-702 of this
21 code to require, dispense with, or modify or terminate a
22 bond;

23 (7) The power of the court under §44D-7-708(b) of this
24 code to adjust a trustee's compensation specified in the
25 terms of the trust instrument which is unreasonably low or
26 high;

27 (8) The effect of an exculpatory term under §44D-10-
28 1008 of this code;

29 (9) The rights under §44D-10-1010 through §44D-10-
30 1013 of this code of a person other than a trustee or
31 beneficiary;

32 (10) Periods of limitation for commencing a judicial
33 proceeding;

34 (11) The power of the court to take action and exercise
35 jurisdiction as may be necessary in the interests of justice;
36 and

37 (12) The subject-matter jurisdiction of the court and
38 venue for commencing a proceeding as provided in §44D-
39 2-203 and §44D-2-204 of this code.

§44D-1-108. Principal place of administration.

1 (a) Without precluding other means for establishing a
2 sufficient connection with the designated jurisdiction, terms

3 of a trust designating the principal place of administration
4 are valid and controlling if:

5 (1) A trustee's principal place of business is located in,
6 or a trustee is a resident of the designated jurisdiction;

7 (2) A trust director's principal place of business is
8 located in, or a trust director is a resident of the designated
9 jurisdiction; or

10 (3) All or part of the administration occurs in the
11 designated jurisdiction.

12 (b) Without precluding the right of the court to order,
13 approve, or disapprove a transfer, the trustee may transfer
14 the trust's principal place of administration to another state
15 or to a jurisdiction outside of the United States that is
16 appropriate to the trust's purposes, its administration, and
17 the interests of the beneficiaries.

18 (c) When the proposed transfer of a trust's principal
19 place of administration is to another state or to a jurisdiction
20 outside of the United States, the trustee shall notify the
21 current beneficiaries of a proposed transfer of a trust's
22 principal place of administration not less than 60 days
23 before initiating the transfer. A corporate trustee that
24 maintains a place of business in West Virginia where one or
25 more trust officers are available on a regular basis for
26 personal contact with trust customers and beneficiaries has
27 not transferred its principal place of administration merely
28 because all or a significant portion of the administration of
29 the trust is performed outside West Virginia. The notice of
30 proposed transfer must include:

31 (1) The name of the jurisdiction to which the principal
32 place of administration is to be transferred;

33 (2) The address and telephone number at the new
34 location at which the trustee can be contacted;

35 (3) An explanation of the reasons for the proposed
36 transfer;

37 (4) The date on which the proposed transfer is
38 anticipated to occur; and

39 (5) The date, not less than 60 days after the giving of the
40 notice, by which the current beneficiary must notify the
41 trustee of an objection to the proposed transfer.

42 (d) The authority of a trustee under this section to
43 transfer a trust's principal place of administration to another
44 state or to a jurisdiction outside the United States terminates
45 if a current beneficiary notifies the trustee of an objection to
46 the proposed transfer on or before the date specified in the
47 notice.

48 (e) In connection with a transfer of the trust's principal
49 place of administration, the trustee may transfer some or all
50 of the trust property to a successor trustee designated in the
51 terms of the trust instrument or appointed pursuant to §44D-
52 7-704 of this code.

ARTICLE 6. REVOCABLE TRUSTS.

§44D-6-603. Grantor's powers; powers of withdrawal.

1 (a) While a trust is revocable and the grantor has
2 capacity to revoke the trust, rights of the beneficiaries are
3 subject to the control of, and the duties of the trustee are
4 owed exclusively to, the grantor.

5 (b) During the period the power may be exercised, the
6 holder of a power of withdrawal has the rights of a grantor
7 of a revocable trust under this section to the extent of the
8 property subject to the power.

9 (c) When a trust is revocable, the trustee may follow a
10 direction of the grantor that is contrary to the terms of the
11 trust instrument.

ARTICLE 7. OFFICE OF THE TRUSTEE.**§44D-7-703. Cotrustees.**

1 (a) Unless otherwise provided in the terms of the trust
2 instrument, cotrustees who are unable to reach a unanimous
3 decision may act by majority decision. Unless otherwise
4 provided by the trust instrument, when a dispute arises
5 among trustees as to the exercise or nonexercise of any of
6 their powers and there is no agreement by a majority of
7 them, the court in its discretion upon a petition filed by any
8 of the trustees, the grantor, if living, a qualified beneficiary,
9 or any interested person, may direct the exercise or
10 nonexercise of the power as it considers necessary for the
11 best interest of the trust.

12 (b) If a vacancy occurs in a cotrusteeship, the remaining
13 cotrustees may act for the trust, unless otherwise provided
14 in the terms of the trust instrument.

15 (c) Subject to the provisions of §44D-8A-801 *et seq.* of
16 this code, a cotrustee must participate in the performance of
17 a trustee's function unless the cotrustee is unavailable to
18 perform the function because of absence, illness,
19 disqualification under other law, or other temporary
20 incapacity or the cotrustee has properly delegated the
21 performance of the function to another trustee.

22 (d) If a cotrustee is unavailable to perform duties
23 because of absence, illness, disqualification under other
24 law, or other temporary incapacity, and prompt action is
25 necessary to achieve the purposes of the trust or to avoid
26 injury to the trust property, the remaining cotrustee or a
27 majority of the remaining cotrustees may act for the trust.

28 (e) A trustee may delegate to a cotrustee the
29 performance of a function other than a function that the
30 terms of the trust expressly require to be performed by the
31 trustees jointly. Unless a delegation was irrevocable, a
32 trustee may revoke a delegation of a function previously
33 made.

34 (f) Except as otherwise provided in subsection (g) of this
35 section, a trustee who does not join in an action of another
36 trustee is not liable for the action.

37 (g) Subject to the provisions of §44D-8A-801 *et seq.* of
38 this code, each trustee shall exercise reasonable care to:

39 (1) Prevent a cotrustee from committing a serious
40 breach of trust; and

41 (2) Compel a cotrustee to redress a serious breach of
42 trust.

43 (h) A dissenting trustee who joins in an action at the
44 direction of the majority of the trustees and who notifies any
45 cotrustee of the dissent at or before the time of the action is
46 not liable for the action unless the action is a serious breach
47 of trust.

ARTICLE 8. DUTIES AND POWERS OF TRUSTEE.

§44D-8-808. Powers to direct.

1 The terms of a trust instrument which confer upon a
2 person other than the grantor of a revocable trust power to
3 direct certain actions of the trustee are governed by the
4 provisions of the West Virginia Uniform Directed Trust Act
5 contained in §44D-8A-801 *et seq.* of this code.

ARTICLE 8A. WEST VIRGINIA UNIFORM DIRECTED TRUST ACT.

§44D-8A-801. Short title.

1 This article may be cited as the West Virginia Uniform
2 Directed Trust Act.

§44D-8A-802. Definitions.

1 In addition to the definitions contained in §44D-1-103
2 of this code, as used in this article:

3 (1) “Breach of trust” means a violation by a trust
4 director or trustee of a duty imposed on that director or

5 trustee by the terms of the trust, this article, or law of this
6 state, other than this article pertaining to trusts.

7 (2) “Directed trust” means a trust for which the terms of
8 the trust grant a power of direction.

9 (3) “Directed trustee” means a trustee that is subject to
10 a trust director’s power of direction.

11 (4) “Power of direction” means a power over a trust
12 granted to a person by the terms of the trust to the extent the
13 power is exercisable while the person is not serving as a
14 trustee. The term includes a power over the investment,
15 management, or distribution of trust property or other
16 matters of trust administration. The term excludes the
17 powers described in §44D-8A-501(b) of this code.

18 (5) “Trust director” means a person that is granted a
19 power of direction by the terms of a trust to the extent the
20 power is exercisable while the person is not serving as a
21 trustee. The person is a trust director whether or not the
22 terms of the trust refer to the person as a trust director and
23 whether or not the person is a beneficiary or grantor of the
24 trust.

25 (6) “Knowingly” means known by the trustee based on
26 the contents of the direction and any information provided
27 by the trust director to the trustee.

28 (7) “Willful misconduct” means intentional malicious
29 conduct or conduct intentionally designed to defraud or seek
30 an unconscionable advantage and which is not mere
31 negligence, gross negligence, or recklessness.

§44D-8A-803. Application; principal place of administration.

1 The provisions of the West Virginia Uniform Directed
2 Trust Act apply to a trust, whenever created, that has its
3 principal place of administration in this state, subject to the
4 following rules:

5 (a) If the trust was created before the effective date of
6 this article, this article applies only to a decision or action
7 occurring on or after the effective date of this article.

8 (b) If the principal place of administration of the trust is
9 changed to this state on or after the effective date of this
10 article, this article applies only to a decision or action
11 occurring on or after the date of the change.

§44D-8A-804. Common law and principles of equity.

1 The common law and principles of equity supplement
2 this article, except to the extent modified by this article or
3 law of this state other than this article.

§44D-8A-805. Exclusions.

1 (a) In this section, “power of appointment” means a
2 power that enables a person acting in a nonfiduciary
3 capacity to designate a recipient of an ownership interest in
4 or another power of appointment over trust property.

5 (b) This article does not apply to a:

6 (1) Power of appointment;

7 (2) Power to appoint or remove a trustee or trust
8 director;

9 (3) Power of a grantor over a trust to the extent the
10 grantor has a power to revoke the trust;

11 (4) Power of a beneficiary over a trust to the extent the
12 exercise or nonexercise of the power affects the beneficial
13 interest of:

14 (A) The beneficiary; or

15 (B) Another beneficiary represented by the beneficiary
16 under §44D-3-301, §44D-3-302, §44D-3-303, §44D-3-304,
17 and §44D-3-305 of this code with respect to the exercise or
18 nonexercise of the power; or

19 (5) Power over a trust if:

20 (A) The terms of the trust provide that the power is held
21 in a nonfiduciary capacity; and

22 (B) The power must be held in a nonfiduciary capacity
23 to achieve the grantor's tax objectives under the United
24 States Internal Revenue Code of 1986 and regulations
25 issued thereunder.

26 (c) Unless the terms of a trust provide otherwise, a
27 power granted to a person to designate a recipient of an
28 ownership interest in or power of appointment over trust
29 property which is exercisable while the person is not serving
30 as a trustee is a power of appointment and not a power of
31 direction.

§44D-8A-806. Powers of trust director.

1 (a) Subject to §44D-8A-807 of this code, the terms of a
2 trust may grant a power of direction to a trust director.

3 (b) Unless the terms of a trust provide otherwise:

4 (1) A trust director may exercise any further power
5 appropriate to the exercise or nonexercise of a power of
6 direction granted to the director under subsection (a) of this
7 section; and

8 (2) Trust directors with joint powers must act by
9 majority decision.

§44D-8A-807. Limitations on trust director.

1 A trust director is subject to the same rules as a trustee
2 in a like position and under similar circumstances in the
3 exercise or nonexercise of a power of direction or further
4 power under §44D-8A-806(b)(1) of this code regarding:

5 (1) A payback provision in the terms of a trust necessary
6 to comply with the reimbursement requirements of
7 Medicaid law in Section 1917 of the Social Security Act, 42

8 U.S.C. Section 1396p(d)(4)(A) and regulations issued
9 thereunder; and

10 (2) A charitable interest in the trust, including notice
11 regarding the interest to the Attorney General of the State of
12 West Virginia.

§44D-8A-808. Duty and liability of trust director.

1 (a) Subject to subsection (b) of this section, with respect
2 to a power of direction or further power under §44D-8A-
3 806(b)(1) of this code:

4 (1) A trust director has the same fiduciary duty and
5 liability in the exercise or nonexercise of the power:

6 (A) If the power is held individually, as a sole trustee in
7 a like position and under similar circumstances; or

8 (B) If the power is held jointly with a trustee or another
9 trust director, as a cotrustee in a like position and under
10 similar circumstances; and

11 (2) The terms of the trust may vary the director's duty
12 or liability to the same extent the terms of the trust could
13 vary the duty or liability of a trustee in a like position and
14 under similar circumstances.

15 (b) Unless the terms of a trust provide otherwise, if a
16 trust director is licensed, certified, or otherwise authorized
17 or permitted by law other than in §44D-8A-801 *et seq.* of
18 this code to provide health care in the ordinary course of the
19 director's business or practice of a profession, to the extent
20 the director acts in that capacity, the director has no duty or
21 liability under this article.

22 (c) The terms of a trust may impose a duty or liability
23 on a trust director in addition to the duties and liabilities
24 under this section.

§44D-8A-809. Duty and liability of directed trustee.

1 (a) Subject to subsection (b) of this section, a directed
2 trustee shall take reasonable action to comply with a trust
3 director's exercise or nonexercise of a power of direction or
4 further power under §44D-8A-806(b)(1) of this code, and
5 the trustee is not liable for the action.

6 (b) A directed trustee must not comply with a trust
7 director's exercise or nonexercise of a power of direction or
8 further power under §44D-8A-806(b)(1) of this code to the
9 extent that the directed trustee is thereby directed knowingly
10 to violate the laws or regulations of any jurisdiction
11 applicable to the trust. The directed trustee may reasonably
12 rely upon the advice of legal counsel to determine what
13 actions would be consistent with or contrary to applicable
14 law. Reasonable expenses incurred by the directed trustee in
15 good faith for legal advice concerning an instruction from a
16 trust director or a petition to the court for instructions shall
17 be proper expenses of the trust.

18 (c) An exercise of a power of direction under which a
19 trust director may release a trustee or another trust director
20 from liability for breach of trust is not effective if:

21 (1) The breach involved the trustee's or other director's
22 willful misconduct;

23 (2) The release was induced by improper conduct of the
24 trustee or other director in procuring the release; or

25 (3) At the time of the release, the director did not know
26 the material facts relating to the breach.

27 (d) A directed trustee that has reasonable doubt about its
28 duty under this section may petition the court for
29 instructions.

30 (e) The terms of a trust may impose a duty or liability
31 on a directed trustee in addition to the duties and liabilities
32 under this section.

§44D-8A-810. Duty to provide information to trust director or trustee.

1 (a) Subject to §44D-8A-811 of this code, a trustee shall
2 provide information to a trust director to the extent the
3 information is reasonably related both to:

4 (1) The powers or duties of the trustee; and

5 (2) The powers or duties of the director.

6 (b) Subject to §44A-8A-811 of this code, a trust director
7 shall provide information to a trustee or another trust
8 director to the extent the information is reasonably related
9 both to:

10 (1) The powers or duties of the director; and

11 (2) The powers or duties of the trustee or other director.

12 (c) A trustee that acts in reliance upon information
13 provided by a trust director is not liable for a breach of trust
14 to the extent the breach resulted from the reliance, unless by
15 so acting the trustee engages in willful misconduct.

16 (d) A trust director that acts in reliance upon information
17 provided by a trustee or another trust director is not liable
18 for a breach of trust to the extent the breach resulted from
19 the reliance, unless by so acting the trust director engages in
20 willful misconduct.

§44D-8A-811. No duty to monitor, inform, or advise.

1 (a) Unless the terms of a trust provide otherwise:

2 (1) A trustee does not have a duty to:

3 (A) Monitor a trust director; or

4 (B) Inform or give advice to a grantor, beneficiary,
5 trustee, or trust director concerning an instance in which the
6 trustee might have acted differently than the director; and

7 (2) By taking an action described in §44D-8A-811(a)(1)
8 of this code, a trustee does not assume the duty excluded by
9 §44D-8A-811(a)(1) of this code.

10 (b) Unless the terms of a trust provide otherwise:

11 (1) A trust director does not have a duty to:

12 (A) Monitor a trustee or another trust director; or

13 (B) Inform or give advice to a grantor, beneficiary,
14 trustee, or another trust director concerning an instance in
15 which the director might have acted differently than a
16 trustee or another trust director; and

17 (2) By taking an action described in §44D-8A-811(b)(1)
18 of this code, a trust director does not assume the duty
19 excluded by §44D-8A-811(b)(1) of this code.

§44D-8A-812. Application to cotrustee.

1 The terms of a trust may relieve a cotrustee from duty
2 and liability with respect to another cotrustee's exercise or
3 nonexercise of a power of the other cotrustee to the same
4 extent that in a directed trust a directed trustee is relieved
5 from duty and liability with respect to a trust director's
6 power of direction under §44D-8A-809, §44D-8A-810, and
7 §44D-8A-811 of this code.

§44D-8A-813. Limitation of action against trust director.

1 (a) An action against a trust director for breach of trust
2 must be commenced within the same limitation period as
3 provided in §44D-10-1005 of this code for an action for
4 breach of trust against a trustee in a like position and under
5 similar circumstances.

6 (b) A report or accounting has the same effect on the
7 limitation period for an action against a trust director for
8 breach of trust that the report or accounting would have
9 under §44D-10-1005 of this code in an action for breach of

10 trust against a trustee in a like position and under similar
11 circumstances.

§44D-8A-814. Defenses in action against trust director.

1 In an action against a trust director for breach of trust,
2 the director may assert the same defenses a trustee in a like
3 position and under similar circumstances could assert in an
4 action for breach of trust against the trustee.

§44D-8A-815. Jurisdiction over trust director.

1 (a) By accepting appointment as a trust director of a
2 trust subject to this article, the director submits to personal
3 jurisdiction of the courts of this state regarding any matter
4 related to a power or duty of the director.

5 (b) §44D-8A-815 of this code does not preclude other
6 methods of obtaining jurisdiction over a trust director.

§44D-8A-816. Office of trust director.

1 Unless the terms of a trust provide otherwise, the rules
2 applicable to a trustee apply to a trust director regarding the
3 following matters:

4 (1) Acceptance under §44D-7-701 of this code;

5 (2) Giving of bond to secure performance under §44D-
6 7-702 of this code;

7 (3) Reasonable compensation under §44D-7-708 of this
8 code;

9 (4) Resignation under §44D-7-705 of this code;

10 (5) Removal under §44D-7-706 of this code; and

11 (6) Vacancy and appointment of successor under §44D-
12 7-704 of this code.

§44D-8A-817. Effective date.

1 This article takes effect on July 1, 2020.

●

CHAPTER 138

(S. B. 321 - By Senator Trump)

[Passed February 12, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 2, 2020.]

AN ACT to amend and reenact §11-10-11 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15-18a of said code, all relating to the collection of tax and the priority of distribution of an estate or property in receivership and the liability of the fiduciary.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-11. Collection of tax.

1 (a) *General.* — The Tax Commissioner shall collect the
2 taxes, additions to tax, penalties, and interest imposed by
3 this article or any of the other articles of this chapter to
4 which this article is applicable. In addition to all other
5 remedies available for the collection of debts due this state,
6 the Tax Commissioner may proceed by foreclosure of the
7 lien provided in §11-10-12 of this code, or by levy and
8 distraint under §11-10-13 of this code.

9 (b) *Prerequisite to final settlement of contracts with*
10 *nonresident contractor; user personally liable.* —

11 (1) Any person contracting with a nonresident
12 contractor subject to the taxes imposed by §11-13-1 *et seq.*,
13 §11-21-1 *et seq.*, and §11-24-1 *et seq.* of this code, shall
14 withhold payment, in the final settlement of the contract, of
15 a sufficient amount, not exceeding six percent of the

16 contract price, as will in the person's opinion be sufficient
17 to cover the taxes, until the receipt of a certificate from the
18 Tax Commissioner to the effect that the above referenced
19 taxes imposed against the nonresident contractor have been
20 paid or provided for.

21 (2) If any person shall fail to withhold as provided in
22 subdivision (1) of this subsection, that person is personally
23 liable for the payment of all taxes attributable to the
24 contract, not to exceed six percent of the contract price. The
25 taxes attributable shall be recoverable by the Tax
26 Commissioner by appropriate legal proceedings, which may
27 include issuance of an assessment under this article.

28 (c) *Prerequisite for issuance of certificate of dissolution*
29 *or withdrawal of corporation.* — The Secretary of State
30 shall withhold the issuance of any certificate of dissolution
31 or withdrawal in the case of any corporation organized
32 under the laws of this state, or organized under the laws of
33 another state and admitted to do business in this state, until
34 the receipt of a certificate from the Tax Commissioner to the
35 effect that every tax administered under this article imposed
36 against any corporation has been paid or provided for, or
37 that the applicant is not liable for any tax administered under
38 this article.

39 (d) *Prerequisite to final settlement of contract with this*
40 *state or political subdivision; penalty.* — All state, county,
41 district, and municipal officers and agents making contracts
42 on behalf of this state or any political subdivision thereof
43 shall withhold payment, in the final settlement of any
44 contract, until the receipt of a certificate from the Tax
45 Commissioner to the effect that the taxes imposed by §11-
46 13-1 *et seq.*, §11-21-1 *et seq.*, and §11-24-1 *et seq.* of this
47 code against the contractor have been paid or provided for.
48 If the transaction embodied in the contract or the subject
49 matter of the contract is subject to county or municipal
50 business and occupation tax, then the payment shall also be
51 withheld until receipt of a release from the county or
52 municipality to the effect that all county or municipal

53 business and occupation taxes levied or accrued against the
54 contractor have been paid. Any official violating this section
55 is subject to a civil penalty of \$1,000, recoverable as a debt
56 in a civil action brought by the Tax Commissioner.

57 (e) *Limited effect of Tax Commissioner's certificates.* —
58 The certificates of the Tax Commissioner provided in
59 subsections (b), (c), and (d) of this section shall not bar
60 subsequent investigations, assessments, refunds, and credits
61 with respect to the taxpayer.

62 (f) *Payment when person sells out or quits business;*
63 *liability of successor; lien.* —

64 (1) If any person subject to any tax administered under
65 this article sells out his, her, or its business or stock of
66 goods, or ceases doing business, any tax, additions to tax,
67 penalties, and interest imposed by this article or any of the
68 other articles of this chapter to which this article is
69 applicable shall become due and payable immediately and
70 that person shall, within 30 days after selling out his, her, or
71 its business or stock of goods or ceasing to do business,
72 make a final return or returns and pay any tax or taxes which
73 are due. The unpaid amount of any tax is a lien upon the
74 property of that person.

75 (2) The successor in business of any person who sells
76 out his, her, or its business or stock of goods, or ceases doing
77 business, is personally liable for the payments of tax,
78 additions to tax, penalties, and interest unpaid after
79 expiration of the 30-day period allowed for payment:
80 *Provided*, That if the business is purchased in an arms-
81 length transaction, and if the purchaser withholds so much
82 of the consideration for the purchase as will satisfy any tax,
83 additions to tax, penalties, and interest which may be due
84 until the seller produces a receipt from the Tax
85 Commissioner evidencing the payment thereof, the
86 purchaser is not personally liable for any taxes attributable
87 to the former owner of the business unless the contract of
88 sale provides for the purchaser to be liable for some or all

89 of the taxes. The amount of tax, additions to tax, penalties,
90 and interest for which the successor is liable is a lien on the
91 property of the successor, which shall be enforced by the
92 Tax Commissioner as provided in this article.

93 (g) *Priority in distribution of estate or property in*
94 *receivership.* — All taxes due and unpaid under this article
95 shall be paid from the first money available for distribution,
96 voluntary or compulsory, in receivership, bankruptcy or
97 otherwise, of the estate of any person or entity, subject to
98 §38-10C-1 *et seq.* of this code and subject to the priority of
99 taxes and debts due the United States which under federal
100 law are given priority over the debts and liens created by
101 this article.

102 (h) *Injunction.* — If the taxpayer fails for a period of
103 more than 60 days to fully comply with any of the
104 provisions of this article or of any other article of this
105 chapter to which this article is applicable, the Tax
106 Commissioner may institute a proceeding to secure an
107 injunction to restrain the taxpayer from doing business in
108 this state until the taxpayer fully complies with the
109 provisions of this article or any other articles. No bond is
110 required of the Tax Commissioner in any action instituted
111 under this subsection.

112 (i) *Costs.* — In any proceeding under this section, upon
113 judgment or decree for the Tax Commissioner, he or she
114 shall be awarded his or her costs.

115 (j) *Refunds; credits; right to offset.* —

116 (1) Whenever a taxpayer has a refund or credit due it for
117 an overpayment of any tax administered under this article,
118 the Tax Commissioner may reduce the amount of the refund
119 or credit by the amount of any tax administered under this
120 article, whether it be the same tax or any other tax, which is
121 owed by the same taxpayer and collectible as provided in
122 subsection (a) of this section.

123 (2) The Tax Commissioner may enter into agreements
124 with the Internal Revenue Service that provide for offsetting
125 state tax refunds against federal tax liabilities; offsetting
126 federal tax refunds against state tax liabilities; and
127 establishing the amount of the offset fee per transaction
128 which both agencies may charge each other: *Provided*, That
129 offsets under subdivision (1) of this subsection shall occur
130 prior to offsets under this subdivision. At the times moneys
131 are received as a result of an offset of a taxpayer's federal
132 tax refund under the provisions of section 6402(e) of the
133 Internal Revenue Code, the taxpayer is given credit against
134 state tax liability for the amount of the offset less a
135 deduction for the offset fee imposed by the Internal Revenue
136 Service: *Provided, however*, That the amount of the offset
137 fee imposed by the Internal Revenue Service shall be added
138 to the taxes, interest, and penalties owed by the taxpayer to
139 this state: *Provided further*, That the amount of the offset
140 fee imposed by the Tax Commissioner shall be deducted
141 from the moneys retained from the taxpayer's state tax
142 refund and then deposited in the special revolving fund
143 which is hereby created and established in the State
144 Treasury and designated as the Tax Offset Fee
145 Administration Fund: *And provided further*, That the fees
146 deposited in the Tax Offset Fee Administration Fund may
147 be expended by the Tax Commissioner for the general
148 administration of the taxes administered under the authority
149 of this article.

150 (k) *Spouse relieved of liability in certain cases.* —

151 (1) *In general.* — Under regulations prescribed by the
152 Tax Commissioner, if:

153 (A) A joint personal income tax return has been made
154 for a taxable year;

155 (B) On the return there is a substantial understatement
156 of tax attributable to grossly erroneous items of one spouse;

157 (C) The other spouse establishes that in signing the
158 return he or she did not know, and had no reason to know,
159 that there was a substantial understatement; and

160 (D) Taking into account all the facts and circumstances,
161 it is inequitable to hold the other spouse liable for the
162 deficiency in tax for the taxable year attributable to the
163 substantial understatement, then the other spouse is relieved
164 of any liability for tax, including interest, additions to tax,
165 and other amounts for the taxable year to the extent the
166 liability is attributable to the substantial understatement.

167 (2) *Grossly erroneous items.* — For purposes of this
168 subsection, the term “grossly erroneous items” means, with
169 respect to any spouse:

170 (A) Any item of gross income attributable to a spouse
171 which is omitted from gross income; and

172 (B) Any claim of a deduction, credit, or basis by a
173 spouse in an amount for which there is no basis in fact or
174 law.

175 (3) *Substantial understatement.* — For purposes of this
176 subsection, the term “substantial understatement” means
177 any understatement, as defined in regulations prescribed by
178 the Tax Commissioner which exceed \$500.

179 (4) Understatement must exceed specified percentage of
180 spouse’s income.

181 (A) *Adjusted gross income of \$20,000 or less.* — If the
182 spouse’s adjusted gross income for the readjustment year is
183 \$20,000 or less, this subsection applies only if the liability
184 described in subdivision (1) of this subsection is greater than
185 10 percent of the adjusted gross income.

186 (B) *Adjusted gross income of more than \$20,000.* — If
187 the spouse’s adjusted gross income for the readjustment
188 year is more than \$20,000, paragraph (A) of this subdivision
189 is applied by substituting “25 percent” for “10 percent”.

190 (C) *Readjustment year.* — For purposes of this
191 subdivision, the term “readjustment year” means the most
192 recent taxable year of the spouse ending before the date the
193 deficiency notice is mailed.

194 (D) *Computation of spouse’s adjusted gross income.* —
195 If the spouse is married to another spouse at the close of the
196 readjustment year, the spouse’s adjusted gross income shall
197 include the income of the new spouse whether or not they
198 file a joint return.

199 (E) *Exception for omissions from gross income.* — This
200 subdivision shall not apply to any liability attributable to the
201 omission of an item from gross income.

202 (5) *Adjusted gross income.* — For purposes of this
203 subsection, the term “adjusted gross income” means the
204 West Virginia adjusted gross income of the taxpayer,
205 determined under §11-21-1 *et seq.* of this code.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-18a. Receivership; bankruptcy; priority of tax.

1 All taxes due and unpaid under this article shall be paid
2 from the first money available for distribution, voluntary or
3 compulsory, in receivership, bankruptcy or otherwise, of the
4 estate of any person or entity, subject to §38-10C-1 *et seq.*
5 of this code and subject to the priority of taxes and debts due
6 the United States which under federal law are given priority
7 over the debts and liens created by this article.

CHAPTER 139

**(S. B. 510 - By Senators Palumbo, Beach, Jeffries,
Lindsay, Plymale, Prezioso, Takubo, Weld, Woelfel,
Hamilton and Stollings)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §31-18E-9 of the Code of West Virginia, 1931, as amended, relating to the right of first refusal which land reuse agencies and municipal land banks have on tax-delinquent properties; expanding the circumstances when the right of first refusal may be used; clarifying provisions related to the right of first refusal; authorizing land reuse agencies and municipal land banks to reject adjacent property owner's request to purchase property in certain circumstances; providing a sunset date; and requiring the submission of a report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18E. WEST VIRGINIA LAND REUSE AGENCY AUTHORIZATION ACT.

§31-18E-9. Acquisition of property.

1 (a) *Title to be held in its name.* — A land reuse agency
2 or municipal land bank shall hold in its own name all real
3 property it acquires.

4 (b) *Tax exemption.* — (1) Except as set forth in
5 subdivision (2) of this subsection, the real property of a land
6 reuse agency or municipal land bank and its income and
7 operations are exempt from property tax.

8 (2) Subdivision (1) of this subsection does not apply to
9 real property of a land reuse agency or municipal land bank
10 after the fifth consecutive year in which the real property is
11 continuously leased to a private third party. However, real
12 property continues to be exempt from property taxes if it is
13 leased to a nonprofit or governmental agency at
14 substantially less than fair market value.

15 (c) *Methods of acquisition.* — A land reuse agency or
16 municipal land bank may acquire real property or interests
17 in real property by any means on terms and conditions and
18 in a manner the land reuse agency considers proper:
19 *Provided,* That a land reuse agency or municipal land bank
20 may not acquire any interest in oil, gas, or minerals which
21 have been severed from the realty.

22 (d) *Acquisitions from municipalities or counties.* — (1)
23 A land reuse agency or municipal land bank may acquire
24 real property by purchase contracts, lease purchase
25 agreements, installment sales contracts, and land contracts
26 and may accept transfers from municipalities or counties
27 upon terms and conditions as agreed to by the land reuse
28 agency or municipal land bank and the municipality or
29 county.

30 (2) A municipality or county may transfer to a land
31 reuse agency or municipal land bank real property and
32 interests in real property of the municipality or county on
33 terms and conditions and according to procedures
34 determined by the municipality or county as long as the real
35 property is located within the jurisdiction of the land reuse
36 agency or municipal land bank.

37 (3) An urban renewal authority, as defined in §16-18-4
38 of this code, located within a land reuse jurisdiction
39 established under this article may, with the consent of the
40 local governing body and without a redevelopment contract,
41 convey property to the land reuse agency. A conveyance
42 under this subdivision shall be with fee simple title, free of
43 all liens and encumbrances.

44 (e) *Maintenance.* — A land reuse agency or municipal
45 land bank shall maintain all of its real property in
46 accordance with the statutes and ordinances of the
47 jurisdiction in which the real property is located.

48 (f) *Prohibition.* — (1) Subject to the provisions of
49 subdivision (2) of this subsection, a land reuse agency or
50 municipal land bank may not own or hold real property
51 located outside the jurisdictional boundaries of the entities
52 which created the land reuse agency under §31-18E-4(c) of
53 this code.

54 (2) A land reuse agency or municipal land bank may be
55 granted authority pursuant to an intergovernmental
56 cooperation agreement with a municipality or county to
57 manage and maintain real property located within the
58 jurisdiction of the municipality or county.

59 (g) *Acquisition of tax-delinquent properties.* — (1)
60 Notwithstanding any other provision of this code to the
61 contrary, if authorized by the land reuse jurisdiction which
62 created a land reuse agency or municipal land bank or
63 otherwise by intergovernmental cooperation agreement, a
64 land reuse agency or municipal land bank may acquire an
65 interest in tax-delinquent property through the provisions of
66 chapter 11A of this code. Notwithstanding the provisions of
67 §11A-3-8 of this code, if no person present at the tax sale
68 bids the amount of the taxes, interest, and charges due on
69 any unredeemed tract or lot or undivided interest in real
70 estate offered for sale, the sheriff shall, prior to certifying
71 the real estate to the Auditor for disposition pursuant to
72 §11A-3-44 of this code, provide a list of all of said real
73 estate within a land reuse or municipal land bank
74 jurisdiction to the land reuse agency or municipal land bank
75 and the land reuse agency or municipal land bank shall be
76 given an opportunity to purchase the tax lien and pay the
77 taxes, interest, and charges due for any unredeemed tract or
78 lot or undivided interest therein as if the land reuse agency
79 or municipal land bank were an individual who purchased
80 the tax lien at the tax sale.

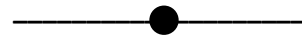
81 (2) Notwithstanding any other provision of this code to
82 the contrary, if authorized by the land reuse jurisdiction
83 which created a land reuse agency or municipal land bank
84 or otherwise by intergovernmental cooperation agreement,
85 the land reuse agency or municipal land bank shall have the
86 right of first refusal to purchase any tax-delinquent property
87 which is within municipal limits, and meets one or more of
88 the following criteria: (A) It has an assessed value of
89 \$50,000 or less; (B) there are municipal liens on the
90 property that exceed the amount of back taxes owed in the
91 current tax cycle; (C) the property has been on the
92 municipality's vacant property registry for 24 consecutive
93 months or longer; (D) the property was sold at a tax sale
94 within the previous three years, was not redeemed, and no
95 deed was secured by the previous lien purchaser; or (E) has
96 been condemned: *Provided*, That the land reuse agency or
97 municipal land bank satisfies the requirements of
98 subdivision (3) of this subsection. A list of properties which
99 meet the criteria of this subdivision shall regularly be
100 compiled by the sheriff of the county, and a land reuse
101 agency or municipal land bank may purchase any qualifying
102 tax-delinquent property for an amount equal to the taxes
103 owed and any related fees before such property is placed for
104 public auction.

105 (3) When a land reuse agency or municipal land bank
106 exercises a right of first refusal in accordance with
107 subdivision (2) of this section, the land reuse agency or
108 municipal land bank shall, within 15 days of obtaining a tax
109 deed, provide written notice to all owners of real property
110 that is adjacent to the tax-delinquent property. Any such
111 property owner shall have a period of 120 days from the
112 receipt of notice, actual or constructive, to express an
113 interest in purchasing the tax-delinquent property from the
114 land reuse agency or municipal land bank for an amount
115 equal to the amount paid for the property plus expenses
116 incurred by the land reuse agency or municipal land bank:
117 *Provided*, That the land reuse agency or municipal land
118 bank may refuse to sell the property to the adjacent property

119 owner that expressed interest in the tax-delinquent property
120 if that property owner or an entity owned by the property
121 owner or its directors is delinquent on any state and local
122 taxes or municipal fees on any of their property.

123 (4) Effective July 1, 2025, the provisions of
124 subdivisions (2) and (3) of this subsection shall sunset and
125 have no further force and effect.

126 (5) Prior to January 1, 2025, any land reuse agency or
127 municipal land bank which exercises the authority granted
128 by this subsection shall submit to the Joint Committee on
129 Government and Finance a report on the entity's activities
130 related to the purchase of tax-delinquent properties and any
131 benefits realized from the authority granted by this
132 subsection.



CHAPTER 140

**(Com. Sub. for S. B. 554 - By Senators Smith,
Clements, Pitsenbarger, Roberts, Trump, Romano,
Hamilton and Maroney)**

[Passed March 2, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §36-4-9b, relating to the termination, expiration, or cancellation of oil or natural gas leases; providing a requirement for a lessee to execute and deliver to the lessor, within a specified time and without cost, a recordable release for terminated, expired, or canceled oil or natural gas leases; providing for a procedure by which a lessor may serve notice to a lessee if a lessee fails to timely provide the release; providing requirements for the content of the notice; requiring a lessee to timely notify the lessor in writing

of a dispute regarding the termination, expiration, or cancellation of the oil and natural gas lease; providing for an affidavit of termination, expiration, or cancellation with specified contents; and providing a requirement that county clerks accept and record said affidavit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COVENANTS.

§36-4-9b. Release of terminated, expired or canceled oil or natural gas leases.

1 (a) Unless a different time is required by the lease,
2 within 60 days after the termination, expiration, or
3 cancellation of an oil or natural gas lease, the lessee shall
4 deliver to the lessor, without cost to the lessor, or his or her
5 successors or assigns, a properly executed and notarized
6 release of such lease in recordable form.

7 (b) If the lessee fails to provide a timely release as
8 required by subsection (a) of this section, the lessor, or his
9 or her successors or assigns, may serve notice of lessee's
10 failure to provide such release. The notice shall be made in
11 good faith and contain the following:

12 (1) A statement that:

13 (A) The lease is terminated, expired, or canceled
14 according to its terms, including the date of such
15 termination, expiration, or cancellation;

16 (B) The lessee has a duty to provide a release pursuant
17 to subsection (a) of this section; and

18 (C) If the release, or a written dispute to such
19 termination, expiration, or cancellation, is not received by
20 the lessor, or his or her successors or assigns, from the lessee
21 within 60 days from receipt of the notice, the lessor, or his
22 or her successors or assigns, shall have the right to file an

23 affidavit of termination, expiration, or cancellation under
24 subsection (e) of this section;

25 (2) The name and address of the lessor, or his or her
26 successors or assigns;

27 (3) A brief description of the land covered by the lease
28 including, but not limited to, the state, county, tax district,
29 tax map and parcel, watershed, historical farm name, or
30 other identifying information;

31 (4) If there is a well on the land covered by the lease, the
32 name or API number of the well, if known to the lessor, or
33 his or her successors or assigns;

34 (5) If located in a unit, the name of the unit, if known,
35 to the lessor, or his or her successors or assigns; and

36 (6) The recording information for the lease, or a
37 memorandum of lease, in the public records of the county
38 or counties, along with the execution date of the lease, and
39 the identity of the original lessor and lessee under the lease.

40 (7) The notice when served shall include a service sheet
41 showing the names and addresses of all persons upon whom
42 the notice has been served.

43 (c) The notice shall be sent to the following persons as
44 are shown by the lessor's reasonable examination of the
45 public records: (1) Lessee; (2) lessee's assignee; (3) all other
46 lessors; and (4) all other persons who have an interest in the
47 leasehold estate or the oil and natural gas leased thereunder.
48 A lessor's inability to afford notice to everyone to whom
49 notice is to be given thereunder does not relieve a lessee of
50 its obligation to respond.

51 (d) Service of notice under subsections (b) and (c) of
52 this section shall be effected either personally or by certified
53 mail to the recipient's last known business addresses, or, if
54 service cannot reasonably be made by those means, by
55 publication once a week for two weeks in a newspaper of

56 general circulation in the county or counties in which the
57 lands covered by the lease are located.

58 (e) If, after receiving a notice of termination, expiration,
59 or cancellation under subsections (b), (c), and (d) of this
60 section, a lessee disputes in good faith that the oil or natural
61 gas lease is terminated, expired, or canceled as stated in the
62 notice, the lessee must, not more than 60 days after receipt
63 of the notice, deliver a written dispute of the contents of the
64 notice to the lessor, or his or her successors or assigns,
65 detailing the good-faith basis for such dispute.

66 (f) A lessor, or his or her successors or assigns, who has
67 served a notice under subsections (b), (c) and (d) of this
68 section, and who fails to receive a timely dispute from a
69 lessee under subsection (e) of this section, may record an
70 affidavit of termination, expiration, or cancellation of an oil
71 or natural gas lease in the office of the county clerk in the
72 county or counties where the lands covered by the lease are
73 situated. The county clerk of each county shall accept all
74 such affidavits and shall enter and record them in the official
75 records of that county and shall index each in the indices
76 under the names, as they appear in the affidavit, of the
77 original lessor, the original lessee, the lessor seeking the
78 release, and the lessee identified in the affidavit.

79 (g) An affidavit of termination, expiration, or
80 cancellation of an oil or a natural gas lease shall be in the
81 form of an affidavit and contain the following information:

82 (1) The name and address of the affiant;

83 (2) The names and addresses of the lessor and lessee;

84 (3) If located in a unit, the name of the unit, if known to
85 the affiant;

86 (4) If there is a well on the land, the name or API number
87 of the well, if known to the affiant;

88 (5) The recording information for the lease, or a
89 memorandum of same, in the public record of the county or
90 counties where the interest is located, along with the
91 execution date of the lease, and the names of the original
92 lessors and lessees under the lease;

93 (6) A brief recitation of the facts known to the affiant
94 relating to the termination, expiration, or cancellation of the
95 lease, including relevant dates;

96 (7) A statement that the lessor, or its successors or
97 assigns, complied with his or her duty to serve proper notice
98 to the lessee under subsections (b), (c), and (d) of this
99 section and that the lessee failed to provide a timely
100 challenge to the notice as provided in subsection (e) of this
101 section. The lessor's affidavit shall have attached to it a
102 copy of the notice made and served under subsections (b),
103 (c), and (d) of this section including therewith a copy of the
104 service sheet accompanying the notice; and

105 (8) The notarized signature of the affiant.

106 (h) A person who files an affidavit under this section
107 shall serve a copy of the same upon all persons to whom
108 notice was required to be given under subsections (b), (c),
109 and (d) of this section in the same manner as notice was
110 required to be served. The filing of an affidavit under this
111 section does not constitute a modification of a lease, nor
112 does it limit, waive, or prejudice any claim or defense of any
113 party to the lease in law or in equity.

114 (i) A lessor's, or his or her successors or assigns,
115 decision not to use the provisions of this section is not
116 evidence that a lease is still in effect.

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CHAPTER 141

(Com. Sub. for S. B. 662 - By Senator Sypolt)

[Passed March 4, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §44-3-1 of the Code of West Virginia, 1931, as amended, relating to removing language restricting more than two fiduciary commissioners being from the same political party.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FIDUCIARY COMMISSIONERS; POWERS AND DUTIES.

§44-3-1. Fiduciary commissioners.

1 The office previously known as commissioner of
2 accounts is hereby abolished. The office of fiduciary
3 commissioner is hereby created and any reference in this
4 code to a commissioner of accounts shall, after the effective
5 date of this section, mean fiduciary commissioner.
6 Fiduciary commissioners shall be attorneys admitted to the
7 practice of law in this state or shall meet the qualifications
8 of fiduciary supervisors as set forth in §44-3A-1 *et seq.* of
9 this code.

10 The county commission of each county shall appoint not
11 more than four fiduciary commissioners. In counties in
12 which there exists a separate tribunal for police and fiscal
13 purposes, that tribunal shall appoint the fiduciary
14 commissioners.

15 The fiduciary commissioner shall report to and settle
16 accounts with the county clerk. On or before the last day of

17 March, June, September, and December, the fiduciary
18 commissioner shall file with the county clerk a report on the
19 status and disposition of every active case referred to the
20 fiduciary commissioner. In the next succeeding term of the
21 county commission, the county clerk shall provide a copy
22 of the report to the county commission, and shall inform the
23 county commission of any cases referred to a fiduciary
24 commissioner in which the fiduciary commissioner has not
25 fulfilled duties relating to the case in accordance with
26 deadlines established by law. The county commission shall
27 take appropriate action to ensure that all deadlines
28 established by law are observed including, if necessary, the
29 removal of fiduciary commissioners who consistently fail to
30 meet the deadlines.



CHAPTER 142

(Com. Sub. for S. B. 668 - By Senator Trump)

[Passed March 6, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §44D-8B-1, §44D-8B-2, §44D-8B-3, §44D-8B-4, §44D-8B-5, §44D-8B-6, §44D-8B-7, §44D-8B-8, §44D-8B-9, §44D-8B-10, §44D-8B-11, §44D-8B-12, §44D-8B-13, §44D-8B-14, §44D-8B-15, §44D-8B-16, §44D-8B-17, §44D-8B-18, §44D-8B-19, §44D-8B-20, §44D-8B-21, §44D-8B-22, §44D-8B-23, §44D-8B-24, §44D-8B-25, §44D-8B-26, §44D-8B-27, §44D-8B-28, §44D-8B-29, §44D-8B-30, and §44D-8B-31, all relating to enactment of the Uniform Trust Decanting Act to allow a trustee to distribute assets of one trust into another trust; providing a short title; defining terms; setting forth the scope of the act; setting forth a fiduciary's duty and the fiduciary's

authority to exercise the decanting power; setting forth those trusts to which the act applies; providing for actions or failure to act as a result of reasonable reliance; requiring fiduciary to give notice containing specified information to certain persons before exercising decanting power; providing for notice to representatives and consent of or waiver by a representative; providing for court involvement upon application by a fiduciary or other specified persons; specifying actions which the court may take; requiring a signed record of any exercise of the decanting power; providing for fiduciary's decanting power under expanded distributive discretion and setting forth restrictions on a second trust; providing for fiduciary's decanting power under expanded limited distributive discretion; providing when a special-needs fiduciary may exercise the decanting power for a beneficiary with a disability; requiring fiduciary to protect charitable interests; setting forth first trust limitations which affect decanting; setting forth limitations on a change in a fiduciary's compensation; providing for relief from liability and indemnification of the fiduciary in the second trust instrument; providing for the removal or replacement of an authorized fiduciary through exercise of the decanting power; setting forth tax-related limitations; providing for the duration of the second trust; providing that distribution is not required; setting forth saving provision where second trust does not comply with the act; setting forth requirements regarding a trust for the care of an animal; providing for second trust terms; providing grantor of the first trust is a grantor of the second trust; providing for later-discovered property; providing that obligations of the first trust are obligations of the second trust; providing that application and construction of the act is to be uniform; relating to application of federal act to electronic signatures; and providing for severability and an effective date.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 8B. WEST VIRGINIA UNIFORM TRUST
DECANTING ACT.**

§44D-8B-1. Short title.

1 This article may be cited as the West Virginia Uniform
2 Trust Decanting Act.

§44D-8B-2. Definitions.

1 In addition to the definitions contained in §44D-1-103
2 of this code which apply to this article:

3 (1) “Appointive property” means the property or
4 property interest subject to a power of appointment.

5 (2) “Authorized fiduciary” means:

6 (A) A trustee or other fiduciary, other than a grantor,
7 that has discretion to distribute or direct a trustee to
8 distribute part or all of the principal of the first trust to one
9 or more current beneficiaries;

10 (B) A special fiduciary appointed under §44D-8B-9 of
11 this code; or

12 (C) A special-needs fiduciary under §44D-8B-13 of this
13 code.

14 (3) “Charitable interest” means an interest in a trust
15 which:

16 (A) Is held by an identified charitable organization and
17 makes the organization a qualified beneficiary;

18 (B) Benefits only charitable organizations and, if the
19 interest were held by an identified charitable organization,
20 would make the organization a qualified beneficiary; or

21 (C) Is held solely for charitable purposes and, if the
22 interest were held by an identified charitable organization,
23 would make the organization a qualified beneficiary.

24 (4) “Charitable organization” means:

25 (A) A person, other than an individual, organized and
26 operated exclusively for charitable purposes; or

27 (B) A government or governmental subdivision,
28 agency, or instrumentality, to the extent it holds funds
29 exclusively for a charitable purpose.

30 (5) “Charitable purpose” means the relief of poverty, the
31 advancement of education or religion, the promotion of
32 health, a municipal or other governmental purpose, or
33 another purpose the achievement of which is beneficial to
34 the community.

35 (6) “Decanting power” or “the decanting power” means
36 the power of an authorized fiduciary under this article to
37 distribute property of a first trust to one or more second
38 trusts or to modify the terms of the first trust.

39 (7) “Expanded distributive discretion” means a
40 discretionary power of distribution that is not limited to an
41 ascertainable standard or a reasonably definite standard.

42 (8) “First trust” means a trust over which an authorized
43 fiduciary may exercise the decanting power.

44 (9) “First-trust instrument” means the trust instrument
45 for a first trust.

46 (10) “General power of appointment” means a power of
47 appointment exercisable in favor of a powerholder, the
48 powerholder’s estate, a creditor of the powerholder, or a
49 creditor of the powerholder’s estate.

50 (11) “Power of appointment” means a power that
51 enables a powerholder acting in a nonfiduciary capacity to
52 designate a recipient of an ownership interest in or another
53 power of appointment over the appointive property. The
54 term does not include a power of attorney.

55 (12) “Powerholder” means a person in which a donor
56 creates a power of appointment.

57 (13) “Presently exercisable power of appointment”
58 means a power of appointment exercisable by the
59 powerholder at the relevant time. The term:

60 (A) Includes a power of appointment exercisable only
61 after:

62 (i) The occurrence of the specified event;

63 (ii) The satisfaction of the ascertainable standard; or

64 (iii) The passage of the specified time; and

65 (B) Does not include a power exercisable only at the
66 powerholder’s death.

67 (14) “Reasonably definite standard” means a clearly
68 measurable standard under which a holder of a power of
69 distribution is legally accountable within the meaning of 26
70 U.S.C. §674(b)(5)(A) and any applicable regulations.

71 (15) “Record” means information that is inscribed on a
72 tangible medium or that is stored in an electronic or other
73 medium and is retrievable in perceivable form.

74 (16) “Second trust” means:

75 (A) A first trust after modification under this article; or

76 (B) A trust to which a distribution of property from a
77 first trust is or may be made under this article.

78 (17) “Second-trust instrument” means the trust
79 instrument for a second trust.

80 (18) “Sign” means with present intent to authenticate or
81 adopt a record:

82 (A) To execute or adopt a tangible symbol; or

83 (B) To attach to or logically associate with the record an
84 electronic symbol, sound, or process.

§44D-8B-3. Scope.

1 (a) Except as otherwise provided in subsections (b) and
2 (c) of this section, this article applies to an express trust that
3 is irrevocable or revocable by the grantor only with the
4 consent of the trustee or a person holding an adverse
5 interest.

6 (b) This article does not apply to a trust held solely for
7 charitable purposes.

8 (c) Subject to §44D-8B-15 of this code, a trust
9 instrument may restrict or prohibit exercise of the decanting
10 power.

11 (d) This article does not limit the power of a trustee,
12 powerholder, or other person to distribute or appoint
13 property in further trust or to modify a trust under the trust
14 instrument, law of this state other than this article, common
15 law, a court order, or a nonjudicial settlement agreement.

16 (e) This article does not affect the ability of a grantor to
17 provide in a trust instrument for the distribution of the trust
18 property or appointment in further trust of the trust property
19 or for modification of the trust instrument.

§44D-8B-4. Fiduciary duty.

1 (a) In exercising the decanting power, an authorized
2 fiduciary shall act in accordance with its fiduciary duties,
3 including the duty to act in accordance with the purposes of
4 the first trust.

5 (b) This article does not create or imply a duty to
6 exercise the decanting power or to inform beneficiaries
7 about the applicability of this article.

8 (c) Except as otherwise provided in a first-trust
9 instrument, for purposes of this article and §44D-8-1 and
10 §44D-8-2(a) of this code, the terms of the first trust are
11 considered to include the decanting power.

§44D-8B-5. Application; governing law.

1 This article applies to a trust created before, on, or after
2 the effective date of this article which:

3 (1) Has its principal place of administration in this state,
4 including a trust whose principal place of administration has
5 been changed to this state; or

6 (2) Provides by its trust instrument that it is governed by
7 the law of this state or is governed by the law of this state
8 for the purpose of:

9 (A) Administration, including administration of a trust
10 whose governing law for purposes of administration has
11 been changed to the law of this state;

12 (B) Construction of terms of the trust; or

13 (C) Determining the meaning or effect of terms of the
14 trust.

§44D-8B-6. Reasonable reliance.

1 A trustee or other person that reasonably relies on the
2 validity of a distribution of part or all of the property of a
3 trust to another trust, or a modification of a trust, under this
4 article, law of this state other than this article, or the law of
5 another jurisdiction is not liable to any person for any action
6 or failure to act as a result of the reliance.

§44D-8B-7. Notice; exercise of decanting power.

1 (a) In this section, a notice period begins on the day
2 notice is given under subsection (c) of this section and ends
3 59 days after the day notice is given.

4 (b) Except as otherwise provided in this article, an
5 authorized fiduciary may exercise the decanting power
6 without the consent of any person and without court
7 approval.

8 (c) Except as otherwise provided in subsection (f) of this
9 section, an authorized fiduciary shall give notice in a record
10 of the intended exercise of the decanting power not later
11 than 60 days before the exercise to:

12 (1) Each grantor of the first trust, if living or then in
13 existence;

14 (2) Each qualified beneficiary of the first trust;

15 (3) Each holder of a presently exercisable power of
16 appointment over any part, or all of, the first trust;

17 (4) Each person that currently has the right to remove or
18 replace the authorized fiduciary;

19 (5) Each other fiduciary of the first trust;

20 (6) Each fiduciary of the second trust; and

21 (7) The West Virginia Attorney General, if §44D-8B-
22 14(b) of this code applies.

23 (d) An authorized fiduciary is not required to give notice
24 under subsection (c) of this section to a person that is not
25 known to the fiduciary.

26 (e) A notice under subsection (c) of this section must:

27 (1) Specify the manner in which the authorized
28 fiduciary intends to exercise the decanting power;

29 (2) Specify the proposed effective date for exercise of
30 the power;

31 (3) Include a copy of the first-trust instrument; and

32 (4) Include a copy of all second-trust instruments.

33 (f) The decanting power may be exercised before
34 expiration of the notice period under subsection (a) of this

35 section if all persons entitled to receive notice waive the
36 period in a signed record.

37 (g) The receipt of notice, waiver of the notice period, or
38 expiration of the notice period does not affect the right of a
39 person to file an application under §44D-8B-9 of this code
40 asserting that:

41 (1) An attempted exercise of the decanting power is
42 ineffective because it did not comply with this article or was
43 an abuse of discretion or breach of fiduciary duty; or

44 (2) Section 44D-8B-22 of this code applies to the
45 exercise of the decanting power.

46 (h) An exercise of the decanting power is not ineffective
47 because of the failure to give notice to one or more persons
48 under subsection (c) of this section if the authorized
49 fiduciary acted with reasonable care to comply with that
50 subsection.

§44D-8B-8. Representation.

1 (a) Notice to a person with authority to represent and
2 bind another person under a first-trust instrument or the
3 provisions of this chapter has the same effect as notice given
4 directly to the person represented.

5 (b) Consent of or waiver by a person with authority to
6 represent and bind another person under a first-trust
7 instrument or the provisions of this chapter is binding on the
8 person represented unless the person represented objects to
9 the representation before the consent or waiver otherwise
10 would become effective.

11 (c) A person with authority to represent and bind
12 another person under a first-trust instrument or the
13 provisions of this chapter may file an application under
14 §44D-8B-9 of this code on behalf of the person represented.

15 (d) A grantor may not represent or bind a beneficiary
16 under this article.

§44D-8B-9. Court involvement.

1 (a) On application of an authorized fiduciary, a person
2 entitled to notice under §44D-8B-7(c) of this code, a
3 beneficiary, or with respect to a charitable interest any other
4 person that has standing to enforce the charitable interest,
5 the court may:

6 (1) Provide instructions to the authorized fiduciary
7 regarding whether a proposed exercise of the decanting
8 power is permitted under this article and consistent with the
9 fiduciary duties of the authorized fiduciary;

10 (2) Appoint a special fiduciary and authorize the special
11 fiduciary to determine whether the decanting power should
12 be exercised under this article and to exercise the decanting
13 power;

14 (3) Approve an exercise of the decanting power;

15 (4) Determine that a proposed or attempted exercise of
16 the decanting power is ineffective because:

17 (A) After applying §44D-8B-22 of this code, the
18 proposed or attempted exercise does not, or did not, comply
19 with this article; or

20 (B) The proposed or attempted exercise would be or was
21 an abuse of the fiduciary's discretion or a breach of
22 fiduciary duty;

23 (5) Determine the extent to which §44D-8B-22 of this
24 code applies to a prior exercise of the decanting power;

25 (6) Provide instructions to the trustee regarding the
26 application of §44D-8B-22 of this code to a prior exercise
27 of the decanting power; or

28 (7) Order other relief to carry out the purposes of this
29 article.

30 (b) On application of an authorized fiduciary, the court
31 may approve:

32 (1) An increase in the fiduciary's compensation under
33 §44D-8B-16 of this code; or

34 (2) A modification under §44D-8B-18 of this code of a
35 provision granting a person the right to remove or replace
36 the fiduciary.

§44D-8B-10. Formalities.

1 An exercise of the decanting power must be made in a
2 record signed by an authorized fiduciary. The signed record
3 must, directly or by reference to the notice required by
4 §44D-8B-7 of this code, identify the first trust and the
5 second trust or trusts and state the property of the first trust
6 being distributed to each second trust and the property, if
7 any, that remains in the first trust.

§44D-8B-11. Decanting power under expanded distributive discretion.

1 (a) In this section:

2 (1) "Noncontingent right" means a right that is not
3 subject to the exercise of discretion or the occurrence of a
4 specified event that is not certain to occur. The term does
5 not include a right held by a beneficiary if any person has
6 discretion to distribute property subject to the right to any
7 person other than the beneficiary or the beneficiary's estate.

8 (2) "Presumptive remainder beneficiary" means a
9 qualified beneficiary other than a current beneficiary.

10 (3) "Successor beneficiary" means a beneficiary that is
11 not a qualified beneficiary on the date the beneficiary's
12 qualification is determined. The term does not include a

13 person that is a beneficiary only because the person holds a
14 nongeneral power of appointment.

15 (4) “Vested interest” means:

16 (A) A right to a mandatory distribution that is a
17 noncontingent right as of the date of the exercise of the
18 decanting power;

19 (B) A current and noncontingent right, annually or more
20 frequently, to a mandatory distribution of income, a
21 specified dollar amount, or a percentage of value of some or
22 all of the trust property;

23 (C) A current and noncontingent right, annually or more
24 frequently, to withdraw income, a specified dollar amount,
25 or a percentage of value of some or all of the trust property;

26 (D) A presently exercisable general power of
27 appointment; or

28 (E) A right to receive an ascertainable part of the trust
29 property on the trust’s termination which is not subject to
30 the exercise of discretion or to the occurrence of a specified
31 event that is not certain to occur.

32 (b) Subject to subsection (c) of this section and §44D-
33 8B-14 of this code, an authorized fiduciary that has
34 expanded distributive discretion over the principal of a first
35 trust for the benefit of one or more current beneficiaries may
36 exercise the decanting power over the principal of the first
37 trust.

38 (c) Subject to §44D-8B-13 of this code, in an exercise
39 of the decanting power under this section, a second trust
40 may not:

41 (1) Include as a current beneficiary a person that is not
42 a current beneficiary of the first trust, except as otherwise
43 provided in subsection (d) of this section;

44 (2) Include as a presumptive remainder beneficiary or
45 successor beneficiary a person that is not a current
46 beneficiary, presumptive remainder beneficiary, or
47 successor beneficiary of the first trust, except as otherwise
48 provided in subsection (d) of this section; or

49 (3) Reduce or eliminate a vested interest.

50 (d) Subject to subdivision (3), subsection (c) of this
51 section and §44D-8B-14 of this code, in an exercise of the
52 decanting power under this section, a second trust may be a
53 trust created or administered under the law of any
54 jurisdiction and may:

55 (1) Retain a power of appointment granted in the first
56 trust;

57 (2) Omit a power of appointment granted in the first
58 trust, other than a presently exercisable general power of
59 appointment;

60 (3) Create or modify a power of appointment if the
61 powerholder is a current beneficiary of the first trust and the
62 authorized fiduciary has expanded distributive discretion to
63 distribute principal to the beneficiary; and

64 (4) Create or modify a power of appointment if the
65 powerholder is a presumptive remainder beneficiary or
66 successor beneficiary of the first trust, but the exercise of
67 the power may take effect only after the powerholder
68 becomes, or would have become if then living, a current
69 beneficiary.

70 (e) A power of appointment described in subdivisions
71 (1) through (4), inclusive, subsection (d) of this section may
72 be general or nongeneral. The class of permissible
73 appointees in favor of which the power may be exercised
74 may be broader than or different from the beneficiaries of
75 the first trust.

76 (f) If an authorized fiduciary has expanded distributive
77 discretion over part, but not all of the principal of a first
78 trust, the fiduciary may exercise the decanting power under
79 this section over that part of the principal over which the
80 authorized fiduciary has expanded distributive discretion.

§44D-8B-12. Decanting power under limited distributive discretion.

1 (a) In this section, “limited distributive discretion”
2 means a discretionary power of distribution that is limited
3 to an ascertainable standard or a reasonably definite
4 standard.

5 (b) An authorized fiduciary that has limited distributive
6 discretion over the principal of the first trust for benefit of
7 one or more current beneficiaries may exercise the
8 decanting power over the principal of the first trust.

9 (c) Under this section and subject to §44D-8B-14 of this
10 code, a second trust may be created or administered under
11 the law of any jurisdiction. Under this section, the second
12 trusts, in the aggregate, must grant each beneficiary of the
13 first trust beneficial interests which are substantially similar
14 to the beneficial interests of the beneficiary in the first trust.

15 (d) A power to make a distribution under a second trust
16 for the benefit of a beneficiary who is an individual is
17 substantially similar to a power under the first trust to make
18 a distribution directly to the beneficiary. A distribution is
19 for the benefit of a beneficiary if:

20 (1) The distribution is applied for the benefit of the
21 beneficiary;

22 (2) The beneficiary is under a legal disability or the
23 trustee reasonably believes the beneficiary is incapacitated,
24 and the distribution is made as permitted under this chapter;
25 or

26 (3) The distribution is made as permitted under the
27 terms of the first-trust instrument and the second-trust
28 instrument for the benefit of the beneficiary.

29 (e) If an authorized fiduciary has limited distributive
30 discretion over part, but not all of, the principal of a first
31 trust, the fiduciary may exercise the decanting power under
32 this section over that part of the principal over which the
33 authorized fiduciary has limited distributive discretion.

§44D-8B-13. Trust for beneficiary with disability.

1 (a) In this section:

2 (1) “Beneficiary with a disability” means a beneficiary
3 of a first trust who the special-needs fiduciary believes may
4 qualify for governmental benefits based on disability,
5 whether or not the beneficiary currently receives those
6 benefits or is an individual who has been adjudicated a
7 protected person.

8 (2) “Governmental benefits” means financial aid or
9 services from a state, federal, or other public agency.

10 (3) “Special-needs fiduciary” means, with respect to a
11 trust that has a beneficiary with a disability:

12 (A) A trustee or other fiduciary, other than a grantor,
13 that has discretion to distribute part or all of the principal of
14 a first trust to one, or more current beneficiaries;

15 (B) If no trustee or fiduciary has discretion under
16 paragraph (A) of this subdivision, a trustee or other
17 fiduciary, other than a grantor, that has discretion to
18 distribute part, or all of, the income of the first trust to one
19 or more current beneficiaries; or

20 (C) If no trustee or fiduciary has discretion under
21 paragraphs (A) and (B) of this subdivision, a trustee or other
22 fiduciary, other than a grantor, that is required to distribute

23 part, or all of, the income or principal of the first trust to one
24 or more current beneficiaries.

25 (4) “Special-needs trust” means a trust the trustee
26 believes would not be considered a resource for purposes of
27 determining whether a beneficiary with a disability is
28 eligible for governmental benefits.

29 (b) A special-needs fiduciary may exercise the
30 decanting power under §44D-8B-11 of this code over the
31 principal of a first trust as if the fiduciary had authority to
32 distribute principal to a beneficiary with a disability subject
33 to expanded distributive discretion if:

34 (1) A second trust is a special-needs trust that benefits
35 the beneficiary with a disability; and

36 (2) The special-needs fiduciary determines that exercise
37 of the decanting power will further the purposes of the first
38 trust.

39 (c) In an exercise of the decanting power under this
40 section, the following rules apply:

41 (1) Notwithstanding §44D-8B-11(c)(2) of this code, the
42 interest in the second trust of a beneficiary with a disability
43 may:

44 (A) Be a pooled trust as defined by Medicaid law for the
45 benefit of the beneficiary with a disability under 42 U.S.C.
46 §1396p(d)(4)(C); or

47 (B) Contain payback provisions complying with
48 reimbursement requirements of Medicaid law under 42
49 U.S.C. §1396p(d)(4)(A).

50 (2) Section 44D-8B-11(c)(3) of this code does not apply
51 to the interests of the beneficiary with a disability.

52 (3) Except as affected by any change to the interests of
53 the beneficiary with a disability, the second trust, or if there

54 are two or more second trusts, the second trusts in the
55 aggregate, must grant each other beneficiary of the first trust
56 beneficial interests in the second trusts which are
57 substantially similar to the beneficiary's beneficial interests
58 in the first trust.

§44D-8B-14. Protection of charitable interest.

1 (a) In this section:

2 (1) "Determinable charitable interest" means a
3 charitable interest that is a right to a mandatory distribution
4 currently, periodically, on the occurrence of a specified
5 event, or after the passage of a specified time and which is
6 unconditional or will be held solely for charitable purposes.

7 (2) "Unconditional" means not subject to the occurrence
8 of a specified event that is not certain to occur, other than a
9 requirement in a trust instrument that a charitable
10 organization be in existence or qualify under a particular
11 provision of the United States Internal Revenue Code of
12 1986 on the date of the distribution, if the charitable
13 organization meets the requirement on the date of
14 determination.

15 (b) If a first trust contains a determinable charitable
16 interest which is not held by an identified charitable
17 organization, the Attorney General has the rights of a
18 qualified beneficiary and may represent and bind the
19 charitable interest.

20 (c) If a first trust contains a charitable interest, the
21 second trust or trusts may not:

22 (1) Diminish the charitable interest;

23 (2) Diminish the interest of an identified charitable
24 organization that holds the charitable interest;

25 (3) Alter any charitable purpose stated in the first-trust
26 instrument; or

27 (4) Alter any condition or restriction related to the
28 charitable interest.

29 (d) If there are two or more second trusts, the second
30 trusts shall be treated as one trust for purposes of
31 determining whether the exercise of the decanting power
32 diminishes the charitable interest or diminishes the interest
33 of an identified charitable organization for purposes of
34 subsection (c) of this section.

35 (e) If a first trust contains a determinable charitable
36 interest which is not held by an identified charitable
37 organization, the second trust or trusts that include a
38 charitable interest pursuant to subsection (c) of this section
39 must be administered under the law of this state unless:

40 (1) The Attorney General, after receiving notice under
41 §44D-8B-7 of this code, fails to object in a signed record
42 delivered to the authorized fiduciary within the notice
43 period;

44 (2) The Attorney General consents in a signed record to
45 the second trust or trusts being administered under the law
46 of another jurisdiction; or

47 (3) The court approves the exercise of the decanting
48 power.

§44D-8B-15. Trust limitation on decanting.

1 (a) An authorized fiduciary may not exercise the
2 decanting power to the extent the first-trust instrument
3 expressly prohibits exercise of:

4 (1) The decanting power; or

5 (2) A power granted by state law to the fiduciary to
6 distribute part, or all of, the principal of the trust to another
7 trust or to modify the trust.

8 (b) Exercise of the decanting power is subject to any
9 restriction in the first-trust instrument that expressly applies
10 to exercise of:

11 (1) The decanting power; or

12 (2) A power granted by state law to a fiduciary to
13 distribute part, or all of, the principal of the trust to another
14 trust or to modify the trust.

15 (c) A general prohibition of the amendment or
16 revocation of a first trust, a spendthrift clause, or a clause
17 restraining the voluntary or involuntary transfer of a
18 beneficiary's interest does not preclude exercise of the
19 decanting power.

20 (d) Subject to subsections (a) and (b) of this section, an
21 authorized fiduciary may exercise the decanting power
22 under this article even if the first-trust instrument permits
23 the authorized fiduciary or another person to modify the
24 first-trust instrument or to distribute part, or all of, the
25 principal of the first trust to another trust.

26 (e) If a first-trust instrument contains an express
27 prohibition described in subsection (a) of this section or an
28 express restriction described in subsection (b) of this
29 section, the provision must be included in the second-trust
30 instrument.

§44D-8B-16. Change in compensation.

1 (a) If a first-trust instrument specifies an authorized
2 fiduciary's compensation, the fiduciary may not exercise
3 the decanting power to increase the fiduciary's
4 compensation above the specified compensation unless:

5 (1) All qualified beneficiaries of the second trust
6 consent to the increase in a signed record; or

7 (2) The increase is approved by the court.

8 (b) If a first-trust instrument does not specify an
9 authorized fiduciary's compensation, the fiduciary may not
10 exercise the decanting power to increase the fiduciary's
11 compensation above the compensation permitted by this
12 chapter unless:

13 (1) All qualified beneficiaries of the second trust
14 consent to the increase in a signed record; or

15 (2) The increase is approved by the court.

16 (c) A change in an authorized fiduciary's compensation
17 which is incidental to other changes made by the exercise of
18 the decanting power is not an increase in the fiduciary's
19 compensation for purposes of subsections (a) and (b) of this
20 section.

§44D-8B-17. Relief from liability and indemnification.

1 (a) Except as otherwise provided in this section, a
2 second-trust instrument may not relieve an authorized
3 fiduciary from liability for breach of trust to a greater extent
4 than the first-trust instrument.

5 (b) A second-trust instrument may provide for
6 indemnification of an authorized fiduciary of the first trust
7 or another person acting in a fiduciary capacity under the
8 first trust for any liability or claim that would have been
9 payable from the first trust if the decanting power had not
10 been exercised.

11 (c) A second-trust instrument may not reduce fiduciary
12 liability in the aggregate.

13 (d) Subject to subsection (c) of this section, a second-
14 trust instrument may divide and reallocate fiduciary powers
15 among fiduciaries, including one or more trustees,
16 distribution advisors, investment advisors, trust protectors,
17 or other persons, and relieve a fiduciary from liability for an
18 act or failure to act of another fiduciary as permitted by law
19 of this state other than this article.

§44D-8B-18. Removal or replacement of authorized fiduciary.

1 An authorized fiduciary may not exercise the decanting
2 power to modify a provision in a first-trust instrument
3 granting another person power to remove or replace the
4 fiduciary unless:

5 (1) The person holding the power consents to the
6 modification in a signed record and the modification applies
7 only to the person;

8 (2) The person holding the power and the qualified
9 beneficiaries of the second trust consent to the modification
10 in a signed record and the modification grants a
11 substantially similar power to another person; or

12 (3) The court approves the modification and the
13 modification grants a substantially similar power to another
14 person.

§44D-8B-19. Tax-related limitations.

1 (a) In this section:

2 (1) “Grantor trust” means a trust as to which a grantor
3 of a first trust is considered the owner under 26 U.S.C.
4 §§671-677 or 26 U.S.C. §679.

5 (2) “Internal Revenue Code” means the United States
6 Internal Revenue Code of 1986.

7 (3) “Nongrantor trust” means a trust that is not a grantor
8 trust.

9 (4) “Qualified benefits property” means property
10 subject to the minimum distribution requirements of 26
11 U.S.C. §401(a)(9), and any applicable regulations, or to any
12 similar requirements that refer to 26 U.S.C. §401(a)(9) or
13 the regulations.

14 (b) An exercise of the decanting power is subject to the
15 following limitations:

16 (1) If a first trust contains property that qualified, or
17 would have qualified but for provisions of this article other
18 than this section, for a marital deduction for purposes of the
19 gift or estate tax under the Internal Revenue Code or a state
20 gift, estate, or inheritance tax, the second-trust instrument
21 must not include or omit any term that, if included in or
22 omitted from the trust instrument for the trust to which the
23 property was transferred, would have prevented the transfer
24 from qualifying for the deduction, or would have reduced
25 the amount of the deduction, under the same provisions of
26 the Internal Revenue Code or state law under which the
27 transfer qualified.

28 (2) If the first trust contains property that qualified, or
29 would have qualified but for provisions of this article other
30 than this section, for a charitable deduction for purposes of
31 the income, gift, or estate tax under the Internal Revenue
32 Code or a state income, gift, estate, or inheritance tax, the
33 second-trust instrument must not include or omit any term
34 that, if included in or omitted from the trust instrument for
35 the trust to which the property was transferred, would have
36 prevented the transfer from qualifying for the deduction, or
37 would have reduced the amount of the deduction, under the
38 same provisions of the Internal Revenue Code or state law
39 under which the transfer qualified.

40 (3) If the first trust contains property that qualified, or
41 would have qualified but for provisions of this article other
42 than this section, for the exclusion from the gift tax
43 described in 26 U.S.C. §2503(b), the second-trust
44 instrument must not include or omit a term that, if included
45 in or omitted from the trust instrument for the trust to which
46 the property was transferred, would have prevented the
47 transfer from qualifying under 26 U.S.C. §2503(b). If the
48 first trust contains property that qualified, or would have
49 qualified but for provisions of this article other than this
50 section, for the exclusion from the gift tax described in 26
51 U.S.C. §2503(b) by application of 26 U.S.C. §2503(c), the
52 second-trust instrument must not include or omit a term that,

53 if included or omitted from the trust instrument for the trust
54 to which the property was transferred, would have
55 prevented the transfer from qualifying under 26 U.S.C.
56 §2503(c).

57 (4) If the property of the first trust includes shares of
58 stock in an S corporation, as defined in 26 U.S.C. §1361 and
59 the first trust is, or but for provisions of this article other
60 than this section would be, a permitted shareholder under
61 any provision of 26 U.S.C. §1361, an authorized fiduciary
62 may exercise the power with respect to part or all of the S
63 corporation stock only if any second trust receiving the
64 stock is a permitted shareholder under 26 U.S.C.
65 §1361(c)(2). If the property of the first trust includes shares
66 of stock in an S corporation and the first trust is, or but for
67 provisions of this article other than this section would be, a
68 qualified subchapter-S trust within the meaning of 26
69 U.S.C. §1361(d), the second-trust instrument must not
70 include or omit a term that prevents the second trust from
71 qualifying as a qualified subchapter-S trust.

72 (5) If the first trust contains property that qualified, or
73 would have qualified but for provisions of this article other
74 than this section, for a zero inclusion ratio for purposes of
75 the generation-skipping transfer tax under 26 U.S.C.
76 §2642(c) the second-trust instrument must not include or
77 omit a term that, if included in or omitted from the first-trust
78 instrument, would have prevented the transfer to the first
79 trust from qualifying for a zero inclusion ratio under 26
80 U.S.C. §2642(c).

81 (6) If the first trust is directly or indirectly the
82 beneficiary of qualified benefits property, the second-trust
83 instrument may not include or omit any term that, if
84 included in or omitted from the first-trust instrument, would
85 have increased the minimum distributions required with
86 respect to the qualified benefits property under 26 U.S.C.
87 §401(a)(9) and any applicable regulations, or any similar
88 requirements that refer to 26 U.S.C. §401(a)(9) or the
89 regulations. If an attempted exercise of the decanting power

90 violates the preceding sentence, the trustee is determined to
91 have held the qualified benefits property and any reinvested
92 distributions of the property as a separate share from the
93 date of the exercise of the power and §2201 applies to the
94 separate share.

95 (7) If the first trust qualifies as a grantor trust because of
96 the application of 26 U.S.C. §672(f)(2)(A), the second trust
97 may not include or omit a term that, if included in or omitted
98 from the first-trust instrument, would have prevented the
99 first trust from qualifying under 26 U.S.C. §672(f)(2)(A).

100 (8) In this subdivision, “tax benefit” means a federal or
101 state tax deduction, exemption, exclusion, or other benefit
102 not otherwise listed in this section, except for a benefit
103 arising from being a grantor trust. Subject to subdivision (9)
104 of this subsection, a second-trust instrument may not
105 include or omit a term that, if included in or omitted from
106 the first-trust instrument, would have prevented
107 qualification for a tax benefit if:

108 (A) The first-trust instrument expressly indicates an
109 intent to qualify for the benefit or the first-trust instrument
110 clearly is designed to enable the first trust to qualify for the
111 benefit; and

112 (B) The transfer of property held by the first trust or the
113 first trust qualified, or but for provisions of this article other
114 than this section, would have qualified for the tax benefit.

115 (9) Subject to subdivision (4) of this subsection:

116 (A) Except as otherwise provided in subdivision (7) of
117 this subsection, the second trust may be a nongrantor trust,
118 even if the first trust is a grantor trust; and

119 (B) Except as otherwise provided in subdivision (10) of
120 this subsection, the second trust may be a grantor trust, even
121 if the first trust is a nongrantor trust.

122 (10) An authorized fiduciary may not exercise the
123 decanting power if a grantor objects in a signed record
124 delivered to the fiduciary within the notice period and:

125 (A) The first trust and a second trust are both grantor
126 trusts, in whole or in part, the first trust grants the grantor or
127 another person the power to cause the first trust to cease to
128 be a grantor trust, and the second trust does not grant an
129 equivalent power to the grantor or other person; or

130 (B) The first trust is a nongrantor trust and a second trust
131 is a grantor trust, in whole or in part, with respect to the
132 grantor, unless:

133 (i) The grantor has the power at all times to cause the
134 second trust to cease to be a grantor trust; or

135 (ii) The first-trust instrument contains a provision
136 granting the grantor or another person a power that would
137 cause the first trust to cease to be a grantor trust and the
138 second-trust instrument contains the same provision.

§44D-8B-20. Duration of second trust.

1 (a) Subject to subsection (b) of this section, a second
2 trust may have a duration that is the same as or different
3 from the duration of the first trust.

4 (b) To the extent that property of a second trust is
5 attributable to property of the first trust, the property of the
6 second trust is subject to any rules governing maximum
7 perpetuity, accumulation, or suspension of the power of
8 alienation which apply to property of the first trust.

§44D-8B-21. Need to distribute not required.

1 An authorized fiduciary may exercise the decanting
2 power whether or not under the first trust's discretionary
3 distribution standard the fiduciary would have made or
4 could have been compelled to make a discretionary
5 distribution of principal at the time of the exercise.

§44D-8B-22. Saving provision.

1 (a) If exercise of the decanting power would be effective
2 under this article except that the second-trust instrument in
3 part does not comply with this article, the exercise of the
4 power is effective and the following rules apply with respect
5 to the principal of the second trust attributable to the
6 exercise of the power:

7 (1) A provision in the second-trust instrument which is
8 not permitted under this article is void to the extent
9 necessary to comply with this article; and

10 (2) A provision required by this article to be in the
11 second-trust instrument which is not contained in the
12 instrument is considered to be included in the instrument to
13 the extent necessary to comply with this article.

14 (b) If a trustee or other fiduciary of a second trust
15 determines that subsection (a) of this section applies to a
16 prior exercise of the decanting power, the fiduciary shall
17 take corrective action consistent with the fiduciary's duties.

§44D-8B-23. Trust for care of animal.

1 (a) In this section:

2 (1) "Animal trust" means a trust or an interest in a trust
3 created to provide for the care of one or more animals.

4 (2) "Protector" means a person appointed in an animal
5 trust to enforce the trust on behalf of the animal or, if no
6 person is appointed in the trust, a person appointed by the
7 court for that purpose.

8 (b) The decanting power may be exercised over an
9 animal trust that has a protector to the extent the trust could
10 be decanted under this article if each animal that benefits
11 from the trust were an individual, if the protector consents
12 in a signed record to the exercise of the power.

13 (c) A protector for an animal has the rights under this
14 article of a qualified beneficiary.

15 (d) Notwithstanding any other provision of this article,
16 if a first trust is an animal trust, in an exercise of the
17 decanting power, the second trust must provide that trust
18 property may be applied only to its intended purpose for the
19 period the first trust benefitted the animal.

§44D-8B-24. Terms of second trust.

1 Any reference in this chapter to a trust instrument or
2 terms of the trust includes a second-trust instrument and the
3 terms of the second trust.

§44D-8B-25. Grantor.

1 (a) For purposes of law of this state other than this
2 article and subject to subsection (b) of this section, a grantor
3 of a first trust is considered to be the grantor of the second
4 trust with respect to the portion of the principal of the first
5 trust subject to the exercise of the decanting power.

6 (b) In determining grantor intent with respect to a
7 second trust, the intent of a grantor of the first trust, a grantor
8 of the second trust, and the authorized fiduciary may be
9 considered.

§44D-8B-26. Later-discovered property.

1 (a) Except as otherwise provided in subsection (c) of
2 this section, if exercise of the decanting power was intended
3 to distribute all the principal of the first trust to one or more
4 second trusts, later-discovered property belonging to the
5 first trust and property paid to or acquired by the first trust
6 after the exercise of the power is part of the trust estate of
7 the second trust or trusts.

8 (b) Except as otherwise provided in subsection (c) of
9 this section, if exercise of the decanting power was intended
10 to distribute less than all the principal of the first trust to one
11 or more second trusts, later-discovered property belonging
12 to the first trust or property paid to or acquired by the first

13 trust after exercise of the power remains part of the trust
14 estate of the first trust.

15 (c) An authorized fiduciary may provide in an exercise
16 of the decanting power or by the terms of a second trust for
17 disposition of later-discovered property belonging to the
18 first trust or property paid to or acquired by the first trust
19 after exercise of the power.

§44D-8B-27. Obligations.

1 A debt, liability, or other obligation enforceable against
2 property of a first trust is enforceable to the same extent
3 against the property when held by the second trust after
4 exercise of the decanting power.

§44D-8B-28. Uniformity of application and construction.

1 In applying and construing this uniform act,
2 consideration must be given to the need to promote
3 uniformity of the law with respect to its subject matter
4 among states that enact it.

§44D-8B-29. Relation to Electronic Signatures in Global and National Commerce Act.

1 This article modifies, limits, or supersedes the
2 Electronic Signatures in Global and National Commerce
3 Act, 15 U.S.C. §7001 *et seq.*, but does not modify, limit, or
4 supersede Section 101(c) of that act, 15 U.S.C. §7001(c), or
5 authorize electronic delivery of any of the notices described
6 in §103(b) of that act, 15 U.S.C. §7003(b).

§44D-8B-30. Severability.

1 If any provision of this article or its application to any
2 person or circumstance is held invalid, the invalidity does not
3 affect other provisions or applications of this article which can
4 be given effect without the invalid provision or application, and
5 to this end the provisions of this article are severable.

§44D-8B-31. Effective date.

1 This article takes effect on July 1, 2020.

●

CHAPTER 143

**(Com. Sub. for H. B. 4088 - By Delegates Anderson,
J. Kelly, Cadle, Hott and Porterfield)**

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §37-4-9; and to amend and reenact §55-12A-7 of said code, all relating to funding the Oil and Gas Reclamation Fund; providing that proceeds from certain real property interests that are due to persons whose names or addresses are unknown or unlocatable which are being kept in special funds throughout the state, if unclaimed for seven years or more, shall be transferred to the Oil and Gas Reclamation Fund and used to plug orphaned and abandoned oil and natural gas wells; providing and clarifying that certain deed or will provisions purporting to convey or reserve interests created by this article are void; clarifying that receivers include both general and special receivers; providing that certain provisions take effect beginning when funds have been unclaimed for seven years after the Special Commissioner's lease regardless of when the lease was signed; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

CHAPTER 37. REAL PROPERTY.

ARTICLE 4. PARTITION.

§37-4-9. Disposition of funds due to unknown or unlocatable interest owners; rulemaking.

1 Notwithstanding the requirements of §36-8-1 *et seq.* of
2 this code, all funds and proceeds due under this article

3 before or after the effective date of this section to owners of
4 real property interests with their appurtenant rights, whose
5 name or location is unknown and who does not make a
6 claim for those funds for seven years after the date of the
7 order of the court authorizing the distribution of the funds,
8 shall be paid to the Oil and Gas Reclamation Fund
9 established pursuant to §22-6-29 of this code. The funds
10 shall be paid by the special or general receiver or other
11 person or entity holding the funds on or before November 1
12 of each year for all funds that became payable before July 1
13 of that year. The Department of Environmental Protection
14 may propose rules for legislative approval in accordance
15 with §29A-3-1 *et seq.* of this code to carry out the provisions
16 of this section.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 12A. LEASE AND CONVEYANCE OF MINERAL INTERESTS OWNED BY MISSING OR UNKNOWN OWNERS OR ABANDONING OWNERS.

§55-12A-7. When special commissioner may convey title in mineral interest to surface owner; form of deed; final report of special Commissioner; unknown owners; transfer of funds; rulemaking.

1 (a) (1) If an owner of any mineral interest leased under
2 section six of this article remains unknown or missing, or
3 does not disavow the abandonment, for a period of seven
4 years from the date of the special commissioner's lease, the
5 special or general receiver shall report the same to the court,
6 whereupon the court shall enter an order naming those who
7 then appear to be surface owners as additional parties and
8 giving notice to them, pursuant to the West Virginia rules of
9 civil procedure, of an opportunity to appear and present
10 proof of ownership in fee of the surface estate. Upon a
11 finding by the court of the present ownership in fee of the
12 surface estate, the court shall (i) order the special
13 Commissioner to convey to the proven surface owner,

14 subject to the special commissioner's lease, the mineral
 15 interest specified in the motion, by a deed substantially in
 16 the form specified in subsection (b) of this section and (ii)
 17 order the special or general receiver to pay to the Oil and
 18 Gas Reclamation Fund established pursuant to §22-6-29 the
 19 funds which have accrued to the credit of the mineral
 20 interests specified in the motion to the date of his or her
 21 report after payment of all allowable fees, expenses and
 22 court costs, including special Commissioner's fees paid or
 23 to be paid in amounts determined by the court. After the date
 24 of the special Commissioner's deed, the surface owner
 25 grantee shall be entitled to receive all proceeds under the
 26 lease attributable to the mineral interests specified in the
 27 deed.

28 (2) If the boundaries of the mineral tract subject to the
 29 special Commissioner's lease encompass two or more
 30 surface tracts, a separate deed shall be made for the mineral
 31 interest underlying each surface tract. If a surface tract is
 32 owned by more than one person, the deed respecting that
 33 surface tract shall convey the mineral interest according to
 34 the surface estate and interest of each surface owner.

35 (b) The special Commissioner's deed may be made in
 36 the following form, or to the same effect:

37 This deed, made the ____ day of _____,
 38 19__, between _____,
 39 special Commissioner, grantor, and
 40 _____, grantee,

41 Witnesseth, that whereas, grantor, in pursuance of the
 42 authority vested in him or her by an order of the circuit court
 43 of _____ county, West Virginia, entered on the
 44 ____ day of _____, 19__, in civil action no.
 45 _____ therein pending, to convey the mineral interest
 46 more particularly described below to the grantee,

47 Now, therefore, this deed witnesseth: That grantor
 48 grants unto grantee, subject to the special commissioner's

49 lease mentioned below, and further subject to all other liens
50 and encumbrances of record, that certain mineral interest in
51 _____ county, West Virginia, more particularly
52 described in the cited order of the circuit court as follows:
53 (here insert the description in the order); and being (here
54 specify “all” or “a portion”) of the mineral interest described
55 in that certain special commissioner’s lease dated
56 _____, 19____, of record in the office of the clerk of
57 _____ county, in _____ book_____, at page
58 _____.

59 Witness the following signature.

60 _____

61 Special Commissioner

62 (c) Upon the delivery of the deed or deeds and the
63 payment or payments as directed in subsection (a) of this
64 section, the special commissioner shall make a final report
65 to the court; and upon approval thereof, the court shall order
66 the discharge of the special commissioner’s bond.

67 (d) Prior to the delivery of the special commissioner’s
68 deed, no deed or will from a surface owner to another shall
69 sever ownership of the surface as such from ownership of
70 any benefits under this article. The provisions of any deed
71 or will granting or reserving an interest purporting to create
72 such a severance shall be void.

73 (e) The amendments to this section made during the
74 2020 regular session of the Legislature which provided for
75 certain accumulated proceeds to be payable to the Oil and
76 Gas Reclamation Fund, shall take effect July 1, 2020, and
77 any funds shall be transferred that have been unclaimed for
78 seven years or more after the date of the special
79 Commissioner’s lease whether or not the special
80 Commissioner’s lease was signed before or after the
81 effective date of the amendments to this section.

82 (f) The Department of Environmental Protection may
83 propose rules for legislative approval in accordance with
84 §29A-3-1 *et seq.* of this code to carry out the provisions of
85 this section relating to transfer of funds to the Oil and Gas
86 Reclamation Fund.

CHAPTER 144

(H. B. 4529 - By Delegates Criss and Nelson)

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §7-25-22 of the Code of West Virginia, 1931, as amended, relating to the collection of assessments and the priority of liens on property within a resort area district.

Be it enacted by the Legislature of West Virginia:

ARTICLE 25. RESORT AREA DISTRICTS.

§7-25-22. Liens; recording notice of liens; priority; release of lien; notice to future property owners.

1 (a) With the exception of property exempt from
2 assessment pursuant to §7-25-18 of this code, there shall be
3 a lien on all real property located within the resort area
4 district for the assessments imposed by §7-25-17 of this
5 code, which shall attach to those parcels made subject to the
6 assessment on the date specified in the notice to property
7 owners. A notice of the liens of the assessments referring to
8 the assessing resolution and setting forth a list of the
9 property assessed, described respectively as to amounts of
10 assessment, ownership, and location of the property, shall
11 be certified, by the chair and secretary of the board, to the
12 clerk of the county commission of the county in which the

13 project is located. The county clerk shall record the notice
14 of the lien in the appropriate trust deed book or other
15 appropriate county lien book and index the lien in the name
16 of each owner of real property assessed. From the date of an
17 assessment, the trustee, for the benefit of bondholders if
18 assessment bonds are issued by the resort area district,
19 and/or the district has the lien and is entitled to enforce the
20 lien in its, his, her, or their name to the extent of the amount,
21 including principal and interest and any penalty due for any
22 failure to pay an installment when due, of the assessments
23 and against the property to which the assessment applies, as
24 to any assessment not paid as and when due. The trustee or
25 the district, as an alternative to the enforcement provision
26 set forth in §7-25-21 of this code, are granted all legal
27 remedies necessary to collect the assessment. The
28 assessments are and constitute liens for the benefit of the
29 resort area district or the trustee, for the benefit of
30 bondholders if assessment bonds are issued by the resort
31 area district, upon the respective lots and parcels of land
32 assessed and have priority over all other liens except: (1)
33 Any liens for land taxes due the state, county, and
34 municipality; (2) any liens for preexisting special
35 assessments provided under this code; and (3) any liens by
36 a lien creditor, including, without limitation, any lien
37 creditor secured by a deed of trust lien, with respect to any
38 of the lots or parcels of land with a lien properly recorded
39 with the Clerk of the County Commission of the county in
40 which the lots or parcels of land are located prior to the time
41 that the notice of the assessment lien is recorded. If any
42 assessment is revised in accordance with this article, the lien
43 created by this section extends to the revised assessment and
44 has the same priority as the priority of the lien created upon
45 the laying of the original assessment. The assessments and
46 interest thereon shall be paid by the owners of the property
47 assessed as and when the installments are due. Following
48 the payment in full of any assessment bonds including any
49 interest thereon, the chair and secretary of the board shall
50 execute a release of all liens and shall certify the release to
51 the county clerk for recondition.

52 (b) Following the grant of any assessment on property
53 as provided in this article, the seller of the property shall
54 provide reasonable disclosure to the buyer in the real estate
55 contract that an assessment has been granted on the
56 property, the amount of the assessment, and the duration of
57 the assessment.



CHAPTER 145

**(Com. Sub. for H. B. 4576 - By Delegates Shott,
Nelson, Lovejoy, Canestraro, Steele, Byrd and Pyles)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §36-3-11, relating to establishing a procedure for correcting errors in deeds, deeds of trust and mortgages; providing definitions; establishing that obvious description errors in a recorded deed, deed of trust or mortgage involving the transfer of interest in real property may be corrected by recorded affidavit; requiring that the correction of an obvious description error may not be inconsistent with the recorded property description; requiring notice be sent to specified persons; providing notice delivery requirements; establishing the contents of the corrective affidavit; establishing the effect of the corrective affidavit once filed; requiring a title insurance company to issue an endorsement to reflect the corrective affidavit; requiring the clerk to record and index the corrective affidavit in the deed book; establishing that a recorded affidavit is prima facie evidence of the facts stated therein; requiring associated costs be paid by the recording party; providing that a person who wrongfully records a corrective deed is liable for actual damages, reasonable costs,

and attorney fees; providing that remedies provided herein are not exclusive; and providing a format for the corrective affidavit and notice of an intent to correct an obvious description error.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FORM AND EFFECT OF DEEDS AND CONTRACTS.

§36-3-11. Correcting errors in deeds, deeds of trust, and mortgages; corrective affidavit.

1 (a) Definitions. As used in this section, unless the
2 context requires a different meaning:

3 (1) “Attorney” means any person licensed as an attorney
4 in West Virginia by the West Virginia State Bar.

5 (2) “Corrective affidavit” means an affidavit of an
6 attorney correcting an obvious description error.

7 (3) “Local entity” means any county, city, town,
8 municipality, public utility, or person, including any
9 individual, firm, partnership, association, not-for-profit
10 corporation, or other corporation organized and existing
11 under the laws of the State of West Virginia.

12 (4) “Obvious description error” means an error in a real
13 property parcel description contained in a recorded deed,
14 deed of trust, or mortgage where:

15 (A) The parcel is identified and shown as a separate
16 parcel on a recorded subdivision plat;

17 (B) The error is apparent by reference to other
18 information on the face of the deed, deed of trust, or
19 mortgage, or on an attachment to the deed, deed of trust, or
20 mortgage, or by reference to other instruments in the chain
21 of title for the property conveyed thereby; and

22 (C) The deed, deed of trust, or mortgage recites
23 elsewhere the parcel's correct address or tax map
24 identification number.

25 (D) An "obvious description error" includes:

26 (i) An error transcribing courses and distances,
27 including the omission of one or more lines of courses, and
28 distances or the omission of angles and compass directions;

29 (ii) An error incorporating an incorrect recorded plat or
30 a deed reference;

31 (iii) An error in a lot number or designation; or

32 (iv) An omitted exhibit supplying the legal description
33 of the real property thereby conveyed.

34 (E) An "obvious description error" does not include:

35 (i) Missing or improper signatures or acknowledgments;
36 or

37 (ii) Any designation of the type of tenancy by which the
38 property is owned or whether or not a right of survivorship
39 exists.

40 (5) "Recorded subdivision plat" means a plat that has
41 been prepared by a professional land surveyor licensed
42 pursuant to W. Va. Code §30-13A-1 *et seq.* of this code and
43 recorded in the clerk's office of the circuit court for the
44 jurisdiction where the property is located.

45 (6) "Title insurance" has the same meaning as set forth
46 in W. Va. §33-1-10(f)(4) of this code.

47 (7) "Title insurance company" means the company that
48 issued a policy of title insurance for the transaction in which
49 the deed, deed of trust, or mortgage needing correction was
50 recorded.

51 (b) Obvious description errors in a recorded deed, deed
52 of trust, or mortgage purporting to convey or transfer an
53 interest in real property may be corrected by recording a
54 corrective affidavit in the office of the clerk of the county
55 commission of the county where the property is situated or
56 where the deed, deed of trust, or mortgage needing
57 correction was recorded. A correction of an obvious
58 description error shall not be inconsistent with the
59 description of the property in any recorded subdivision plat.

60 (c) Prior to recording a corrective affidavit, notice of the
61 intent to record the corrective affidavit, of each party's right
62 to object to the corrective affidavit, and a copy of the
63 corrective affidavit shall be served upon:

64 (1) All parties to the deed, deed of trust, or mortgage,
65 including the current owner of the property;

66 (2) The attorney who prepared the deed, deed of trust,
67 or mortgage, if known and if possible;

68 (3) To the title insurance company, if known;

69 (4) To the adjoining property owners;

70 (5) To the property address for the real property
71 conveyed by the deed, deed of trust, or mortgage needing
72 correction;

73 (6) If a local entity is a party to the deed, deed of trust,
74 or mortgage, the notice and a copy of the corrective affidavit
75 required by this subsection, to the county, city, or town
76 attorney for the local entity, if any, and if there is no such
77 attorney, then to the chief executive for the local entity. For
78 the purposes of this section, the term "party" includes any
79 local entity that is a signatory; and

80 (7) If the State of West Virginia is a party to the deed,
81 deed of trust, or mortgage, the notice and a copy of the
82 corrective affidavit required by this subsection, to the
83 Attorney General and to the director, chief executive

84 officer, or head of the state agency or chairman of the board
85 of the state entity in possession or that had possession of the
86 property.

87 (d) The notice and a copy of the corrective affidavit
88 shall be delivered by personal service, sent by certified mail,
89 return receipt requested, or delivered by a commercial
90 overnight delivery service or the United States Postal
91 Service, and a receipt obtained, to the last known address of
92 each party to the deed, deed of trust, or mortgage to be
93 corrected that:

94 (1) Is admitted to record in the office of the clerk of the
95 county commission of the county in which the property is
96 situate and where the deed, deed of trust, or mortgage
97 needing correction was recorded;

98 (2) Is contained in the deed, deed of trust, or mortgage
99 needing correction;

100 (3) Has been provided to the attorney who prepared the
101 deed, deed of trust, or mortgage as a forwarding address; or

102 (4) Has been established with reasonable certainty by
103 other means and to all other persons and entities to whom
104 notice is required to be given.

105 (e) If no written objection is received from any party
106 disputing the facts recited in the corrective affidavit or
107 objecting to its recordation within 30 days after personal
108 service, or receipt of confirmation of delivery of the notice
109 and copy of the corrective affidavit, the attorney may record
110 the corrective affidavit, and all parties to the deed, deed of
111 trust, or mortgage are bound by the terms of the corrective
112 affidavit.

113 (f) The corrective affidavit shall:

114 (1) Be notarized;

115 (2) Contain a statement that no objection was received
116 from any party within the specified time period;

117 (3) Confirm that a copy of the notice was sent to all the
118 parties; and,

119 (4) Contain the attorney's West Virginia State Bar
120 number.

121 (g) A corrective affidavit recorded pursuant to this
122 section operates as a correction of the deed, deed of trust, or
123 mortgage and relates back to the date of the original
124 recordation of the deed, deed of trust, or mortgage as if the
125 deed, deed of trust, or mortgage was correct when first
126 recorded.

127 (h) A title insurance company, upon request, shall issue
128 an endorsement to reflect the corrections made by the
129 corrective affidavit and shall deliver a copy of the
130 endorsement to all parties to the policy who can be found.

131 (i) The clerk shall record the corrective affidavit in the
132 deed book or other book in which deeds are recorded in the
133 county and, notwithstanding their designation in the deed,
134 deed of trust, or mortgage needing correction, index the
135 corrective affidavit in the names of the parties to the deed,
136 deed of trust, or mortgage as grantors and grantees as set
137 forth in the corrective affidavit. A corrective affidavit
138 recorded in compliance with this section is prima facie
139 evidence of the facts stated in the corrective affidavit.

140 (j) Costs associated with the recording of a corrective
141 affidavit pursuant to this section shall be paid by the party
142 that records the corrective affidavit.

143 (k) Any person who wrongfully or erroneously records
144 a corrective affidavit is liable for actual damages sustained
145 by any party due to the recordation, including reasonable
146 attorney fees and costs.

147 (l) The remedies under this section are not exclusive and
148 do not abrogate any right or remedy under the laws of the
149 State of West Virginia other than this section.

150 (m) A corrective affidavit under this section may be
151 made in the following form, or to the same effect:

152 **Corrective Affidavit**

153 This corrective affidavit, prepared pursuant to West
154 Virginia Code §36-3-11, shall be indexed in the names of
155 (grantor(s)) whose addresses are and
156 (grantee(s)), whose addresses are The
157 undersigned affiant, being first duly sworn, deposes and
158 states as follows:

159 1. That the affiant is a West Virginia attorney.

160 2. That the deed, deed of trust, or mortgage needing
161 correction was made in connection with a real estate
162 transaction in which purchased real estate from
163, as shown in a deed recorded in the office of the
164 clerk of the county commission of County, West
165 Virginia, in Deed Book, Page, or as Instrument
166 Number; or in which real estate was encumbered, as
167 shown in a deed recorded in the office of the clerk of the
168 county commission of County, West Virginia, in
169 Deed Book, Page, or as Instrument Number

170 3. That the property description in the aforementioned
171 deed, deed of trust, or mortgage contains an obvious
172 description error.

173 4. That the property description containing the obvious
174 description error reads:

175

176

177 5. That the correct property description should read:

178

179

180 6. That this corrective affidavit is given pursuant to
181 West Virginia Code §36-3-11 to correct the property
182 description in the aforementioned deed, deed of trust, or
183 mortgage, and such description shall be as stated in
184 paragraph 5 above upon recordation of this corrective
185 affidavit in the office of the clerk of the county commission
186 of County, West Virginia.

187 7. That notice of the intent to record this corrective
188 affidavit and a copy of this corrective affidavit was
189 delivered to all parties to the deed, deed of trust, or mortgage
190 being corrected pursuant to West Virginia Code §36-3-1
191 and that no objection to the recordation of this corrective
192 affidavit was received within the applicable period of time
193 as set forth in West Virginia Code §36-3-1.

194

195 (Name of attorney)

196

197 (Signature of attorney)

198

199 (Address of attorney)

200

201 (Telephone number of attorney)

202

203 (Bar number of attorney)

204 The foregoing affidavit was acknowledged before me

205 This day of, 20...., by

206

207 Notary Public

208 My Commission expires

209 Notary Registration Number:

210 (n) Notice under this section may be made in the
211 following form, or to the same effect:

212 **Notice of Intent to Correct an Obvious Description Error**

213 Notice is hereby given to you concerning the deed, deed
214 of trust, or mortgage described in the corrective affidavit, a
215 copy of which is attached to this notice, as follows:

216 1. The attorney identified below has discovered or has
217 been advised of an obvious description error in the deed,
218 deed of trust, or mortgage recorded as part of your real estate
219 settlement. The error is described in the attached affidavit.

220 2. The undersigned will record an affidavit to correct
221 such error unless the undersigned receives a written
222 objection disputing the facts recited in the affidavit or
223 objecting to the recordation of the affidavit. Your objections
224 must be sent within 30 days of receipt of this notice to the
225 following address:

226

227 (Address)

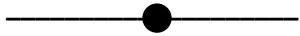
228

229 (Name of attorney)

230

231 (Signature of attorney)

- 232
- 233 (Address of attorney)
- 234
- 235 (Telephone number of attorney)
- 236
- 237 (Bar number of attorney)



CHAPTER 146

(H. B. 4929 - By Delegate Shott)

[Passed March 2, 2020; in effect ninety days from passage.]
 [Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §44-3A-24 of the Code of West Virginia, 1931, as amended, relating to the administrative closing of stale or unprogressed estates.

Be it enacted by the Legislature of West Virginia:

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 within a
23 period of three years from the opening of such estate and in
24 which no progress, or in his or her opinion, unsatisfactory
25 progress, has been made toward settlement, for any cause,
26 within the preceding 12 months.

27 (c) The county commission, after consultation with the
28 fiduciary supervisor shall take care to require prompt
29 disposition of all matters and causes reported to it by the
30 semiannual reports required herein of delinquent and
31 unprogressed estates; enter an order in the name of the
32 county commission directing the appointed personal
33 representative to file a statement to show cause why the
34 county commission should not find the personal
35 representative delinquent in his or her administration of the
36 respective estate and should not remove the personal
37 representative from office; administratively close the estate;
38 or take such other action against the personal representative
39 as may be proper.

40 (1) The order to show cause shall be mailed by the
41 fiduciary supervisor to the personal representative at the last
42 known address appearing in the records of the fiduciary
43 supervisor. A copy of the order shall also be mailed to the
44 heirs at law, beneficiaries under the will, any creditors who

45 have filed claims which are not released, any surety on any
46 bond, and any other person interested in the estate at their
47 last known addresses appearing in the records of the
48 fiduciary supervisor.

49 (2) The personal representative shall have 30 days after
50 the mailing of the order to show cause to file properly any
51 delinquent documents required for the administration of the
52 estate or to file a verified statement, under oath, stating why
53 he or she should not be found delinquent in the
54 administration of the respective estate and should not be
55 removed from office or the estate administratively closed.

56 (3) If, within the 30-day time period, the personal
57 representative fails to file properly the delinquent
58 documents, or fails to file a verified statement, or files a
59 verified statement which the fiduciary supervisor upon
60 review finds and determines does not present good cause,
61 the fiduciary supervisor shall give notice of the failure,
62 delinquency, or finding to the county commission, the
63 personal representative, the heirs at law, beneficiaries under
64 the will, any creditors who have filed claims which are not
65 released, any surety on any bond, and any other person
66 interested in the estate and shall advise that the personal
67 representative shall be removed from office and such other
68 appropriate person appointed as personal representative as
69 the county commission may determine or that the estate
70 shall be administratively closed 30 days following the date
71 of the notice at a hearing thereon to be held before the
72 county commission at a date and time fixed for presentation.
73 In addition, on the first Monday of the next month, the
74 fiduciary supervisor shall publish a notice of this action as a
75 Class I-0 legal advertisement.

76 (4) The personal representative or any person interested
77 may file an objection at, or prior to, the time set by the notice
78 for presentation to the county commission. The commission
79 shall proceed to hear the presentation of the proposed
80 removal or closing and findings and hear interested parties,
81 if any appear, and may enter an appropriate order to

82 approve, modify and approve, or refuse to approve, the
83 proposed removal or closing and the findings of the
84 fiduciary supervisor. Alternatively, the commission may
85 refer the cause to a fiduciary commissioner generally for
86 supervision or for the purpose of the resolution of any
87 disputed matter. An appeal from the decision of the county
88 commission may, without any formal bill of exceptions, be
89 taken to the circuit court of the county by the personal
90 representative or any interested party. The appeal shall be
91 tried and heard in the circuit court, or before the judge
92 thereof in vacation, on the record made before the fiduciary
93 supervisor and the county commission.

94 (d) In addition, the fiduciary supervisor and the
95 fiduciary commissioners, shall be empowered, and where
96 appropriate, shall on their own motion, petition the circuit
97 court to compel compliance with the provisions of this
98 chapter, in the same manner and to the same extent
99 heretofore provided in the case of commissioners of
100 accounts, or by any other proper proceeding.



CHAPTER 147

**(Com. Sub. for H. B. 4611 - By Delegates J. Jeffries,
D. Jeffries, Hanna, Maynard, Porterfield, Phillips,
Paynter, Barnhart, C. Martin, Linville and Pack)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §29-3E-5 and §29-3E-8 of the Code of West Virginia, 1931, as amended, all relating generally to fireworks; requiring the State Fire Marshal to establish a procedure that allows a fireworks retailer to combine and pay all applicable fees in a single payment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3E. FIREWORKS SAFETY.

§29-3E-5. Consumer fireworks certificate required.

1 (a) A retailer may not sell consumer fireworks unless
2 the retailer is certified under this article.

3 (b) To be certified to sell consumer fireworks a retailer
4 shall:

5 (1) Submit an application to the State Fire Marshal;

6 (2) Submit with the application a copy of his or her
7 current business registration certificate;

8 (3) Pay a fee of \$500 for each temporary retail sales
9 location and \$1000 for each permanent retail sales location
10 to the State Fire Marshal;

11 (4) Provide the State Fire Marshal proof that the retailer
12 maintains at all times public liability and product liability
13 insurance with minimum coverage limits of \$1 million to
14 cover losses, damages or injuries that might result from
15 selling consumer fireworks; and

16 (5) Provide other information as the State Fire Marshal
17 may require by legislative rule.

18 (c) A consumer fireworks certificate is valid from April
19 1 through March 31 of the next calendar year.

20 (d) A consumer fireworks certificate is not transferable.

21 (e) A retailer shall post the certificate in a conspicuous
22 place at the location of the business.

23 (f) A separate certificate is required for each location of
24 the business.

25 (g) A certificate holder may also sell sparkling devices
26 and novelties at the same location without additionally
27 obtaining a sparkling devices and novelties registration.

28 (h) A retailer who sells consumer fireworks shall
29 comply with the regulations provided in NFPA 1124.

30 (i) A retailer who sells consumer fireworks shall comply
31 with all regulations provided in NFPA 1124. The State Fire
32 Marshal may by legislative rule, promulgate rules to
33 supplement those rules established in NFPA 1124.

34 (j) A retailer shall sell the consumer fireworks only from
35 a permanent building or structure that meets the
36 specifications in NFPA 1124 or a temporary facility or
37 structure that meets the specifications of NFPA 1124.7.3.5.

38 (k) Any fees collected pursuant to this section shall be
39 deposited in the State Fire Marshal Fees Fund established
40 by the provisions of §29-3-12b of this code.

41 (l) Notwithstanding any provision of this article to the
42 contrary, no retailer may offer consumer fireworks for sale
43 before June 1, 2016.

§29-3E-8. State Fire Marshal's Rule-making Authority.

1 The State Fire Marshal may promulgate emergency
2 rules and shall propose legislative rules for promulgation, in
3 accordance with §29A-3-1 *et seq.* of this code, to implement
4 this article, including:

5 (1) Adopting by reference the most recent edition of
6 APA Standard 87-1;

7 (2) Adopting by reference the most recent edition of
8 NFPA 1123, Code for Fireworks Display;

9 (3) Adopting by reference NFPA 1124, code for the
10 manufacture, transportation, storage and retail sales of
11 fireworks and pyrotechnic articles;

- 12 (4) Adopting by reference the most recent edition of
13 NFPA 1126, standard for the use of pyrotechnics before a
14 proximate audience;
- 15 (5) Procedures for the issuance and renewal of a
16 registration, certificate and permit;
- 17 (6) A fee schedule;
- 18 (7) Establishing insurance or bond requirements;
- 19 (8) Establishing additional criteria for the granting of a
20 registration, certificate, or permit under this article;
- 21 (9) Registration of manufacturers, wholesalers and
22 distributors; and
- 23 (10) Establishing a procedure that allows a retailer to
24 combine and pay all applicable fees in a single payment.

CHAPTER 148

**(H. B. 4955 - By Delegates Householder, Barrett,
Criss, Espinosa, Cowles, Boggs, Graves, Anderson,
Hartman and Pack)**

[Passed March 3, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §61-7-4 and §61-7-4a of the Code of West Virginia, 1931, as amended, all relating to reducing the cost of the fees for state licenses to carry concealed deadly weapons and provisional state licenses to carry concealed deadly weapons; eliminating the partial fee deposits in the Courthouse Facilities Improvement Fund for both licenses; reducing the fee deposits for both licenses into the Concealed Weapons License Administration Fund, and exempting

honorably discharged veterans of the armed forces of the United States from payment of certain fees for state licenses to carry concealed deadly weapons.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

1 (a) Except as provided in §61-7-4(h) of this code, any
2 person desiring to obtain a state license to carry a concealed
3 deadly weapon shall apply to the sheriff of his or her county
4 for the license, and pay to the sheriff, at the time of
5 application, a fee of \$25. Concealed weapons license may
6 only be issued for pistols and revolvers. Each applicant shall
7 file with the sheriff a complete application, as prepared by
8 the Superintendent of the West Virginia State Police, in
9 writing, duly verified, which sets forth only the following
10 licensing requirements:

11 (1) The applicant's full name, date of birth, Social
12 Security number, a description of the applicant's physical
13 features, the applicant's place of birth, the applicant's
14 country of citizenship and, if the applicant is not a United
15 States citizen, any alien or admission number issued by the
16 United States Bureau of Immigration and Customs
17 Enforcement, and any basis, if applicable, for an exception
18 to the prohibitions of 18 U.S.C. §922(g)(5)(B);

19 (2) That, on the date the application is made, the
20 applicant is a bona fide United States citizen or legal
21 resident thereof and resident of this state and of the county
22 in which the application is made and has a valid driver's
23 license or other state-issued photo identification showing
24 the residence;

25 (3) That the applicant is twenty-one years of age or
26 older;

27 (4) That the applicant is not addicted to alcohol, a
28 controlled substance or a drug and is not an unlawful user
29 thereof as evidenced by either of the following within the
30 three years immediately prior to the application:

31 (A) Residential or court-ordered treatment for
32 alcoholism or alcohol detoxification or drug treatment; or

33 (B) Two or more convictions for driving while under the
34 influence or driving while impaired;

35 (5) That the applicant has not been convicted of a felony
36 unless the conviction has been expunged or set aside or the
37 applicant's civil rights have been restored or the applicant
38 has been unconditionally pardoned for the offense;

39 (6) That the applicant has not been convicted of a
40 misdemeanor crime of violence other than an offense set
41 forth in subdivision (7) of this subsection in the five years
42 immediately preceding the application;

43 (7) That the applicant has not been convicted of a
44 misdemeanor crime of domestic violence as defined in 18
45 U.S.C. §921(a)(33), or a misdemeanor offense of assault or
46 battery either under §61-2-28 of this code or §61-2-9(b) or
47 §61-2-9(c) of this code, in which the victim was a current or
48 former spouse, current or former sexual or intimate partner,
49 person with whom the defendant cohabits or has cohabited,
50 a parent or guardian, the defendant's child or ward or a
51 member of the defendant's household at the time of the
52 offense, or a misdemeanor offense with similar essential
53 elements in a jurisdiction other than this state;

54 (8) That the applicant is not under indictment for a
55 felony offense or is not currently serving a sentence of
56 confinement, parole, probation or other court-ordered
57 supervision imposed by a court of any jurisdiction or is the
58 subject of an emergency or temporary domestic violence
59 protective order or is the subject of a final domestic violence
60 protective order entered by a court of any jurisdiction;

61 (9) That the applicant has not been adjudicated to be
62 mentally incompetent or involuntarily committed to a
63 mental institution. If the applicant has been adjudicated
64 mentally incompetent or involuntarily committed, the
65 applicant must provide a court order reflecting that the
66 applicant is no longer under such disability and the
67 applicant's right to possess or receive a firearm has been
68 restored;

69 (10) That the applicant is not prohibited under the
70 provisions of §61-7-7 of this code or federal law, including
71 18 U.S.C. §922(g) or (n), from receiving, possessing, or
72 transporting a firearm;

73 (11) That the applicant has qualified under the minimum
74 requirements set forth in subsection (d) of this section for
75 handling and firing the weapon: *Provided*, That this
76 requirement shall be waived in the case of a renewal
77 applicant who has previously qualified; and

78 (12) That the applicant authorizes the sheriff of the
79 county, or his or her designee, to conduct an investigation
80 relative to the information contained in the application.

81 (b) For both initial and renewal applications, the sheriff
82 shall conduct an investigation including a nationwide
83 criminal background check consisting of inquiries of the
84 National Instant Criminal Background Check System, the
85 West Virginia criminal history record responses and the
86 National Interstate Identification Index and shall review the
87 information received in order to verify that the information
88 required in subsection (a) of this section is true and correct.
89 A license may not be issued unless the issuing sheriff has
90 verified through the National Instant Criminal Background
91 Check System that the information available to him or her
92 does not indicate that receipt or possession of a firearm by
93 the applicant would be in violation of the provisions of §61-
94 7-7 of this code or federal law, including 18 U.S.C. §922(g)
95 or (n).

96 (c) Twenty-five dollars of the application fee and any
97 fees for replacement of lost or stolen licenses received by
98 the sheriff shall be deposited by the sheriff into a concealed
99 weapons license administration fund. The fund shall be
100 administered by the sheriff and shall take the form of an
101 interest-bearing account with any interest earned to be
102 compounded to the fund. Any funds deposited in this
103 concealed weapon license administration fund are to be
104 expended by the sheriff to pay the costs associated with
105 issuing concealed weapons licenses. Any surplus in the fund
106 on hand at the end of each fiscal year may be expended for
107 other law-enforcement purposes or operating needs of the
108 sheriff's office, as the sheriff considers appropriate.

109 (d) All persons applying for a license must complete a
110 training course in handling and firing a handgun, which
111 includes the actual live firing of ammunition by the
112 applicant. The successful completion of any of the
113 following courses fulfills this training requirement:
114 *Provided*, That the completed course includes the actual live
115 firing of ammunition by the applicant:

116 (1) Any official National Rifle Association handgun
117 safety or training course;

118 (2) Any handgun safety or training course or class
119 available to the general public offered by an official law-
120 enforcement organization, community college, junior
121 college, college or private or public institution or
122 organization or handgun training school utilizing instructors
123 certified by the institution;

124 (3) Any handgun training or safety course or class
125 conducted by a handgun instructor certified as such by the
126 state or by the National Rifle Association;

127 (4) Any handgun training or safety course or class
128 conducted by any branch of the United States military,
129 reserve or National Guard or proof of other handgun

130 qualification received while serving in any branch of the
131 United States military, reserve or National Guard.

132 A photocopy of a certificate of completion of any of the
133 courses or classes or an affidavit from the instructor, school,
134 club, organization or group that conducted or taught the
135 course or class attesting to the successful completion of the
136 course or class by the applicant or a copy of any document
137 which shows successful completion of the course or class is
138 evidence of qualification under this section and shall
139 include the instructor's name, signature and NRA or state
140 instructor identification number, if applicable.

141 (e) All concealed weapons license applications must be
142 notarized by a notary public duly licensed under §39-4-1 *et*
143 *seq.* of this code. Falsification of any portion of the
144 application constitutes false swearing and is punishable
145 under §61-5-2 of this code.

146 (f) The sheriff shall issue a license unless he or she
147 determines that the application is incomplete, that it
148 contains statements that are materially false or incorrect or
149 that applicant otherwise does not meet the requirements set
150 forth in this section. The sheriff shall issue, reissue, or deny
151 the license within 45 days after the application is filed if all
152 required background checks authorized by this section are
153 completed.

154 (g) Before any approved license is issued or is effective,
155 the applicant shall pay to the sheriff a fee in the amount of
156 \$25 which the sheriff shall forward to the Superintendent of
157 the West Virginia State Police within 30 days of receipt. A
158 license in effect as of the effective date of the amendments
159 to this section enacted during the 2019 regular session of the
160 Legislature shall, subject to revocation for cause, be valid
161 until the licensee's birthday during the fifth year from the
162 date of issuance or five years from the date of issuance,
163 whichever is later in time. Renewals of such licenses and
164 licenses newly issued after the effective date of the
165 amendments to this section enacted during the 2019 regular

166 session of the Legislature shall, subject to revocation for
167 cause, be valid for a period of five years from the licensees'
168 most recent birthday.

169 (h) Each license shall contain the full name and address
170 of the licensee and a space upon which the signature of the
171 licensee shall be signed with pen and ink. The issuing sheriff
172 shall sign and attach his or her seal to all license cards. The
173 sheriff shall provide to each new licensee a duplicate license
174 card, in size similar to other state identification cards and
175 licenses, suitable for carrying in a wallet, and the license
176 card is considered a license for the purposes of this section.
177 All duplicate license cards issued on or after July 1, 2017,
178 shall be uniform across all 55 counties in size, appearance
179 and information and shall feature a photograph of the
180 licensee.

181 (i) The Superintendent of the West Virginia State
182 Police, in cooperation with the West Virginia Sheriffs'
183 Bureau of Professional Standards, shall prepare uniform
184 applications for licenses and license cards showing that the
185 license has been granted and shall do any other act required
186 to be done to protect the state and see to the enforcement of
187 this section.

188 (j) If an application is denied, the specific reasons for
189 the denial shall be stated by the sheriff denying the
190 application. Any person denied a license may file, in the
191 circuit court of the county in which the application was
192 made, a petition seeking review of the denial. The petition
193 shall be filed within 30 days of the denial. The court shall
194 then determine whether the applicant is entitled to the
195 issuance of a license under the criteria set forth in this
196 section. The applicant may be represented by counsel, but
197 in no case is the court required to appoint counsel for an
198 applicant. The final order of the court shall include the
199 court's findings of fact and conclusions of law. If the final
200 order upholds the denial, the applicant may file an appeal in
201 accordance with the Rules of Appellate Procedure of the
202 Supreme Court of Appeals. If the findings of fact and

203 conclusions of law of the court fail to uphold the denial, the
204 applicant may be entitled to reasonable costs and attorney's
205 fees, payable by the sheriff's office which issued the denial.

206 (k) If a license is lost or destroyed, the person to whom
207 the license was issued may obtain a duplicate or substitute
208 license for a fee of \$5 by filing a notarized statement with
209 the sheriff indicating that the license has been lost or
210 destroyed.

211 (l) Whenever any person after applying for and
212 receiving a concealed weapon license moves from the
213 address named in the application to another county within
214 the state, the license remains valid for the remainder of the
215 five years unless the sheriff of the new county has
216 determined that the person is no longer eligible for a
217 concealed weapon license under this article, and the sheriff
218 shall issue a new license bearing the person's new address
219 and the original expiration date for a fee not to exceed \$5:
220 *Provided*, That the licensee, within 20 days thereafter,
221 notifies the sheriff in the new county of residence in writing
222 of the old and new addresses.

223 (m) The sheriff shall, immediately after the license is
224 granted as aforesaid, furnish the Superintendent of the West
225 Virginia State Police a certified copy of the approved
226 application. The sheriff shall furnish to the Superintendent
227 of the West Virginia State Police at any time so requested a
228 certified list of all licenses issued in the county. The
229 Superintendent of the West Virginia State Police shall
230 maintain a registry of all persons who have been issued
231 concealed weapons licenses.

232 (n) The sheriff shall deny any application or revoke any
233 existing license upon determination that any of the licensing
234 application requirements established in this section have
235 been violated by the licensee.

236 (o) A person who is engaged in the receipt, review or in
237 the issuance or revocation of a concealed weapon license

238 does not incur any civil liability as the result of the lawful
239 performance of his or her duties under this article.

240 (p) Notwithstanding subsection (a) of this section, with
241 respect to application by an honorably discharged veteran
242 of the armed forces of the United States or a former law-
243 enforcement officer honorably retired from agencies
244 governed by §7-14-1 *et seq.* of this code; §8-14-1 *et seq.* of
245 this code; §15-2-1 *et seq.* of this code; and §20-7-1 *et seq.*
246 of this code, an honorably retired officer or an honorably
247 discharged veteran of the armed forces of the United States
248 is exempt from payment of fees and costs as otherwise
249 required by this section. All other application and
250 background check requirements set forth in this section are
251 applicable to these applicants.

252 (q) Information collected under this section, including
253 applications, supporting documents, permits, renewals or
254 any other information that would identify an applicant for
255 or holder of a concealed weapon license, is confidential:
256 *Provided*, That this information may be disclosed to a law-
257 enforcement agency or officer: (i) To determine the validity
258 of a license; (ii) to assist in a criminal investigation or
259 prosecution; or (iii) for other lawful law-enforcement
260 purposes. A person who violates this subsection is guilty of
261 a misdemeanor and, upon conviction thereof, shall be fined
262 not less than \$50 or more than \$200 for each offense.

263 (r) A person who pays fees for training or application
264 pursuant to this article after the effective date of this section
265 is entitled to a tax credit equal to the amount actually paid
266 for training not to exceed \$50: *Provided*, That if such
267 training was provided for free or for less than \$50, then such
268 tax credit may be applied to the fees associated with the
269 initial application.

270 (s) Except as restricted or prohibited by the provisions
271 of this article or as otherwise prohibited by law, the issuance
272 of a concealed weapon license issued in accordance with the
273 provisions of this section authorizes the holder of the license

274 to carry a concealed pistol or revolver on the lands or waters
275 of this state.

**§61-7-4a. Provisional license to carry deadly weapons; how
obtained.**

1 (a) Any person who is at least eighteen years of age and
2 less than twenty-one years of age who desires to obtain a
3 state license to carry a concealed deadly weapon shall apply
4 to the sheriff of his or her county for a provisional license,
5 and pay to the sheriff, at the time of application, a fee of
6 \$15. Provisional licenses may only be issued for pistols or
7 revolvers. Each applicant shall file with the sheriff a
8 complete application, as prepared by the Superintendent of
9 the West Virginia State Police, in writing, duly verified,
10 which sets forth only the following licensing requirements:

11 (1) The applicant's full name, date of birth, Social
12 Security number, a description of the applicant's physical
13 features, the applicant's place of birth, the applicant's
14 country of citizenship and, if the applicant is not a United
15 States citizen, any alien or admission number issued by the
16 United States Bureau of Immigration and Customs
17 Enforcement, and any basis, if applicable, for an exception
18 to the prohibitions of 18 U. S. C. §922(g)(5)(B);

19 (2) That, on the date the application is made, the
20 applicant is a bona fide resident of this state and of the
21 county in which the application is made and has a valid
22 driver's license or other state-issued photo identification
23 showing the residence;

24 (3) That the applicant is at least eighteen years of age
25 and less than twenty-one years of age;

26 (4) That the applicant is not addicted to alcohol, a
27 controlled substance or a drug and is not an unlawful user
28 thereof as evidenced by either of the following within the
29 three years immediately prior to the application:

30 (A) Residential or court-ordered treatment for
31 alcoholism or alcohol detoxification or drug treatment; or

32 (B) Two or more convictions for driving while under the
33 influence or driving while impaired;

34 (5) That the applicant has not been convicted of a felony
35 unless the conviction has been expunged or set aside, or the
36 applicant's civil rights have been restored or the applicant
37 has been unconditionally pardoned for the offense;

38 (6) That the applicant has not been convicted of a
39 misdemeanor crime of violence other than an offense set
40 forth in subdivision (7) of this section within five years
41 immediately preceding the application;

42 (7) That the applicant has not been convicted of a
43 misdemeanor crime of domestic violence as defined in 18
44 U. S. C. §921(a)(33), or a misdemeanor offense of assault
45 or battery under either section twenty-eight, article two of
46 this chapter or subsection (b) or (c), section nine, article two
47 of this chapter in which the victim was a current or former
48 spouse, current or former sexual or intimate partner, person
49 with whom the defendant cohabits or has cohabited, a parent
50 or guardian, the defendant's child or ward or a member of
51 the defendant's household at the time of the offense, or a
52 misdemeanor offense with similar essential elements in a
53 jurisdiction other than this state;

54 (8) That the applicant is not under indictment for a
55 felony offense or is not currently serving a sentence of
56 confinement, parole, probation or other court-ordered
57 supervision imposed by a court of any jurisdiction, or is the
58 subject of an emergency or temporary domestic violence
59 protective order or is the subject of a final domestic violence
60 protective order entered by a court of any jurisdiction;

61 (9) That the applicant has not been adjudicated to be
62 mentally incompetent or involuntarily committed to a
63 mental institution. If the applicant has been adjudicated

64 mentally incompetent or involuntarily committed, the
65 applicant must provide a court order reflecting that the
66 applicant is no longer under such disability and the
67 applicant's right to possess or receive a firearm has been
68 restored;

69 (10) That the applicant is not prohibited under section
70 seven of this article or federal law, including 18 U. S. C.
71 §922(g) or (n), from receiving, possessing or transporting a
72 firearm;

73 (11) That the applicant has qualified under the minimum
74 requirements set forth in subsection (d) of this section for
75 handling and firing the weapon;

76 (12) That the applicant authorizes the sheriff of the
77 county, or his or her designee, to conduct an investigation
78 relative to the information contained in the application.

79 (b) For provisional license applications, the sheriff shall
80 conduct an investigation including a nationwide criminal
81 background check consisting of inquiries of the National
82 Instant Criminal Background Check System, the West
83 Virginia criminal history record responses and the National
84 Interstate Identification Index, and shall review the
85 information received in order to verify that the information
86 required in subsection (a) of this section is true and correct.
87 A provisional license may not be issued unless the issuing
88 sheriff has verified through the National Instant Criminal
89 Background Check System that the information available
90 does not indicate that receipt of or possession of a firearm
91 by the applicant would be in violation of the provisions of
92 section seven of this article or federal law, including 18 U.
93 S. C. §922(g) or (n).

94 (c) Fifteen dollars of the application fee and any fees for
95 replacement of lost or stolen provisional licenses received
96 by the sheriff shall be deposited by the sheriff into a
97 concealed weapons license administration fund. The fund
98 shall be administered by the sheriff and shall take the form

99 of an interest-bearing account with any interest earned to be
100 compounded to the fund. Any funds deposited in said fund
101 are to be expended by the sheriff to pay the costs associated
102 with issuing concealed weapons provisional licenses. Any
103 surplus in the fund on hand at the end of each fiscal year
104 may be expended for other law-enforcement purposes or
105 operating needs of the sheriff's office, as the sheriff
106 considers appropriate.

107 (d) All persons applying for a provisional license must
108 complete a training course in handling and firing a handgun,
109 which includes the actual live firing of ammunition by the
110 applicant. The successful completion of any of the
111 following courses fulfills this training requirement:
112 *Provided*, That the completed course included the actual
113 live firing of ammunition by the applicant:

114 (1) Any official National Rifle Association handgun
115 safety or training course;

116 (2) Any handgun safety or training course or class
117 available to the general public offered by an official law-
118 enforcement organization, community college, junior
119 college, college, or private or public institution, or
120 organization or handgun training school utilizing instructors
121 certified by the institution;

122 (3) Any handgun training or safety course or class
123 conducted by a handgun instructor certified as such by the
124 state or by the National Rifle Association;

125 (4) Any proof of current or former service in the United
126 States armed forces, armed forces reserves or National
127 Guard.

128 A photocopy of a certificate of completion of any of the
129 courses or classes or an affidavit from the instructor, school,
130 club, organization or group that conducted or taught the
131 course or class attesting to the successful completion of the
132 course or class by the applicant, or a copy of any document

133 which shows successful completion of the course or class,
134 is evidence of qualification under this section. Certificates,
135 affidavits or other documents submitted to show completion
136 of a course or class shall include instructor information and
137 proof of instructor certification, including, if applicable, the
138 instructor's NRA instructor certification number.

139 (e) All provisional license applications must be
140 notarized by a notary public duly licensed under article four,
141 chapter twenty-nine of this code. Falsification of any
142 portion of the application constitutes false swearing and is
143 punishable under section two, article five of this chapter.

144 (f) The sheriff shall issue a provisional license unless
145 the sheriff determines that the application is incomplete, that
146 it contains statements that are materially false or incorrect
147 or that applicant otherwise does not meet the requirements
148 set forth in this section. The sheriff shall issue, reissue or
149 deny the license within forty-five days after the application
150 is filed once all required background checks authorized by
151 this section are completed.

152 (g) Before any approved license is issued or is effective,
153 the applicant shall pay to the sheriff a fee in the amount of
154 \$15 which the sheriff shall forward to the Superintendent of
155 the West Virginia State Police within thirty days of receipt.
156 The provisional license is valid until the licensee turns
157 twenty-one years of age, unless sooner revoked.

158 (h) Each provisional license shall contain the full name
159 and address of the licensee and a space upon which the
160 signature of the licensee shall be signed with pen and ink.
161 The issuing sheriff shall sign and attach his or her seal to all
162 provisional license cards. The sheriff shall provide to each
163 new licensee a duplicate license card, in size similar to other
164 state identification cards and licenses, suitable for carrying
165 in a wallet, and the license card is considered a license for
166 the purposes of this section. Duplicate license cards issued
167 shall be uniform across all fifty-five counties in size,
168 appearance and information and must feature a photograph

169 of the licensee. The provisional license shall be readily
170 distinguishable from a license issued pursuant to section
171 four of this article and shall state: "NOT NICS EXEMPT.
172 This license confers the same rights and privileges to carry
173 a concealed pistol or revolver on the lands or waters of this
174 state as a license issued pursuant to section four, article
175 seven, chapter sixty-one of this code, except that this license
176 does not satisfy the requirements of 18 U. S. C. §922(t)(3).
177 A NICS check must be performed prior to purchase of a
178 firearm from a federally licensed firearm dealer."

179 (i) The Superintendent of the West Virginia State
180 Police, in coordination with the West Virginia Sheriffs'
181 Bureau of Professional Standards, shall prepare uniform
182 applications for provisional licenses and license cards
183 showing that the license has been granted and shall perform
184 any other act required to protect the state and to enforce this
185 section.

186 (j) If an application is denied, the specific reasons for
187 the denial shall be stated by the sheriff denying the
188 application. Any person denied a provisional license may
189 file, in the circuit court of the county in which the
190 application was made, a petition seeking review of the
191 denial. The petition shall be filed within thirty days of the
192 denial. The court shall then determine whether the applicant
193 is entitled to the issuance of a provisional license under the
194 criteria set forth in this section. The applicant may be
195 represented by counsel, but in no case is the court required
196 to appoint counsel for an applicant. The final order of the
197 court shall include the court's findings of fact and
198 conclusions of law. If the final order upholds the denial, the
199 applicant may file an appeal in accordance with the Rules
200 of Appellate Procedure of the Supreme Court of Appeals. If
201 the findings of fact and conclusions of law of the court fail
202 to uphold the denial, the applicant may be entitled to
203 reasonable costs and attorney's fees, payable by the sheriff's
204 office which issued the denial.

205 (k) If a provisional license is lost or destroyed, the
206 person to whom the license was issued may obtain a
207 duplicate or substitute license for a fee of \$5 by filing a
208 notarized statement with the sheriff indicating that the
209 license has been lost or destroyed.

210 (l) Whenever any person after applying for and
211 receiving a provisional concealed weapon license moves
212 from the address named in the application to another county
213 within the state, the license remains valid until the licensee
214 turns twenty-one years of age unless the sheriff of the new
215 county has determined that the person is no longer eligible
216 for a provisional concealed weapon license under this
217 article, and the sheriff shall issue a new provisional license
218 bearing the person's new address and the original expiration
219 date for a fee not to exceed \$5: *Provided*, That the licensee
220 within twenty days thereafter notifies the sheriff in the new
221 county of residence in writing of the old and new addresses.

222 (m) The sheriff shall, immediately after the provisional
223 license is granted, furnish the Superintendent of the West
224 Virginia State Police a certified copy of the approved
225 application. The sheriff shall furnish to the Superintendent
226 of the West Virginia State Police, at any time so requested,
227 a certified list of all provisional licenses issued in the
228 county. The Superintendent of the West Virginia State
229 Police shall maintain a registry of all persons who have been
230 issued provisional concealed weapon licenses.

231 (n) The sheriff shall deny any application or revoke any
232 existing provisional license upon determination that any of
233 the licensing application requirements established in this
234 section have been violated by the licensee.

235 (o) A person who is engaged in the receipt, review or in
236 the issuance or revocation of a concealed weapon
237 provisional license does not incur any civil liability as the
238 result of the lawful performance of his or her duties under
239 this article.

240 (p) Information collected under this section, including
241 applications, supporting documents, permits, renewals, or
242 any other information that would identify an applicant for
243 or holder of a concealed weapon provisional license, is
244 confidential: *Provided*, That this information may be
245 disclosed to a law enforcement agency or officer: (i) To
246 determine the validity of a provisional license; (ii) to assist
247 in a criminal investigation or prosecution; or (iii) for other
248 lawful law-enforcement purposes. A person who violates
249 this subsection is guilty of a misdemeanor and, upon
250 conviction thereof, shall be fined not less than \$50 or more
251 than \$200 for each offense.

252 (q) Except as restricted or prohibited by the provisions
253 of this article or as otherwise prohibited by law, the issuance
254 of a provisional concealed weapon license issued in
255 accordance with the provisions of this section authorizes the
256 holder of the license to carry a concealed pistol or revolver
257 on the lands or waters of this state.



CHAPTER 149

(Com. Sub. for S. B. 232 - By Senator Weld)

[Passed March 2, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §47-21-2, §47-21-20, and §47-21-26 of the Code of West Virginia, 1931, as amended, all relating to charitable raffles; removing outdated prohibitions against electronic or mechanical ticket dispensers and readers and associated digital fundraising platforms; limiting types and numbers of mechanical or electronic ticket dispenser systems; and removing restriction that a licensee may only use raffle equipment obtained from another licensee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-2. Definitions.

1 For purposes of this article, unless specified otherwise:

2 (a) “Charitable or public service activity or endeavor”
3 means any bona fide activity or endeavor which directly
4 benefits a number of people by:

5 (1) Contributing to educational or religious purposes;

6 (2) Relieving them from disease, distress, suffering,
7 constraint, or the effects of poverty;

8 (3) Increasing their comprehension of, and devotion to,
9 the principles upon which this nation was founded and to
10 the principles of good citizenship;

11 (4) Making them aware of, or educating them about,
12 issues of public concern so long as the activity or endeavor
13 is not aimed at supporting or participating in the campaign
14 of any candidate for public office;

15 (5) Lessening the burdens borne by government or
16 voluntarily supporting, augmenting or supplementing
17 services which government would normally render to the
18 people;

19 (6) Providing or supporting nonprofit community
20 activities for youth, senior citizens, or the disabled;

21 (7) Providing or supporting nonprofit cultural or artistic
22 activities; or

23 (8) Providing or supporting any political party executive
24 committee.

25 (b) “Charitable or public service organization” means a
26 bona fide, not for profit, tax-exempt, benevolent,

27 educational, philanthropic, humane, patriotic, civic,
28 religious, fraternal, or eleemosynary, incorporated or
29 unincorporated association or organization; or a volunteer
30 fire department, rescue unit, or other similar volunteer
31 community service organization or association; but does not
32 include any nonprofit association or organization, whether
33 incorporated or not, which is organized primarily for the
34 purposes of influencing legislation or supporting or
35 promoting the campaign of any single candidate for public
36 office.

37 (c) "Commissioner" means the State Tax Commissioner.

38 (d) "Concession" means any stand, booth, cart, counter,
39 or other facility, whether stationary or movable, where
40 beverages, both alcoholic and nonalcoholic, food, snacks,
41 cigarettes or other tobacco products, newspapers, souvenirs,
42 or any other items are sold to patrons by an individual
43 operating the facility. Notwithstanding anything contained
44 in §60-7-12(a)(2) of this code to the contrary, "concession"
45 includes beverages which are regulated by and are subject
46 to the provisions of chapter 60 of this code.

47 (e) "Conduct" means to direct the actual holding of a
48 raffle by activities including, but not limited to, handing out
49 tickets, collecting money, drawing the winning numbers or
50 names, announcing the winning numbers or names, posting
51 the winning numbers or names, verifying winners, and
52 awarding prizes.

53 (f) "Expend net proceeds for charitable or public service
54 purposes" means to devote the net proceeds of a raffle
55 occasion or occasions to a qualified recipient organization
56 or as otherwise provided by this article and approved by the
57 commissioner pursuant to §47-21-15 of this code.

58 (g) "Gross proceeds" means all moneys collected or
59 received from the conduct of a raffle or raffles at all raffle
60 occasions held by a licensee during a license period; this
61 term shall not be determined to include any moneys

62 collected or received from the sale of concessions at raffle
63 occasions.

64 (h) “Joint raffle occasion” means a single gathering or
65 session at which a series of one or more successive raffles
66 is conducted by two or more licensees.

67 (i) “Licensee” means any organization or association
68 granted an annual or limited occasion license pursuant to the
69 provisions of this article.

70 (j) “Net proceeds” means all moneys collected or
71 received from the conduct of raffle or raffles at occasions
72 held by a licensee during a license period after payment of
73 the raffle expenses authorized by §47-21-11, §47-21-13,
74 and §47-21-15 of this code; this term shall not be
75 determined to include moneys collected or received from
76 the sale of concessions at raffle occasions.

77 (k) “Person” means any individual, association, society,
78 incorporated or unincorporated organization, firm,
79 partnership, or other nongovernmental entity or institution.

80 (l) “Patron” means any individual who attends a raffle
81 occasion other than an individual who is participating in the
82 conduct of the occasion or in the operation of any
83 concession, whether or not the individual is charged an
84 entrance fee or participates in any raffle.

85 (m) “Qualified recipient organization” means any bona
86 fide, not for profit, tax-exempt, as defined in subdivision (p)
87 of this section, incorporated or unincorporated association
88 or organization which is organized and functions
89 exclusively to directly benefit a number of people as
90 provided in paragraphs (1) through (7), inclusive,
91 subdivision (a), of this section. “Qualified recipient
92 organization” includes, without limitation, any licensee
93 which is organized and functions exclusively as provided in
94 this subdivision.

95 (n) “Raffle” means a game involving the selling or
96 distribution of paper tickets, entitling the holder or holders
97 to participate in a raffle game for a chance on a prize or
98 prizes: *Provided*, That any mechanical or electronic raffle
99 ticket system of whatever design or function is prohibited
100 except as provided in paragraph (2) of this subdivision. This
101 subdivision shall not be interpreted to prevent the use of:

102 (1) Hand-cranked or motorized drum mixers which
103 randomly mix tickets or other indicia together for the
104 purpose of allowing the hand drawing of a ticket or winning
105 indicia;

106 (2) Mechanical or electronic ticket dispenser systems
107 that produce paper tickets with randomly generated indicia
108 that cannot be redeemed electronically, cannot be used for
109 any other purpose than a one-time raffle, and are limited as
110 follows:

111 (A) No more than three electronic ticket dispensing
112 units in facilities with a capacity of fewer than 3,000 people;
113 or

114 (B) No more than one electronic ticket dispensing unit
115 for every 1,000 persons permitted in facilities with a
116 maximum occupancy greater than 3,000 people, not to
117 exceed a total of 10 dispensing units;

118 (3) A cash register for handling proceeds of sales and
119 other ordinary cash-handling and record-keeping functions
120 of a raffle licensee; or

121 (4) Accounting and record-keeping software for the
122 purpose of maintaining accounting and reporting records of
123 the licensee, and the computer for running those
124 applications.

125 (o) “Raffle occasion” or “occasion” means a single
126 gathering or session at which a series of one or more
127 successive raffles is conducted by a single licensee.

128 (p) “Tax-exempt association or organization” means an
129 association or organization which is, and has received from
130 the Internal Revenue Service a determination letter that is
131 currently in effect stating that the organization is exempt
132 from federal income taxation under subsection 501(a) and
133 described in subsection 501(c)(3), 501(c)(4), 501(c)(8),
134 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue
135 Code of 1986, as amended; or is exempt from income taxes
136 under subsection 527(a) of that code.

**§47-21-20. Violation of provisions; crime; civil penalties;
additional grounds for suspension or revocation.**

1 (a) Any person who knowingly violates any provisions
2 of this article, other than the provisions of §47-21-18 or §47-
3 21-19 of this code, or subsection (b) of this section, is guilty
4 of a misdemeanor and, upon conviction thereof, shall be
5 fined not less than \$100 nor more than \$1,000; and, upon a
6 second or subsequent conviction thereof, shall be fined not
7 less than \$100 nor more than \$100,000 or confined in jail
8 not more than one year, or both fined and confined.

9 (b) On and after July 1, 2010, any person licensed under
10 this article, or any person who operates a raffle without a
11 license under §47-21-3 of this code, who is in possession of
12 any electronic or mechanical raffle ticket system of
13 whatever design or function, other than those machines and
14 apparatus allowed under §47-21-2(n) of this code, that is
15 used or designed to be used as part of a licensed raffle is
16 guilty of a felony and, upon conviction thereof, shall be
17 imprisoned in a state correctional facility for a term of not
18 less than one year nor more than three years, and fined not
19 less than \$50,000 nor more than \$100,000, for each
20 electronic or mechanical raffle ticket system of whatever
21 design or function, other than those machines and apparatus
22 allowed under §47-21-2(n) of this code, in the person’s
23 actual or constructive possession in this state. For a person
24 other than an individual, upon conviction, the fine may not
25 be less than \$100,000 nor more than \$500,000 for each
26 video electronic or mechanical raffle ticket system of

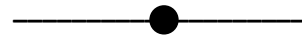
27 whatever design or function in the person's actual or
28 constructive possession in this state.

29 (c) A licensee may also have his or her license
30 suspended or revoked for failure to comply with this article
31 and may be required to forfeit the machines or devices to
32 the Tax Commissioner for destruction.

33 (d) In addition to any other penalty provided by law, any
34 person, licensed or unlicensed under this article, who
35 violates any provisions of this article, or who fails to
36 perform any of the duties or obligations created and
37 imposed upon them by the provisions of this article, other
38 than the provisions of §47-21-18 or §47-21-19 of this code,
39 or subsection (b) of this section, is subject to a civil penalty
40 as may be determined by the Tax Commissioner in an
41 amount not to exceed \$10,000.

§47-21-26. Restrictions on use of raffle equipment.

1 A licensee may use only raffle equipment which it
2 owns, which it borrows without compensation, or which it
3 leases for a reasonable and customary amount.



CHAPTER 150

**(Com. Sub. for H. B. 4438 - By Delegates Espinosa,
Householder, Barrett, Storch and Hardy)**

[Passed March 6, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 23, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §19-23-12e,
relating to the licensing of advance deposit wagering; defining
terms; providing for source market fees; providing for certain

distribution of source market fees derived from wagers of account holders; providing that advance deposit account wagers are authorized; providing exception from certain provisions of code; conferring jurisdiction to the Racing Commission; providing for the assessment and imposition of licensing and annual renewal fees; providing that applicants may bear certain costs; providing for a special revenue account; providing for a fee to be paid by advance deposit wagering licensees and deposited into the special revenue account; prohibiting advance deposit wagering in West Virginia unless conducted through an advance deposit wagering licensee; exempting advance deposit wagering from certain provisions of code and implementing rules; providing for criminal penalties for accepting advance deposit wagers without a license; providing authority for the Racing Commission to seek civil remedies and damages; providing for a regulatory fee; providing that all advance deposit wagers placed by residents within the state are considered to be wagering within West Virginia subject to the laws of this state and rules of the Racing Commission; providing for an investigation as to whether nonresident account holders of a licensee placed wagers while physically located in West Virginia; providing for an annual report of the Racing Commission; setting forth elements of the report; and authorizing rulemaking and emergency rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12e. Licensing of advance deposit account wagering.

1 (a) As used in this section:

2 “Account” means an advance deposit wagering (ADW)
3 account owned by an account holder and managed by an
4 ADW licensee that the Racing Commission has determined
5 will maintain a specific identifiable record of account
6 deposits, wagers, credits, debits, and withdrawals, and
7 protect the account holder’s confidential information.

8 “Account holder” means a resident individual, at least
9 18 years of age who applies for and successfully opens an
10 account with an ADW licensee.

11 “Advance deposit account wagering” means a method
12 of pari-mutuel wagering that is permissible under the
13 Interstate Horseracing Act, 15 U.S.C. §3001 *et seq.*, in
14 which an individual may establish an account with a person
15 or entity, licensed by the Racing Commission, to place pari-
16 mutuel wagers on horse or greyhound racing with the ADW
17 licensee via electronic media or by telephone, but not
18 including account wagering conducted through a licensee
19 under §19-23-9(a) of this code, and the Racing
20 Commission’s rules thereunder with respect to wagering
21 conducted pursuant to Racing Commission Rule §178-5-5.

22 “Advance deposit account wagering licensee” means an
23 entity licensed by the Racing Commission to conduct
24 advance deposit account wagering that accepts deposits and
25 wagers, issues a receipt or other confirmation to the account
26 holder evidencing the deposits and wagers, and transfers
27 credits and debits to and from an account.

28 “ADW” means advance deposit account wagering.

29 “Confidential information” means: (A) The amount of
30 money credited to, debited from, withdrawn from, or
31 present in an account; (B) the amount of money wagered by
32 an account holder on any race or series of races, or the
33 identities of racing associations on which the account holder
34 is wagering or has wagered; (C) the account number and
35 secure personal identification information of an account
36 holder; and (D) unless authorized by the account holder, the
37 name, address, or other information that would identify the
38 account holder to any person or entity other than the Racing
39 Commission or the ADW licensee that manages the
40 account.

41 “Electronic media” means any electronic
42 communication device or combination of devices,

43 including, but not limited to, personal computers, the
44 Internet, private networks, interactive televisions, and
45 wireless communication technologies or other technologies
46 approved by the Racing Commission.

47 “Licensee” means any racing association holding a
48 license as defined by §19-23-3 of this code;

49 “Located” means, in regard to a resident account holder,
50 where his or her principal residence is located.

51 “Principal residence” means the street address identified
52 by a resident account holder as that individual’s residential
53 address, as the address may be verified by the ADW
54 licensee to the satisfaction of the Racing Commission.

55 “Resident” is an individual who: (A) Is domiciled in
56 West Virginia; (B) maintains a place of abode and spends at
57 least 183 days within a calendar year in West Virginia; or
58 (C) lists an address in West Virginia as his or her principal
59 residence when opening an account.

60 “Source market fee” means a fee paid by the ADW
61 licensee which shall be four percent of the total amount
62 wagered through the ADW licensee by residents under this
63 section, excluding refunds and cancellations, payable on a
64 monthly basis to the Racing Commission and distributed as
65 set forth in subsection (b) of this section.

66 “Total handle” means the total annual dollar sales
67 amount of all pari-mutuel wagering on horse and greyhound
68 races conducted at, or generated from, imports or exports of
69 simulcast horse and greyhound races to or from a licensee,
70 including all moneys from wagering conducted under §19-
71 23-9, §19-23-12a, §19-23-12b, and §19-23-12c of this code,
72 but excluding refunds, cancellations, and advance deposit
73 account wagering under this section.

74 (b) The source market fee shall be paid by the ADW
75 licensee on a monthly basis to the Racing Commission and
76 distributed as provided in this subsection. The Racing

77 Commission shall prorate all source market fees derived
78 from wagers of account holders between the licensees by
79 dividing each licensee's total handle by the total handle of
80 all West Virginia licensees in the prior calendar year, and
81 distribute the prorated amounts as follows:

82 (1) Ten percent of each horse racing licensee's prorated
83 amount to the West Virginia Thoroughbred Development
84 Fund or 10 percent of each dog racing licensee's prorated
85 amount to the West Virginia Racing Commission Special
86 Account-West Virginia Greyhound Breeding Development
87 Fund;

88 (2) Forty-five percent to the purse fund of each prorated
89 licensee; and

90 (3) Forty-five percent to each prorated licensee.

91 (c) The advance deposit account wagers placed by
92 account holders with an ADW licensee licensed by the
93 Racing Commission in accordance with this section are
94 authorized, and the provisions of §61-10-1 *et seq.* of this
95 code relating to gaming do not apply to advance deposit
96 account wagering conducted in accordance with this
97 section.

98 (d) The Racing Commission is vested with jurisdiction
99 over any person or entity that solicits account holders or
100 offers advance deposit account wagering in West Virginia.
101 Any person or entity that solicits account holders or offers
102 advance deposit account wagering in West Virginia shall be
103 licensed and the Racing Commission may impose a
104 nonrefundable initial and annual renewal licensing
105 application fee not to exceed \$5,000. The Racing
106 Commission may also require any applicant for an initial or
107 renewal ADW license to bear the costs involved in
108 conducting background checks and reviews. If a licensee or
109 an affiliate of a licensee applies for an ADW license under
110 this section, all fees under this subsection shall be deemed
111 paid and an ADW license issued as part of a licensee's

112 annual licensing, or, if the license application is submitted
113 apart from annual licensing, an ADW license shall be issued
114 at the time the application is submitted.

115 (e) A person or entity may not conduct advance deposit
116 account wagering in West Virginia unless the person or
117 entity has applied for and been granted an ADW license by
118 the Racing Commission. The Racing Commission shall also
119 ensure that, except for advance deposit account wagering
120 authorized under this section, all pari-mutuel wagering on
121 racing is conducted within the confines of a licensee's
122 racetrack or licensed contiguous hotel, as permitted under
123 §19-23-9(a) and §19-23-12a(1) of this code and
124 implementing rules thereunder, including Racing
125 Commission Rule §178-5-5, or within an authorized gaming
126 facility in a historic resort hotel, as permitted under §19-23-
127 12d of this code and implementing rules thereunder.

128 (f) Any person who is not licensed as an advance deposit
129 account wagering licensee by the Racing Commission who
130 accepts an advance deposit account wager from a resident is
131 guilty of a felony and, upon conviction thereof, shall be
132 fined not more than \$50,000 or imprisoned in a state
133 correctional facility not more than five years, or both fined
134 and imprisoned. Further, the court shall order any convicted
135 person to pay restitution to recover all amounts that would
136 have been payable to the Racing Commission under this
137 section.

138 (g) The Racing Commission may seek injunctive relief
139 against any person who is not licensed as an advance deposit
140 account wagering licensee by the Racing Commission who
141 accepts or attempts to accept an advance deposit account
142 wager from a resident. The Racing Commission may also
143 seek recovery of all amounts that would have been payable
144 to the Racing Commission under this section, damages
145 equal to three times the amount of recovery, and reasonable
146 costs and attorney fees. Damages recovered by the Racing
147 Commission shall be distributed as source market fees
148 under this section.

149 (h) There is hereby assessed a regulatory fee paid by the
150 ADW licensee, which shall be one-half percent of the total
151 amount wagered through the ADW licensee by residents
152 under this section, excluding refunds and cancellations,
153 payable on a monthly basis to the Racing Commission for
154 deposit into the Racing Commission's general
155 administrative account.

156 (i) There is further assessed an additional fee paid by the
157 ADW licensee, which shall be one and one-half percent of
158 the total amount wagered through the ADW licensee by
159 residents under this section, excluding refunds and
160 cancellations, payable on a monthly basis to the Racing
161 Commission for deposit into a special revenue account in
162 the State Treasury to be known as the "Advance Deposit
163 Wagering Account" to be expended pursuant to
164 appropriation of the Legislature.

165 (j) Advance deposit account wagers placed by residents
166 are considered to be wagering conducted in this state and
167 subject to the laws of this state and the rules of the Racing
168 Commission.

169 (k) The Racing Commission shall submit a report by
170 December 31, 2020, and annually thereafter to the Joint
171 Committee on Government and Finance detailing the
172 operation of ADW in this state. The report shall include, but
173 is not limited to, the following:

174 (1) A complete list of ADW licensees offering ADW
175 services;

176 (2) The total amount of funds paid to the Racing
177 Commission pursuant to subsection (h) of this section;

178 (3) The total amount deposited in the preceding 12-
179 month period in the special revenue account set forth in
180 subsection (i) of this section;

181 (4) The amounts distributed as set forth in subdivision
182 (b) of this section;

183 (5) Beginning with the report due December 31, 2021,
184 a statistical comparison of ADW services to the preceding
185 year; and

186 (6) The total amount of wagering by West Virginia
187 residents through ADW Licensees.

188 (l) The Racing Commission may propose legislative
189 rules for promulgation, pursuant to §29A-3-1 *et seq.* of this
190 code, to implement this section and may propose emergency
191 rules to provide conditions for the licensing of advance
192 deposit account wagering. Those rules may include, but are
193 not limited to: (1) Standards, qualifications, and procedures
194 for the issuance of an advance deposit account wagering
195 license in West Virginia; (2) rules establishing initial and
196 renewal license fees and payment of same to the Racing
197 Commission to cover the costs of licensing ADW licensees;
198 (3) provisions regarding the collection and distribution of
199 those fees; (4) provisions regarding access to books and
200 records and submission to investigations and audits by the
201 Racing Commission; (5) standards and procedures for
202 opening, maintaining, operating, and securing ADW
203 accounts, as well as protecting confidential information
204 therein; and (6) any other conditions to ensure an orderly
205 process of accepting ADW wagers in acting in the best
206 interests of the West Virginia horse and dog racing
207 industries.

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CHAPTER 151

**(H. B. 4647 - By Delegates Shott, Espinosa, Queen,
Westfall, Hamrick, Howell, Householder, Barrett,
Bates and Miller)**

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §29-22B-1107 of the Code of West Virginia, 1931, as amended, relating to limited video lottery permit holders; and giving current permit holders a priority preference to reacquire permits they have, at the minimum stated bid price, before those permits are made available to other applicants.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-1107. Bidding process.

1 (a) Bids for issuance of permits shall be obtained by
2 public notice published as a Class II-0 legal advertisement
3 in compliance with the provisions of §59-3-1 *et seq.* of this
4 code.

5 (b) The second publication of the notice shall appear
6 more than 60 days next preceding the final day for
7 submitting bids.

8 (c) Each bid shall indicate the number of video lottery
9 terminals for which the permit is sought. The bid shall state
10 the amount bid for each video lottery terminal for which the
11 permit is sought.

12 (d) No bid may be altered or withdrawn after the
13 appointed hour for the opening of the bids.

14 (e) Subject to the provisions of subsection (f) of this
15 section, permits shall be awarded to the persons submitting
16 the highest per terminal bids, except that no person may be
17 authorized to directly or indirectly own or lease more than
18 seven and one-half percent of the total number of video
19 lottery terminals authorized in §29-22B-1101 of this code.
20 If a high bidder already holds a permit issued under this
21 section, the bid shall be awarded to that bidder, but only to
22 the extent the total number of video lottery terminals the
23 operator or limited video lottery retailer is authorized to
24 directly or indirectly own or lease does not exceed seven
25 and one-half percent of the number of video lottery
26 terminals authorized for the entire state specified in §29-
27 22B-1101 of this code.

28 (f) No bid may be considered unless the bond required
29 by §29-22B-1109 of this code accompanies the bid or was
30 submitted to the State Treasurer before the time designated
31 for opening of the bid.

32 (g) No bid may be considered unless the amount of the
33 bid equals or exceeds the minimum bid amount for a video
34 lottery terminal specified by the commission.

35 (h) All bids for a permit may be rejected by the
36 commission if the commission determines that the bids are
37 inadequate. In this event, the director shall begin anew the
38 bidding process for the permits.

39 (i) Whenever there are two or more bids of the same
40 dollar amount and the number of authorizations for which
41 the bids were submitted exceeds the number of
42 authorizations still available to fill the bids, the director
43 shall award the permit based upon the drawing of lots
44 among the bidders.

45 (j) A person submitting a bid under this article shall
46 deliver one copy to the Director of Purchasing of the
47 Purchasing Division within the Department of
48 Administration. The bid must be received at the designated
49 office location prior to the specified date and time of the bid
50 opening.

51 (k) The failure to deliver or the nonreceipt of the bid
52 forms at the designated office location prior to the appointed
53 date and hour are grounds for rejection of the bid.

54 (l) After the award of a permit, the Director of the
55 Lottery shall indicate upon the successful bid that it was the
56 successful bid and the number of video lottery terminals for
57 which a permit is awarded to the bidder. This shall be the
58 number of video lottery terminals for which the bid was
59 submitted, or the remaining number of video lottery
60 terminals to be awarded when the number of video lottery
61 terminals remaining is less than the number of terminals for
62 which the bid was submitted. Thereafter, a copy of the bid
63 and the bidder's application for an operator's license or a
64 limited video lottery retailer license shall be maintained as
65 a public record at the commissions' offices and shall be
66 open to public inspection during its normal business hours.
67 These documents may not be destroyed without the prior
68 written consent of the Legislative Auditor.

69 (m) Prior to issuing a permit to a successful bidder, the
70 bid price for the number of video lottery terminals
71 authorized in the permit plus the amount of the operator's
72 annual license fee or the limited video lottery retailer's
73 annual license fee for the first license year, as specified in
74 §29-22B-518 of this code shall be paid to the commission
75 by money order, certified check or cashier's check. If the
76 operator's annual license fee or the limited video lottery
77 retailer's license fee was paid for the current license year
78 before the due date of the bid amount, the license fee may
79 not be collected a second time for the same license year. The
80 amount paid shall be deposited into the fund established in
81 §29-22-18a of this code.

82 (n) All permits shall be signed by the Director of the
83 Lottery in the name of the state.

84 (o) If the successful bidder fails to pay to the
85 commission the bid price and the operator's annual license
86 fee or the limited video lottery retailer's license fee for the
87 first license year, at the time specified by the commission,
88 the bond provided for in §29-22B-1109 of this code shall be
89 forfeited and the bidder may not be issued the permit.

90 (p) In the event of a default, as provided in subsection
91 (h) of this section, the commission shall then issue the
92 permit to the next highest bidder for video lottery terminals,
93 or reject all remaining bids and start anew the bidding
94 procedure for the remaining number of video lottery
95 terminals.

96 (q) If after a permit is awarded, an operator or limited
97 video lottery retailer surrenders the permit, in whole or in
98 part, or the permit is revoked or canceled by operation of
99 law, the commission may seek bids for video lottery
100 terminals for which authorization was surrendered or
101 revoked, subject to the limitations and requirements of this
102 article.

103 (r) During the fiscal year of the state ending June 30,
104 2011, the commission shall seek bids for the 10-year period
105 beginning July 1, 2011, and ending June 30, 2021.

106 (s) For all bids conducted subsequent to June 30, 2011,
107 the commission shall give a priority preference, to allow
108 current permit holders to acquire permits which are held by
109 those permit holders at the minimum stated bid price before
110 those permits are made available for bid to other applicants.

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CHAPTER 152

**(H. B. 4760 - By Delegates Campbell, Criss, Cooper,
Pack, Westfall, Canestraro, Queen, Dean, Paynter,
Storch and Lavender-Bowe)**

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §29-22B-1202 of the Code of West Virginia, 1931, as amended, relating to modifying video lottery retailer licensing eligibility requirements; modifying the distance measurements from prohibited structures by equalizing the measurement standards for licensed video lottery licenses with that of the Alcoholic Beverage Commission's distance measurements from certain prohibited locations for private clubs' licenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-1202. No limited video lottery retailer license for premises within 150 feet of another licensed premises; no two license retailer locations within a common structure.

1 (a) A limited video lottery retailer license may not be
2 granted for operation of video lottery terminals on a
3 premises if, at the time of application for the license, the
4 applicant's premises are within 150 feet of, or has an
5 external structural connection not amounting to a common
6 internal wall to, a premises that already has a license for
7 video lottery terminals.

8 (1) A measurement of the distance between two
9 premises must be taken between the front door and the front
10 door of each location, along the street or streets: *Provided,*

11 That for the purposes of determining whether a limited
12 video lottery retailer applicant that holds a private club
13 license meets distance requirements for prohibited locations
14 of licensees pursuant to §11-16-8(a)(5) of this code, the
15 applicant's location is deemed compliant upon the issuance
16 of a valid license pursuant to §60-7-1 *et seq.* of this code.

17 (2) When determining common ownership, the
18 commission shall consider direct as well as indirect
19 ownership.

20 (b) A premises for which a private club license to
21 dispense alcoholic liquors, under provisions of §60-7-1 *et*
22 *seq.* of this code, or a Class A nonintoxicating beer license,
23 under the provisions of §11-16-1 *et seq.* of this code, was
24 granted, was applied for, or the transfer of which was validly
25 contracted for prior to January 1, 2001, is not subject to
26 subsections (a) and (c) of this section: *Provided*, That a
27 fraternal organization for which a private club license to
28 dispense alcoholic liquors, under the provisions of §60-7-1
29 *et seq.* of this code, or a Class A nonintoxicating beer
30 license, under the provisions of §11-16-1 *et seq.* of this
31 code, which was granted prior to January 1, 2001, and which
32 has remained in continuous operation since January 1, 2001,
33 may, for good cause shown, obtain approval to be exempt
34 from subsections (a) and (c) of this section, upon approval
35 of the Commission.

36 (c) No more than one restricted access adult-only
37 facility shall hold a limited video lottery retailer license to
38 offer video lottery terminals in any single structure under
39 one roof.



CHAPTER 153

(Com. Sub. for S. B. 175 - By Senator Blair)

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5F-1-7; to amend and reenact §7-1-3rr of said code; to amend said code by adding thereto a new article, designated §8-39-1; and to amend said code by adding thereto two new sections, designated §17A-2-26 and §17A-2-27, all relating to governmental entities distribution of information; requiring executive branch agencies to maintain websites that contain specific information; requiring county commissions to maintain websites with specific information; requiring county commissions to provide certain information to the Secretary of State; allowing municipalities to maintain websites with specific information available to the public at no charge; providing for exceptions to disclosing certain information in defined circumstances; requiring information to be updated; requiring updated information to be provided to the Office of Technology; requiring the Division of Motor Vehicles to establish and maintain an enrollment list of persons who have communication disabilities; authorizing the Division of Motor Vehicles to promulgate rules; exempting Division of Motor Vehicles enrollment list from the Freedom of Information Act; providing for submission of certain information to the Division of Motor Vehicles; and authorizing the Division of Motor Vehicles to provide enrollment list information to law-enforcement officers through automated data system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-7. Website content and required information.

1 Beginning December 31, 2020, each agency shall
2 maintain a website that provides the following information
3 in a searchable form by the public, if applicable:

4 (1) The office contact information, including office
5 location and mailing address, telephone number, facsimile
6 number, office hours, and a secure electronic means of
7 contacting the office such as a contact portal or other
8 interface;

9 (2) The contact information of each administrative
10 agency official, including office location and mailing
11 address, office telephone number, facsimile number, and an
12 organizational electronic mail address: *Provided*, That the
13 agency may withhold contact information from disclosure
14 that it deems necessary to protect their safety, the safety of
15 their coworkers, and the integrity of law-enforcement
16 operations;

17 (3) Organizational chart;

18 (4) A list of governing statutes and legislative and
19 procedural rules;

20 (5) Meeting minutes;

21 (6) Annual reports;

22 (7) Frequently asked questions and descriptive answers;

23 (8) Available state grant opportunities to include, but
24 not be limited to:

25 (A) Available grant information and application
26 information;

- 27 (B) Grant eligibility requirements; and
- 28 (C) Award ranges and award deadlines; and
- 29 (9) State grants that are awarded in an amount greater
30 than \$20,000 to include, but not be limited to:
 - 31 (A) The name and address of the grantee's organization;
 - 32 (B) The purpose of the award;
 - 33 (C) The amount of the award;
 - 34 (D) The effective date and duration of the award; and
 - 35 (E) Any financial and performance reports that are
36 required by the State of West Virginia.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3rr. Accessible county records; required information.

- 1 (a) Beginning December 31, 2020, each county
2 commission shall maintain a website that provides the
3 following information without charge:
 - 4 (1) The title and name of each elected county office
5 holder;
 - 6 (2) The contact information of each elected county
7 office holder, including office telephone number, facsimile
8 number, office location, and mailing address: *Provided*,
9 That the county commission may withhold contact
10 information from disclosure that it deems necessary to
11 protect their safety, the safety of their coworkers, and the
12 integrity of law-enforcement operations;
 - 13 (3) A secure electronic means of contacting each elected
14 county office holder;

15 (4) A copy of each county ordinance in effect;

16 (5) A copy of the approved meeting minutes; and

17 (6) A schedule of regular meeting days for each calendar
18 year.

19 (b) Beginning on or before December 31, 2020, and
20 each year thereafter, each county commission shall provide
21 to the Secretary of State the following information:

22 (1) A list of each elected county official by title, with
23 the name of the elected official;

24 (2) The office contact information for each county
25 office holder; and

26 (3) The website address of the county commission
27 website, where available.

28 (c) The county commission shall update the information
29 required pursuant to this section within 30 days of the date
30 the change occurs and shall provide the updated information
31 to the Office of Technology who shall update the
32 information on the wv.gov website.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 39. MUNICIPAL WEBSITES.

§8-39-1. Accessible municipal records; required information.

1 (a) Beginning on or before December 31, 2020, each
2 municipality may maintain a website that provides the
3 following information accessible to the public without
4 charge:

5 (1) The title and name of each elected office holder;

6 (2) The contact information of each elected office
7 holder, including office telephone number, facsimile
8 number, office location, office hours, and mailing address:

9 *Provided*, That the municipality may withhold contact
10 information from disclosure that it deems necessary to
11 protect their safety, the safety of their coworkers, and the
12 integrity of law-enforcement operations;

13 (3) A secure electronic means of contacting each elected
14 office holder;

15 (4) A copy of each municipal ordinance in effect;

16 (5) A copy of the approved meeting minutes; and

17 (6) A schedule of regular meeting days for each calendar
18 year.

19 (b) Each municipality shall update the information
20 required pursuant to this section within 30 days of the date
21 the change occurs and provide the updated information to
22 the Office of Technology who shall update the information
23 on the wv.gov website.

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE, AND
ANTITHEFT PROVISIONS.**

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

**§17A-2-26. Enrollment of persons with communication
disability.**

1 (a) As used in this section:

2 (1) “Communication disability” has the same meaning
3 as in §17A-2-27 of this code.

4 (2) “Disability that can impair communication” has the
5 same meaning as in §17A-2-27 of this code.

6 (3) “Legal guardian” has the same meaning as in §49-1-
7 205 of this code.

8 (4) “Ward” means a person for whom a legal guardian
9 has been appointed.

10 (b) The Division of Motor Vehicles shall establish and
11 maintain an enrollment list of persons who enroll under this
12 section as being diagnosed with a communication disability
13 or a disability that can impair communication.

14 (c) Any person diagnosed with a communication
15 disability or a disability that can impair communication who
16 is 18 years of age or older may enroll with the division for
17 inclusion in the enrollment list by submitting a completed
18 verification form to the division.

19 (d) Any parent or guardian of a minor child or a ward
20 diagnosed with a communication disability or a disability
21 that can impair communication may enroll the minor child
22 or the ward with the division for inclusion in the enrollment
23 list by submitting a completed verification form to the
24 division.

25 (e) (1) The division shall include in the enrollment list
26 information provided on a completed verification form that
27 the division determines is necessary for a law-enforcement
28 officer to identify a person as diagnosed with a
29 communication disability or a disability that can impair
30 communication. The division shall make the enrollment list
31 available to state and local law-enforcement officers
32 through a law-enforcement automated data system.

33 (2) Information in the enrollment list is not a public
34 record subject to inspection or copying under chapter 29B
35 of this code.

36 (f) A person diagnosed with a communication disability
37 or a disability that can impair communication who is
38 included in the enrollment list, or the parent or guardian of
39 a minor child or a ward diagnosed with a communication
40 disability or a disability that can impair communication who
41 is included in the enrollment list, may request removal of

42 the person, minor, or ward, as applicable, from the
43 enrollment list. The person, parent, or guardian shall do so
44 by completing the verification form with only the
45 information required under §17A-2-27(c)(1), §17A-2-
46 27(c)(2), §17A-2-27(c)(3), §17A-2-27(c)(8), and §17A-2-
47 27(c)(9) of this code, as applicable, and submitting the form
48 to the division. Upon receipt of a properly completed
49 verification form requesting the removal of a person with a
50 communication disability or a disability that can impair
51 communication from the enrollment list, the division shall
52 immediately remove that person from the enrollment list.

53 (g) The division may propose rules for promulgation in
54 accordance with the provisions of §29A-3-1 *et seq.* of this
55 code to carry out the requirements of this section.

§17A-2-27. Form for inclusion in enrollment list with a communication disability.

1 (a) As used in this section:

2 (1) “Communication disability” means a human
3 condition involving an impairment in the human’s ability to
4 receive, send, process, or comprehend concepts or verbal,
5 nonverbal, or graphic symbol systems that may result in a
6 primary disability or may be secondary to other disabilities.

7 (2) “Disability that can impair communication” means
8 a human condition with symptoms that can impair the
9 human’s ability to receive, send, process, or comprehend
10 concepts or verbal, nonverbal, or graphic symbol systems.

11 (3) “Legal guardian” has the same meaning as in §49-1-
12 205 of this code.

13 (4) “Health care provider” means a person as defined in
14 §16-30-3 of this code.

15 (5) “Psychiatrist” means a licensed physician who has
16 satisfactorily completed a residency training program in
17 psychiatry, as approved by the residency review committee

18 of the American Medical Association, the committee on
19 post-graduate education of the American Osteopathic
20 Association, or the American Osteopathic Board of
21 Neurology and Psychiatry.

22 (6) “Psychologist” means a person licensed under the
23 provisions of §30-21-1 *et seq.* of this code.

24 (b) The form shall include the following information:

25 (1) The name of the person diagnosed with a
26 communication disability or a disability that can impair
27 communication;

28 (2) The name of the person completing the form on
29 behalf of the person diagnosed with a communication
30 disability or a disability that can impair communication, if
31 applicable;

32 (3) The relationship between the person completing the
33 form and the person diagnosed with a communication
34 disability or a disability that can impair communication, if
35 applicable;

36 (4) The driver’s license number or state identification
37 card number issued to the person diagnosed with a
38 communication disability or a disability that can impair
39 communication, if that person has such a number;

40 (5) The license plate number of each vehicle owned,
41 operated, or regularly occupied by the person diagnosed
42 with a communication disability or a disability that can
43 impair communication, or enrolled in that person’s name;

44 (6) A physician’s, psychiatrist’s, or psychologist’s
45 signed certification that the person has been diagnosed with
46 a communication disability or a disability that can impair
47 communication;

48 (7) The name, business address, business telephone
49 number, and medical license number of the physician,
50 psychiatrist, or psychologist making the certification;

51 (8) The signature of the person diagnosed with a
52 communication disability or a disability that can impair
53 communication, or the signature of the person completing
54 the form on behalf of such a person, that may indicate the
55 desire to be removed from the database; and

56 (9) Option to explain – A place where the person or
57 persons may include a short explanation of the type of
58 disability, possible symptoms, and measures which could
59 alleviate or lessen the symptoms.

60 (c) Any of the following persons may complete the
61 verification form:

62 (1) Any person diagnosed with a communication
63 disability or a disability that can impair communication who
64 is 18 years of age or older;

65 (2) The parent or parents of a minor child diagnosed
66 with a communication disability or a disability that can
67 impair communication;

68 (3) The guardian of a person diagnosed with a
69 communication disability or a disability that can impair
70 communication, regardless of the age of the person.

71 (d) The Division of Motor Vehicles shall make the
72 verification form electronically available on each of their
73 respective websites.

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CHAPTER 154

(Com. Sub. for S. B. 193 - By Senator Tarr)

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §5A-3-10 of the Code of West Virginia, 1931, as amended, relating to establishing deadlines for spending units to submit procurements to the Purchasing Division when a continuing procurement for goods and services exceeds \$1 million.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops; continuing procurements over \$1 million.

1 (a) A purchase of and contract for commodities,
2 printing, and services shall be based, whenever possible, on
3 competitive bids.

4 (b) The director shall solicit sealed bids for the purchase
5 of commodities and printing which is estimated to exceed
6 \$25,000. No spending unit shall issue a series of requisitions
7 or divide or plan procurements to circumvent this \$25,000
8 threshold or otherwise avoid the use of sealed bids. Any
9 spending unit which awards multiple contracts for the same
10 or similar commodity or service to an individual vendor
11 over any 12-month period, the total value of which exceeds
12 \$25,000, shall file copies of all contracts awarded to the
13 vendor within the 12 preceding months with the director
14 immediately upon exceeding the \$25,000 limit, along with

15 a statement explaining how the multiple contract awards do
16 not circumvent the \$25,000 threshold. If the spending unit
17 does not immediately report to the director, the director may
18 suspend the purchasing authority of the spending unit until
19 the spending unit complies with the reporting requirement
20 of this subsection. The director may conduct a review of any
21 spending unit to ensure compliance with this subsection.
22 Following a review, the director shall complete a report
23 summarizing his or her findings and forward the report to
24 the spending unit. In addition, the director shall report to the
25 Joint Committee on Government and Finance on January 1
26 and July 1 of each year the spending units which have
27 reported under this subsection and the findings of the
28 director.

29 (c) The director may permit bids by electronic
30 transmission to be accepted in lieu of sealed bids.

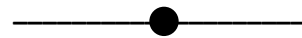
31 (d) Bids shall be solicited by public notice. The notice
32 may be published by any advertising medium the director
33 considers advisable. The director may also solicit sealed
34 bids by sending requests by mail or electronic transmission
35 to prospective vendors.

36 (e) (1) The director shall, without competitive bidding,
37 purchase commodities and services produced and offered
38 for sale by nonprofit workshops, as defined in §5A-1-1 of
39 this code, which are located in this state: *Provided*, That the
40 commodities and services shall be of a fair market price and
41 of like quality comparable to other commodities and
42 services otherwise available as determined by the director
43 with the advice of the Committee on the Purchase of
44 Commodities and Services from the Handicapped.

45 (2) To encourage contracts for commodities and
46 services with nonprofit workshops, the director shall
47 employ a person whose responsibilities in addition to other
48 duties are to identify all commodities and services available
49 for purchase from nonprofit workshops, to evaluate the need
50 of the state for commodities and services to coordinate the

51 various nonprofit workshops in their production efforts, and
 52 to make available to the workshops information about
 53 available opportunities within state government for
 54 purchase of commodities or services which might be
 55 produced and sold by such workshops. Funds to employ
 56 such a person shall be included annually in the budget.

57 (f) For all commodities and services in an amount
 58 exceeding \$1 million, if the procurement of the commodity
 59 or service is continuing in nature, 12 months prior to the
 60 expiration of the contract or final renewal option, whichever
 61 is later, the spending unit shall submit a new procurement
 62 for approval and release to the Purchasing Division. This
 63 procurement shall be awarded or terminated no later than
 64 180 days after the procurement specifications have been
 65 submitted to and approved by the Purchasing Division.



CHAPTER 155

(S. B. 322 - By Senator Maynard)

[Passed March 6, 2020; in effect ninety days from passage.]
 [Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §5A-3-10e of the Code of West Virginia, 1931, as amended, relating to prequalification of vendors for state contracts; allowing for prequalification agreements for the purchase of services; and removing obsolete terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10e. Prequalification agreement; agency-delegated bidding.

1 (a) Subject to the limitations of this section, the director
 2 may permit spending units to procure commodities and

3 services from a preapproved vendor through a
4 prequalification agreement and delegated prequalification
5 bidding if the director determines the process is fair,
6 economical, and in the best interests of the state.

7 (b) *Definitions.* — For purposes of this section:

8 “Prequalification agreement” means an agreement,
9 having a term of no more than three years, between the
10 Purchasing Division and at least two prequalified vendors
11 authorizing a spending unit to purchase a commodity or
12 service on a recurrent basis through the delegated
13 prequalification bidding process defined in the
14 prequalification agreement.

15 “Prequalified vendor” means a “vendor”, as that term is
16 defined in §5A-1-1 of this code, that has entered into a
17 prequalification agreement with the Purchasing Division
18 and may participate in the delegated prequalification
19 bidding subject to the terms and conditions of the
20 prequalification agreement.

21 “Delegated prequalification bidding” means the
22 competitive bidding process whereby the prequalified
23 vendors that are parties to a prequalification agreement may
24 submit sealed bids directly to spending units to provide a
25 commodity or service identified in the prequalification
26 agreement subject to the limitations set forth in this section.

27 (c) *Prequalification agreement.* —

28 (1) For each prequalification agreement, the director
29 shall set forth the requirements, technical or otherwise,
30 under which a vendor may be qualified to supply a
31 commodity or service through the delegated
32 prequalification bidding. For each prequalification
33 agreement, the director shall follow the notice and
34 advertising requirements set forth in §5A-3-10 of this code.

35 (2) A prequalification agreement may authorize the
36 delegated prequalification bidding for only one type of
37 commodity or service.

38 (3) A vendor may submit information to the director to
39 establish that it meets the requirements set forth in the
40 prequalification agreement.

41 (4) If the director determines that a vendor meets the
42 requirements set forth in the prequalification agreement, the
43 vendor may enter into the prequalification agreement as a
44 prequalified vendor.

45 (d) *Delegated prequalification bidding procedures.* —

46 (1) A spending unit may commence the delegated
47 prequalification bidding process by issuing a request for a
48 commodity or service identified in the prequalification
49 agreement stating in the request the quantity of the
50 commodity or if a service, the scope of work to be
51 completed, to be procured.

52 (2) The prequalified vendor that submits the lowest bid
53 in response to the request shall be awarded the procurement.

54 (3) The delegated prequalification bidding may not be
55 utilized for any request for commodities or services
56 anticipated to cost more than \$1 million, unless approved in
57 writing by the Director of Purchasing. The state may not
58 issue a series of orders each anticipated to cost less than \$1
59 million to circumvent the monetary limitation in this
60 subsection. The limit expressed herein applies to each
61 delegated prequalification bid conducted pursuant to the
62 prequalification agreement and not to total spending under
63 the prequalification agreement.

64 (e) *Rule-making authority.* — The Director of the
65 Purchasing Division shall propose rules for legislative
66 approval in accordance with the provisions of §29A-3-1 *et seq.*
67 of this code to implement this section, including, but not
68 limited to, provisions to establish procedures for the
69 solicitation and authorization of prequalification agreements,
70 prequalification of vendors, and implementation of delegated
71 prequalification bidding.

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CHAPTER 156

(S. B. 545 - By Senator Tarr)

[Passed March 4, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §23-2C-16 of the Code of West Virginia, 1931, as amended, relating to authorizing the Insurance Commissioner to transfer moneys from the Insurance Commission Fund, also known as the Commissioner's Operating Fund, into the Workers' Compensation Old Fund to reduce any deficit balance of the Old Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-16. Administration of Old Fund, Uninsured Employer Fund, Self-Insured Employer Guaranty Risk Pool, Self-Insured Employer Security Risk Pool, and Private Carrier Guaranty Fund.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the company shall be the initial third-party
3 administrator of the Old Fund, Uninsured Employer Fund,
4 Self-Insured Employer Guaranty Risk Pool, Self-Insured
5 Employer Security Risk Pool, and Private Carrier Guaranty
6 Fund from the termination of the commission and thereafter
7 for a term of at least six months but not more than three
8 years pursuant to an agreement to be entered into between
9 the Insurance Commissioner and the company prior to the
10 termination of the commission. The company shall be paid
11 a reasonable fee for services provided. The company's

12 administrative duties may include, but not be limited to,
13 receipt of all claims, processing said claims, providing for
14 the payment of said claims through the State Treasurer's
15 office or other applicable state agency, and ensuring,
16 through the selection and assignment of counsel, that claims
17 decisions are properly defended. The administration of said
18 funds thereafter shall be subject to the procedures set forth
19 §5A-3-1 *et seq.* of this code.

20 (b) The Insurance Commissioner shall review claims
21 determined to be payable from said funds and may contest
22 the determination pursuant to the provisions of §23-5-1 *et*
23 *seq.* of this code.

24 (c) The Insurance Commissioner may conduct or cause
25 to be conducted an annual audit to be performed on said
26 funds.

27 (d) The Insurance Commissioner may contract or
28 employ counsel to perform legal services related solely to
29 the collection of moneys due the Old Fund, including the
30 collection of moneys due the Old Fund and enforcement of
31 repayment agreements entered into for the collection of
32 moneys due on or before June 30, 2005, in any
33 administrative proceeding and in any state or federal court.

34 (e) During the fiscal years beginning July 1, 2019, and
35 July 1, 2020, the Insurance Commissioner may, in his or her
36 discretion, transfer special revenue moneys contained in the
37 Insurance Commission Fund to the Old Fund in any fiscal
38 year in which the Insurance Commissioner has determined,
39 and an independent auditor has attested thereto, that a deficit
40 balance existed in the Old Fund for the prior fiscal year.

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CHAPTER 157

(Com. Sub. for S. B. 576 - By Senator Maynard)

[Passed February 29, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §5A-8-6 and §5A-8-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §5A-8-3, §5A-8-4, §5A-8-5, §5A-8-7, §5A-8-9, §5A-8-10, §5A-8-11, §5A-8-13, §5A-8-14, §5A-8-15, and §5A-8-17 of said code, all relating to records management of public records; defining terms; dissolving the formal advisory committee; updating the authority of the administrator; allowing for records of historical value; updating the authority of agency heads related to records management; providing for electronic storage and electronic formats for records; repealing the requirement that administrator must store agencies' essential records; removing the requirement that administrator notify agencies of essential records destruction; providing that administrator may approve request by agencies to destroy their essential records; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-3. Definitions.

- 1 As used in this article:
- 2 “Agency” means any department, office, commission,
- 3 board, or other unit, however designated, of the executive
- 4 branch of state government.

5 “Agency Records Manager” means an employee
6 appointed by the agency’s chief executive officer or agency
7 head to manage the agency’s records inventory and to act as
8 liaison with the administrator.

9 “Disaster” means any occurrence of fire, flood, storm,
10 earthquake, explosion, epidemic, riot, sabotage, or other
11 condition of extreme peril resulting in substantial damage
12 or injury to persons or property within this state, whether
13 such occurrence is caused by an act of God, nature, or man,
14 including an enemy of the United States.

15 “Local record” means a record of a county, city, town,
16 authority, or any public corporation or political entity
17 whether organized and existing under charter or under
18 general law unless the record is designated or treated as a
19 state record under state law.

20 “Preservation duplicate” means a copy of an essential
21 state record which is used for the purpose of preserving such
22 state record pursuant to this article.

23 “Record” means document, electronic file, book, paper,
24 photograph, sound recording, or other material, regardless
25 of physical form or characteristics, made or received
26 pursuant to law or ordinance or in connection with the
27 transaction of official state government business. Library
28 and museum material made or acquired and preserved
29 solely for reference or exhibition purposes, extra copies of
30 documents preserved only for convenience of reference, and
31 stocks of publications and of processed documents are not
32 included within the definition of records as used in this
33 article.

34 “State record” means:

35 (A) A record of a department, office, commission,
36 board, spending unit, or other agency, however designated,
37 of the state government.

38 (B) A record of the State Legislature.

39 (C) A record of any court of record, whether of
40 statewide or local jurisdiction.

41 (D) Any record designated or treated as a state record
42 under state law.

§5A-8-4. Categories of records to be preserved.

1 State or local records which are within the following
2 categories are essential records which shall be preserved
3 pursuant to this article:

4 Category A. Records containing information necessary
5 to the operation of government in the emergency created by
6 a disaster.

7 Category B. Records not within category A but
8 containing information necessary to protect the rights and
9 interest of persons or to establish and affirm the powers and
10 duties of governments in the resumption of operations after
11 a disaster.

12 Category C. Records with historical value justifying
13 permanent retention.

§5A-8-5. State records administrator.

1 The Secretary of the Department of Administration is
2 hereby designated the state records administrator,
3 hereinafter called the administrator. The secretary may
4 designate someone within the department to carry out the
5 duties of the administrator. The administrator shall establish
6 and administer in the Department of Administration of the
7 executive branch of state government a records
8 management program, which will apply efficient and
9 economical management methods to the creation,
10 utilization, maintenance, and retention, preservation, and
11 disposal of state records; and shall establish and maintain a
12 program for the selection and preservation of essential state
13 records and shall advise and assist in the establishment of

14 programs for the selection and preservation of essential
15 local records.

§5A-8-6. Records management and preservation advisory committee.

1 [Repealed.]

§5A-8-7. Duties of administrator.

1 The administrator shall, with due regard for the
2 functions of the agencies concerned:

3 (a) Establish standards, procedures, and techniques for
4 effective management of records;

5 (b) Make continuing surveys of document operations
6 and recommend improvements in current records
7 management practices including the use of space,
8 technology, equipment, and supplies employed in creating,
9 maintaining, storing, and servicing records;

10 (c) Establish standards for the preparation of schedules
11 providing for the retention of state records of continuing
12 value and for the prompt and orderly disposal of state
13 records no longer possessing sufficient administrative,
14 legal, or fiscal value to warrant storage;

15 (d) Solicit input from agencies on essential records and
16 data classification of information contained in the records.
17 In accordance with the rules and regulations promulgated by
18 the administrator, each agency that has custody or control
19 of state records shall: (1) Inventory the state records in his
20 or her custody or control; (2) submit to the administrator a
21 report thereon containing such information as the
22 administrator directs and containing recommendations as to
23 which state records are essential; and (3) periodically
24 review his or her inventory and his or her report and, if
25 necessary, revise the report so that it is current, accurate, and
26 complete; and

27 (e) Obtain reports from agencies as are required for the
28 administration of the program.

§5A-8-9. Duties of agency heads.

1 The head of each agency shall:

2 (a) Establish and maintain an active, continuing
3 program for the economical and efficient management of
4 the records of the agency;

5 (b) Designate and notify the administrator of an agency
6 records manager to act as a point of contact between the
7 administrator and the agency on issues related to
8 management of the state records within the agency's control
9 or custody;

10 (c) Make and maintain records containing adequate and
11 proper documentation of the organization, functions,
12 policies, decisions, procedures, and essential transactions of
13 the agency designed to furnish information to protect the
14 legal and financial rights of the state and of persons directly
15 affected by the agency's activities;

16 (d) Submit to the administrator, in accordance with the
17 standards established by him or her, schedules proposing the
18 length of time each state record series warrants retention for
19 administrative, legal, or fiscal purposes after it has been
20 received by the agency. Each agency records manager also
21 shall submit lists of state records in custody of the agency
22 that are not needed in the transaction of current business and
23 that do not have sufficient administrative, legal, or fiscal
24 value to warrant storage for disposal in conformity with the
25 requirements of §5A-8-10 of this code;

26 (e) Designate those records of the agency that are
27 essential state records, at least annually, and report the
28 designated essential state records to the administrator;

29 (f) Provide for the preservation and safekeeping of
30 essential state records in an appropriate manner;

31 (g) Cooperate with the administrator in the conduct of
32 surveys made pursuant to the provisions of this article;

33 (h) Comply with the rules, regulations, standards, and
34 procedures issued by the administrator; and

35 (i) First obtain the administrator's written approval
36 before purchasing or acquiring any equipment, technology,
37 or supplies used or to be used to store or preserve records of
38 the agency.

§5A-8-10. Essential state records – Preservation duplicates.

1 (a) The agency head may make or cause to be made
2 preservation duplicates or may designate as preservation
3 duplicates existing copies of essential state records. A
4 preservation duplicate shall be durable, accurate, complete,
5 and clear, and a preservation duplicate made by means of
6 photography, microphotography, photocopying, film,
7 microfilm, electronic file, or digital image stored on
8 unalterable media shall be made in conformity with the
9 standards prescribed therefor by the administrator.

10 (b) A preservation duplicate made by a photographic,
11 photostatic, microfilm, microcard, miniature photographic,
12 electronic file, digital image, or other process which
13 accurately reproduces or forms a durable and unalterable
14 medium for so reproducing the original, shall have the same
15 force and effect for all purposes as the original record
16 whether the original record is in existence or not. A
17 transcript, exemplification, or certified copy of such
18 preservation duplicate shall be deemed for all purposes to
19 be a transcript, exemplification, or certified copy of the
20 original record.

§5A-8-11. Essential state records – Safekeeping.

1 (a) The administrator shall prescribe a manner of
2 safekeeping of essential state records and preservation
3 duplicates and may establish, with the approval of the
4 Legislature, storage facilities therefor. The administrator
5 may provide for physical storage outside the state or
6 electronic storage.

7 (b) When in the opinion of the administrator the legally
8 designated or customary location of an essential state record
9 is such that the essential state record may be destroyed or
10 unavailable in the event of a disaster:

11 (1) The agency with custody of the essential state record
12 shall store a preservation duplicate at another location and
13 permit such state record to remain at its legally designated
14 or customary location; or

15 (2) The agency shall store such state record at a location
16 other than its legally designated or customary location and
17 deposit at the legally designated or customary location a
18 preservation duplicate for use in lieu of the state record; or

19 (3) The agency may store such state record at a location
20 other than its legally designated or customary location,
21 without providing for a preservation duplicate, upon a
22 determination that it is impracticable to provide for a
23 preservation duplicate and that the state record is not
24 frequently used. Such determination shall be made by the
25 administrator and the regularly designated custodian of such
26 state record, but if they disagree the determination shall be
27 made by the administrator.

28 (c) The requirements of subsection (b) of this section
29 shall not prohibit the administrator from removing an
30 essential state record or preservation duplicate from the
31 legally designated or customary location of the state record
32 if a disaster has occurred or is imminent.

**§5A-8-12. Essential state records – Maintenance, inspection,
and use.**

1 [Repealed.]

§5A-8-13. Essential state records – Confidential records.

1 Any agency subject to this article shall control and at all
2 times be the owner of its records. When a state record is
3 required by law to be treated in a confidential manner and is
4 an essential state record, the agency, in effectuating the

5 purpose of this article with respect to such state record, shall
6 protect its confidential nature.

§5A-8-14. Essential state records – Review of program.

1 The administrator shall review the program at least
2 annually for the selection and preservation of essential state
3 records designated by the agencies, including the
4 classification of records and the provisions for preservation
5 duplicates, and for safekeeping of essential state records or
6 preservation duplicates to ensure that the purposes of this
7 article are accomplished.

§5A-8-15. Records management and preservation of county records; alternate storage of county records; Records Management and Preservation Board; qualifications and appointment of members; reimbursement of expenses; staffing; rule-making authority; study of records management needs of state agencies; grants to counties.

1 The Legislature finds that the use of electronic
2 technology and other procedures to manage and preserve
3 public records by counties should be uniform throughout the
4 state where possible.

5 (a) The governing body and the chief elected official of
6 a county, hereinafter referred to as a county government
7 entity, whether organized and existing under a charter or
8 under general law, shall promote the principles of efficient
9 records management and preservation of local records. A
10 county governing entity may, as far as practical, follow the
11 program established for the uniform management and
12 preservation of county records as set out in rules proposed
13 for legislative approval in accordance with the provisions of
14 §29A-3-1 *et seq.* of this code as proposed by the Records
15 Management and Preservation Board.

16 (b) In the event a county government entity decides to
17 destroy or otherwise dispose of a county record, the county
18 government entity may, prior to destruction or disposal
19 thereof, offer the record to the Director of Archives and

20 History within the Department of Arts, Culture, and History
21 for preservation of the record as a document of historical
22 value. Unless authorized by the Supreme Court of Appeals,
23 the records of courts of record and magistrate courts are not
24 affected by the provisions of this section.

25 (c)(1) A preservation duplicate of a county government
26 entity record may be stored in any format approved by the
27 board in which the image of the original record is preserved
28 in a form, including electronic file, in which the image is
29 incapable of erasure or alteration and from which a
30 reproduction of the stored record may be retrieved that truly
31 and accurately depicts the image of the original county
32 government record.

33 (2) Except for those formats, processes, and systems
34 used for the storage of records on the effective date of this
35 section, no alternate format for the storage of county
36 government entity records described in this section is
37 authorized for the storage of county government entity
38 records unless the particular format has been approved
39 pursuant to a legislative rule promulgated by the board in
40 accordance with the provisions of chapter 29A of this code.
41 The board may prohibit the use of any format, process, or
42 system used for the storage of records upon its
43 determination that the same is not reasonably adequate to
44 preserve the records from destruction, alteration, or decay.

45 (3) Upon creation of a preservation duplicate that stores
46 an original county government entity record in an approved
47 format that is incapable of erasure or alteration and that may
48 be retrieved in a format that truly and accurately depicts the
49 image of the original record, the county government entity
50 may destroy or otherwise dispose of the original in
51 accordance with the provisions of §57-1-7c of this code.

52 (d) A Records Management and Preservation Board for
53 county government entities is continued, to be composed of
54 11 members.

55 (1) Three members shall serve ex officio. One member
56 shall be the Curator of the Department of Arts, Culture, and
57 History or designee who shall be the chair of the board. One
58 member shall be the Administrator of the Supreme Court of
59 Appeals or designee. One member shall be the Chief
60 Technology Officer or designee.

61 (2) The Governor shall appoint eight members of the
62 board, with the advice and consent of the Senate. Not more
63 than five appointments to the board may be from the same
64 political party and not more than three members may be
65 appointed from the same congressional district. Of the eight
66 members appointed by the Governor:

67 (i) Five appointments shall be county elected officials,
68 one of whom shall be a clerk of a county commission, one
69 of whom shall be a circuit court clerk, one of whom shall be
70 a county commissioner, one of whom shall be a county
71 sheriff, and one of whom shall be a county assessor, to be
72 selected from a list of 15 names. The names of three clerks
73 of county commissions and three circuit court clerks shall
74 be submitted to the Governor by the West Virginia
75 Association of Counties. The names of three county
76 commissioners shall be submitted to the Governor jointly
77 by the West Virginia Association of Counties and the West
78 Virginia county commissioners Association. The names of
79 three county sheriffs shall be submitted to the Governor by
80 the West Virginia Sheriff's Association. The names of three
81 county assessors shall be submitted to the Governor by the
82 Association of West Virginia assessors;

83 (ii) One appointment shall be a county prosecuting
84 attorney to be selected from a list of three names submitted
85 by the West Virginia Prosecuting Attorneys Institute;

86 (iii) One appointment shall be an attorney licensed in
87 West Virginia and in good standing as a member of the West
88 Virginia State Bar with experience in real estate and mineral
89 title examination, to be selected from a list of three names
90 submitted by the State Bar; and

91 (iv) One appointment shall be a representative of a local
92 historical or genealogical society.

93 (e) The members of the board shall serve without
94 compensation but shall be reimbursed for all reasonable and
95 necessary expenses actually incurred in the performance of
96 their duties as members of the board in a manner consistent
97 with the guidelines of the Travel Management Office of the
98 Department of Administration. In the event the expenses are
99 paid, or are to be paid, by a third party, the member shall not
100 be reimbursed by the state.

101 (f) The staff of the board shall consist of the Director of
102 Archives and History within the Department of Arts,
103 Culture, and History and any additional staff as needed.

104 (g) The board shall propose rules for legislative
105 approval in accordance with the provisions of §29A-3-1 *et*
106 *seq.* of this code to establish a system of records
107 management and preservation for county governments:
108 *Provided, That,* for the retention and disposition of records
109 of courts of record and magistrate courts, the
110 implementation of the rule is subject to action by the
111 Supreme Court of Appeals of West Virginia. The proposed
112 rules shall include provisions for establishing a program of
113 grants to county governments for making records
114 management and preservation uniform throughout the state.

115 (h) In addition to the fees charged by the clerk of the
116 county commission under the provisions of §59-1-10 of this
117 code, the clerk shall charge and collect an additional \$1 fee
118 for every document containing less than 10 pages filed for
119 recording and an additional \$1 fee for each additional 10
120 pages of document filed for recording. At the end of each
121 month, the clerk of the county commission shall deposit into
122 the Public Records and Preservation Revenue Account as
123 established in the State Treasury all fees collected:
124 *Provided, That* the clerk may retain not more than 10
125 percent of the fees for costs associated with the collection
126 of the fees. Clerks shall be responsible for accounting for

127 the collection and deposit in the State Treasury of all fees
128 collected by the clerk under the provisions of this section.

129 (i) There is hereby created in the State Treasury a
130 special account entitled the Public Records and Preservation
131 Revenue Account. The account shall consist of all fees
132 collected under the provisions of this section, legislative
133 appropriations, interest earned from fees, investments, gifts,
134 grants, or contributions received by the board. Expenditures
135 from the account shall be for the purposes set forth in this
136 article and are not authorized from collections but are to be
137 made only in accordance with appropriation by the
138 Legislature and in accordance with the provisions of §12-3-
139 1 *et seq.* of this code and upon the fulfillment of the
140 provisions set forth in §11B-2-1 *et seq.* of this code.

141 (j) Subject to the above provision, the board may expend
142 the funds in the account to implement the provisions of this
143 article. In expending funds from the account, the board shall
144 allocate not more than 50 percent of the funds for grants to
145 counties for records management, access, and preservation
146 purposes. The board shall provide for applications, set
147 guidelines, and establish procedures for distributing grants
148 to counties, including a process for appealing an adverse
149 decision on a grant application. Expenditures from the
150 account shall be for the purposes set forth in this section,
151 including the cost of additional staff of the Division of
152 Archives and History.

§5A-8-17. Disposal of records.

1 (a) Except as provided in §57-1-7a of this code, no
2 record shall be destroyed or otherwise disposed of by any
3 agency of the state, unless it is determined by the
4 administrator and the Director of Archives and History
5 within the Department of Arts, Culture, and History that the
6 record has no further administrative, legal, fiscal, research,
7 or historical value. In the event the administrator is of the
8 opinion that the record has no further administrative, legal,
9 fiscal, research, or historical value, the administrator shall

10 approve, if appropriate, a request for disposal of the records
11 and notify both the Director of Archives and History and the
12 agency that is the custodian of the records that they may be
13 destroyed.

14 (b) The provisions of this section are not applicable to
15 the judicial branch, the West Virginia House of Delegates,
16 the West Virginia Senate, or the Joint Committee on
17 Government and Finance.

●

CHAPTER 158

**(Com. Sub. for S. B. 586 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed February 28, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §15-5-4 and §15-5-27 of the Code of West Virginia, 1931, as amended; to repeal §29-3-1, §29-3-2, §29-3-3, §29-3-4, §29-3-5, §29-3-5a, §29-3-5b, §29-3-5c, §29-3-5d, §29-3-5e, §29-3-5f, §29-3-6, §29-3-7, §29-3-8, §29-3-9, §29-3-10, §29-3-11, §29-3-12, §29-3-12a, §29-3-12b, §29-3-13, §29-3-14, §29-3-15, §29-3-16, §29-3-16a, §29-3-16b, §29-3-16c, §29-3-16d, §29-3-17, §29-3-18, §29-3-19, §29-3-21, §29-3-22, §29-3-27, §29-3-28, §29-3-29, §29-3-30, and §29-3-32 of said code; to amend and reenact §5F-1-2 of said code; to amend and reenact §5F-2-1 and §5F-2-2 of said code; to amend and reenact §15-1A-3 of said code; to amend and reenact §15-5-3, §15-5-4b, §15-5-4c, §15-5-13, §15-5-20a, §15-5-24, and §15-5-26 of said code; to amend said code by adding thereto a new section, designated §15-5-29; to amend and reenact §15A-1-2 and §15A-1-3 of said code; to amend said code by adding thereto a new section, designated §15A-1-9; to amend said code by adding thereto a new article,

designated §15A-9-1, §15A-9-2, §15A-9-3, §15A-9-4, §15A-9-5, §15A-9-6, and §15A-9-7; to amend said code by adding thereto a new article, designated §15A-10-1, §15A-10-2, §15A-10-3, §15A-10-4, §15A-10-5, §15A-10-6, §15A-10-7, §15A-10-8, §15A-10-9, §15A-10-10, §15A-10-11, §15A-10-12, §15A-10-13, §15A-10-14, §15A-10-15, §15A-10-16, §15A-10-17, §15A-10-18, §15A-10-19, §15A-10-20, §15A-10-21, §15A-10-22, §15A-10-23, §15A-10-24, and §15A-10-25; to amend said code by adding thereto a new article, designated §15A-11-1, §15A-11-2, §15A-11-3, §15A-11-4, §15A-11-5, §15A-11-6, §15A-11-7, §15A-11-8, §15A-11-9, §15A-11-10, and §15A-11-11; to amend and reenact §19-1-4 of said code; to amend and reenact §19-21A-4 of said code; to amend and reenact §20-1-7 of said code; to amend and reenact §22-1-6 of said code; to amend and reenact §29-31-2, §29-31-3, and §29-31-4 of said code; to amend said code by adding thereto a new section, designated §29-31-5; and to amend said code by adding thereto a new section, designated §33-2-23, all relating to reorganizing and redesignating the Department of Military Affairs and Public Safety as the Department of Homeland Security; clarifying the divisions that report to the cabinet secretary of that department; removing the Adjutant General's Office, State Armory Board, and Military Awards Board from the Department of Military Affairs and Public Safety; clarifying the agencies established within the Department of Military Affairs and Public Safety; delineating that the secretary of each state Department cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; requiring that the Adjutant General cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; designating the Department of Homeland Security as the State Administrative Agency for homeland security and emergency management grants; designating the Division of Homeland Security and Emergency Management as the Division of Emergency Management; making the employees of the Division of Emergency Management classified-exempt employees; terminating the West Virginia Disaster Recovery Board; providing that the State Resiliency Officer have the

authority to disburse funds from the Disaster Recovery Trust Fund; granting powers necessary to accomplish such disbursement to the State Resiliency Officer; providing for appropriations and other funding sources to the Disaster Recovery Trust Fund; deleting requirements for government entities with deficiently trained floodplain managers to transfer their floodplain oversight to another governmental entity; amending provisions regarding administration of the Disaster Recovery Trust Fund; providing the State Resiliency Officer need not pay taxes for moneys deposited in the Disaster Recovery Trust Fund or other assets of such fund; repealing the provision for an annual report of the abolished Disaster Recovery Board; providing the Director of the Division of Emergency Management shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; establishing the powers and duties of the Secretary of the Department of Homeland Security; establishing the Office of Administrative Hearings within the Department of Homeland Security; authorizing the appointment of a Chief Hearing Examiner; establishing the organization of the Office of the Chief Hearing Examiner; establishing the jurisdiction of the Office of Administrative Hearings; establishing hearing procedures; establishing rule-making authority; establishing a duty to provide notice of change of address; establishing policies for the transition from divisions of the Department of Homeland Security to the Office of Administrative Hearings; separating the Fire Marshal from the Fire Commission; transferring the Fire Marshal from the State Fire Commission to the Department of Homeland Security; setting forth the appointment process for the Fire Marshal; setting forth qualifications, salary, and responsibilities of the State Fire Marshal; allowing the Fire Marshal to hire employees; allowing the Fire Marshal to hire a deputy, and setting the qualifications of the deputy; requiring new Fire Marshals 1, 2, 3, and deputies to become certified law-enforcement officers; setting forth powers and duties of the State Fire Marshal; setting forth additional powers and duties relating to law enforcement, statewide contracts, penalties, and authority to carry firearms; creating

enforcement standards for the state building and fire codes; creating rule-making authority; allowing the appointment of advisory boards; setting forth the responsibilities of insurance companies in fire loss investigations; allowing the Fire Marshal to set fees; requiring an annual report; setting forth maintenance of fire hazard standards; allowing orders for repair or demolition; allowing orders to contain notice to comply and a right to appeal; providing standards for service of repair or demolition orders; clarifying who is responsible for cost of work or demolition; allowing an action to recover cost; requiring smoke detectors in one- and two- family dwellings; requiring carbon monoxide detectors in residential units, schools, and day care facilities and setting forth penalties; allowing the use of live trees in public buildings under certain circumstances; setting forth safety standards for bed and breakfast establishments; setting forth standards for installation of propane gas systems; setting forth parameters to abate fire hazards; setting forth license denial, limitation, suspension, and revocation standards; creating an independent informal dispute process for licensees upon appeal; establishing demonstration building and equipment standards for educational instruction for fire protection and prevention and abatement; creating crime of false alarm of fires and setting forth penalties; creating tax on insurance companies; setting forth general criminal penalties for violation; setting forth that the parts of the article are construed liberally; creating a severability section; allowing the Fire Marshal to award service weapons to retiring employees under certain conditions; allowing the Fire Marshal to dispose of unused firearms; continuing the Fire Commission; setting forth composition, qualifications, appointment, terms of office, removal, vacancies, and compensation and expenses of commission; establishing chairperson, vice chairperson, meeting, and quorum requirements; creating rule-making authority for fire code, building code, and general rule-making authority; continuing the Hazardous Response Training Program; requiring public hearing and notice prior to promulgation of fire code; setting forth commission's powers and conduct of public hearings; setting forth commission's

powers, duties, and authority; setting forth authority over volunteer fire department training and equipment, and creating rule-making authority for such; continuing courtesy certification of firefighters in surrounding states to serve as volunteer firefighters; continuing the Fire Service Equipment and Training Fund; providing the Commissioner of Agriculture shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; providing the State Conservation Committee shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; relating to additional powers, duties, and services of Director of Division of Natural Resources; creating exception to requirement that Division of Natural Resources payments be deposited in bank within 24 hours; providing the Director of the Division of Natural Resources shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; providing the Secretary of the Department of Environmental Protection shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; repealing generally now-obsolete provisions relating to the Fire Commission and State Fire Marshal; placing the State Resiliency Office under the Office of the Governor; adding the President of the West Virginia Emergency Management Council, the Secretary of the Department of Homeland Security, and the Director of the Division of Emergency Management on the State Resiliency Office Board; adding two nonvoting member legislators from each house of the Legislature to the State Resiliency Office Board; specifying tenure of office on that board; providing that members of the board serve without compensation, but may collect necessary expenses; providing certain mandatory duties for that board; providing the State Resiliency Officer shall be appointed by the Governor with the advice and consent of the Senate, and setting the duties and qualifications for such officer; providing for the employment of a deputy to the State Resiliency Officer shall be appointed by the Governor with the advice and consent of the Senate, upon presentation from a list of names

by the State Resiliency Office Board, and, setting the duties and qualifications for such officer; providing that the State Resiliency Officer and his or her deputy must have complimentary work experience; specifying the areas in which the State Resiliency Office Board shall be required to assist the State Resiliency Officer to fulfill the missions of that office, and specifying the areas where that body shall assist the State Resiliency Officer to devise plans and develop procedures; providing for certain exemptions from the Public Meetings Act and Freedom of Information Act for meetings of, and materials presented to, the board; delineating the authority of the State Resiliency Office and the State Resiliency Officer in carrying out their missions; providing the State Resiliency Officer shall report at least quarterly to the Joint Legislative Committee on Flooding; granting the State Resiliency Officer authority to hire employees for the office; providing that such employees are at-will, may participate in state insurance and other programs, and, if entrusted with state funds, shall execute surety bonds; providing that the State Resiliency Officer shall set employee salary rates; creating the state Office of the National Flood Insurance Program in the Office of the Insurance Commissioner; requiring a coordinator to administer such program; providing that state-owned property in any nonparticipating community shall be governed by appropriate rules promulgated by the Insurance Commissioner; requiring the coordinator and floodplain managers to develop a strategic plan to meet goals and objectives, which plan shall be reviewed by and must be approved by the State Resiliency Officer and State Resiliency Office Board; requiring the coordinator to establish and enforce flood plain management regulations in special hazard areas which are in conformity with federal laws and regulations; and providing the coordinator of the state Office of the National Flood Insurance Program shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

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

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

3 (1) Department of Administration;

4 (2) Department of Environmental Protection;

5 (3) Department of Health and Human Resources;

6 (4) Department of Homeland Security;

7 (5) Department of Revenue;

8 (6) Department of Transportation;

9 (7) Department of Commerce; and

10 (8) Department of Veterans' Assistance.

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

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

**§5F-2-1. Transfer and incorporation of agencies and boards;
funds.**

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

5 (1) Public Employees Insurance Agency provided in §5-
6 16-1 *et seq.* of this code;

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

9 (3) Commission on Uniform State Laws provided in
10 §29-1A-1 *et seq.* of this code;

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

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

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

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

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

21 (9) The West Virginia Ethics Commission provided in
22 §6B-2-1 *et seq.* of this code;

23 (10) Consolidated Public Retirement Board provided in
24 §5-10D-1 *et seq.* of this code; and

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

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

31 (1) Division of Labor provided in §21-1-1 *et seq.* of this
32 code, which includes:

33 (A) Occupational Safety and Health Review
34 Commission provided in §21-3A-1 *et seq.* of this code; and

35 (B) Board of Manufactured Housing Construction and
36 Safety provided in §21-9-1 *et seq.* of this code.

37 (2) Office of Miners' Health, Safety, and Training
38 provided in §22A-1-1 *et seq.* of this code. The following
39 boards are transferred to the Office of Miners' Health,
40 Safety, and Training for purposes of administrative support
41 and liaison with the Office of the Governor:

42 (A) Board of Coal Mine Health and Safety and Coal
43 Mine Safety and Technical Review Committee provided in
44 §22A-6-1 *et seq.* of this code;

45 (B) Board of Miner Training, Education, and
46 Certification provided in §22A-7-1 *et seq.* of this code; and

47 (C) Mine Inspectors' Examining Board provided in
48 §22A-9-1 *et seq.* of this code.

49 (3) The West Virginia Development Office provided in
50 §5B-2-1 *et seq.* of this code;

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

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

56 (6) Geological and Economic Survey provided in §29-
57 2-1 *et seq.* of this code; and

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

60 (A) Division of Unemployment Compensation;

61 (B) Division of Employment Service;

62 (C) Division of Workforce Development; and

63 (D) Division of Research, Information and Analysis.

64 (8) Office of Energy, within the Development Office,
65 provided in §5B-2F-1 *et seq.* of this code;

66 (9) West Virginia Tourism Office and Tourism
67 Commission provided in §5B-2I-1 *et seq.* of this code; and

68 (10) Division of Rehabilitation Services provided in
69 §18-10A-1 *et seq.* of this code.

70 (c) The Economic Development Authority provided in
71 §31-15-1 *et seq.* of this code is continued as an independent
72 agency within the executive branch.

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

77 (e) The West Virginia Educational Broadcasting
78 Authority provided in §10-5-1 *et seq.* of this code and the
79 State Library Commission provided in §10-1-1 *et seq.* of
80 this code are each continued as separate independent
81 agencies within the Department of Arts, Culture, and
82 History, which shall provide administrative support for both
83 entities.

84 (f) The Division of Culture and History as established
85 in §29-1-1 *et seq.* of this code is continued as a separate
86 independent agency within the Executive Branch as the
87 Department of Arts, Culture, and History. All references
88 throughout this code to the “Division of Culture and
89 History” means the “Department of Arts, Culture, and
90 History”.

91 (g) The following agencies and boards, including all of
92 the allied, advisory, and affiliated entities, are transferred to
93 the Department of Environmental Protection for purposes of

94 administrative support and liaison with the Office of the
95 Governor:

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

98 (2) Solid Waste Management Board provided in §22C-
99 3-1 *et seq.* of this code;

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

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

104 (5) Oil and Gas Inspectors' Examining Board provided
105 in §22C-7-1 *et seq.* of this code;

106 (6) Shallow Gas Well Review Board provided in §22C-
107 8-1 *et seq.* of this code; and

108 (7) Oil and Gas Conservation Commission provided in
109 §22C-9-1 *et seq.* of this code.

110 (h) The following agencies and boards, including all of
111 the allied, advisory, affiliated, or related entities and funds
112 associated with any agency or board, are incorporated in and
113 administered as a part of the Department of Health and
114 Human Resources:

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

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

119 (3) Office of Emergency Medical Services and the
120 Emergency Medical Service Advisory Council provided in
121 §16-4C-1 *et seq.* of this code;

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

124 (5) State Commission on Intellectual Disability
125 provided in §29-15-1 *et seq.* of this code;

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

128 (7) Bureau for Child Support Enforcement provided in
129 chapter 48 of this code.

130 (i) The following agencies and boards, including all of
131 the allied, advisory, affiliated, or related entities and funds
132 associated with any agency or board, are incorporated in and
133 administered as a part of the Department of Homeland
134 Security:

135 (1) West Virginia State Police;

136 (2) Division of Emergency Management provided in
137 §15-5-1 *et seq.* of this code and Emergency Response
138 Commission provided in §15-5A-1 *et seq.* of this code:
139 *Provided*, That notwithstanding any other provision of this
140 code to the contrary, whenever in this code, or a rule
141 promulgated thereunder, a reference is made to the Division
142 of Homeland Security and Emergency Management, it shall
143 be construed to mean the Division of Emergency
144 Management;

145 (3) Division of Administrative Services;

146 (4) Division of Corrections and Rehabilitation;

147 (5) Fire Commission;

148 (6) The State Fire Marshal;

149 (7) Board of Probation and Parole;

150 (8) The West Virginia Fusion Center;

151 (9) The Division of Protective Services; and

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

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

159 (1) Tax Division provided in chapter 11 of this code;

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

162 (3) Lottery Commission and position of Lottery
163 Director provided in §29-22-1 of this code;

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

166 (5) West Virginia Alcohol Beverage Control
167 Commissioner provided in §11-16-1 *et seq.* of this code and
168 §60-2-1 *et seq.* of this code;

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

171 (7) Lending and Credit Rate Board provided in chapter
172 47A of this code;

173 (8) Division of Financial Institutions provided in §31A-
174 2-1 *et seq.* of this code;

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

177 (10) The Municipal Bond Commission provided in §13-
178 3-1 *et seq.* of this code;

179 (11) The Office of Tax Appeals provided in §11-10A-1
180 of this code; and

181 (12) The State Athletic Commission provided in §29-
182 5A-1 *et seq.* of this code.

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

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

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

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

193 (4) Driver's Licensing Advisory Board provided in
194 §17B-2-1 *et seq.* of this code;

195 (5) Aeronautics Commission provided in §29-2A-1 *et*
196 *seq.* of this code;

197 (6) State Rail Authority provided in §29-18-1 *et seq.* of
198 this code; and

199 (7) Public Port Authority provided in §17-16B-1 *et seq.*
200 of this code.

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

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

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

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

230 (p) When an agency, board, or commission is
231 transferred under a bureau or agency other than a
232 department headed by a secretary pursuant to this section,
233 that transfer is solely for purposes of administrative support
234 and liaison with the Office of the Governor, a department
235 secretary or a bureau. Nothing in this section extends the
236 powers of department secretaries under §5F-2-2 of this code
237 to any person other than a department secretary and nothing
238 limits or abridges the statutory powers and duties of
239 statutory commissioners or officers pursuant to this code.

§5F-2-2. Power and authority of secretary of each department.

1 (a) Notwithstanding any other provision of this code to
2 the contrary, the secretary of each department shall have
3 plenary power and authority within and for the department
4 to:

5 (1) Employ and discharge within the office of the
6 secretary employees as may be necessary to carry out the

7 functions of the secretary, which employees shall serve at
8 the will and pleasure of the secretary;

9 (2) Cause the various agencies and boards to be operated
10 effectively, efficiently, and economically and develop
11 goals, objectives, policies, and plans that are necessary or
12 desirable for the effective, efficient, and economical
13 operation of the department;

14 (3) Eliminate or consolidate positions, other than
15 positions of administrators or positions of board members
16 and name a person to fill more than one position;

17 (4) Transfer permanent state employees between
18 departments in accordance with the provisions of §5F-2-7
19 of this code;

20 (5) Delegate, assign, transfer, or combine
21 responsibilities or duties to or among employees, other than
22 administrators or board members;

23 (6) Reorganize internal functions or operations;

24 (7) Formulate comprehensive budgets for consideration
25 by the Governor and transfer within the department funds
26 appropriated to the various agencies of the department
27 which are not expended due to cost savings resulting from
28 the implementation of the provisions of this chapter:
29 *Provided*, That no more than 25 percent of the funds
30 appropriated to any one agency or board may be transferred
31 to other agencies or boards within the department: *Provided*,
32 *however*, That no funds may be transferred from a special
33 revenue account, dedicated account, capital expenditure
34 account, or any other account or funds specifically
35 exempted by the Legislature from transfer, except that the
36 use of appropriations from the State Road Fund transferred
37 to the office of the Secretary of the Department of
38 Transportation is not a use other than the purpose for which
39 the funds were dedicated and is permitted: *Provided further*,
40 That if the Legislature by subsequent enactment

41 consolidates agencies, boards, or functions, the appropriate
42 secretary may transfer the funds formerly appropriated to
43 the agency, board, or function in order to implement
44 consolidation. The authority to transfer funds under this
45 section shall expire on June 30, 2010;

46 (8) Enter into contracts or agreements requiring the
47 expenditure of public funds and authorize the expenditure
48 or obligation of public funds as authorized by law:
49 *Provided*, That the powers granted to the secretary to enter
50 into contracts or agreements and to make expenditures or
51 obligations of public funds under this provision shall not
52 exceed or be interpreted as authority to exceed the powers
53 granted by the Legislature to the various commissioners,
54 directors, or board members of the various departments,
55 agencies, or boards that comprise and are incorporated into
56 each secretary's department under this chapter;

57 (9) Acquire by lease or purchase property of whatever
58 kind or character and convey or dispose of any property of
59 whatever kind or character as authorized by law: *Provided*,
60 That the powers granted to the secretary to lease, purchase,
61 convey, or dispose of such property shall be exercised in
62 accordance with §5A-3-1 *et seq.*, §5A-10-1 *et seq.*, and
63 §5A-3-11 *et seq.* of this code: *Provided, however*, That the
64 powers granted to the secretary to lease, purchase, convey,
65 or dispose of such property shall not exceed or be
66 interpreted as authority to exceed the powers granted by the
67 Legislature to the various commissioners, directors, or
68 board members of the various departments, agencies, or
69 boards that comprise and are incorporated into each
70 secretary's department under this chapter;

71 (10) Conduct internal audits;

72 (11) Supervise internal management;

73 (12) Promulgate rules, as defined in §29A-1-2 of this
74 code, to implement and make effective the powers,
75 authority, and duties granted and imposed by the provisions

76 of this chapter in accordance with the provisions of chapter
77 29A of this code;

78 (13) Grant or withhold written consent to the proposal
79 of any rule, as defined in §29A-1-2 of this code, by any
80 administrator, agency, or board within the department.
81 Without written consent, no proposal for a rule shall have
82 any force or effect;

83 (14) Delegate to administrators the duties of the
84 secretary as the secretary may deem appropriate, from time
85 to time, to facilitate execution of the powers, authority, and
86 duties delegated to the secretary; and

87 (15) Take any other action involving or relating to
88 internal management not otherwise prohibited by law.

89 (b) The secretaries of the departments hereby created
90 shall engage in a comprehensive review of the practices,
91 policies, and operations of the agencies and boards within
92 their departments to determine the feasibility of cost
93 reductions and increased efficiency which may be achieved
94 therein, including, but not limited to, the following:

95 (1) The elimination, reduction, and restriction of the
96 state's vehicle or other transportation fleet;

97 (2) The elimination, reduction, and restriction of state
98 government publications, including annual reports,
99 informational materials, and promotional materials;

100 (3) The termination or rectification of terms contained
101 in lease agreements between the state and private sector for
102 offices, equipment, and services;

103 (4) The adoption of appropriate systems for accounting,
104 including consideration of an accrual basis financial
105 accounting and reporting system;

106 (5) The adoption of revised procurement practices to
107 facilitate cost-effective purchasing procedures, including

108 consideration of means by which domestic businesses may
109 be assisted to compete for state government purchases; and

110 (6) The computerization of the functions of the state
111 agencies and boards.

112 (c) Notwithstanding the provisions of subsections (a)
113 and (b) of this section, none of the powers granted to the
114 secretaries herein shall be exercised by the secretary if to do
115 so would violate or be inconsistent with the provisions of
116 any federal law or regulation, any federal-state program or
117 federally delegated program or jeopardize the approval,
118 existence or funding of any program.

119 (d) The layoff and recall rights of employees within the
120 classified service of the state as provided in §29-6-10(5) and
121 §29-6-10(6) of this code shall be limited to the
122 organizational unit within the agency or board and within
123 the occupational group established by the classification and
124 compensation plan for the classified service of the agency
125 or board in which the employee was employed prior to the
126 agency or board's transfer or incorporation into the
127 department: *Provided*, That the employee shall possess the
128 qualifications established for the job class. The duration of
129 recall rights provided in this subsection shall be limited to
130 two years or the length of tenure, whichever is less. Except
131 as provided in this subsection, nothing contained in this
132 section shall be construed to abridge the rights of employees
133 within the classified service of the state as provided in §29-
134 6-10 and §29-6-10a of this code.

135 (e) Notwithstanding any other provision of this code to
136 the contrary, the secretary of each department with authority
137 over programs which have an impact on the delivery of
138 health care services in the state or are payors for health care
139 services or are payors for prescription drugs, including, but
140 not limited to, the Public Employees Insurance Agency, the
141 Department of Health and Human Resources, the Bureau of
142 Senior Services, the Children's Health Insurance Program,
143 the Health Care Authority, the Office of the Insurance

144 Commissioner, the Division of Corrections, the Division of
145 Juvenile Services, the Regional Jail and Correctional
146 Facility Authority, state colleges and universities, public
147 hospitals, state or local institutions including nursing homes
148 and veterans' homes, the Division of Rehabilitation
149 Services, public health departments, the Bureau for Medical
150 Services and other programs, which have an impact on the
151 delivery of health care services or are payors for health care
152 services or are payors for prescription drugs, in West
153 Virginia shall cooperate with the Governor's Office of
154 Health Enhancement and Lifestyle Planning established
155 pursuant to §16-29H-1 *et seq.* of this code for the purpose
156 of improving the health care delivery services in West
157 Virginia for any program over which they have authority.

158 (f) Notwithstanding any other provision of this code to
159 the contrary, the secretary of each department shall
160 cooperate with the State Resiliency Office to the fullest
161 extent practicable to assist that office in fulfilling its duties.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 1A. ADJUTANT GENERAL.

§15-1A-3. Duties.

1 (a) The Adjutant General shall be chief of staff to the
2 Governor and commanding general of the organized militia.
3 He or she shall direct the planning and employment of the
4 military forces of the state in carrying out their state
5 mission, establish unified command of state forces
6 whenever jointly engaged, coordinate the military affairs
7 with the civil defense of the state and organize and
8 coordinate the activities of all civil agencies including local
9 and state police in event of declaration of a limited
10 emergency by the Governor pursuant to §15-1D-1 *et seq.* of
11 this code. In time of emergency or disaster, the Adjutant
12 General shall coordinate his or her activities with those of
13 the Office of Emergency Services provided for by §15-5-1
14 *et seq.* of this code. He or she shall be custodian of all

15 military records of the state and shall keep the same indexed
16 and available for ready reference. He or she shall keep an
17 itemized account of all moneys received and dispensed from
18 all sources and shall make an annual report to the Governor
19 on the condition of the organized militia, receipts and
20 expenditures and such other matters relating to the military
21 forces of the state and the Adjutant General's department as
22 he or she shall deem expedient.

23 (b) The Adjutant General shall be responsible for the
24 organization, administration, training, and supply of the
25 organized militia and shall cause to be procured, prepared,
26 and issued to the organizations of the organized militia all
27 necessary books and blanks for reports, records, returns, and
28 general administration, and shall, at the expense of the state,
29 cause the military laws, military code and rules and
30 regulations in force to be printed, bound in proper form and
31 distributed, one copy to each commissioned officer, and one
32 each to all the circuit, intermediate and criminal court
33 judges, sheriffs and justices of the peace in the state
34 requiring them and shall procure and supply all necessary
35 textbooks of drill and instruction. He or she shall keep in his
36 or her office an accurate account of all state and United
37 States property issued to the state. He or she shall keep on
38 file in his or her office all official bonds required by this
39 chapter, the reports and returns of troops and military forces
40 of the state and all other writings and papers which are
41 required to be transmitted to and preserved at the general
42 headquarters of the organized militia.

43 (c) The Adjutant General shall keep records of all
44 service personnel from the State of West Virginia,
45 commissioned or enlisted, in any of the wars of the United
46 States and of individual claims of citizens of West Virginia
47 for service rendered in such wars. He or she shall assist all
48 persons residing in this state having claims against the
49 United States for pension, bounty, or back pay or such
50 claims as have arisen out of, or by reason of, service in any
51 of said wars. To this end he or she shall cooperate with the
52 agents or attorneys of such claimants, furnish to claimants

53 only all necessary certificates or certified abstracts from, or
54 copies of, records or documents in his or her office and shall
55 seek in all practicable ways to secure speedy and just action
56 in all claims now pending or which may hereafter be filed:
57 *Provided*, That any and all of the above services shall be
58 rendered without charge to the claimant. He or she shall
59 establish and maintain as a part of his or her office a bureau
60 of records of the services of the West Virginia troops during
61 such wars and shall keep arranged in proper and convenient
62 form all records and papers pertaining thereto.

63 (d) Notwithstanding any other provision of this code to
64 the contrary, the Adjutant General shall cooperate with the
65 State Resiliency Office to the fullest extent practicable to
66 assist that office in fulfilling its duties.

ARTICLE 5. DIVISION OF EMERGENCY MANAGEMENT.

§15-5-3. Division of Emergency Management created.

1 (a) The Division of Homeland Security and Emergency
2 Management is continued as the Division of Emergency
3 Management, within the Department of Homeland Security.
4 All of the allied, advisory, affiliated, or related entities, and
5 funds associated with the Division of Homeland Security
6 and Emergency Management and all its functions,
7 personnel, and property are transferred to, incorporated in,
8 and administered as a part of the Division of Emergency
9 Management. Wherever the words “Office of Emergency
10 Services” or “Division of Homeland Security and
11 Emergency Management” appear in this code, they shall
12 mean the Division of Emergency Management.

13 (b) A Director of the Division of Emergency
14 Management shall be appointed by the Governor, by and
15 with the advice and consent of the Senate. The Governor
16 shall consider applicants for director who at a minimum: (1)
17 Have at least five years managerial or strategic planning
18 experience; (2) are knowledgeable in matters relating to
19 public safety, homeland security, emergency management,

20 and emergency response; and (3) have, at a minimum, a
21 federally issued secret level security clearance or have
22 submitted to or will submit to a security clearance
23 investigation for the purpose of obtaining, at a minimum, a
24 federally issued secret level security clearance.

25 (c) The director may employ such technical, clerical,
26 stenographic, and other personnel, fix their compensation
27 and make expenditures within the appropriation to the
28 division or from other funds made available for the purpose
29 of providing homeland security and emergency
30 management services to carry out the purpose of this article.
31 Beginning on the effective date of this section, all
32 employees of the Division of Emergency Management are
33 exempt from the Civil Service System: *Provided*, That
34 employees of the Division of Homeland Security and
35 Emergency Management who are currently members of the
36 classified service, having been transferred to the Division of
37 Emergency Management, retain their classified service as
38 long as they remain in their current classification.
39 Thereafter, if the employee leaves his or her current
40 classification and maintains employment in the Division of
41 Emergency Management, that employee, at that time,
42 becomes transferred to the classified-exempt service as that
43 term is defined in §29A-6-2 of this code.

44 (d) The director and other personnel of the Division of
45 Emergency Management shall be provided with appropriate
46 office space, furniture, equipment, supplies, stationery, and
47 printing in the same manner as provided for personnel of
48 other state agencies.

49 (e) The director, subject to the direction and control of
50 the Governor through the Secretary of the Department of
51 Homeland Security, shall be the executive head of the
52 Division of Emergency Management and shall be
53 responsible to the Governor and the Secretary of the
54 Department of Homeland Security for carrying out the
55 program for emergency management in this state. The
56 director, in consultation with the Secretary of the

57 Department of Homeland Security, shall coordinate the
58 activities of all organizations for emergency management
59 within the state and maintain liaison with and cooperate
60 with homeland security, emergency management and other
61 emergency service and civil defense agencies and
62 organizations of other states and of the federal government,
63 and shall have additional authority, duties, and
64 responsibilities authorized by §15-5-1 *et seq.* of this code as
65 may be prescribed by the Governor or the Secretary of the
66 Department of Homeland Security.

67 (f) The director shall have the power to acquire in the
68 name of the state by purchase, lease, or gift, real property
69 and rights or easements necessary or convenient to construct
70 thereon the necessary building or buildings for housing an
71 emergency management control center.

72 (g) The director may, for the purposes of responding to
73 a declared state of emergency or for the recovery from a
74 declared state of emergency following the termination of the
75 declaration, employ personnel or enter into contracts and
76 subcontracts for goods or specialized technical services,
77 subject to the following provisions:

78 (1) Employee positions shall be contingent on the
79 receipt of the necessary federal and/or state funds.

80 (2) All employees employed pursuant to this subsection
81 shall be exempt from both the classified services category
82 and the classified exempt services category provided in §29-
83 6-4 of this code.

84 (3) Each employee hired shall be deemed an at-will
85 employee who may be discharged or released from his or
86 her respective position without cause or reason.

87 (4) Employees may participate in the PEIA, PERS,
88 workers' compensation, unemployment compensation
89 programs, or their equivalents.

90 (5) The director shall set appropriate salary rates for
91 employees equivalent to a rate commensurate with industry
92 standards.

93 (6) Contracts may be entered into pursuant to this
94 subsection with the federal government, its instrumentalities
95 and agencies, any state, territory or the District of Columbia
96 and its agencies and instrumentalities, municipalities,
97 foreign governments, public bodies, private corporations,
98 partnerships, associations and individuals for specialized
99 technical services at a rate commensurate with industry
100 standards as determined by the director to support specific
101 activities related to the response to or the recovery from a
102 declared state of emergency.

**§15-5-4. West Virginia disaster recovery board created;
organization of board; appointment of board members;
term of office and expenses of board members; meetings.**

1 [Repealed.]

**§15-5-4b. West Virginia Disaster Recovery Trust Fund
disbursement.**

1 Upon the proclamation of the existence of a state of
2 emergency or state of preparedness under the provisions of
3 §15-5-6 of this code, The State Resiliency Officer, shall
4 have the power to disburse funds from the disaster relief
5 recovery trust fund created pursuant to §15-5-24 of this code
6 to any person, political subdivision, or local organization for
7 emergency services in such amounts and in such manner,
8 and to take such other actions, as the State Resiliency
9 Officer may determine is necessary or appropriate in order
10 to provide assistance to any person, political subdivision, or
11 local organization for emergency services responding to or
12 recovering from the disaster, or otherwise involved in
13 disaster recovery activities: *Provided*, That except as
14 provided hereafter in this section, requisitions for payment
15 shall not be made or authorized for payment by the Auditor
16 without the express approval of the State Resiliency Officer,

17 except that the State Resiliency Officer's approval shall be
18 deemed to be made for the initial disbursement to cover the
19 first 30 days of disaster response, and: *Provided, however,*
20 That all subsequent disbursements arising out of the events
21 surrounding the state of emergency or preparedness giving
22 rise to the relevant disbursements shall require the express
23 approval of the State Resiliency Officer, which approval
24 shall not be unduly withheld or delayed.

**§15-5-4c. Powers and duties related to the West Virginia
Disaster Recovery Trust Fund.**

1 The State Resiliency Officer is hereby granted, has and
2 may exercise all powers necessary or appropriate to carry
3 out and effectuate the purposes set forth in §15-5-4b of this
4 code. The State Resiliency Officer has the power:

5 (1) To accept appropriations, gifts, grants, bequests, and
6 devises from any source, public or private, for deposit into
7 the recovery fund, and to use or dispose of the same to
8 provide assistance to any person, political subdivision, or
9 local organization for emergency services responding to or
10 recovering from a disaster, or otherwise involved in disaster
11 recovery activities;

12 (2) To make and execute contracts, leases, releases, and
13 other instruments necessary or convenient for the exercise
14 of its power;

15 (3) To make, and from time to time, amend, and repeal
16 bylaws for the governance of its activities not inconsistent
17 with the provisions of this article;

18 (4) To sue and be sued;

19 (5) To acquire, hold, and dispose of real and personal
20 property;

21 (6) To enter into agreements or other transactions with
22 any federal or state agency, political subdivision, or person;

23 (7) To provide for the deposit of any funds or assets of
24 the West Virginia disaster relief recovery trust fund with the
25 state Board of Investments for investment;

26 (8) To procure insurance against any loss in connection
27 with its property in such amounts, and from such insurers,
28 as may be necessary or desirable;

29 (9) To use the recovery trust fund to pay the costs
30 incurred by any state department or agency for the purpose
31 of obtaining property appraisals and other certifications
32 necessary to justify the involvement of the Federal
33 Emergency Management Agency and to allow its
34 determination of a presidentially declared disaster;

35 (10) To establish, or assist in the establishment of,
36 temporary housing and residential housing by, with or for
37 political subdivisions declared to be in a disaster area by the
38 Federal Emergency Management Agency or other agency
39 or instrumentality of the United States or by the Governor
40 of this state;

41 (11) To enter into purchase, lease, or other arrangements
42 with an agency of the United States or this state for
43 temporary housing or residential housing units to be
44 occupied by disaster victims and make such units available
45 to any political subdivision or persons;

46 (12) To assist political subdivisions, local organizations
47 for emergency services and nonprofit corporations in
48 acquiring sites necessary for temporary housing or
49 residential housing for disaster victims and in otherwise
50 preparing the sites to receive and use temporary housing or
51 residential housing units, including payment of
52 transportation charges, by advancing or lending funds
53 available to the Division of Emergency Management from
54 the recovery fund;

55 (13) To make grants and provide technical services to
56 assist in the purchase or other acquisition, planning,

57 processing, design, construction, or rehabilitation,
58 improvement or operation of temporary housing or
59 residential housing: *Provided*, That no such grant or other
60 financial assistance shall be provided except upon a written
61 finding by the State Resiliency Officer that such assistance
62 and the manner in which it will be provided constitute a
63 disaster recovery activity;

64 (14) To make or participate in the making of insured or
65 uninsured construction and permanent loans or grants for
66 temporary housing or residential housing, community
67 facilities, and essential business activities: *Provided*, That
68 no such loan or grant shall be made except upon a written
69 finding by the State Resiliency Officer that the loan or grant
70 and the manner in which it will be provided constitute a
71 disaster recovery activity and that the loan or grant is not
72 otherwise available, wholly or in part, from a private or
73 public lender upon reasonably equivalent terms and
74 conditions; and

75 (15) Do all acts necessary and proper to carry out the
76 powers granted to the State Resiliency Office.

**§15-5-13. Appropriations; acceptance of services, gifts, grants,
and loans.**

1 (a) Each political subdivision shall have the power to
2 make appropriations in the manner provided by law for
3 making appropriations for the ordinary expenses of such
4 political subdivision for the payment of expenses of its local
5 organization for emergency services or of its proportionate
6 share of expenses of a regional organization for emergency
7 services, or both.

8 (b) Whenever the federal government or any agency or
9 officer thereof shall offer to any authority, corporation,
10 partnership, or other entity, public or private or the state, or
11 through the state to any political subdivision thereof,
12 services, equipment, supplies, materials or funds by way of
13 gift, grant or loan, for purposes relating to homeland

14 security or emergency services, the state, after consultation
15 and in coordination with the State Resiliency Officer and
16 acting through the Governor, or a political subdivision after
17 consultation and in coordination with the State Resiliency
18 Officer and acting with the consent of the Governor and
19 through its executive officer or governing body, may accept
20 the offer. Upon acceptance, the Governor of the state or
21 executive officer or governing body of the political
22 subdivision may authorize any officer of the state or of the
23 political subdivision, as the case may be, to receive services,
24 equipment, supplies, materials or funds on behalf of the
25 state or the political subdivision and subject to the terms of
26 the offer and the rules and regulations, if any, of the agency
27 making the offer.

28 (c) Whenever any person, firm, or corporation shall
29 offer to the state or to any political subdivision thereof,
30 services, equipment, supplies, materials, or funds by way of
31 gift, grant, or loan, for purposes relating to homeland
32 security or emergency services, the state, after consultation
33 and in coordination with the State Resiliency Officer and
34 acting through the Governor, or the political subdivision
35 after consultation and in coordination with the State
36 Resiliency Officer and acting through its executive officer
37 or governing body, may accept the offer. Upon acceptance,
38 the Governor of the state or executive officer or governing
39 body of the political subdivision may authorize any officer
40 of the state or of the political subdivision, as the case may
41 be, to receive services, equipment, supplies, materials, or
42 funds on behalf of the state or the political subdivision and
43 subject to the terms of the offer.

44 (d) The Governor may require any agency, authority,
45 corporation, partnership, or other entity to furnish a report,
46 in both written and electronic form, detailing the source and
47 receipt of all services, equipment, supplies, materials, or
48 funds for purposes relating to homeland security or
49 emergency services as a condition of receiving these from
50 the state. Within 10 days of the receipt of any reports

51 required under this subsection, the Governor shall furnish
52 copies thereof to the Legislature.

§15-5-20a. Floodplain manager training.

1 (a) Community participation in the National Flood
2 Insurance Program is important to manage and mitigate the
3 special flood hazard areas in West Virginia. Therefore, all
4 state, county, municipality and local floodplain managers
5 should be adequately trained in floodplain management.

6 (b) Commencing July 1, 2012, each floodplain manager
7 in the state is required to complete six hours of training in
8 floodplain management annually to maintain good standing
9 with the West Virginia Division of Emergency
10 Management.

11 (c) A governmental unit that has a floodplain manager
12 who fails to obtain the required training shall suspend the
13 floodplain manager from his or her floodplain management
14 responsibilities until the training requirement is met.

§15-5-24. Disaster Recovery Trust Fund; disbursement of funds.

1 (a) There is hereby created a special trust fund which
2 shall be designated and known as the West Virginia Disaster
3 Recovery Trust Fund to be administered by the State
4 Resiliency Officer. The recovery fund shall consist of: (i)
5 Any appropriations, grants, gifts, contributions, or revenues
6 received by the recovery fund from any source, public or
7 private; and (ii) all income earned on moneys, properties,
8 and assets held in the recovery fund. When any funds are
9 received by the State Resiliency Officer from any source,
10 they shall be paid into the recovery fund, and shall be
11 disbursed and otherwise managed in the manner set forth in
12 this article. The recovery fund shall be treated by the
13 Auditor and Treasurer as a special revenue fund and not as
14 part of the general revenues of the state.

15 (b) All moneys, properties, and assets acquired by the
16 State of West Virginia in the disaster recovery fund shall be
17 held by it in trust for the purposes of carrying out its powers
18 and duties and shall be used and reused in accordance with
19 the purposes and provisions of this article. Such moneys,
20 properties, and assets shall at no time be commingled with
21 other public funds. Disbursements from the recovery fund
22 shall be made only upon the written requisition of the
23 Governor, the State Resiliency Officer, on behalf of and
24 authorized by the Governor, or as set forth in §15-5-4b of
25 this code. If no need exists for immediate use or
26 disbursement, moneys, properties, and assets in the
27 recovery fund shall be invested or reinvested by the State
28 Resiliency Officer as provided in this article.

§15-5-26. Tax exemption.

1 The State Resiliency Officer shall not be required to pay
2 any taxes and assessments to the state or any political
3 subdivision of the state upon any of its moneys, properties,
4 or assets or upon its obligations or other evidences of
5 indebtedness pursuant to the provisions of this article, or
6 upon any moneys, funds, revenues, or other income held or
7 received into the West Virginia disaster recovery fund.

§15-5-27. Annual report.

1 [Repealed.]

§15-5-29. Cooperation with State Resiliency Office.

1 Notwithstanding any other provision of this code to the
2 contrary, the Director of the Division of Emergency
3 Management shall cooperate with the State Resiliency
4 Office to the fullest extent practicable to assist that office in
5 fulfilling its duties.

**CHAPTER 15A. DEPARTMENT OF HOMELAND
SECURITY.**

ARTICLE 1. DEFINITIONS.

§15A-1-2. Department.

1 “Department” means the Department of Homeland
2 Security.

§15A-1-3. Secretary.

1 “Secretary” means the Secretary of the Department of
2 Homeland Security.

§15A-1-9. Department of Homeland Security; Secretary of the Department of Homeland Security; powers and duties.

1 (a)(1) The Department of Homeland Security is
2 established within the Executive Branch as a criminal
3 justice agency. In addition to all other powers and duties set
4 forth in this code, the department is designated as the
5 principal state agency to coordinate the receipt, distribution,
6 and monitoring of all funds available from any source for
7 the purpose of equipping, training, research, and education
8 in regard to homeland security related items, issues, or
9 services. The department is authorized to coordinate and
10 establish standards for all operations and activities of the
11 state related to homeland security efforts and to establish
12 protocols for coordinating and sharing information with
13 state and federal law enforcement and intelligence agencies
14 responsible for investigating and collecting information
15 related to homeland security and national security threats.

16 (2) The department is designated as the state
17 administrative agency responsible for homeland security
18 and emergency management for the planning and
19 development of state programs and grants which may be
20 funded by federal, state, or other allocations in the areas of
21 homeland security and emergency management, unless such
22 administration has been specifically entrusted to another
23 state agency by the Governor or the Legislature.

24 (3) Notwithstanding any other provision of this code to
25 the contrary, whenever in this code, or a rule promulgated
26 thereunder, a reference is made to the Department of

27 Military Affairs and Public Safety, it means the Department
28 of Homeland Security.

29 (b) The secretary is the chief executive officer of the
30 department. Subject to §5F-2-2 of this code, the secretary
31 shall organize the department into such offices, sections,
32 agencies, and other units of activity as may be found by the
33 secretary to be desirable for the orderly, efficient and
34 economical administration of the department and for the
35 accomplishment of its objects and purposes. The secretary
36 may appoint a deputy secretary, chief of staff, assistants,
37 hearing officers, clerks, stenographers, and other officers,
38 technical personnel, and employees needed for the
39 operation of the department and may prescribe their powers
40 and duties and fix their compensation within amounts
41 appropriated.

42 (c) The secretary has the power to and may designate
43 supervisory officers or other officers or employees of the
44 department to substitute for him or her on any board or
45 commission established under this code or to sit in his or her
46 place in any hearings, appeals, meetings, or other activities
47 with such substitute having the same powers, duties,
48 authority, and responsibility as the secretary. The secretary
49 has the power to delegate, as he or she considers
50 appropriate, to supervisory officers or other officers or
51 employees of the department his or her powers, duties,
52 authority and responsibility relating to such duties and
53 functions set forth in this chapter or elsewhere in this code.

54 (d) The secretary has responsibility for the conduct of
55 the intergovernmental relations of the department, including
56 assuring:

57 (1) That the department carries out its functions in a
58 manner which supplements and complements the homeland
59 security and public safety policies, programs and
60 procedures of the federal government, other state
61 governments, and other instrumentalities of this state; and

62 (2) That appropriate officers and employees of the
63 department consult with individuals responsible for making
64 policy relating to homeland security and public safety issues
65 in the federal government, other state governments, and
66 other instrumentalities of this state concerning differences
67 over policies, programs, and procedures and concerning the
68 impact of statutory law and rules upon the homeland
69 security and public safety of this state.

70 (e) In addition to other powers, duties, and
71 responsibilities granted and assigned to the secretary by this
72 code, the secretary is authorized and empowered to:

73 (1) Sign and execute in the name of the state by the
74 Department of Homeland Security any contract or
75 agreement with the federal government or its departments
76 or agencies, subdivisions of the state, corporations,
77 associations, partnerships or individuals: *Provided*, That the
78 powers granted to the secretary to enter into agreements or
79 contracts and to make expenditures and obligations of
80 public funds under this subdivision may not exceed or be
81 interpreted as authority to exceed the powers granted by the
82 Legislature to the various commissioners, directors, or
83 board members of the various departments, agencies, or
84 boards that comprise and are incorporated into each
85 secretary's department pursuant to the provisions of chapter
86 5F of this code;

87 (2) Conduct research in improved homeland security
88 and public safety methods and disseminate information to
89 the citizens of this state;

90 (3) Require any persons contracting to install, establish,
91 modify, operate, or close a correctional or other public
92 safety facility to furnish the fingerprints of the person or
93 persons; any officer, director, or manager of the contractor;
94 any person owning a five percent or more interest,
95 beneficial or otherwise, in the contractor's business; or any
96 other person conducting or managing the affairs of the
97 contractor, in whole or in part. These fingerprints may be

98 used to obtain and review any police record for the purposes
99 that may be in the interest of homeland security or public
100 safety, and to use the fingerprints furnished to conduct a
101 criminal records check through the Criminal Identification
102 Bureau of the West Virginia State Police and a national
103 criminal history check through the Federal Bureau of
104 Investigation. The results of the checks shall be provided to
105 the secretary;

106 (4) Acquire for the state in the name of the Department
107 of Homeland Security by purchase, lease, or agreement, or
108 accept or reject for the state, in the name of the Department
109 of Homeland Security, gifts, donations, contributions,
110 bequests, or devises of money, security, or property, both
111 real and personal, and any interest in property; and

112 (5) Provide for workshops, training programs, and other
113 educational programs, apart from or in cooperation with
114 other governmental agencies, necessary to ensure adequate
115 standards of public service in the department. The secretary
116 may provide for technical training and specialized
117 instruction of any employee. Approved educational
118 programs, training and instruction time may be
119 compensated for as a part of regular employment. The
120 secretary is authorized to pay out of federal or state funds,
121 or both, as such funds are available, fees and expenses
122 incidental to the educational programs, training and
123 instruction. Eligibility for participation by employees shall
124 be in accordance with guidelines established by the
125 secretary.

126 (f) The secretary shall be appointed by the Governor, by
127 and with the advice and consent of the Senate and serves at
128 the will and pleasure of the Governor.

129 (g) The secretary shall serve as the Homeland Security
130 Advisor (HSA) for West Virginia, and shall be responsible
131 for coordinating, designing, and implementing West
132 Virginia's program for homeland security. The secretary
133 shall be the principal point of contact between the State of

134 West Virginia and the federal government with respect to
135 homeland security issues. The HSA shall either possess at
136 least a secret clearance through the federal government or
137 be able to qualify for, and be in the process of obtaining,
138 such clearance at the time of his or her appointment as HSA.
139 The HSA shall keep the Governor advised of all homeland
140 security matters and shall be the main point of contact for
141 the Governor on these issues. The secretary, with
142 permission of the Governor, may delegate all or a portion of
143 the functions of the HSA to a designee who possesses at
144 least a secret clearance.

145 (h) Notwithstanding any other provision of this code to
146 the contrary, any records compiled by the department or any
147 division, agency, office, or unit thereof, the disclosure of
148 which could be used to create an endangerment to
149 municipal, county, state, or national welfare and security,
150 are not public records and are not subject to disclosure in
151 response to a Freedom of Information Act request under
152 §29B-1-1 *et seq.* of this code.

153 (i) The Department of Homeland Security shall
154 cooperate with the State Resiliency Office to the fullest
155 extent practicable to assist that office in fulfilling its duties.

ARTICLE 9. OFFICE OF ADMINISTRATIVE HEARINGS.

§15A-9-1. Office created; appointment of Chief Hearing Examiner.

1 (a) The Office of Administrative Hearings is created as
2 a separate operating agency within the department.

3 (b) The secretary shall appoint a director of the office
4 who serves as the administrative head of the office and as
5 Chief Hearing Examiner.

6 (c) Prior to appointment, the Chief Hearing Examiner
7 shall be a citizen of the United States and a resident of this
8 state who is admitted to the practice of law in this state.

9 (d) The salary of the Chief Hearing Examiner shall be
10 set by the secretary of the department. (e) In addition to
11 adherence to the code of conduct set forth in §6B-2-5a of
12 this code, the Chief Hearing Examiner during his or her term
13 shall:

14 (1) Devote his or her full time to the duties of the
15 position;

16 (2) Not otherwise engage in the active practice of law or
17 be associated with any group or entity which is itself
18 engaged in the active practice of law. This subsection does
19 not prohibit the Chief Hearing Examiner from being a
20 member of a national, state, or local bar association or
21 committee, or of any other similar group or organization,
22 nor does it prohibit the Chief Hearing Examiner from
23 engaging in the practice of law by representing himself,
24 herself, or his or her immediate family in their personal
25 affairs in matters not subject to this article;

26 (3) Not engage directly or indirectly in any activity,
27 occupation, or business interfering or inconsistent with his
28 or her duties as Chief Hearing Examiner;

29 (4) Not hold any other appointed public office or any
30 elected public office or any other position of public trust;
31 and

32 (5) Not be a candidate for any elected public office, or
33 serve on or under any committee of, any political party.

34 (f) The Chief Hearing Examiner serves at the will and
35 pleasure of the secretary.

§15A-9-2. Organization of office.

1 (a) The Chief Hearing Examiner is the chief
2 administrator of the Office of Administrative Hearings and
3 he or she may employ hearing examiners and other clerical
4 personnel necessary for the proper administration of this
5 article.

6 (1) The Chief Hearing Examiner may delegate
7 administrative duties to other employees, but the Chief
8 Hearing Examiner is responsible for all official delegated
9 acts.

10 (2) All employees of the Office of Administrative
11 Hearings are classified exempt.

12 (b) The Chief Hearing Examiner shall:

13 (1) Direct and supervise the work of the office staff;

14 (2) Hold hearings;

15 (3) Make hearing assignments;

16 (4) Maintain the records of the office;

17 (5) Review and approve decisions of hearing examiners
18 as to legal accuracy, clarity, and other requirements; and

19 (6) Perform the other duties necessary and proper to
20 carry out the purposes of this article.

21 (c) The administrative expenses of the office shall be
22 included within the annual budget of the Division of
23 Administrative Services.

§15A-9-3. Jurisdiction of Office of Administrative Hearings.

1 Notwithstanding any provision of this code to the
2 contrary, the Office of Administrative Hearings has
3 jurisdiction to hear and determine all:

4 (1) Level one grievance proceedings for all divisions of
5 the department, except for the State Police.

6 (2) Appeals from decisions or orders of the State Fire
7 Commission, except as otherwise provided in §15A-10-9(b)
8 of this code;

9 (3) Other matters for which a hearing examiner is
10 necessary within the department or any division of the
11 department; and

12 (4) Other matters which may be conferred upon the
13 office by statute or legislatively approved rules.

§15A-9-4. Hearing procedures.

1 (a) All level one grievance hearings before the office
2 shall be heard in accordance with practices and procedures
3 as set forth in §6C-2-1 *et seq.* of this code.

4 (b) All hearings on appeals before the office shall be
5 heard *de novo* and conducted pursuant to the provisions of
6 the contested case procedure set forth in §29A-5-1 *et seq.* of
7 this code.

8 (1) Notwithstanding any provision of this code to the
9 contrary, the division head, or the Fire Commission, may be
10 represented at hearings conducted by the office and
11 evidence submitted by the division head may be considered
12 in such hearings with or without such representation.

13 (2) The West Virginia Rules of Evidence governing
14 proceedings in the courts of this state shall be given like
15 effect in hearings held before a hearing examiner. All
16 testimony shall be given under oath.

17 (3) The hearing examiner may request proposed
18 findings of fact and conclusions of law from the parties prior
19 to the issuance by the office of the decision in the matter.

20 (c) Hearings and all records of hearings are exempt from
21 the requirements of §29B-1-1 *et seq.* of this code, until the
22 results of the hearing have been rendered: *Provided*, That
23 once the decision is rendered, the records may be exempt
24 from disclosure, pursuant to §29B-1-4 or other applicable
25 section of this code.

§15A-9-5. Rule-making authority.

1 The Office of Administrative Hearings may propose
2 legislative and procedural rules in accordance with the
3 provisions of chapter 29A of this code in order to implement
4 the provisions of this article and to carry out the duties
5 prescribed therein.

§15A-9-6. Duty to provide notice of change of address.

1 Any person who has any pending contested matter
2 before the Office of Administrative Hearings is required to
3 provide notice of a change in address in writing at least 10
4 days prior to any scheduled hearing in which they are a
5 party. If the person's final hearing is held prior to the
6 person's change in address, then the person is required to
7 provide the written notice prior to the issuance of the final
8 order in their case. Written notice must be provided by
9 certified mail, return receipt requested, facsimile, or by
10 electronic mail, to the Office of Administrative Hearings.

§15A-9-7. Transition from divisions of the department to the Office of Administrative Hearings.

1 (a) In order to implement an orderly and efficient
2 transition of the administrative hearing process from the
3 many divisions of the department, the secretary may
4 establish interim policies and procedures for the transfer of
5 administrative hearings, appeals from decisions or orders of,
6 as contemplated by this article, currently administered by
7 the separate divisions and the Fire Commission, no later
8 than October 1, 2020.

9 (b) On the effective date of this article, all equipment
10 and records necessary to effectuate the purposes of this
11 article shall be transferred from the many divisions of the
12 department to the Office of Administrative Hearings:
13 *Provided*, That in order to provide for a smooth transition,
14 the secretary may establish interim policies and procedures,
15 determine how the equipment and records are to be

16 transferred and provide that the transfers provided for in this
17 subsection take effect no later than October 1, 2020.

ARTICLE 10. FIRE MARSHAL.

§15A-10-1. State Fire Marshal and Office of the State Fire Marshal transferred to Department of Homeland Security; appointment of State Fire Marshal; removal; salary; qualifications; responsibilities; employees; equipment.

1 (a) The State Fire Marshal and the Office of the State
2 Fire Marshal, heretofore existing in this code, are hereby
3 continued in all respects except that all powers and duties
4 exercised by the State Fire Commission with respect to the
5 State Fire Marshal and the Office of the State Fire Marshal
6 are terminated and all such powers and duties are hereby
7 transferred to and vested in the Department of Homeland
8 Security except as provided otherwise in this article.

9 (b) When a vacancy occurs in the position of State Fire
10 Marshal, the Fire Commission, at the request of the
11 Governor, shall submit a list of not more than three names
12 to the Governor from which the Governor shall make the
13 appointment. The Governor shall appoint a State Fire
14 Marshal, from a list of names submitted by the Fire
15 Commission. The State Fire Marshal serves at the will and
16 pleasure of the Governor and is exempt from coverage
17 under the classified civil service system.

18 (c) The State Fire Marshal shall have a baccalaureate
19 degree from an accredited four-year college or university,
20 or equivalent experience, and six years of full-time or part-
21 time equivalent paid or volunteer experience in fire
22 prevention or fire safety including two years in a
23 supervisory capacity in fire prevention and fire safety.

24 (d) The State Fire Marshal, shall have full responsibility
25 for the enforcement of fire and life safety programs in this
26 state designated to minimize fire hazards and disaster and
27 loss of life and property from these causes. These

28 responsibilities include, but are not limited to, the
29 establishment and enforcement of fire safety practices
30 throughout the state, preventive inspection and correction
31 activities, coordination of fire safety programs with
32 volunteer and paid fire departments, and critical analysis
33 and evaluation of West Virginia's fire loss statistics for
34 determination of problems and solutions.

35 (e) The State Fire Marshal may employ such technical,
36 clerical, stenographic, and other personnel and fix their
37 compensation and may incur such expenses as may be
38 necessary in the performance of the duties of his or her
39 office within the appropriation therefor. Employees of the
40 Fire Marshal's office shall be members of the state civil
41 service system and all appointments of the office shall be a
42 part of the classified service under the civil service system.

43 (f) The State Fire Marshal may employ a chief deputy
44 fire marshal, who shall be classified exempt. The deputy
45 shall have a baccalaureate degree from an accredited four-
46 year college or university, or equivalent experience, and six
47 years of full-time or part-time equivalent paid or volunteer
48 experience in fire prevention or fire safety including two
49 years in a supervisory capacity in fire prevention and fire
50 safety.

51 (g) Any individual who is employed by the State Fire
52 Marshal to conduct criminal investigations or who may
53 become actively involved in matters of a criminal nature
54 shall first be required to pass a civil service examination
55 testing his or her competency and proficiency in the law of
56 arrest, search and seizure, and other criminal procedures
57 relating to the powers granted to the State Fire Marshal
58 pursuant to the provisions of this article: *Provided*, That all
59 new hires to sworn positions of Fire Marshal 1, 2, or 3 and
60 deputy fire marshal, excluding the chief deputy as described
61 in subdivision (f) of this section, shall comply with the law
62 enforcement certification requirements set forth in §30-29-
63 1 *et seq.*

64 (h) The State Fire Marshal and other personnel of the
65 State Fire Marshal's Office shall be provided with
66 appropriate office space, furniture, equipment, supplies,
67 stationery, and printing in the same manner as provided for
68 other state agencies.

§15A-10-2. Powers, duties, and authority of State Fire Marshal.

1 (a) The State Fire Marshal may employ personnel, fix
2 their compensation and, within funds available to do so,
3 incur expenses as necessary in the performance of the duties
4 of his or her office.

5 (b) The State Fire Marshal is responsible for the
6 enforcement of fire programs within this state, training,
7 uniform standards and certification, finance, and planning,
8 and fire prevention.

9 (c) The State Fire Marshal shall ensure that state and
10 area training and education in fire service are operated
11 throughout the state at a level consistent with needs
12 identified by the State Fire Commission.

13 (d) The State Fire Marshal shall perform any such duties
14 as necessary to assist the State Fire Commission in
15 performing its duties and responsibilities as provided in
16 §15A-11-1 *et seq.* of this code. This shall include, but not
17 be limited to, performing inspections on fire departments,
18 making recommendations on fire department boundary
19 lines, making recommendations on applications for new fire
20 departments, making recommendations on closures or
21 suspensions of fire departments, and any other act or
22 assistance to the State Fire Commission as may be
23 necessary. The Fire Marshal may, in the case of imminent
24 danger, issue immediate cease and desist orders on behalf
25 of the State Fire Commission without their prior approval.
26 In that case, the State Fire Commission shall act further
27 upon said order at their next regular meeting.

28 (e) The State Fire Marshal may accept, on behalf of the
29 Office of the State Fire Marshal, or on behalf of the State

30 Fire Commission, gifts, grants, court ordered civil forfeiture
31 proceedings and bequests of funds or property from
32 individuals, foundations, corporations, the federal
33 government, governmental agencies and other
34 organizations or institutions. Moneys from gifts, grants,
35 civil forfeiture proceedings and bequests received by the
36 State Fire Marshal shall be deposited into the special
37 account set forth in §15A-10-7 of this code, and the State
38 Fire Marshal, has the authority to make expenditures of, or
39 use of any tangible property, in order to effectuate the
40 purposes of this article.

41 (f) Beginning July 1, 2020, applicants for certification
42 or licensure in accordance with the education and training
43 programs under the respective jurisdictions of State Fire
44 Marshal shall be permitted to apply training hours earned
45 via career technical education provided by West Virginia
46 public schools or an apprenticeship program or employer-
47 sponsored training program towards the requirements for
48 certification and/or licensure by the State Fire Marshal as
49 applicable. The State Fire Marshal shall, after consultation
50 with the State Superintendent of Schools, propose rules for
51 legislative approval, in accordance with the provisions of
52 §29A-3-1 *et seq.* of this code, for the implementation and
53 enforcement of these provisions. The rules shall provide at
54 least the following:

55 (1) Standards and procedures for recognizing training
56 hours acquired through career technical education provided
57 by West Virginia public schools and applying those hours
58 to requirements for testing and/or certification and/or
59 licensure; and

60 (2) Standards and procedures for recognizing training
61 hours acquired through apprenticeship programs and
62 employer-sponsored training programs and applying those
63 hours to requirements for testing and/or certification and/or
64 licensure.

65 As used in this subsection:

66 (A) “Apprentice” means someone who is enrolled in an
67 apprenticeship program.

68 (B) “Apprenticeship program” means a program offered
69 by an employer to provide supervised on-the-job training to
70 employees approved by the United States Department of
71 Labor.

72 (C) “Employer sponsored training program” means a
73 program approved in accordance with a rule promulgated by
74 the State Fire Commission or the State Fire Marshal under
75 their respective authorities established in this code.

76 (D) “License” means a valid and current certification or
77 license issued by State Fire Commission or the State Fire
78 Marshal for satisfactory completion of education and
79 training programs under their respective jurisdictions.

80 (E) “Career technical education” means programs of
81 study, clusters, and pathways approved by the West
82 Virginia Board of Education pursuant to state board policy.

83 (g) Notwithstanding any other provisions of this code,
84 beginning on July 1, 2020, the State Fire Commission has
85 no enforcement authority for violations of the fire code, or
86 the building code, all enforcement authority previously held
87 by the Fire Commission regarding these two rules is hereby
88 transferred and solely vests in the Office of the State Fire
89 Marshal.

90 (h) Notwithstanding any provision of this code to the
91 contrary, on July 1, 2020, all power and authority for the
92 licensing or certifications programs of “home inspectors”,
93 and “municipal, county, and other public sector building
94 code officials, building code inspectors, and plans
95 examiners”, are hereby transferred to the Office of the State
96 Fire Marshal, and the State Fire Marshal shall have full
97 authority over said programs, licenses, certifications, and all
98 responsibilities thereof. Whenever in this code a reference
99 is made to the State Fire Commission in relation to these

100 Licensing or Certification Programs, it shall be construed to
101 mean the State Fire Marshal.

**§15A-10-3. Additional powers, duties and authority of State
Fire Marshal relating to law enforcement; statewide
contracts; penalties; authority to carry firearms.**

1 (a) *Enforcement of laws.* — The State Fire Marshal, and
2 any of his or her assistant fire marshals or deputy fire
3 marshals, are fully authorized to enforce the fire code, the
4 building code, this article, §15A-11-1 *et seq.* of this code,
5 and any laws over of the state having to do with:

6 (1) Prevention of fire;

7 (2) The storage, sale, and use of any explosive,
8 combustible, or other dangerous article or articles in solid,
9 flammable liquid, or gas form;

10 (3) The installation and maintenance of equipment of all
11 sorts intended to extinguish, detect, and control fires;

12 (4) The means and adequacy of exit, in case of fire, from
13 buildings and all other places in which persons work, live,
14 or congregate, from time to time, for any purpose, except
15 buildings used wholly as dwelling houses for no more than
16 two families;

17 (5) The suppression of arson; and

18 (6) Any other thing necessary to carry into effect the
19 provisions of this article and §15A-11-1 *et seq.* of this code
20 including, but not limited to, confiscating any materials,
21 chemicals, items, or personal property owned, possessed, or
22 used in direct violation of the State Fire Code.

23 (b) *Assistance upon request.* — Upon request, the State
24 Fire Marshal shall assist any chief of any recognized fire
25 company or department. Upon the request of any federal
26 law-enforcement officer, State Police officer, Natural
27 Resources police officer, or any county or municipal law-

28 enforcement officer, the State Fire Marshal, any deputy
29 state fire marshal, or assistant state fire marshal employed
30 pursuant to the provisions of this article and any person
31 deputized pursuant to subsection (j) of this section may
32 assist in the lawful execution of the requesting officer's
33 official duties: *Provided*, That the State Fire Marshal, or
34 other person authorized to act under this subsection, shall at
35 all times work under the direct supervision of the requesting
36 officer.

37 (c) *Enforcement of rules.* — The State Fire Marshal shall
38 enforce the rules promulgated by the State Fire Commission
39 as authorized by this article and §15A-11-1 *et seq.* of this
40 code.

41 (d) *Inspections generally.* — The State Fire Marshal
42 shall inspect all structures and facilities, other than one- and
43 two-family dwelling houses, subject to the State Fire Code
44 and this article, including, but not limited to, state, county,
45 and municipally owned institutions, all public and private
46 schools, health care facilities, theaters, churches, and other
47 places of public assembly to determine whether the
48 structures or facilities are in compliance with the State Fire
49 Code.

50 (e) *Right of entry.* — The State Fire Marshal may, at any
51 hour necessary, enter any building or premises, other than
52 dwelling houses, for the purpose of making an inspection
53 which he or she may consider necessary under the
54 provisions of this article. The State Fire Marshal and any
55 deputy state fire marshal or assistant state fire marshal
56 approved by the State Fire Marshal may enter upon any
57 property, or enter any building, structure, or premises,
58 including dwelling houses during construction and prior to
59 occupancy, for the purpose of ascertaining compliance with
60 the conditions set forth in any permit or license issued by
61 the office of the State Fire Marshal pursuant to §15A-10-7
62 or §29-3B-1 *et seq.* of this code.

63 (f) *Investigations.* — The State Fire Marshal may, at any
64 time, investigate as to the origin or circumstances of any fire
65 or explosion or attempt to cause fire or explosion occurring
66 in the state. The State Fire Marshal has the authority at all
67 times of the day or night, in performance of the duties
68 imposed by the provisions of this article, to investigate
69 where any fires or explosions or attempt to cause fires or
70 explosions may have occurred, or which at the time may be
71 burning. Notwithstanding the above provisions of this
72 subsection, prior to entering any building or premises for the
73 purposes of the investigation, the State Fire Marshal shall
74 obtain a proper search warrant: *Provided*, That a search
75 warrant is not necessary where there is permissive waiver or
76 the State Fire Marshal is an invitee of the individual having
77 legal custody and control of the property, building or
78 premises to be searched.

79 (g) *Testimony.* — The State Fire Marshal, in making an
80 inspection or investigation when in his or her judgment the
81 proceedings are necessary, may take the statements or
82 testimony under oath of all persons who may be cognizant
83 of any facts or have any knowledge about the matter to be
84 examined and inquired into and may have the statements or
85 testimony reduced to writing; and shall transmit a copy of
86 the statements or testimony so taken to the prosecuting
87 attorney for the county wherein the fire or explosion or
88 attempt to cause a fire or explosion occurred.
89 Notwithstanding the above, no person may be compelled to
90 testify or give any statement under this subsection.

91 (h) *Arrests; warrants.* — The State Fire Marshal, any
92 full-time deputy fire marshal, or any full-time assistant fire
93 marshal employed by the State Fire Marshal pursuant to this
94 article is hereby authorized and empowered and any person
95 deputized pursuant to this article may be authorized and
96 empowered by the State Fire Marshal:

97 (1) To arrest any person anywhere within the confines
98 of the State of West Virginia, or have him or her arrested,
99 for any violation of the arson-related offenses of §61-3-1 *et*

100 *seq.* of this code or of the explosives-related offenses of
101 §61-3E-1 *et seq.* of said code: *Provided*, That any and all
102 persons so arrested shall be forthwith brought before the
103 magistrate or circuit court: *Provided, however*, That the
104 State Fire Marshal, any full-time deputy fire marshal or any
105 full-time assistant fire marshal is authorized to arrest
106 persons for violations of §61-5-17 of this code.

107 (2) To make complaint in writing before any court or
108 officer having jurisdiction and obtain, serve, and execute an
109 arrest warrant when knowing or having reason to believe
110 that anyone has committed an offense under any provision
111 of this article, of the arson-related offenses of §61-3-1 *et*
112 *seq.* of this code or of the explosives-related offenses of
113 §61-3E-1 *et seq.* of this code. Proper return shall be made
114 on all arrest warrants before the tribunal having jurisdiction
115 over the violation.

116 (3) To make a complaint in writing before any court or
117 officer having jurisdiction and obtain, serve, and execute a
118 warrant for the search of any premises that may possess
119 evidence or unlawful contraband relating to violations of
120 this article, of the arson-related offenses of §61-3-1 *et seq.*
121 of this code or of the explosives-related offenses of §61-3E-
122 1 *et seq.* of said code. Proper return shall be made on all
123 search warrants before the tribunal having jurisdiction over
124 the violation.

125 (4) Any member of the West Virginia State Police,
126 Natural Resources police officer, or any county or
127 municipal law-enforcement officer may assist, upon
128 request, the State Fire Marshal or any of his or her
129 employees authorized to enforce the provisions of this
130 section in any duties for which the State Fire Marshal has
131 jurisdiction.

132 (i) *Witnesses and oaths.* — The State Fire Marshal may
133 issue subpoenas and subpoenas duces tecum to compel the
134 attendance of persons before him or her to testify in relation
135 to any matter which is, by the provision of this article, a

136 subject of inquiry and investigation by the State Fire
137 Marshal and cause to be produced before him or her such
138 papers as he or she may require in making the examination.
139 The State Fire Marshal may administer oaths and
140 affirmations to persons appearing as witnesses before him
141 or her. False swearing in any matter or proceeding is
142 considered perjury and is punishable as perjury.

143 (j) *Deputizing members of fire departments in this state.*
144 — The State Fire Marshal may deputize a member of any
145 fire department, duly organized and operating in this state,
146 who is approved by the chief of his or her department and
147 who is properly qualified to act as his or her assistant for the
148 purpose of making inspections with the consent of the
149 property owner or the person in control of the property and
150 the investigations as may be directed by the State Fire
151 Marshal, and the carrying out of orders as may be prescribed
152 by him or her, to enforce and make effective the provisions
153 of this article and any and all rules promulgated by the State
154 Fire Commission under authority of this article: *Provided,*
155 That in the case of a volunteer fire department, only the
156 chief thereof or his or her single designated assistant may be
157 so deputized.

158 (k) *Written report of examinations.* — The State Fire
159 Marshal shall, at the request of the county commission of
160 any county or the municipal authorities of any incorporated
161 municipality in this state, make to them a written report of
162 the examination made by him or her regarding any fire
163 happening within their respective jurisdictions.

164 (l) *Report of losses by insurance companies.* — Each
165 fire insurance company or association doing business in this
166 state, within 10 days after the adjustment of any loss
167 sustained by it that exceeds \$1,500, shall report to the State
168 Fire Marshal information regarding the amount of
169 insurance, the value of the property insured, and the amount
170 of claim as adjusted. This report is in addition to any
171 information required by the State Insurance Commissioner.
172 Upon the request of the owner or insurer of any property

173 destroyed or injured by fire or explosion, or in which an
174 attempt to cause a fire or explosion may have occurred, the
175 State Fire Marshal shall report in writing to the owner or
176 insurer the result of the examination regarding the property.

177 (m) *Issuance of permits and licenses.* — The State Fire
178 Marshal may issue permits, documents, and licenses in
179 accordance with the provisions of this article or §29-3B-1 *et*
180 *seq.* of this code: *Provided*, That unless otherwise provided,
181 the State Fire Marshall shall take final action upon any
182 completed permit applications within 30 days of receipt if
183 the application is uncontested, or within 90 days if the
184 application is contested. The State Fire Marshal may require
185 any person who applies for a permit to use explosives, other
186 than an applicant for a license to be a pyrotechnic operator
187 under §29-3E-6 of this code, to be fingerprinted and to
188 authorize the State Fire Marshal to conduct a criminal
189 records check through the Criminal Identification Bureau of
190 the West Virginia State Police and a national criminal
191 history check through the Federal Bureau of Investigation.
192 The results of any criminal records or criminal history check
193 shall be sent to the State Fire Marshal.

194 (n) *Issuance of citations for fire and life safety*
195 *violations.* — The State Fire Marshal, any deputy fire
196 marshal, and any assistant fire marshal employed pursuant
197 to this article, and any person deputized pursuant to
198 subsection (j) of this section may be authorized by the State
199 Fire Marshal to issue citations, in his or her jurisdiction, for
200 fire and life safety violations of the State Fire Code and as
201 provided for by the rules promulgated by the State Fire
202 Commission in accordance with §15A-11-1 *et seq.* of this
203 code: *Provided*, That a summary report of all citations
204 issued pursuant to this section by persons deputized under
205 subsection (j) of this section shall be forwarded monthly to
206 the State Fire Marshal in the form and containing
207 information as he or she may by rule require, including the
208 violation for which the citation was issued, the date of
209 issuance, the name of the person issuing the citation, and the

210 person to whom the citation was issued. The State Fire
211 Marshal may at any time revoke the authorization of a
212 person deputized pursuant to subsection (j) of this section to
213 issue citations, if in the opinion of the State Fire Marshal,
214 the exercise of authority by the person is inappropriate.

215 Violations for which citations may be issued include,
216 but are not limited to:

217 (1) Overcrowding places of public assembly;

218 (2) Locked or blocked exits in public areas;

219 (3) Failure to abate a fire hazard;

220 (4) Blocking of fire lanes or fire department
221 connections; and

222 (5) Tampering with, or rendering inoperable, except
223 during necessary maintenance or repairs, on-premise
224 firefighting equipment, fire detection equipment, and fire
225 alarm systems.

226 (o) *Required training; liability coverage.* — No person
227 deputized pursuant to subsection (j) of this section may be
228 authorized to issue a citation unless that person has
229 satisfactorily completed the mandatory training as described
230 in §15A-10-1 of this code, or a law-enforcement officer
231 training course designed specifically for fire marshals. The
232 course shall be approved by the Law-enforcement Training
233 Subcommittee of the Governor's Committee on Criminal
234 Justice and Highway Safety and the State Fire Commission.
235 In addition, no person deputized pursuant to subsection (j)
236 of this section may be authorized to issue a citation until
237 evidence of liability coverage of the person has been
238 provided, in the case of a paid municipal fire department, by
239 the municipality wherein the fire department is located, or
240 in the case of a volunteer fire department, by the county
241 commission of the county wherein the fire department is
242 located, or by the municipality served by the volunteer fire

243 department and that evidence of liability coverage has been
244 filed with the State Fire Marshal.

245 (p) *Statewide contracts.* — The State Fire Marshal may
246 cooperate with the Department of Administration,
247 Purchasing Division, to establish one or more statewide
248 contracts for equipment and supplies utilized by fire
249 companies and departments in accordance with §5A-3-1 *et*
250 *seq.* of this code.

251 (1) Any statewide contract established hereunder shall
252 be made available to any fire company and department in
253 this state, as well as any other state agency or political
254 subdivision that has a need for the equipment or supplies
255 included in those contracts.

256 (2) The State Fire Marshal may develop uniform
257 standards for equipment and supplies used by fire
258 companies and departments in accordance with §5A-3-1 *et*
259 *seq.* of this code.

260 (3) The State Fire Commission shall propose legislative
261 rules for promulgation in accordance with §29A-3-1 *et seq.*
262 of this code to effectuate the provisions of this subsection.

263 (q) *Penalties for violations.* — Any person who violates
264 any fire and life safety rule of the State Fire Code is guilty
265 of a misdemeanor and, upon conviction thereof, shall be
266 fined not less than \$100 nor more than \$1,000, or confined
267 in jail not more than 90 days, or both fined and confined.
268 Every day during which any violation of the provisions of
269 this article continues after knowledge or official notice that
270 it is illegal is a separate offense.

271 (r) The State Fire Marshal, any full-time deputy fire
272 marshal, or any full-time assistant fire marshal employed by
273 the State Fire Marshal, pursuant to this article may carry a
274 firearm while acting in the course of his or her official
275 duties, if he or she has successfully completed a firearms
276 training and certification program equivalent to that

277 provided to officers attending the entry level law-
278 enforcement certification course provided at the West
279 Virginia State Police Academy. The person shall thereafter
280 successfully complete an annual firearms qualification
281 course equivalent to that required of certified law-
282 enforcement officers as established by legislative rule. The
283 State Fire Marshal may reimburse the person for the cost of
284 the training and requalification.

§15A-10-4. Enforcement standards.

1 (a) In the enforcement of the State Building Code and
2 State Fire Code, the State Fire Marshal shall provide
3 compliance alternatives for historic structures as provided
4 for in §29-1-5 of this code, which compliance alternatives
5 shall take into account the historic integrity of the historic
6 structures, and shall coordinate with the Director of the
7 Archives and History Division the application of the rules
8 of that division.

9 (b) In interpretation and application, the State Fire Code
10 shall be held to be the minimum requirements for the
11 safeguarding of life and property from the hazards of fire
12 and explosion: *Provided*, That the State Fire Marshal shall
13 provide compliance alternatives for historic structures and
14 sites as provided in §29-1-5 of this code, which compliance
15 alternatives shall take into account the historic integrity of
16 the historic structures and sites. Whenever any other state
17 law, county or municipal ordinance, or regulation of any
18 agency thereof, is more stringent or imposes a higher
19 standard than is required by the State Fire Code, the
20 provisions of the state law, county or municipal ordinance,
21 or regulation of any agency thereof governs, if they are not
22 inconsistent with the laws of West Virginia and are not
23 contrary to recognized standards and good engineering
24 practices: *Provided, however*, That, on and after July 1,
25 2010, if a municipal or county fire ordinance or regulation
26 of any agency thereof is more stringent or imposes a higher
27 standard than is required by the State Fire Code, it must be
28 presented for review and approval and sanctioned for use by

29 the State Fire Commission. In any question, the decision of
30 the State Fire Commission determines the relative priority
31 of any such state law, county or municipal ordinance, or
32 regulation of any agency thereof and determines compliance
33 with state fire rules by officials of the state, counties,
34 municipalities, and political subdivisions of the state.

§15A-10-5. General rule-making authority; appointment of advisory boards.

1 (a) The State Fire Marshal may propose rules for
2 legislative approval in accordance with the provisions of
3 §29A-3-1 *et seq.* of this code, establishing state standards
4 and fee schedules for the licensing, registration,
5 certification, regulation and continuing education of persons
6 which will conduct inspections relating to the State Building
7 Code, which include, but are not limited to, building code
8 officials, inspectors, plans examiners, and home inspectors.

9 (b) The State Fire Marshal shall propose rules for
10 legislative approval requiring applicants for home inspector
11 licensing, registration, or certification to submit to a state
12 and national criminal history record check as set forth in this
13 section and may deny licensing, registration, or certification
14 based upon the results of the criminal history record check.

15 (c) The State Fire Marshal may establish advisory
16 boards as it considers appropriate to encourage
17 representative participation in subsequent rulemaking from
18 groups or individuals with an interest in any aspect of the
19 rules promulgated by the State Fire Marshal.

§15A-10-6. Responsibilities of insurance companies in fire loss investigation.

1 (a) The State Fire Marshal or any deputy or assistant fire
2 marshals under the authority of the fire marshal may request
3 any insurance company investigating a fire loss of real or
4 personal property to release any information in its
5 possession relative to that loss. The company shall release
6 the information and cooperate with any official authorized

7 to request such information pursuant to this section. The
8 information shall include, but not be limited to:

9 (1) Any policy in force;

10 (2) Any application for a policy;

11 (3) Premium payment records;

12 (4) History of previous claims; and

13 (5) Material relating to the investigation of the loss,
14 including statements of any person, proof of loss, and any
15 other relevant evidence.

16 (b) Any insurance company shall notify the State Fire
17 Marshal if it has reason to believe, based on its investigation
18 of a fire loss to real or personal property, that the fire was
19 caused by other than accidental means. The company shall
20 furnish the State Fire Marshal with pertinent information
21 acquired during its investigation and cooperate with the
22 courts and administrative agencies of the state, and any
23 official mentioned, or referred to, in subsection (a) of this
24 section.

25 (c) In the absence of fraud, no insurance company or
26 person who furnishes information on its behalf, shall be
27 liable for any oral or written statement or any other action
28 necessary to supply information required pursuant to this
29 section.

30 (d) Any information furnished pursuant to this section
31 shall be held in confidence, and is exempt from the
32 provisions of §29B-1-1 *et seq.* of this code, until such time
33 as its release may be required pursuant to a criminal
34 proceeding.

35 (e) Any official mentioned, or referred to, in subsection
36 (a) of this section may be required to testify as to any
37 information in his or her possession regarding the fire loss
38 of real or personal property in any civil action in which any

39 person seeks recovery under a policy against an insurance
40 company for the fire loss.

§15A-10-7. Fees.

1 (a) The State Fire Marshal is authorized to propose rules
2 for legislative authorization pursuant to §29A-3-1 *et seq.* of
3 this code to establish fees in accordance with the following:

4 (1) For blasting;

5 (2) For inspections of schools or day-care facilities;

6 (3) For inspections of hospitals or nursing homes;

7 (4) For inspections of personal care homes or board and
8 care facilities;

9 (5) For inspections of residential occupancies;

10 (6) For inspections of mercantile occupancies;

11 (7) For business occupancies; and

12 (8) For inspections of assembly occupancies;

13 For purposes of this subdivision, an “assembly
14 occupancy” includes, but is not limited to, all buildings or
15 portions of buildings used for gathering together 50 or more
16 persons for such purposes as deliberation, worship,
17 entertainment, eating, drinking, amusement, or awaiting
18 transportation. For purposes of this section, a “Class C
19 assembly facility” is one that accommodates 50 to 300
20 persons, a “Class B facility” is one which accommodates
21 more than 300 persons but less than 1,000 persons, and a
22 “Class A facility” is one which accommodates more than
23 1,000 persons.

24 (b) The State Fire Marshal may collect fees for the fire
25 safety review of plans and specifications for new and
26 existing construction. Fees shall be paid by the party or
27 parties receiving the review.

28 (1) Structural barriers and fire safety plans review;

29 (2) Sprinkler system review;

30 (3) Fire alarm systems review;

31 (4) Range hood extinguishment system review;

32 (5) Carpet specifications;

33 (c) All fees authorized and collected pursuant to this
34 article, §29-3B-1 *et seq.*, §29-3C-1 *et seq.*, and §29-3D-1 *et*
35 *seq.* of this code shall be paid to the State Fire Marshal and
36 thereafter deposited into the special account in the State
37 Treasury known as the Fire Marshal Fees Fund.
38 Expenditures from the fund shall be for the purposes set
39 forth in this article and §29-3B-1 *et seq.*, §29-3C-1 *et seq.*,
40 and §29-3D-1 *et seq.* of this code and are not authorized
41 from collections but are to be made only in accordance with
42 appropriation by the Legislature and in accordance with the
43 provisions of §12-3-1 *et seq.* of this code and upon
44 fulfillment of the provisions of §5A-2-1 *et seq.* of this code.
45 Any balance remaining in the special account at the end of
46 any fiscal year shall be reappropriated to the next fiscal year.

47 (d) If the owner or occupant of any occupancy arranges
48 a time and place for an inspection with the State Fire
49 Marshal and is not ready for the occupancy to be inspected
50 at the appointed time and place, the owner or occupant
51 thereof shall be charged the inspection fee provided in this
52 section unless at least 48 hours prior to the scheduled
53 inspection the owner or occupant requests the State Fire
54 Marshal to reschedule the inspection. In the event a second
55 inspection is required by the State Fire Marshal as a result
56 of the owner or occupant failing to be ready for the
57 inspection when the State Fire Marshal arrives, the State
58 Fire Marshal shall charge the owner or occupant of the
59 occupancy the inspection fees set forth above for each
60 inspection trip required.

§15A-10-8. Annual reports.

1 The State Fire Marshal shall transmit annually to the
2 Governor an annual report, pursuant to §5-1-20 of this code.
3 Said annual report shall include the activities of the State
4 Fire Commission which are reportable pursuant to §5-1-20
5 of this code.

**§15A-10-9. Maintenance of fire hazard; order for repair or
demolition; order to contain notice to comply; right to
appeal.**

1 (a) No person shall erect, construct, reconstruct, alter,
2 maintain, or use any building, structure, or equipment, or
3 use any land in such a way to endanger life or property from
4 the hazards of fire or explosion, or in violation of any
5 regulation, rule, or any provision or any change thereof
6 promulgated by the State Fire Marshal or State Fire
7 Commission.

8 (b) Whenever the State Fire Marshal determines that
9 any building or structure has been constructed, altered, or
10 repaired in a manner violating the State Building Code, or
11 State Fire Code, prior to the commencement of such
12 construction, alteration, or repairs; or whenever he or she
13 may determine that any building or structure constitutes a
14 fire hazard by reason of want of repair, age, or dilapidated
15 or abandoned condition, or otherwise, and is so situated as
16 to endanger other buildings and property; or whenever he or
17 she may find in any building or upon any premises any
18 combustible, flammable, or explosive substance or material,
19 or other conditions dangerous to the safety of persons
20 occupying the building or premises and adjacent premises
21 or property, he or she may make reasonable orders in
22 writing, directed to the owner of such building, structure, or
23 premises, for the repair or demolition of such building or
24 structure, or the removal of the combustible, flammable, or
25 explosive substance or material, as the case may be, and the
26 remedying of any conditions found to be in violation of a

27 regulation promulgated as aforesaid or to be dangerous to
28 the safety of persons or property.

29 A true copy of every order of the State Fire Marshal as
30 provided for in this section shall be filed in the county where
31 the premises are totally or partially located, with the county
32 clerk who shall index and record the order in the general lien
33 book. Upon filing, the order constitutes notice of such
34 proceedings to all persons or parties thereafter having
35 dealings involving said property.

36 A statement of the expenses and administrative charges
37 shall also be filed with the county clerk, recorded, and
38 indexed in the general lien book and upon filing, shall
39 become a lien against the property. Thereafter, a court
40 supervised sale of the property to enforce the collection of
41 the expenses and administrative charges may be prosecuted
42 at the request of the State Fire Marshal, or the Attorney
43 General.

44 Every order provided for in this section shall contain a
45 notice that compliance therewith shall be required within a
46 period of 30 days from the date of issuance thereof and also
47 that any person desiring to contest the validity of any such
48 order may enter an appeal from such order to the Office of
49 Administrative Hearings established in §15-9-1 et. seq. of
50 this code, and then to the circuit court in the county where
51 the premises are totally or partially located as provided in
52 this article.

§15A-10-10. Service of repair or demolition order.

1 The written order of the State Fire Marshal made
2 pursuant to §15A-10-9 of this code shall be served by
3 delivering a true copy thereof to such owner or, if the owner
4 is absent from the state or his or her whereabouts be
5 unknown to the State Fire Marshal, by mailing a true copy
6 thereof by certified mail to the said owner's last known post-
7 office address, or if no such address be known, then by
8 certified mail to said owner in care of general delivery at the

9 post office serving the community in which said premises
10 lie. Delivering or mailing such order shall be accomplished
11 within five days of the date of issuance of such order. In the
12 event it is necessary to mail a copy of such order as
13 aforesaid, the officer mailing the same shall also, within five
14 days of the date of issuance of such order, post a true copy
15 thereof in a conspicuous place on the door or other
16 prominent entrance to said premises.

§15A-10-11. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.

1 In the event any owner of any building or premises
2 served with a copy of an order as provided in §15A-10-9
3 and §15A-10-10 of this code shall fail substantially to
4 comply with such order within 30 days from the date of
5 issuance thereof, or within 30 days after any appeal from
6 such order has been affirmed by the State Fire Marshal or
7 by the court, the State Fire Marshal, or his or her designee,
8 may enter into and upon the premises affected by such order
9 and cause the building, structure, or premises to be repaired,
10 torn down, materials removed, and all dangerous conditions
11 to be remedied, as the case may be, at the expense of the
12 owner and with any administrative charges as established by
13 the State Fire Marshal also being borne by the owner, and if
14 such person shall fail or neglect to repay the State Fire
15 Marshal the expense and administrative charge thereby
16 incurred by him or her within 30 days after written demand
17 shall have been delivered or mailed to the said owner as
18 provided in §15A-10-10 of this code, the State Fire Marshal
19 is hereby authorized to bring an action in the name of the
20 state to recover such expenses, with interest, and any
21 administrative charge as established by the commission, in
22 any court of competent jurisdiction.

23 Upon a determination by the State Fire Marshal that the
24 provisions of §15A-10-9 and §15A-10-10 of this code have
25 not been met, and that such property constitutes a hazard to
26 health or public safety, in lieu of initiating an order as

27 therein provided, the State Fire Marshal may notify the
28 county commission or the county health officer in order that
29 they may perform their duties pursuant to section §7-1-3ff
30 of this code. The State Fire Marshal may also, in lieu
31 thereof, notify the municipality where the property is
32 located so that the municipality may perform its duties
33 pursuant to §8-12-14 of this code.

34 The State Fire Marshal may designate, pursuant to this
35 section, a designee to accomplish the building, structure, or
36 premises to be repaired, torn down, materials removed, and
37 all dangerous conditions to be remedied, as the case may be.
38 The designee may include an employee of the Fire Marshal,
39 an agent of the Fire Marshal, a vendor, a Fire Department
40 and its employees or agents, or a governmental entity and
41 its employees or agents. Any contract entered into, pursuant
42 to this section is exempt from the requirements of § 5A-3 -
43 1 *et seq.* of this code.

§15A-10-12. 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 State Fire Code, and in the manufacturer’s
9 specifications. When activated, the smoke detector shall
10 provide an alarm suitable to warn the occupants of the
11 danger of fire.

12 (b) The owner of each dwelling described in subsection
13 (a) of this section shall provide, install, and replace the
14 operational smoke detectors required by this section. To
15 assure that the smoke detector continues to be operational
16 in each dwelling described in subsection (a) of this section

17 which is not occupied by the owner of the dwelling, the
18 tenant in any dwelling shall perform routine maintenance on
19 the smoke detectors within the dwelling.

20 (c) Where a dwelling is not occupied by the owner and
21 is occupied by an individual who is deaf or hard of hearing,
22 the owner shall, upon written request by or on behalf of the
23 individual, provide and install a smoke detector with a light
24 signal sufficient to warn the deaf or hard of hearing
25 individual of the danger of fire.

26 (d) An automatic fire sprinkler system installed in
27 accordance with the current edition of the State Fire Code
28 and the State Building Code may be provided in lieu of
29 smoke detectors.

30 (e) After investigating a fire in any dwelling described
31 in subsection (a) of this section, the local investigating
32 authority shall issue to the owner a smoke detector
33 installation order in the absence of the required smoke
34 detectors.

35 (f) An operational single station carbon monoxide
36 detector with a suitable alarm or a combination smoke
37 detector and carbon monoxide detector, which shall be
38 alternating current (AC) powered, either plugged directly in
39 to an electrical outlet that is not controlled by a switch or
40 hardwired into an alternating current (AC) electrical source,
41 with battery backup, shall be installed, maintained, tested,
42 repaired, or replaced, if necessary, in accordance with the
43 manufacturer's direction:

44 (1) In any newly constructed residential unit which has
45 a fuel-burning heating or cooking source including, but not
46 limited to, an oil or gas furnace or stove;

47 (2) In any residential unit which is connected to a newly
48 constructed building, including, but not limited to, a garage,
49 storage shed, or barn, which has a fuel-burning heating or

50 cooking source, including, but not limited to, an oil or gas
51 furnace or stove; and

52 (3) In either a common area where the general public
53 has access or all rooms in which a person will be sleeping
54 that are adjoining to and directly below and above all areas
55 or rooms that contain permanently installed fuel-burning
56 appliances and equipment that emit carbon monoxide as a
57 byproduct of combustion located within all apartment
58 buildings, boarding houses, dormitories, long-term care
59 facilities, adult or child care facilities, assisted living
60 facilities, one- and two-family dwellings intended to be
61 rented or leased, hotels, and motels.

62 (g) All single station carbon monoxide detectors with a
63 suitable alarm or a combination smoke detector and carbon
64 monoxide detectors shall be hardwired into an alternating
65 current (AC) electrical source, with battery backup, when
66 installed in all newly constructed apartment buildings,
67 boarding houses, dormitories, hospitals, long-term care
68 facilities, adult or child care facilities, assisted living
69 facilities, one- and two-family dwellings intended to be
70 rented or leased, hotels, and motels.

71 (h) In any long-term care facility that is staffed on a 24-
72 hour, seven day a week basis, the single station carbon
73 monoxide detector with a suitable alarm or a combination
74 smoke detector and carbon monoxide detector is only
75 required to be installed in an area of the facility that permits
76 the detector to be audible to the staff on duty.

77 (i) Carbon monoxide detectors shall be installed in
78 every public or private school or daycare facility that uses a
79 fuel-burning heating system or other fuel-burning device
80 that produces combustion gases. A carbon monoxide
81 detector shall be located in each area with a fuel-burning
82 heating system or other fuel-burning device that produces
83 combustion gases.

84 (j) Any person installing a carbon monoxide detector in
85 a residential unit shall inform the owner, lessor, or the
86 occupant or occupants of the residential unit of the dangers
87 of carbon monoxide poisoning and instructions on the
88 operation of the installed carbon monoxide detector.

89 (k) When repair or maintenance work is undertaken on
90 a fuel-burning heating or cooking source or a venting
91 system in an existing residential unit, the person making the
92 repair or performing the maintenance shall inform the
93 owner, lessor, or the occupant or occupants of the unit being
94 served by the fuel-burning heating or cooking source or
95 venting system of the dangers of carbon monoxide
96 poisoning and recommend the installation of a carbon
97 monoxide detector.

98 (l) Any person who violates any provision of this section
99 is guilty of a misdemeanor and, upon conviction thereof, for
100 a first offense, shall be fined \$250. For a second offense, the
101 person is guilty of a misdemeanor and, upon conviction
102 thereof, shall be fined \$750. For a third and subsequent
103 offenses, the person is guilty of a misdemeanor and, upon
104 conviction thereof, shall be fined \$2000.

105 (m) A violation of this section may not be considered to
106 constitute evidence of negligence or contributory
107 negligence or comparative negligence in any civil action or
108 proceeding for damages.

109 (n) A violation of this section may not constitute a
110 defense in any civil action or proceeding involving any
111 insurance policy.

112 (o) Nothing in this section shall be construed to limit the
113 rights of any political subdivision in this state to enact laws
114 imposing upon owners of any dwelling or other building
115 described in subsection (a) or (f) of this section a greater
116 duty with regard to the installation, repair, and replacement
117 of the smoke detectors or carbon monoxide detectors than is
118 required by this section.

§15A-10-13. Use of live trees in public buildings; exceptions.

1 Notwithstanding any other provision of law to the
2 contrary, live trees may be displayed in public buildings if
3 the trees are decorated with U/L approved miniature lights,
4 or are not decorated with electrical lights. The provisions of
5 this section do not apply to public buildings used for
6 education, health care, nursing homes, or correctional
7 facilities.

§15A-10-14. Safety standards for bed and breakfast establishments; findings.

1 (a) *Findings.* — Bed and breakfast establishments
2 provide a unique and important contribution to the state,
3 allowing visitors the opportunity to enjoy many of the
4 aspects of our communities and state not available at hotels
5 and motels, and often provide vacationers access to
6 overnight accommodation in areas of this state that would
7 not otherwise be available. These operations continue to
8 grow in number and importance in our state's economy and
9 must be promoted and encouraged by state and local
10 government. Most of these facilities are older residences
11 being converted to this use, and in many cases have
12 architectural and historical significance; and, as with most
13 small businesses, are begun with limited capital available
14 for investment. Any fire safety code standards applicable to
15 these facilities must be sensitive to this distinction and avoid
16 placing a large financial burden on persons operating or
17 planning to operate these facilities. Further, the personal
18 safety of those who live in and visit these facilities is of
19 paramount importance and requires that consideration be
20 made to assure that adequate safety requirements are placed
21 on these facilities to provide for the safety of visitors,
22 residents, and, in an emergency, responding firefighters and
23 rescue workers.

24 (b) *Definition.* — For the purposes of this section, the
25 term “bed and breakfast establishment” means a building
26 occupied as a one-family dwelling unit that provides

27 sleeping accommodations and breakfast to transient guests
28 for a single fee and does not offer more than six guest rooms
29 to no more than 12 guests.

30 (c) *Fire code standards.* — Notwithstanding any
31 provision of this code to the contrary, every bed and
32 breakfast establishment shall be exempt from provisions of
33 fire safety code requirements which are contrary to the
34 following standards:

35 (1) Each bed and breakfast shall have operational smoke
36 alarms in all common areas, guest rooms, and hallways, and
37 heat detectors as otherwise required by this code or rule of
38 the Fire Commission. Battery-powered smoke alarms shall
39 be permitted where the establishment has demonstrated that
40 the testing, maintenance, and battery replacement
41 procedures will ensure reliable power to the smoke alarms.
42 Notwithstanding any provision of this code to the contrary,
43 no smoking will be allowed inside a bed and breakfast
44 establishment.

45 (2) Each bed and breakfast shall have operational hard-
46 wired, battery-powered, or plug-in emergency lighting that
47 indicates available means of egress. Battery-powered or
48 plug-in emergency lighting devices shall be permitted
49 where the establishment has demonstrated that the testing,
50 maintenance, and battery replacement procedures will
51 ensure reliable power to the emergency lighting devices.

52 (3) The State Fire Marshal shall permit bed and
53 breakfast establishments that cannot readily comply with
54 the requirements of a legislative rule, which may mandate
55 the installation of a secondary means of escape or a sprinkler
56 system, one year per floor of the establishment to comply
57 with the requirements.

58 (4) All other provisions of the state fire safety code not
59 inconsistent with this section and rules promulgated
60 pursuant to subsection (d) of this section are applicable to
61 bed and breakfast establishments.

62 (d) *Legislative rules.* — The State Fire Commission
63 shall promulgate or amend an existing legislative rule, in
64 accordance with the provisions of §29A-3-1 *et seq.* of this
65 code, to effectuate the provisions of this section. The rule
66 shall include a mechanism for the Fire Marshal to grant
67 individual variances to bed and breakfast establishments
68 which cannot otherwise meet provisions of the state fire
69 safety code due to the historic and architectural significance
70 of the establishment, with due consideration of the
71 economic limitations inherent in the operation of this type
72 of small business.

73 (e) *Historic preservation review.* — The owner of a bed
74 and breakfast may request the historical preservation section
75 of the Division of Culture and History, pursuant to §15A-1-
76 8 of this code, to consult with the owner and provide a
77 recommendation to the Fire Marshal regarding the historic
78 character of the structures used or proposed to be used as a
79 bed and breakfast and any objections or concerns regarding
80 any renovations or other changes required by the Fire
81 Marshal. If an appeal regarding a decision made by the Fire
82 Marshal is made as provided by §15A-10-18 of this code,
83 the Fire Marshal shall consider the recommendation of the
84 historical preservation section when making a
85 determination regarding the variance as provided for in
86 subsection (d) of this section.

§15A-10-15. Performance of installation of propane gas systems.

1 (a) Notwithstanding any statutory or regulatory
2 provisions to the contrary, any person who installs, fuels,
3 maintains, or services any fuel gas system to a one- or two-
4 family dwelling shall comply with rules promulgated by the
5 Fire Commission relating to fuel gas systems.

6 (b) This section does not apply to any person who
7 performs this work on a single-family dwelling, owned or
8 leased, and occupied by that person. The personal
9 exemption provided in this subsection is the same as the

10 personal exemption provided in §29-3D-1, *et seq.* of this
11 code.

§15A-10-16. Additional remedies to abate, etc., fire hazards.

1 In case any building, structure, or equipment is, or is
2 proposed to be, erected, constructed, reconstructed, altered,
3 maintained, or used, or any land is or is proposed to be used
4 in such a way to endanger life or property from the hazards
5 of fire or explosion or in violation of this article, §15A-11-
6 1 *et seq.* of this code, the fire code or the building code, the
7 State Fire Marshal, or the Attorney General may, in addition
8 to other remedies provided by law, institute injunction,
9 mandamus, abatement, or any other appropriate action or
10 actions, proceedings to prevent, enjoin, abate, or remove
11 such unlawful erection, construction, reconstruction,
12 alteration, maintenance, or use.

§15A-10-17. License denial limitation, suspension, or revocation.

1 (a) The State Fire Marshal shall deny, limit, suspend, or
2 revoke a license issued if the provisions of this article, or if
3 the rules promulgated pursuant to this article or §15A-11-1
4 *et seq.* of this code are violated

5 (b) Before any such license is denied, limited,
6 suspended, or revoked, however, written notice shall be
7 given to the licensee stating the grounds for such denial,
8 limitation, suspension, or revocation.

9 (c) An applicant or licensee has 10 working days after
10 receipt of the order denying, limiting, suspending, or
11 revoking a license to request a formal hearing contesting the
12 denial, limitation, suspension, or revocation of a license
13 under this article. If a formal hearing is requested, the
14 applicant or licensee and the secretary shall proceed in
15 accordance with the provisions of §29A-5-1 *et seq.* of this
16 code.

17 (d) If the license is denied, limited, suspended, or
18 revoked, the license or certification holder shall cease and

19 desist practices of their profession as of the effective date of
20 the denial, limitation, suspension, or revocation. Any
21 administrative appeal of such denial, limitation, suspension,
22 or revocation shall not stay the denial, limitation,
23 suspension, or revocation.

24 (e) A party aggrieved by a decision by the State Fire
25 Marshal may appeal such final decision to the Office of
26 Administrative Hearings, pursuant to §15A-9-1 *et seq.* of
27 this code, or may choose independent informal dispute
28 resolution as set forth in this article.

§15A-10-18. Independent informal dispute resolution.

1 (a) A license or certification holder adversely affected
2 by an order or citation of a deficient practice issued pursuant
3 to this article may request the independent informal dispute
4 resolution process. A license or certificate holder may
5 contest a cited deficiency as contrary to law or unwarranted
6 by the facts or both.

7 (b) The State Fire Marshal has the authority to establish
8 conference panels composed of three persons of the licensed
9 or certified skill to decide the outcome of the independent
10 informal dispute resolution process. One member shall be
11 selected by the State Fire Marshal, one member shall be
12 selected by the licensee or certificate holder, and one
13 member shall be selected by agreement of both. If a vacancy
14 occurs on the panel, the replacement for that member shall
15 be made by the original individual who had selected such
16 member. The members of the panel shall serve without
17 compensation. This panel shall hear the matter and render a
18 decision. The licensee or certificate holder may not be
19 accompanied by counsel during the independent informal
20 dispute resolution conference.

21 (c) Upon appeal of a decision rendered by the State Fire
22 Marshal, the panel shall hold an informal conference
23 affirming, modifying, or vacating an order of the State Fire
24 Marshal, or issuing an order in the name of the State Fire

25 Marshal. The panel shall forthwith notify the parties of its
26 decision and as soon as practicable send written notices of
27 its decision to the parties. The decision of the panel is final.
28 The independent informal dispute resolution process is not
29 a formal evidentiary proceeding.

30 (d) A party aggrieved by a decision of a panel may
31 appeal pursuant to §29A-5-1 *et seq.* of this code.

32 (e) The State Fire Marshal shall promulgate a
33 procedural rule to carry out the provisions of this section.

§15A-10-19. Establishment of demonstration buildings and equipment for educational instruction in fire prevention and protection; payment therefor.

1 The State Fire Marshal is authorized to establish for
2 educational purposes in public and private schools and state
3 educational institutions, demonstration buildings and
4 equipment for fire prevention and protection, and such
5 expenditures therefor shall be made from the funds
6 appropriated therefor to the office of the State Fire Marshal.

§15A-10-20. False alarm of fire; penalties.

1 No person shall make, report, or disclose, by any means
2 of written or verbal communication, aid or abet in such, any
3 alarm of fire which he or she knows to be false at the time
4 of making or turning in the alarm.

§15A-10-21. Tax on insurance companies.

1 Every insurance company doing business in this state,
2 except Farmers' Mutual Fire Insurance companies, shall
3 pay to the State Insurance Commissioner annually on or
4 before March 1, in addition to the taxes now required by law
5 to be paid by the companies, one half of one percent of the
6 taxable premiums of the companies on insurance against the
7 hazard of fire and on that portion of all other taxable
8 premiums reasonably applicable to insurance against the
9 hazard of fire which are included in other coverages, and

10 received by it for insurance on property or risks in this state
11 during the calendar year next preceding as shown by their
12 annual statement under oath to the insurance department.
13 The money so received by the State Insurance
14 Commissioner is paid by him or her into the treasury and
15 credited to the Special Revenue Fund created in §15A-10-7
16 of this code.

§15A-10-22. Penalties.

1 (a) Any person who violates any regulations
2 promulgated by the State Fire Commission as provided in
3 §15A-11-1 *et seq.* of this code, or by the State Fire Marshal
4 as provided in this article is guilty of a misdemeanor and,
5 upon conviction thereof, shall be fined not more than \$100
6 or confined in the county jail not more than 90 days, or both.

7 Each day during which any illegal erection,
8 construction, reconstruction, alteration, maintenance or use
9 continues after knowledge or official notice that it is illegal
10 is a separate offense.

11 (b) Except as provided by the provisions of subsection
12 (c) of this section, any person who violates the provisions of
13 §15A-10-20 of this code shall be guilty of a misdemeanor
14 and, upon conviction thereof, shall be fined for a first
15 offense not more than \$100 or confined in jail for not more
16 than 30 days, or both fined and confined; and for a second
17 and each subsequent offense, fined not less than \$100 nor
18 more than \$500, or confined in jail for not less than 90 days
19 nor more than one year, or both.

20 (c) Any person who violates the provisions of §15A-10-
21 20 of this code with the intent to cause injury to the person
22 of another, to cause destruction of the property of another,
23 or to divert the attention of law enforcement or fire
24 personnel to help effectuate the commission of another
25 crime shall be guilty of a felony and, upon conviction
26 thereof, shall be confined in a state correctional facility for

27 not less than one nor more than three years, or fined not
28 more than \$500, or both fined and confined.

29 (d) Any officer who knowingly and willfully fails to
30 perform any duty required of him or her by this article or
31 who violates any of its provisions is guilty of a misdemeanor
32 and, upon conviction thereof, shall be fined not less than \$25
33 nor more than \$50 for each failure or violation.

34 (e) Any person who violates any other provision of this
35 article is guilty of a misdemeanor and, upon conviction
36 thereof, shall be fined not more than \$100 or confined in jail
37 not more than 90 days, or both fined and confined.

§15A-10-23. Construction.

1 Being in the interest of public safety, the provisions of
2 this article shall be liberally construed.

§15A-10-24. Severability.

1 If any section, subsection, subdivision, subparagraph,
2 sentence, or clause of this article is adjudged to be
3 unconstitutional or invalid, such invalidation shall not affect
4 the validity of the remaining portions of this article and, to
5 this end, the provisions of this article are hereby declared to
6 be severable.

**§15A-10-25. Awarding service weapon upon retirement of fire
marshal or service weapon.**

1 (a) Upon the retirement of a State Fire Marshal, any full-
2 time deputy fire marshal or any full-time assistant fire
3 marshal employed by the State Fire Marshal pursuant to this
4 article shall award to the retiring member his or her service
5 weapon, without charge, upon determining:

6 (1) That the retiring employee is retiring honorably with
7 at least 20 years of service; or

8 (2) The retiring employee is retiring with less than 20
9 years of service based upon a determination that the

10 employee is totally physically disabled as a result of his or
11 her service with the State Fire Marshal.

12 (b) Notwithstanding the provisions of subsection (a) of
13 this section, the State Fire Marshal may not award a service
14 weapon to any employee whom the State Fire Marshal
15 knows is prohibited from possessing a firearm, finds to be
16 mentally incapacitated, or who constitutes a danger to any
17 person or the community.

18 (c) If a service weapon is taken out of service due to
19 routine wear, the State Fire Marshal may offer the service
20 weapon for sale to any active or retired State Fire Marshal,
21 assistant state fire marshal, or deputy state fire marshal, at
22 fair market value, with the proceeds from any sales used to
23 offset the cost of new service weapons. The disposal of
24 service weapons pursuant to this subsection does not fall
25 within the jurisdiction of the Purchasing Division of the
26 Department of Administration.

ARTICLE 11. FIRE COMMISSION.

§15A-11-1. State Fire Commission continued; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.

1 (a) The Fire Commission is hereby continued, which
2 shall consist of 13 voting members, with the State Fire
3 Marshal sitting as an ex officio nonvoting member. The
4 voting members shall be qualified by experience and
5 training to deal with the matters which are the
6 responsibilities of the commission. All current members of
7 the commission are continued in their respective term. The
8 officers of the West Virginia Fire Chief's Association, the
9 West Virginia Firemen's Association, the West Virginia
10 Professional Fire Fighters Association, the West Virginia
11 Professional Fire Chiefs Association, the West Virginia
12 Manufacturers Association, the Professional Independent
13 Insurance Agents of West Virginia, and the West Virginia
14 Society of Architects shall submit a list of names of persons

15 recommended by each of these associations to the Governor
16 for consideration in appointing the State Fire Commission.
17 The West Virginia Professional Fire Fighters Association
18 and the West Virginia Professional Fire Chiefs Association
19 shall recommend the names of two persons from full-time
20 paid fire departments. The West Virginia Fire Chief's
21 Association and the West Virginia Firemen's Association
22 shall each recommend the names of three persons from
23 volunteer fire departments. The West Virginia
24 Manufacturers Association shall recommend the names of
25 three persons to represent business and industry. The
26 Professional Independent Insurance Agents of West
27 Virginia shall recommend the names of two persons to
28 represent the fire insurance industry. The West Virginia
29 Society of Architects shall recommend the names of two
30 persons to represent registered architects. Appointments to
31 the commission shall be made by the Governor, by and with
32 the advice and consent of the Senate, from the lists of
33 qualified persons recommended by the organizations. Three
34 members shall be appointed to represent full-time paid fire
35 departments, one member shall be appointed to represent
36 the full-time paid fire chiefs, three members shall be
37 appointed to represent volunteer fire departments, and two
38 members shall be appointed to represent the volunteer fire
39 chiefs. Two members shall be appointed to represent
40 business and industry and one member shall be appointed to
41 represent the fire insurance industry. One member shall be
42 appointed to represent registered architects. The term of
43 office of the members shall be staggered five-year terms.
44 Vacancies shall be filled in the same manner as the original
45 appointment but only for the remainder of a term. All
46 members serve at the will and pleasure of the Governor, and
47 may be removed for any or no reason.

48 (b) The members of the State Fire Commission shall
49 serve without compensation but shall be reimbursed for
50 their reasonable and necessary expenses actually incurred in
51 the performance of their duties.

52 (c) All costs incidental to the administration of the
53 commission shall be paid from the special fund by the State
54 Fire Marshal established in §15A-10-7 of this code.

§15A-11-2. Chairperson; vice chairperson; meetings; quorum.

1 (a) The State Fire Commission shall select a chairperson
2 and vice chairperson from among its members and shall
3 hold regular meetings at least once every two months and
4 special meetings when called by its chairman. In the
5 absence of the chairman, the vice chairman shall exercise
6 the powers and duties of the chairman.

7 (b) No business shall be transacted by the State Fire
8 Commission in the absence of a quorum which shall be
9 seven members, one of whom must be the chairperson or
10 vice chairperson.

§15A-11-3. Promulgation of rules and State Fire Code.

1 (a) Pursuant to the provisions of § 29A-3- 1 *et seq.* of
2 this code, the State Fire Commission shall propose and
3 promulgate comprehensive rules for the safeguarding of life
4 and property from the hazards of fire and explosion to be
5 known as the State Fire Code. Rules embodied in the State
6 Fire Code shall be in accordance with standard safe practice
7 as embodied in widely recognized standards of good
8 practice for fire prevention and fire protection and have the
9 force and effect of law in the several counties,
10 municipalities, and political subdivisions of the state. The
11 rule shall include, but not be limited to, standard safe
12 practices for the design, construction, location, installation,
13 maintenance, and operation of liquefied petroleum gas
14 systems, and training standards and qualifications for
15 persons who install or maintain liquefied petroleum gas
16 systems.

17 (b) The State Fire Commission may establish work
18 groups and seek input in the rulemaking process from

19 groups or individuals with an interest in any aspect of the
20 fire code.

§15A-11-4. Hazardous substance emergency response training programs.

1 (a) The State Fire Commission shall promulgate rules
2 pursuant to §29A-3-1 *et seq.* of this code establishing
3 criteria for qualified training programs in hazardous
4 substance emergency response activities and procedures for
5 such qualified training programs to be certified by the State
6 Fire Marshal.

7 (b) For the purposes of this section, “hazardous
8 substance” means any hazardous substance as defined in
9 chapter 88, Acts of the Legislature, regular session, 1985,
10 any “chemical substances and materials” listed in the rules
11 promulgated by the Commissioner of Labor pursuant to
12 §21-3-8 of this code, and any “hazardous waste” as defined
13 in §22-18-1 *et seq.* of this code.

§15A-11-5. Promulgation of rules and statewide building code.

1 (a) The State Fire Commission shall propose rules for
2 legislative approval in accordance with the provisions of
3 §29A-3-1 *et seq.* of this code to safeguard life and property
4 and to ensure the quality of construction of all structures
5 erected or renovated throughout this state through the
6 adoption of a State Building Code. The rule may include
7 provisions regarding building construction, renovation, and
8 all other aspects as related to the construction and
9 mechanical operations of a structure. The rule shall include
10 building energy codes. The rules shall be in accordance with
11 standard safe practices so embodied in widely recognized
12 standards of good practice for building construction and all
13 aspects related thereto and have force and effect in those
14 counties and municipalities adopting the State Building
15 Code: *Provided*, That each county or municipality may

16 adopt the code to the extent that it is only prospective and
17 not retroactive in its application.

18 (b) The State Fire Commission may establish advisory
19 boards as it considers appropriate to encourage
20 representative participation in subsequent rulemaking from
21 groups or individuals with an interest in any aspect of the
22 State Building Code or related construction or renovation
23 practices.

24 (c) For the purpose of this section, the term “building
25 code” is intended to include all aspects of safe building
26 construction and mechanical operations and all safety
27 aspects related thereto. Whenever any other state law,
28 county, or municipal ordinance, or regulation of any agency
29 thereof is more stringent or imposes a higher standard than
30 is required by the State Building Code, the provisions of the
31 state law, county or municipal ordinance, or regulation of
32 any agency thereof governs if they are not inconsistent with
33 the laws of West Virginia and are not contrary to recognized
34 standards and good engineering practices. In any question,
35 the decision of the State Fire Commission determines the
36 relative priority of any such state law, county or municipal
37 ordinance, or regulation of any agency thereof, and
38 determines compliance with State Building Code by
39 officials of the state, counties, municipalities, and political
40 subdivisions of the state.

41 (d) Enforcement of the provisions of the State Building
42 Code is the responsibility of the respective local
43 jurisdiction. Also, any county or municipality may enter
44 into an agreement with any other county or municipality to
45 provide inspection and enforcement services: *Provided,*
46 That any county or municipality may adopt the State
47 Building Code with or without adopting the BOCA National
48 Property Maintenance Code.

49 (e) After the State Fire Commission has promulgated
50 rules as provided in this section, each county or

51 municipality intending to adopt the State Building Code
52 shall notify the State Fire Marshal of its adoption.

53 (f) The State Fire Commission may conduct public
54 meetings in each county or municipality adopting the State
55 Building Code to explain the provisions of the rules.

56 (g) The provisions of the State Building Code relating
57 to the construction, repair, alteration, restoration, and
58 movement of structures are not mandatory for existing
59 buildings and structures identified and classified by the
60 State Register of Historic Places under the provisions of
61 §29-1-8 of this code or the National Register of Historic
62 Places, pursuant to 16 U.S.C. §470a. Prior to renovations
63 regarding the application of the State Building Code, in
64 relation to historical preservation of structures identified as
65 such, the authority having jurisdiction shall consult with the
66 Division of Culture and History, State Historic Preservation
67 Office. The final decision is vested in the State Fire Marshal.
68 Additions constructed on a historic building are not
69 excluded from complying with the State Building Code.

§15A-11-6. Public hearings and notice.

1 Prior to the promulgation of a State Fire Code, or any
2 amendments thereto, as provided in this article, the State
3 Fire Commission shall hold at least one public hearing on
4 the proposed regulations contained therein, notice of which
5 shall be the same as the notice for a hearing as provided in
6 the Administrative Procedure Act, chapter 29A of this code.

§15A-11-7. Commission's powers in conduct of public hearing.

1 For the purposes of any public hearing under this article,
2 the State Fire Commission is empowered and authorized to
3 issue subpoenas and subpoenas duces tecum, to take
4 testimony, and to administer oaths to any witness in any
5 proceeding or examination instituted before it or conducted
6 by it with reference to any matter within its jurisdiction. In
7 all hearings or proceedings before the State Fire

8 Commission, the evidence of witnesses and the production
9 of documentary evidence may be required at any designated
10 place of hearing; and in case of disobedience to a subpoena
11 or other process, the State Fire Commission or any party to
12 the proceedings before the commission may invoke the aid
13 of any circuit court in requiring the evidence and testimony
14 of witnesses and the production of papers, books, and
15 documents. Such court, in case of refusal to obey the
16 subpoena issued to any person subject to the provisions of
17 this chapter, shall issue an order requiring such person to
18 appear before the State Fire Commission and produce all
19 books and papers, if so ordered, and give evidence touching
20 the matter in question.

§15A-11-8. Powers, duties, and authority of State Fire Commission.

1 (a) All state and area training and education in fire
2 service shall be coordinated by the State Fire Commission.
3 The State Fire Marshal shall ensure that these programs are
4 operated throughout the state at a level consistent with needs
5 identified by the commission.

6 (b) The State Fire Commission may make
7 recommendations to the State Insurance Commissioner
8 regarding town classifications for fire insurance rates.

9 (c) The formation of any new fire department, including
10 volunteer fire departments, requires the concurrence of the
11 State Fire Commission. The State Fire Commission shall
12 develop a method of certification which can be applied to
13 all fire departments and volunteer fire departments.

14 (d) The State Fire Commission shall develop a plan for
15 fire prevention and control which shall include, but not be
16 limited to, the following areas: manpower needs, location of
17 training centers, location of fire prevention and control
18 units, communications, fire-fighting facilities, water
19 sources, vehicular needs, public education and information,
20 public participation, standardization in recordkeeping,

21 evaluation of personnel, reporting of fire hazards, programs
22 on mutual aid, location of public safety agencies, outline of
23 fire prevention programs, and accessibility of fire
24 prevention information.

25 (e) The State Fire Commission shall establish fire
26 protection areas and at such times as funds are available
27 shall establish field offices for inspection, planning, and
28 certification.

29 (f) The State Fire Marshal may accept, on behalf of the
30 State Fire Commission, gifts, grants, court-ordered civil
31 forfeiture proceedings, and bequests of funds or property
32 from individuals, foundations, corporations, the federal
33 government, governmental agencies, and other
34 organizations or institutions. The State Fire Marshal, acting
35 on behalf of the State Fire Commission, may enter into, sign
36 and execute any agreements, and do and perform any acts
37 that may be necessary, useful, desirable, or convenient to
38 effectuate the purposes of this article. Moneys from gifts,
39 grants, civil forfeiture proceedings, and bequests received
40 by the State Fire Marshal shall be deposited into the special
41 account set forth in §15A-10-7 of this code, and the State
42 Fire Marshal, with the approval of the State Fire
43 Commission, has the authority to make expenditures of, or
44 use of any tangible property, in order to effectuate the
45 purposes of this article.

46 (g) The State Fire Commission shall establish standards
47 and procedures for fire departments to implement the
48 provisions of this section with regard to the following:

49 (1) Fire prevention and control;

50 (2) Uniform standards of performance, equipment, and
51 training;

52 (3) Certification;

53 (4) Training and education in fire service, subject to the
54 rule-making requirements set forth in section nine of this
55 article; and

56 (5) The creation, operation, and responsibilities of fire
57 departments throughout the state.

58 (h) The State Fire Commission may establish advisory
59 boards as it considers appropriate to encourage
60 representative participation in subsequent rulemaking from
61 groups or individuals with an interest in any aspect of the
62 State Fire or Building Code or related construction or
63 renovation practices.

64 (i) The State Fire Commission may deny, suspend, or
65 revoke certification of any fire department in the State of
66 West Virginia if a fire department is not in compliance with
67 all applicable laws, rules, and regulations.

68 (j) Appeals from any final decision of the Fire
69 Commission shall be heard by the Office of Administrative
70 Hearings pursuant to this chapter, except as otherwise
71 provided in §15A-10-9(b) of this code.

§15A-11-9. Volunteer firefighters' training and equipment.

1 (a) The State Fire Commission shall maintain oversight
2 and authority over training, equipment requirements, and
3 performance standards for volunteer fire departments and its
4 members, establishing and maintaining said requirements
5 pursuant to legislative rule, in accordance with the
6 provisions of §29A-3-1 *et seq.* of this code, to establish
7 training requirements for firefighters which:

8 (1) Provide for:

9 (A) Minimum training levels for rescue and firefighting;

10 (B) Minimum levels of equipment needed to protect life
11 and property within fire service areas;

12 (C) Minimum performance standards the departments
13 must meet in response times, communications, levels of
14 water flow, and pressure; and

15 (D) Other performance measures as considered
16 necessary to meet the overall goals of improved fire
17 prevention and control;

18 (2) Allow the training to be offered in segments, blocks,
19 or modules: *Provided*, That no firefighter may engage in
20 firefighting activities, except in response to wildland fires,
21 until he or she has completed all firefighter one training:
22 *Provided, however*, That support members may provide
23 ancillary assistance to firefighters as defined by the rule;

24 (3) Provide for online training;

25 (4) Allow testing to be done in person or online; and

26 (5) Establish the testing requirements which include:

27 (A) If the individual is required to test in person, then
28 the tests must be given regionally at various times
29 throughout the year; or

30 (B) If the individual is authorized to test online, then the
31 requirements for online testing must be established.

32 (b) Notwithstanding any provision of this code to the
33 contrary, the State Fire Commission may establish or
34 continue a pilot project program which implements changes
35 to standards imposed on volunteer firefighting that address
36 problems facing volunteer fire departments in the state,
37 including issues related to training, recruitment, and
38 retention.

39 (1) The State Fire Commission may limit the number of
40 participating volunteer fire departments in the pilot project
41 program.

42 (2) The State Fire Commission shall set the rules and
43 conditions for participating volunteer fire departments by
44 policies adopted and ratified by the commission.

45 (3) On July 1 of each year, the State Fire Commission
46 shall annually provide a full summary report of the status of
47 the program to the Joint Committee on Government and
48 Finance.

**§15A-11-10. Courtesy certification of firefighters in
surrounding states to serve as volunteer firefighter.**

1 (a) It is the intention of the Legislature to permit
2 individuals who have been certified as professional or
3 volunteer firefighters in a state bordering West Virginia to
4 serve as volunteer firefighters in West Virginia.

5 (b) Beginning July 1, 2020, the State Fire Commission
6 shall establish a process by which a courtesy certification to
7 serve as a volunteer firefighter in this state may be issued to
8 any person who satisfies the following requirements:

9 (1) Is a certified professional or volunteer firefighter in
10 good standing in a state bordering West Virginia;

11 (2) Complies with the application process and
12 procedures established by the State Fire Commission; and

13 (3) Submits any required fee.

14 (c) Issuance of a courtesy certification shall not be
15 withheld by the State Fire Commission based on an
16 individual's failure to satisfy the training requirements for
17 volunteer firefighters set forth in legislative rules
18 promulgated pursuant to §15A-11-9 of this code.

19 (d) The State Fire Commission shall propose rules for
20 legislative approval in accordance with the provisions of
21 §29A-3-1 *et seq.* of this code to implement the provisions of
22 this section.

23 (e) Any courtesy certification issued pursuant to this
24 section may be revoked at any time if the individual's
25 certification in the bordering state is restricted, revoked, or
26 otherwise expires.

27 (f) Any courtesy certification issued pursuant to this
28 section must be renewed biennially.

29 (g) The State Fire Commission may deny, suspend, or
30 revoke a courtesy certification if the certificate holder is, or
31 has acted, not in compliance with all applicable laws, rules,
32 and regulations.

33 (h) Appeals from any final decision of the Fire
34 Commission shall be heard by the Office of Administrative
35 Hearings pursuant to this chapter.

**§15A-11-11. Fire Service Equipment and Training Fund;
creation of fire service equipment and training grant;
reports of ineligibility to State Fire Marshal.**

1 (a) *Definitions.* — For the purposes of this section:

2 “Equipment and training grant” means a grant of money
3 to a volunteer fire company or a part-volunteer fire
4 department from the Fire Service Equipment and Training
5 Fund created in §15A-11-11 of this code;

6 “Formula distribution” means a distribution of money
7 to volunteer and part-volunteer fire companies or
8 departments made pursuant to §33-3-14d, §33-3-33, and
9 §33-12C-7 of this code; and

10 “State funds account” means a bank account established
11 by a volunteer or part-volunteer fire company or department
12 and maintained for the exclusive use and accounting of
13 money from formula distributions and equipment and
14 training grants.

15 (b) *Filing required documentation.* — Every volunteer
16 and part-volunteer fire company or department seeking to

17 receive formula distributions or an equipment and training
18 grant shall file copies of bank statements and check images
19 from the company's or department's state funds account for
20 the previous calendar year with the Legislative Auditor on
21 or before February 1 of each year.

22 (c) *Reviews and audits.* — The Legislative Auditor is
23 authorized to conduct regular reviews or audits of deposits
24 and expenditures from formula distribution and equipment
25 and training grant funds by volunteer and part-volunteer fire
26 companies or departments. The Legislative Auditor may
27 assign an employee or employees to perform audits or
28 reviews at his or her direction. The State Treasurer shall
29 provide the Legislative Auditor information, in the manner
30 designated by the Legislative Auditor, concerning formula
31 distributions and equipment and training grants paid to
32 volunteer or part-volunteer fire companies and departments.
33 The volunteer or part-volunteer fire company or department
34 shall cooperate with the Legislative Auditor, the Legislative
35 Auditor's employees, and the State Auditor in performing
36 their duties under the laws of this state.

37 (d) *State Auditor.* — Whenever the State Auditor
38 performs an audit of a volunteer or part-volunteer fire
39 company or department for any purpose, the Auditor shall
40 also conduct an audit of other state funds received by the
41 company or department pursuant to §33-3-14d, §33-3-33,
42 and §33-12C-7 of this code. The Auditor shall send a copy
43 of the audit to the Legislative Auditor. The Legislative
44 Auditor may accept an audit performed by the Auditor in
45 lieu of performing an audit under this section.

46 (e) *Withholding of funds.* — The Treasurer is authorized
47 to withhold payment of a formula distribution or an
48 equipment and training grant from a volunteer or part-
49 volunteer fire company or department, when properly
50 notified by the Legislative Auditor pursuant to this section,
51 of any of the following conditions:

52 (1) Failure to file, in a timely manner, copies of bank
53 statements and check images with the Legislative Auditor;

54 (2) Failure to cooperate with a review or audit
55 conducted by the Legislative Auditor;

56 (3) Misapplication of state funds; or

57 (4) Failure to file a report or a sworn statement of
58 expenditures as required by §12-4-14 of this code for a state
59 grant other than an equipment and training grant.

60 (f) *Delinquency in filing.* — If, after February 1, a
61 volunteer or part-volunteer fire company or department has
62 failed to file the required bank statements and check images
63 with the Legislative Auditor, the Legislative Auditor shall
64 notify the delinquent company or department at two
65 separate times in writing of the delinquency and of possible
66 forfeiture of its Fire Service Equipment and Training Fund
67 distribution for the year. If the required bank statements and
68 check images are not filed with the Legislative Auditor by
69 March 31, unless the time period is extended by the
70 Legislative Auditor, the Legislative Auditor shall then
71 notify the Treasurer who shall withhold payment of any
72 amount that would otherwise be distributed to the company
73 or department. Prior to each subsequent quarterly
74 disbursement of funds by the Treasurer, the Legislative
75 Auditor shall notify each delinquent company or department
76 twice per each quarter in which the company or department
77 is delinquent. The Legislative Auditor may choose the
78 method or methods of notification most likely to be received
79 by the delinquent company or department.

80 (g) *Noncooperation.* — If, in the course of an audit or
81 review by the Legislative Auditor, a volunteer or part-
82 volunteer fire company or department fails to provide
83 documentation of its accounts and expenditures in response
84 to a request of the Legislative Auditor, the Legislative
85 Auditor shall notify the State Treasurer who shall withhold
86 payment of any amount that would otherwise be distributed

87 to the company or department under the provisions of §33-
88 3-14d, §33-3-33, and §33-12C-7 of this code until the
89 Legislative Auditor informs the State Treasurer that the
90 company or department has cooperated with the review or
91 audit.

92 (h) *Reporting of other grants.* — Nothing in this section
93 alters the duties and responsibilities of a volunteer or part-
94 volunteer fire company or department imposed under §12-
95 4-14 of this code if that company or department has received
96 funds from any state grant program other than from the Fire
97 Service Equipment and Training Fund. If the Legislative
98 Auditor is notified by a grantor that a volunteer or part-
99 volunteer fire company or department has failed to file a
100 report or a sworn statement of expenditures for a state grant
101 it received, the Legislative Auditor shall notify the State
102 Treasurer who shall withhold further distributions to the
103 company or department in the manner provided in this
104 section.

105 (i) *Escrow and forfeiture of moneys withheld.* — The
106 Volunteer Fire Department Audit Account previously
107 created in the treasury is hereby continued. When the State
108 Treasurer receives notice to withhold the distribution of
109 money to a volunteer or part-volunteer fire company or
110 department pursuant to this section, the Treasurer shall
111 instead deposit the amounts withheld into the Volunteer Fire
112 Department Audit Account. If the Treasurer receives notice
113 that the volunteer or part-volunteer fire company or
114 department has come into compliance in less than one year
115 from the date of deposit into this special revenue account,
116 then the Treasurer shall release and distribute the withheld
117 amounts to the company or department, except that any
118 interest that has accrued thereon shall be credited to the
119 general revenue of the state. If, after one year from payment
120 of the amount withheld into the special revenue account, the
121 Legislative Auditor informs the State Treasurer of
122 continued noncooperation by the company or department,
123 the delinquent company or department forfeits the amounts

124 withheld and the State Treasurer shall pay the amounts
125 withheld into Fire Service Equipment and Training Fund
126 created in §29-3-5f of this code.

127 (j) *Misuse of state money.* — If the Legislative Auditor
128 determines that a volunteer or part-volunteer fire company
129 or department has used formula distribution money for
130 purposes not authorized by §8-15-8b of this code or has used
131 equipment and training grant money for purposes not
132 authorized by the grant program, the Legislative Auditor
133 shall give a written notice of noncompliance to the company
134 or department. If a volunteer or part-volunteer fire company
135 or department disagrees or disputes the finding, the
136 company or department may contest the finding by
137 submitting a written objection to the Legislative Auditor
138 within five working days of receipt of the Legislative
139 Auditor’s finding. The department or company shall then
140 have 60 days from the date of the Legislative Auditor’s
141 finding to provide documentation to substantiate that the
142 expenditures were made for authorized purposes. If the
143 volunteer or part-volunteer fire company or department
144 does not dispute the findings of the Legislative Auditor or if
145 the company or department is not able to substantiate an
146 authorized purpose for the expenditure, the Legislative
147 Auditor shall notify the Treasurer of the amount of
148 misapplied money and the Treasurer shall deduct that
149 amount from future distributions to that company or
150 department until the full amount of unauthorized
151 expenditure is offset.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-4. Duties of commissioner.

1 The Commissioner of Agriculture shall perform the
2 following duties:

3 (a) Devise means of advancing the agricultural interests
4 of the state and, in the performance of such duty, he or she

5 shall have authority to call upon any state department, or
6 officer of the state or county, to cooperate in promoting the
7 agricultural interests of the state. It shall be the duty of any
8 such department, or officer, upon request of the
9 commissioner to render the assistance desired;

10 (b) Promote and encourage the organization of such
11 societies and associations as have for their object the
12 improvement and development of the state's agricultural,
13 horticultural and kindred interests, especially in production,
14 processing for market, and distribution;

15 (c) Conduct cooperative work with the United States
16 Department of Agriculture in inspecting and determining
17 the grade and condition of farm produce at collecting
18 centers, receiving centers, and shipping points;

19 (d) Induce the investment of capital in, and immigration
20 into, this state by the dissemination of information relative
21 to the soil, climate, health, natural resources, market
22 opportunities, and advantages of the state;

23 (e) Investigate and report upon the kinds, conditions,
24 and extent of the mineral products of the state and their
25 value;

26 (f) Take charge of the museum of the Department of
27 Agriculture, collect, preserve and exhibit therein specimens
28 of agricultural, horticultural and kindred products, products
29 of the forests, minerals, flora, and fauna of the state;

30 (g) Publish and distribute, from time to time, such
31 reports and bulletins concerning agriculture, horticulture,
32 and kindred subjects as may be of value to the farmers of
33 the state and, as conditions may demand, publish a
34 handbook giving the resources of the several counties of the
35 state, the varieties of soil and products, both mineral and
36 vegetable, and the adaptability of the different sections of
37 the state to the different branches of agriculture,
38 horticulture, and kindred interests;

39 (h) Submit a biennial report to the Governor and
40 Legislature containing such information as to the operations
41 of the department as may be helpful to the agricultural
42 interests of the state, together with an itemized statement of
43 all receipts and disbursements during the biennial period
44 covered thereby and giving the name of every person
45 employed during such period, the time employed, and the
46 amount paid each employee;

47 (i) Perform such other duties and exercise such other
48 powers as are provided in this chapter and by general law;

49 (j) Enter into an agreement with the Secretary of the
50 Department of Veterans' Assistance to transfer without
51 consideration all or part of the approximately 17 acres of
52 Department of Agriculture property in Beckley, West
53 Virginia, located adjacent to the Jackie Withrow Hospital
54 which was formerly known as Pinecrest Hospital, for
55 construction of a veterans skilled nursing facility;

56 (k) Propose rules, including regulatory standards, for
57 legislative approval in accordance with the provisions of
58 §29A-3-1 *et seq.* of this code for the purpose of carrying out
59 the requirements of this chapter; and

60 (l) Cooperate with the State Resiliency Office to the
61 fullest extent practicable to assist that office in fulfilling its
62 duties.

ARTICLE 21A. CONSERVATION DISTRICTS.

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

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

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

72 (4) Cooperate with the State Resiliency Office to the
73 fullest extent practicable to assist that office in fulfilling its
74 duties.

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

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

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

86 (3) Coordinate the programs of the several conservation
87 districts so far as this may be done by advice and
88 consultation;

89 (4) Contract for services directly related to natural
90 disaster recovery and stream restoration related to flooding,
91 on an as needed basis;

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

99 (6) Secure the cooperation and assistance of the United
100 States and any of its agencies and of agencies of this state in
101 the work of the districts;

102 (7) Disseminate information throughout the state
103 concerning the activities and programs of the conservation

104 districts and encourage the formation of the districts in areas
105 where their organization is desirable;

106 (8) Administer a conservation grant program that
107 provides financial assistance to conservation districts and
108 others to promote approved conservation projects;

109 (9) Accept and receive donations, gifts, contributions,
110 grants, and appropriations in money, services, materials, or
111 otherwise from the United States or any of its agencies, from
112 the State of West Virginia, or from other sources and use or
113 expend the money, services, materials, or other
114 contributions in carrying out the policy and provisions of
115 this article, including the right to allocate the money,
116 services, or materials in part to the various conservation
117 districts created by this article in order to assist them in
118 carrying on their operations;

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

134 (11) Promulgate emergency and legislative rules to
135 effectuate the provisions of this article as amended and
136 reenacted by the Legislature during the 2018 regular session
137 of the Legislature; and

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

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

***§20-1-7. Additional powers, duties and services of director.**

1 In addition to all other powers, duties, and
2 responsibilities granted and assigned to the director in this
3 chapter and elsewhere by law, the director may:

4 (1) With the advice of the commission, prepare and
5 administer, through the various divisions created by this
6 chapter, a long-range comprehensive program for the
7 conservation of the natural resources of the state which best
8 effectuates the purpose of this chapter and which makes
9 adequate provisions for the natural resources laws of the
10 state;

11 (2) Sign and execute in the name of the state by the
12 Division of Natural Resources any contract or agreement
13 with the federal government or its departments or
14 agencies, subdivisions of the state, corporations,
15 associations, partnerships, or individuals: *Provided*, That
16 intergovernmental cooperative agreements and agreements
17 with nongovernmental organizations in furtherance of
18 providing a comprehensive program for the exploration,
19 conservation, development, protection, enjoyment, and use
20 of the natural resources of the state are exempt from the

*NOTE: This section was also amended by S. B. 487 (Chapter 229),
which passed prior to this act.

21 provisions of §5A-3-1 *et seq.* of this code: *Provided,*
22 *however,* That repair, renovation and rehabilitation of
23 existing facilities, buildings, amenities, and infrastructure
24 necessary to protect public health or safety or to provide
25 uninterrupted enjoyment and public use of state parks, state
26 forests, wildlife management areas, and state natural areas
27 under the jurisdiction of the Division of Natural Resources
28 are exempt from the provisions of §5A-3-1 *et seq.* of this
29 code. Nothing in this section authorizes new construction of
30 buildings and new construction of recreational facilities as
31 defined in §20-5-4 of this code without complying with the
32 provisions of §5A-3-1 *et seq.* of this code.

33 (3) Conduct research in improved conservation methods
34 and disseminate information matters to the residents of the
35 state;

36 (4) Conduct a continuous study and investigation of the
37 habits of wildlife and, for purposes of control and
38 protection, to classify by regulation the various species into
39 such categories as may be established as necessary;

40 (5) Prescribe the locality in which the manner and
41 method by which the various species of wildlife may be
42 taken, or chased, unless otherwise specified by this chapter.

43 (6) Hold at least six meetings each year at such time and
44 at such points within the state, as in the discretion of the
45 Natural Resources Commission may appear to be necessary
46 and proper for the purpose of giving interested persons in
47 the various sections of the state an opportunity to be heard
48 concerning open season for their respective areas, and report
49 the results of the meetings to the Natural Resources
50 Commission before the season and bag limits are fixed by
51 it;

52 (7) Suspend open hunting season upon any or all
53 wildlife in any or all counties of the state with the prior
54 approval of the Governor in case of an emergency such as a
55 drought, forest fire hazard, or epizootic disease among

56 wildlife. The suspension shall continue during the existence
57 of the emergency and until rescinded by the director.
58 Suspension, or reopening after such suspension, of open
59 seasons may be made upon 24 hours' notice by delivery of
60 a copy of the order of suspension or reopening to the wire
61 press agencies at the state capitol;

62 (8) Supervise the fiscal affairs and responsibilities of the
63 division;

64 (9) Designate such localities as he or she shall determine
65 to be necessary and desirable for the perpetuation of any
66 species of wildlife;

67 (10) Enter private lands to make surveys or inspections
68 for conservation purposes, to investigate for violations of
69 provisions of this chapter, to serve and execute warrants and
70 processes, to make arrests, and to otherwise effectively
71 enforce the provisions of this chapter;

72 (11) Acquire for the state in the name of the Division of
73 Natural Resources by purchase, condemnation, lease or
74 agreement, or accept or reject for the state, in the name of
75 the Division of Natural Resources, gifts, donations,
76 contributions, bequests, or devises of money, security or
77 property, both real and personal, and any interest in such
78 property, including lands and waters, which he or she deems
79 suitable for the following purposes:

80 (a) For state forests for the purpose of growing timber,
81 demonstrating forestry, furnishing or protecting watersheds,
82 or providing public recreation;

83 (b) For state parks or recreation areas for the purpose of
84 preserving scenic, aesthetic, scientific, cultural,
85 archaeological, or historical values or natural wonders, or
86 providing public recreation;

87 (c) For public hunting, trapping, or fishing grounds or
88 waters for the purpose of providing areas in which the public

89 may hunt, trap, or fish, as permitted by the provisions of this
90 chapter and the rules issued hereunder;

91 (d) For fish hatcheries, game farms, wildlife research
92 areas, and feeding stations;

93 (e) For the extension and consolidation of lands or
94 waters suitable for the above purposes by exchange of other
95 lands or waters under his or her supervision;

96 (f) For such other purposes as may be necessary to carry
97 out the provisions of this chapter;

98 (12) Capture, propagate, transport, sell, or exchange any
99 species of wildlife as may be necessary to carry out the
100 provisions of this chapter;

101 (13) Sell timber for not less than the value thereof, as
102 appraised by a qualified appraiser appointed by the director,
103 from all lands under the jurisdiction and control of the
104 director, except those lands that are designated as state parks
105 and those in the Kanawha State Forest. The appraisal shall
106 be made within a reasonable time prior to any sale, reduced
107 to writing, filed in the office of the director and shall be
108 available for public inspection. The director must obtain the
109 written permission of the Governor to sell timber when the
110 appraised value is more than \$5,000. The director shall
111 receive sealed bids therefor, after notice by publication as a
112 Class II legal advertisement in compliance with the
113 provisions of §59-3-1 *et seq.* of this code and the publication
114 area for the publication shall be each county in which the
115 timber is located. The timber so advertised shall be sold at
116 not less than the appraised value to the highest responsible
117 bidder, who shall give bond for the proper performance of
118 the sales contract as the director shall designate; but the
119 director may reject any and all bids and re-advertise for bids.
120 If the foregoing provisions of this section have been
121 complied with and no bid equal to or in excess of the
122 appraised value of the timber is received, the director may,
123 at any time, during a period of six months after the opening

124 of the bids, sell the timber in such manner as he or she deems
125 appropriate, but the sale price may not be less than the
126 appraised value of the timber advertised. No contract for
127 sale of timber made pursuant to this section may extend for
128 a period of more than 10 years. And all contracts heretofore
129 entered into by the state for the sale of timber may not be
130 validated by this section if a contract is otherwise invalid.
131 The proceeds arising from the sale of the timber so sold shall
132 be paid to the Treasurer of the State of West Virginia and
133 shall be credited to the division and used exclusively for the
134 purposes of this chapter: *Provided*, That nothing contained
135 herein may prohibit the sale of timber which otherwise
136 would be removed from rights-of-way necessary for and
137 strictly incidental to the extraction of minerals;

138 (14) Sell or lease, with the approval in writing of the
139 Governor, coal, oil, gas, sand, gravel, and any other
140 minerals that may be found in the lands under the
141 jurisdiction and control of the director, except those lands
142 that are designated as state parks. The director, before
143 making sale or lease thereof, shall receive sealed bids
144 therefor, after notice by publication as a Class II legal
145 advertisement in compliance with the provisions of §59-3-1
146 *et seq.* of this code, and the publication area for such
147 publication shall be each county in which such lands are
148 located. The minerals so advertised shall be sold or leased
149 to the highest responsible bidder, who shall give bond for
150 the proper performance of the sales contract or lease as the
151 director shall designate; but the director may reject any and
152 all bids and re-advertise for bids. The proceeds arising from
153 any such sale or lease shall be paid to the Treasurer of the
154 State of West Virginia and shall be credited to the division
155 and used exclusively for the purposes of this chapter;

156 (15) Exercise the powers granted by this chapter for the
157 protection of forests and regulate fires and smoking in the
158 woods or in their proximity at such times and in such
159 localities as may be necessary to reduce the danger of forest
160 fires;

161 (16) Cooperate with departments and agencies of state,
162 local, and federal governments in the conservation of
163 natural resources and the beautification of the state;

164 (17) Report to the Governor each year all information
165 relative to the operation and functions of the division and
166 the director shall make such other reports and
167 recommendations as may be required by the Governor,
168 including an annual financial report covering all receipts
169 and disbursements of the division for each fiscal year, and
170 he or she shall deliver the report to the Governor on or
171 before December 1 next after the end of the fiscal year so
172 covered. A copy of the report shall be delivered to each
173 house of the Legislature when convened in January next
174 following;

175 (18) Keep a complete and accurate record of all
176 proceedings, record and file all bonds and contracts taken or
177 entered into, and assume responsibility for the custody and
178 preservation of all papers and documents pertaining to his
179 or her office, except as otherwise provided by law;

180 (19) Offer and pay, in his or her discretion, rewards for
181 information respecting the violation, or for the apprehension
182 and conviction of any violators, of any of the provisions of
183 this chapter;

184 (20) Require such reports as he or she may determine to
185 be necessary from any person issued a license or permit
186 under the provisions of this chapter, but no person may be
187 required to disclose secret processes or confidential data of
188 competitive significance;

189 (21) Purchase as provided by law all equipment
190 necessary for the conduct of the division;

191 (22) Conduct and encourage research designed to
192 further new and more extensive uses of the natural resources
193 of this state and to publicize the findings of the research;

194 (23) Encourage and cooperate with other public and
195 private organizations or groups in their efforts to publicize
196 the attractions of the state including, completing the
197 feasibility study for the Beech Fork State Park Lodge as
198 follows:

199 (a) The director shall convene, prior to October 1, 2019,
200 two public hearings:

201 (i) An initial public hearing shall be for the purpose of
202 seeking public input regarding options for the construction
203 of a lodge and a conference center, including all available
204 public, private, or public-private partnership (PPP) funding
205 and financing options; and

206 (ii) A subsequent public hearing at which the feasibility
207 study and any recommendation shall be available for public
208 comment;

209 (b) The public hearings required by this subdivision
210 must be held in a suitable location reasonably close to Beech
211 Fork State Park so as to accommodate public participation
212 from the citizens of Cabell, Lincoln, and Wayne counties;
213 and

214 (c) Upon completion of the feasibility study it shall be
215 submitted by the director to the Joint Committee on
216 Government and Finance on or before December 1, 2019;

217 (24) Accept and expend, without the necessity of
218 appropriation by the Legislature, any gift or grant of money
219 made to the division for all purposes specified in this chapter
220 and he or she shall account for and report on all such receipts
221 and expenditures to the Governor;

222 (25) Cooperate with the state historian and other
223 appropriate state agencies in conducting research with
224 reference to the establishment of state parks and monuments
225 of historic, scenic, and recreational value and to take such
226 steps as may be necessary in establishing the monuments or
227 parks as he or she deems advisable;

228 (26) Maintain in his or her office at all times, properly
229 indexed by subject matter and also in chronological
230 sequence, all rules made or issued under the authority of this
231 chapter. The records shall be available for public inspection
232 on all business days during the business hours of working
233 days;

234 (27) Delegate the powers and duties of his or her office,
235 except the power to execute contracts not related to land and
236 stream management, to appointees and employees of the
237 division, who shall act under the direction and supervision
238 of the director and for whose acts he or she shall be
239 responsible;

240 (28) Conduct schools, institutions, and other
241 educational programs, apart from or in cooperation with
242 other governmental agencies, for instruction and training in
243 all phases of the natural resources programs of the state;

244 (29) Authorize the payment of all or any part of the
245 reasonable expenses incurred by an employee of the
246 division in moving his or her household furniture and effects
247 as a result of a reassignment of the employee: *Provided*,
248 That no part of the moving expenses of any one such
249 employee may be paid more frequently than once in 12
250 months;

251 (30) Establishing procedures and fee schedule for
252 individuals applying for limited permit hunts;

253 (31) Promulgate rules, in accordance with the
254 provisions of §29A-1-1 *et seq.* of this code, to implement
255 and make effective the powers and duties vested in him or
256 her by the provisions of this chapter and take such other
257 steps as may be necessary in his or her discretion for the
258 proper and effective enforcement of the provisions of this
259 chapter;

260 (32) Exempt designated sections within the Division of
261 Natural Resources from the requirement that all payments

262 must be deposited in a bank within 24 hours for amounts
263 less than \$500, notwithstanding any other provision of this
264 code to the contrary: *Provided*, That such designated
265 sections shall make a deposit in any amount no less than
266 every seven working days; and

267 (33) Cooperate with the State Resiliency Office to the
268 fullest extent practicable to assist that office in fulfilling its
269 duties.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-6. Secretary of the Department of Environmental Protection.

1 (a) The secretary is the chief executive officer of the
2 department. Subject to §22-1-7 of this code and other
3 provisions of law, the secretary shall organize the
4 department into such offices, sections, agencies, and other
5 units of activity as may be found by the secretary to be
6 desirable for the orderly, efficient, and economical
7 administration of the department, and for the
8 accomplishment of its objects and purposes. The secretary
9 may appoint a deputy secretary, chief of staff, assistants,
10 hearing officers, clerks, stenographers and other officers,
11 technical personnel, and employees needed for the
12 operation of the department and may prescribe their powers
13 and duties and fix their compensation within amounts
14 appropriated.

15 (b) The secretary has the power to and may designate
16 supervisory officers or other officers or employees of the
17 department to substitute for him or her on any board or
18 commission established under this code or to sit in his or her
19 place in any hearings, appeals, meetings, or other activities
20 with such substitute having the same powers, duties,
21 authority and responsibility as the secretary. The secretary
22 has the power to delegate, as he or she considers

23 appropriate, to supervisory officers or other officers or
24 employees of the department his or her powers, duties,
25 authority, and responsibility relating to issuing permits,
26 hiring and training inspectors, and other employees of the
27 department, conducting hearings and appeals and such other
28 duties and functions set forth in this chapter or elsewhere in
29 this code.

30 (c) The secretary has responsibility for the conduct of
31 the intergovernmental relations of the department, including
32 assuring:

33 (1) That the department carries out its functions in a
34 manner which supplements and complements the
35 environmental policies, programs, and procedures of the
36 federal government, other state governments and other
37 instrumentalities of this state; and

38 (2) That appropriate officers and employees of the
39 department consult with individuals responsible for making
40 policy relating to environmental issues in the federal
41 government, other state governments, and other
42 instrumentalities of this state concerning differences over
43 environmental policies, programs, and procedures and
44 concerning the impact of statutory law and rules upon the
45 environment of this state.

46 (d) In addition to other powers, duties, and
47 responsibilities granted and assigned to the secretary by this
48 chapter, the secretary is authorized and empowered to:

49 (1) Sign and execute in the name of the state by the
50 Department of Environmental Protection any contract or
51 agreement with the federal government or its departments
52 or agencies, subdivisions of the state, corporations,
53 associations, partnerships, or individuals: *Provided*, That
54 the powers granted to the secretary to enter into agreements
55 or contracts and to make expenditures and obligations of
56 public funds under this subdivision may not exceed or be
57 interpreted as authority to exceed the powers granted by the

58 Legislature to the various commissioners, directors, or
59 board members of the various departments, agencies, or
60 boards that comprise and are incorporated into each
61 secretary's department pursuant to the provisions of chapter
62 5F of this code;

63 (2) Conduct research in improved environmental
64 protection methods and disseminate information to the
65 citizens of this state;

66 (3) Enter private lands to make surveys and inspections
67 for environmental protection purposes; to investigate for
68 violations of statutes or rules which the department is
69 charged with enforcing; to serve and execute warrants and
70 processes; to make arrests; issue orders, which for the
71 purposes of this chapter include consent agreements; and to
72 otherwise enforce the statutes or rules which the department
73 is charged with enforcing;

74 (4) Require any applicant or holder of a permit to install,
75 establish, modify, operate, or close a solid waste facility to
76 furnish the fingerprints of the applicant or permittee; any
77 officer, director, or manager of the applicant or permittee;
78 any person owning a five percent or more interest,
79 beneficial or otherwise, in the applicant's or permittee's
80 business; or any other person conducting or managing the
81 affairs of the applicant or permittee or of the proposed
82 licensed premises, in whole or in part. These fingerprints
83 may be used to obtain and review any police record for the
84 purposes set may be relevant pursuant to §20-15-5 of this
85 code, and to use the fingerprints furnished to conduct a
86 criminal records check through the Criminal Identification
87 Bureau of the West Virginia State Police and a national
88 criminal history check through the Federal Bureau of
89 Investigation. The results of the checks shall be provided to
90 the secretary.

91 (5) Acquire for the state in the name of the Department
92 of Environmental Protection by purchase, condemnation,
93 lease, or agreement, or accept or reject for the state, in the

94 name of the Department of Environmental Protection, gifts,
95 donations, contributions, bequests, or devises of money,
96 security, or property, both real and personal, and any
97 interest in property;

98 (6) Provide for workshops, training programs and other
99 educational programs, apart from or in cooperation with
100 other governmental agencies, necessary to ensure adequate
101 standards of public service in the department. The secretary
102 may provide for technical training and specialized
103 instruction of any employee. Approved educational
104 programs, training, and instruction time may be
105 compensated for as a part of regular employment. The
106 secretary is authorized to pay out of federal or state funds,
107 or both, as such funds are available, fees and expenses
108 incidental to the educational programs, training, and
109 instruction. Eligibility for participation by employees shall
110 be in accordance with guidelines established by the
111 secretary;

112 (7) Issue certifications required under 33 U.S.C. §1341
113 of the federal Clean Water Act and enter into agreements in
114 accordance with the provisions of §22-11-7a of this code.
115 Prior to issuing any certification the secretary shall solicit
116 from the Division of Natural Resources reports and
117 comments concerning the possible certification. The
118 Division of Natural Resources shall direct the reports and
119 comments to the secretary for consideration;

120 (8) Notwithstanding any provisions of this code to the
121 contrary, employ in-house counsel to perform all legal
122 services for the secretary and the department, including, but
123 not limited to, representing the secretary, any chief, the
124 department or any office thereof in any administrative
125 proceeding or in any proceeding in any state or federal
126 court. Additionally, the secretary may call upon the
127 Attorney General for legal assistance and representation as
128 provided by law; and

129 (9) Cooperate with the State Resiliency Office to the
130 fullest extent practicable to assist that office in fulfilling its
131 duties.

132 (e) The secretary shall be appointed by the Governor, by
133 and with the advice and consent of the Senate, and serves at
134 the will and pleasure of the Governor.

135 (f) At the time of his or her initial appointment, the
136 secretary must be at least 30 years old and shall be selected
137 with special reference and consideration given to his or her
138 administrative experience and ability, to his or her
139 demonstrated interest in the effective and responsible
140 regulation of the energy industry and the conservation and
141 wise use of natural resources. The secretary must have at
142 least a bachelor's degree in a related field and at least three
143 years of experience in a position of responsible charge in at
144 least one discipline relating to the duties and responsibilities
145 for which the secretary will be responsible upon assumption
146 of the office. The secretary may not be a candidate for or
147 hold any other public office, may not be a member of any
148 political party committee and shall immediately forfeit and
149 vacate his or her office as secretary in the event he or she
150 becomes a candidate for or accepts appointment to any other
151 public office or political party committee.

152 (g) The secretary shall receive an annual salary as
153 provided in §6-7-2a of this code and is allowed and shall be
154 paid necessary expenses incident to the performance of his
155 or her official duties. Prior to the assumption of the duties
156 of his or her office, the secretary shall take and subscribe to
157 the oath required of public officers prescribed by section
158 five, article IV of the Constitution of West Virginia and
159 shall execute a bond, with surety approved by the Governor,
160 in the penal sum of \$10,000, which executed oath and bond
161 will be filed in the Office of the Secretary of State.
162 Premiums on the bond shall be paid from the department
163 funds.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-1. Short title.

1 [Repealed]

§29-3-2. Legislative findings and declaration of policy.

1 [Repealed]

§29-3-3. State Fire Commission created; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.

1 [Repealed]

§29-3-4. Chairman; vice chairman; meetings; quorum.

1 [Repealed]

§29-3-5. Promulgation of rules and State Fire Code.

1 [Repealed]

§29-3-5a. Hazardous substance emergency response training programs.

1 [Repealed]

§29-3-5b. Promulgation of rules and statewide building code.

1 [Repealed]

§29-3-5c. Liquified petroleum gas systems.

1 [Repealed]

§29-3-5d. Volunteer firefighters' training.

1 [Repealed]

§29-3-5e. Courtesy certification of firefighters in surrounding states to serve as volunteer firefighter.

1 [Repealed]

§29-3-5f. Fire Service Equipment and Training Fund; creation of fire service equipment and training grant.

1 [Repealed]

§29-3-6. Public hearings and notice.

1 [Repealed]

§29-3-7. Commission's powers in conduct of public hearing.

1 [Repealed]

§29-3-8. Comprehensive report by State Fire Marshal.

1 [Repealed]

§29-3-9. Powers, duties and authority of State Fire Commission and State Fire Marshal.

1 [Repealed]

§29-3-10. State fire marshal's office transferred to state Fire Commission; powers and duties of state Insurance Commissioner with respect to fire marshal terminated; operation of commission prior to adoption of code.

1 [Repealed]

§29-3-11. Appointment of State Fire Marshal; term of office; removal; salary; qualifications; responsibilities; employees; equipment.

1 [Repealed]

§29-3-12. Powers and duties of State Fire Marshal.

1 [Repealed]

§29-3-12a. Responsibilities of insurance companies in fire loss investigation.

1 [Repealed]

§29-3-12b. Fees.

1 [Repealed]

§29-3-13. Annual reports.

1 [Repealed]

§29-3-14. Maintenance of fire hazard; order for repair or demolition; order to contain notice to comply and right to appeal.

1 [Repealed]

§29-3-15. Service of repair or demolition order.

1 [Repealed]

§29-3-16. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.

1 [Repealed]

§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units, schools, and daycare facilities; penalty.

1 [Repealed]

§29-3-16b. Use of live trees in public buildings; exceptions.

1 [Repealed]

§29-3-16c. Safety standards for bed and breakfast establishments; findings.

1 [Repealed]

§29-3-16d. Performance of installation of propane gas systems.

1 [Repealed]

§29-3-17. Additional remedies to abate, etc., fire hazards.

1 [Repealed]

§29-3-18. Appellate procedure generally.

1 [Repealed]

§29-3-19. Establishment of demonstration buildings and equipment for educational instruction in fire prevention and protection; payment therefor.

1 [Repealed]

§29-3-21. False alarm of fire; penalties.

1 [Repealed]

§29-3-22. Tax on insurance companies.

1 [Repealed]

§29-3-27. Penalties.

1 [Repealed]

§29-3-28. Transfer of certain state employees; perpetuation of rules, regulations and orders.

1 [Repealed]

§29-3-29. Construction.

1 [Repealed]

§29-3-30. Severability.

1 [Repealed]

§29-3-32. Awarding service weapon upon retirement of fire marshal or service weapon.

1 [Repealed]

ARTICLE 31. STATE RESILIENCY AND FLOOD PROTECTION PLAN ACT.

§29-31-2. State Resiliency Office

1 (a) It is determined that a state authority is required to
2 provide a coordinated effort for emergency and disaster
3 planning, response, recovery, and resiliency between
4 government agencies, first responders, and all other entities
5 to reduce the loss of life and property, lessen the impact of
6 future disasters, respond quickly to save lives, protect
7 property and the environment, meet basic human needs, and
8 provide economic growth and resilience in the aftermath of
9 an incident. Therefore, the State Resiliency Office is hereby
10 created. The office shall be organized within the Office of
11 the Governor. The office will serve as the recipient of
12 disaster recovery and resiliency funds, excluding federal
13 Stafford Act funds, and the coordinating agency of recovery
14 and resiliency efforts, including matching funds for other
15 disaster recovery programs, excluding those funds and
16 efforts under the direct control of the State Resiliency
17 Officer pursuant to §15-5-4b and §15-5-24 of this code for
18 a particular event.

19 (b)(1) The State Resiliency Office Board is also
20 established and shall consist of the following members: the
21 Secretary of the Department of Commerce or his or her
22 designee; the Director of the Division of Natural Resources
23 or his or her designee; the Secretary of the Department of
24 Environmental Protection or his or her designee; the
25 Executive Director of the State Conservation Agency or his
26 or her designee; the President of the West Virginia
27 Emergency Management Council or his or her designee; the
28 Secretary of the Department of Homeland Security or his or
29 her designee; the Secretary of Transportation or his or her

30 designee; the Adjutant General of the West Virginia
31 National Guard or his or her designee; the Director of the
32 Division of Emergency Management within the Department
33 of Homeland Security or his or her designee; two nonvoting
34 members of the West Virginia Senate, to be appointed by
35 the President of the Senate; and two nonvoting members of
36 the West Virginia House of Delegates, to be appointed by
37 the Speaker of the House of Delegates.

38 (2) A member of the board holds office so long as he or
39 she retains the office or position by virtue of which he or
40 she is serving on the board. A majority of the board is a
41 quorum and the concurrence of a board in any matter within
42 their duties is required for its determination. The members
43 of the board may receive no compensation for their services
44 on the committee, but are entitled to reimbursement of
45 expenses, including traveling expenses necessarily incurred
46 in the discharge of their duties on the board.

47 (3) The board shall:

48 (A) Provide for the keeping of a full and accurate record
49 of all proceedings and of all resolutions, rules, and orders
50 issued or adopted and of its other official actions;

51 (B) Shall adopt a seal, which shall be judicially noticed;

52 (C) Provide for an annual audit of the accounts of
53 receipts and disbursements of the State Resiliency Office;
54 and

55 (D) Perform those acts necessary for the execution of its
56 functions under this article.

57 (c)(1) The State Resiliency Officer shall be the chair of
58 the State Resiliency Office Board, and shall be appointed by
59 the Governor with the advice and consent of the Senate. In
60 the absence of the chair, any member designated by the
61 members present may act as chair.

62 (2) The State Resiliency Officer shall be vested with the
63 authority and duties prescribed to the office within this
64 article.

65 (3) The State Resiliency Officer shall be a person who
66 has:

67 (A) At least five years' managerial or strategic planning
68 experience in matters relating to flood control and hazard
69 mitigation or, alternatively, in disaster recovery, emergency
70 management, or emergency response;

71 (B) At least a level IS-800 NIMS certification:
72 *Provided*, That if the State Resiliency Officer does not have
73 a level IS-800 NIMS certification when appointed, he or she
74 shall become so certified within one year following
75 appointment; and

76 (C) Be thoroughly knowledgeable in matters relating to
77 flood control and hazard mitigation, or alternatively, in
78 matters relating to disaster recovery, emergency
79 management, and emergency response.

80 (4) The State Resiliency Officer shall employ a deputy
81 who shall assist the State Resiliency Officer in carrying out
82 the duties of the office. The State Resiliency Office Board
83 shall meet and submit a list of no more than five nor less
84 than two of the most qualified persons to the Governor
85 within 90 days of the occurrence of a vacancy in this deputy
86 position. This deputy shall be appointed by the Governor
87 with the advice and consent of the Senate. Applicants for
88 the deputy position shall at a minimum:

89 (A) Have at least three years' managerial or strategic
90 planning experience in matters relating to flood control and
91 hazard mitigation or, alternatively, in disaster recovery,
92 emergency management, or emergency response;

93 (B) Have at least a level E/L 950 NIMS certification:
94 *Provided*, That if the deputy State Resiliency Officer does
95 not have a level E/L 950 NIMS certification when

96 appointed, he or she shall become so certified within one
97 year following appointment; and

98 (C) Be thoroughly knowledgeable in matters relating to
99 flood control and hazard mitigation, or alternatively, in
100 matters relating to disaster recovery, emergency
101 management, and emergency response; and

102 (D) If the State Resiliency Officer has his or her primary
103 experience in flood control and hazard mitigation then his
104 or her deputy must have experience in disaster recovery,
105 emergency management, or emergency response;
106 alternatively, if the State Resiliency Officer has his or her
107 primary experience in disaster recovery, emergency
108 management, or emergency response then his or her deputy
109 must have experience in flood control and hazard
110 mitigation.

111 (d) The board shall meet no less than once each calendar
112 quarter at the time and place designated by the chair and the
113 board shall work together with the State Resiliency Officer
114 to fulfill the mission given to the State Resiliency Office to
115 coordinate efforts for emergency and disaster planning,
116 response, recovery, and resiliency between government
117 agencies, first responders and others.

118 The board will assist and advise the State Resiliency
119 Officer in developing policies to accomplish, at a minimum,
120 the following specific tasks in order to achieve these goals,
121 and will assist the State Resiliency Officer in devising plans
122 and developing procedures which will ensure that agencies
123 and political subdivisions of the state carry out these
124 following specific tasks:

125 (1) Establish mechanisms to coordinate resiliency-
126 related programs and activities among state agencies and to
127 encourage intergovernmental as well as cross-sector
128 coordination and collaboration;

129 (2) Evaluate the state's role in construction permitting
130 process and identify opportunities to expedite the permitting
131 process post-disaster and for selected types of mitigation
132 and adaptation actions;

133 (3) Conduct a review of laws and regulations to identify
134 those that create or add to risk, or interfere with the ability
135 to reduce risk or to improve resiliency;

136 (4) Conduct an inventory of relevant critical planned
137 activity by state agencies to determine their proposed
138 impact upon resiliency;

139 (5) Make recommendations regarding practical steps
140 that can be taken to improve efficiencies, and to pool and
141 leverage resources to improve resiliency;

142 (6) Identify, prioritize, and evaluate issues affecting
143 implementation of mitigation and adaptation actions,
144 including, but not limited to, the effect of loss of land in
145 context of zoning and other land use regulations, possible
146 conflicts between public hazard mitigation/adaptation
147 planning and private property interests (e.g. buy-out
148 programs, projects to increase flood storage), develop
149 guidance for cities and towns, real estate professionals,
150 property owners under existing law and regulations; and
151 develop proposals for changes in laws, policies, and
152 regulations, as needed;

153 (7) Ensure all counties and municipalities have up to
154 date Hazard Mitigation Plans and Local Comprehensive
155 Disaster Plans that are consistent with and coordinated to
156 the state's Hazard Mitigation Plans and Comprehensive
157 Disaster Plans; including, but not limited to, assisting them
158 in developing planning guidance for cities and towns to
159 complete and/or update Hazard Mitigation Plans; providing
160 technical assistance to help counties and municipalities
161 meet these standards; and provide notice to counties and
162 municipalities of funding opportunities to implement
163 projects outlined in their Hazard Mitigation Plans;

164 (8) Conduct risk assessments, including, but not limited
165 to, examining state highway corridors and associated
166 drainage systems for stormwater inundation, impacts of
167 downed trees, effects on utilities, etc.; assessment of known
168 stormwater impacts between state highways and municipal
169 drainage systems, options to eliminate or mitigate such
170 impact; a housing vulnerability assessment for structures in
171 riparian zones; and a vulnerability assessment of the state's
172 historic and cultural resources;

173 (9) Establish working groups that will conduct
174 assessments for varied sectors of the economy, such as
175 small business, ports and river traffic, agriculture,
176 manufacturing, and tourism; these assessments should
177 address vulnerabilities and economic impacts, options to
178 mitigate impacts, options to improve preparedness,
179 response and recovery, and economic opportunities
180 associated with design, engineering, technological and other
181 skills and capabilities that can improve resilience;

182 (10) Establish emergency permitting procedures to
183 expedite issuance of state permits following disasters, and
184 develop guidance (model procedures) for political
185 subdivisions to follow; and

186 (11) Establish a model long-term recovery plan that
187 would be activated after catastrophic events.

188 All decisions of the board shall be decided by a majority
189 vote of the members.

190 (e) The State Resiliency Office shall provide adequate
191 staff from that office to ensure the meetings of the board are
192 properly noticed, meetings of the board are facilitated,
193 board meeting minutes are taken, records and
194 correspondence kept and that reports of the board are
195 produced in a timely manner.

196 (f) Notwithstanding any other provisions of this code:

197 (1) The meetings of the board are not subject to the
198 provisions of §6-9A-1 *et seq.* of this code.

199 (2) The following are exempt from public disclosure
200 under the provisions of chapter 29B of this code:

201 (A) All deliberations of the board;

202 (B) The materials, in any medium, including hard copy
203 and electronic, placed in the custody of the board as a result
204 of any of its duties; and

205 (C) All records of the board, in the possession of the
206 board, and generated by the board, due to their falling under
207 several exceptions to public disclosure including, but not
208 limited to, that for security or disaster recovery plans and
209 risk assessments.

§29-31-3. Authority of State Resiliency Office and State Resiliency Officer.

1 The State Resiliency Office will coordinate the state's
2 disaster response mission and the State Resiliency Officer
3 serve as the primary representative of the Governor. The
4 State Resiliency Officer shall, upon the order and direction
5 of the Governor, act on behalf of the Governor in the event
6 of the proclamation of the existence of a state of emergency
7 or state of preparedness under the provisions of §15-5-6 of
8 this code. The State Resiliency Officer will assist and advise
9 the Governor on all disaster response issues and serve as a
10 liaison between the Governor's office, and all other parties,
11 whether state, federal, public, or private to further the
12 purposes of this article. The State Resiliency Officer will:

13 (1) Serve as coordinator of all economic and community
14 resiliency planning and implementation efforts, including,
15 but not limited to, flood protection programs and activities
16 in the state;

17 (2) Coordinate an annual review of the state flood
18 protection plan and update the plan no less than biannually;

19 (3) Recommend legislation to reduce or mitigate flood
20 damage;

21 (4) Report to the Joint Legislative Committee on
22 Flooding at least quarterly;

23 (5) Catalog, maintain, and monitor a listing of current
24 and proposed capital expenditures to reduce or mitigate
25 flood damage and other hazards, and other useful and
26 desirable resiliency efforts;

27 (6) Coordinate planning of flood projects with federal
28 agencies;

29 (7) Improve professional management of flood plains;

30 (8) Provide education and outreach on flooding issues
31 to the citizens of this state;

32 (9) Establish a single website integrating all agency
33 flood information;

34 (10) Monitor federal funds and initiatives that become
35 available for disaster recovery and economic and
36 community resiliency or other flood or hazard mitigation
37 and to direct expenditure on behalf of the Governor;

38 (11) Pursue additional funds and resources to assist not
39 only with long-term recovery efforts but also long-term
40 community and statewide resiliency efforts;

41 (12) Coordinate, integrate, and expand planning efforts
42 in the state for hazard mitigation, long-term disaster
43 recovery, and economic diversification;

44 (13) Coordinate long-term disaster recovery efforts in
45 response to disasters as they occur;

46 (14) Establish and facilitate regular communication
47 between federal, state, local, and private sector agencies and
48 organizations to further economic and disaster resilience;

49 (15) Receive resources, monetary or otherwise, from
50 any other governmental entity and disburse those resources
51 to effectuate the purposes of this article;

52 (16) Execute cooperative agreements, where
53 appropriate, between the State Resiliency Office and the
54 federal and/or state governments;

55 (17) Contract, where appropriate, on behalf of the State
56 Resiliency Office, with the federal government, its
57 instrumentalities and agencies, any state, territory or the
58 District of Columbia, and its agencies and instrumentalities,
59 municipalities, foreign governments, public bodies, private
60 corporations, partnerships, associations, and individuals;

61 (18) Use funds administered by the State Resiliency
62 Office for the maintenance, construction, or reconstruction
63 of capital repair and replacement items as necessary to
64 effectuate the purposes of this article;

65 (19) Accept and use funds from the federal government,
66 its instrumentalities and agencies, any state, territory or the
67 District of Columbia, and its agencies and instrumentalities,
68 municipalities, foreign governments, public bodies, private
69 corporations, partnerships, associations, and individuals for
70 the purposes of disaster recovery, hazard mitigation, flood
71 mitigation, flood prevention, and disaster response
72 programs;

73 (20) Hire necessary employees at an appropriate salary
74 equivalent to a competitive wage rate;

75 (21) Enroll appropriate employees in PERS, PEIA, and
76 workers' compensation and unemployment programs, or
77 their equivalents: *Provided*, That the State Resiliency
78 Office, through the receipt of federal and/or state funds,
79 pays the required employer contributions;

80 (22) Develop a human resources division that will
81 administer and manage its employees and receive state

82 matching funds as necessary to ensure maximum federal
83 funds are secured;

84 (23) Have the ability to secure all other bonding,
85 insurance or other liability protections necessary for its
86 employees to fulfill their duties and responsibilities;

87 (24) Have the ability to draw upon other departments,
88 divisions, agencies, and all other subdivisions of the state
89 for research and input in fulfilling the requirements of this
90 article, and its requests are to have priority over other such
91 requests;

92 (25) Participate in the interdepartmental transfer of
93 permanent state employees, as if he were a department
94 secretary, under the provisions of §5F-2-7 *et seq.* of this
95 code.

96 (26) Notwithstanding any other provision of this code to
97 the contrary, acquire legal services that are necessary,
98 including representation of the board, its employees and
99 officers before any court or administrative body from the
100 office of the Attorney General, who shall provide such legal
101 assistance and representation, and

102 (27) Take all other actions necessary and proper to
103 effectuate the purposes of this article.

104 The office shall have any other additional authority,
105 duties, and responsibilities as prescribed by the Governor to
106 effectuate the purposes of this article. Due to the at-will
107 employment relationship with the office, its employees may
108 not avail themselves of the state grievance procedure as set
109 forth in §6C-2-1 *et seq.* of this code.

**§29-31-4. Reporting to the Joint Legislative Committee on
Flooding.**

1 The State Resiliency Officer shall report, at a minimum
2 of quarterly, to the Joint Legislative Committee on
3 Flooding, created pursuant to §4-15-1 *et seq.* of this code,

4 in sufficient detail for the committee to be aware of the
5 activities of the office to assure progress toward reducing
6 and mitigating flood damage within this state while
7 respecting and complying with the Takings Clause of the
8 United States Constitution, the West Virginia Constitution,
9 and related precedential court opinions, and to develop
10 legislative recommendations and shall submit an annual
11 report to the committee by December 31 of each year, along
12 with any recommended legislation, budget requests and a
13 summary of the activities of the office for the previous year.

§29-31-5. Employees.

1 (a) The State Resiliency Officer shall have the power to
2 hire, administer, and manage employees necessary to fulfill
3 its responsibilities.

4 (1) All employees will be exempt from both the
5 classified services category and the classified-exempt
6 services category as set forth in §29-6-4 of this code.

7 (2) Employee positions are contingent upon the receipt
8 of the necessary federal and/or state funds.

9 (3) Each employee hired shall be deemed an at-will
10 employee who may be discharged or released from his or
11 her respective position without cause or reason.

12 (4) Employees may participate in the PEIA, PERS, and
13 workers' compensation and unemployment compensation
14 programs, or their equivalents. Public safety-related
15 positions will continue to require dual status membership as
16 outlined in §15-1B-26 of this code.

17 (5) All employees and officers of the State Resiliency
18 Office who are entrusted with funds or property shall
19 execute surety bonds.

20 (b) The State Resiliency Officer will set appropriate
21 salary rates for employees equivalent to a competitive wage
22 rate necessary to support a specific mission.

CHAPTER 33. INSURANCE.**ARTICLE 2. INSURANCE COMMISSIONER.****§33-2-23. Creation of the State Office of the National Flood Insurance Program; responsibilities.**

1 (a) The Legislature, finding that the National Flood
2 Insurance Program is a voluntary federal program under
3 which federal flood insurance is made available to
4 participating communities is of vital importance to the
5 citizens of West Virginia, does hereby create the State
6 Office of the National Flood Insurance Program, to be
7 housed in the office of the Insurance Commissioner of West
8 Virginia, and which office shall administer this program.

9 (b) The State Office of the National Flood Insurance
10 Program shall have a coordinator who shall issue such
11 regulations, guidance, and instructions as necessary to
12 effectively administer the program. The coordinator shall
13 conduct trainings and will adopt and enforce adequate land
14 use and development criteria that are consistent with the
15 minimum standards established by the National Flood
16 Insurance Program and shall report to the Insurance
17 Commissioner.

18 (c) Any state-owned property that is located in a
19 nonparticipating local community will be governed by the
20 rules promulgated by the Insurance Commissioner and filed
21 in the Code of State Rules.

22 (d) The coordinator, in consultation with the Insurance
23 Commissioner, and with the assistance of floodplain
24 managers around the state, shall develop and publish a
25 strategic plan to establish shared goals, define a path to meet
26 those goals, and shall invite other governmental units to
27 adopt these goals and objectives. The strategic plan shall be
28 initially presented by the Coordinator to the State Resiliency
29 Officer and to the State Resiliency Office Board who shall
30 review and approve the strategic plan, and that plan shall be
31 so presented and approved no less than biannually

32 thereafter. The strategic plan shall be made available to the
33 public.

34 (e) The coordinator shall establish and enforce flood
35 plain management regulations for any state property in
36 special hazard areas which, at a minimum, satisfy the
37 criteria set forth in 44 CFR §§ 60.3, 60.4, and 60.5 (2019).

38 (f) Notwithstanding any other provision of this code to
39 the contrary, the coordinator shall cooperate with the State
40 Resiliency Office to the fullest extent practicable to assist
41 that office in fulfilling its duties.



CHAPTER 159

(S. B. 610 - By Senators Weld, Palumbo, Trump and Woelfel)

[Passed March 6, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §29-22B-327 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-16-3 and §11-16-8 of said code; to amend and reenact §16A-6-3 of said code; to amend and reenact §29-22B-503, §29-22B-504, and §29-22B-512 of said code; to amend and reenact §60-1-5 of said code; to amend and reenact §60-3A-8 of said code; to amend and reenact §60-7-4 and §60-7-5 of said code; and to amend and reenact §60-8-16 and §60-8-17 of said code, all relating to removing resident manager requirements; adding a manager requirement for West Virginia Alcohol Beverage Control Administration applicants and licensees; removing residency requirements for granting permits under the Medical Cannabis Act; and removing residency and United States citizenship requirements for the West Virginia Lottery.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

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) "Manager" means an individual who is the
126 applicant's or licensee's on-premises employee, member,
127 partner, shareholder, director, or officer who meets the
128 licensure requirements of §11-16-1 *et seq.* of this code and
129 rules promulgated thereunder who actively manages,
130 conducts, and carries on the day-to-day operations of the
131 applicant or licensee with full and apparent authority or
132 actual authority to act on behalf of the applicant or licensee.
133 Such duties include but are not limited to: Coordinating
134 staffing; reviewing and approving payroll; ordering and
135 paying for inventory, such as nonintoxicating beer, wine,
136 and liquor, as applicable; and managing security staff,
137 security systems, video and other security equipment; and
138 any further acts or actions involved in managing the affairs
139 of the business, on behalf of owners, partners, members,
140 shareholders, officers, or directors.

141 (14) “Nonintoxicating beer” means all natural cereal
142 malt beverages or products of the brewing industry
143 commonly referred to as beer, lager beer, ale and all other
144 mixtures and preparations produced by the brewing
145 industry, including malt coolers and nonintoxicating craft
146 beers with no caffeine infusion or any additives masking or
147 altering the alcohol effect containing at least one half of one
148 percent alcohol by volume, but not more than 11.9 percent
149 of alcohol by weight, or 15 percent alcohol by volume,
150 whichever is greater. The word “liquor” as used in chapter
151 60 of this code does not include or embrace nonintoxicating
152 beer nor any of the beverages, products, mixtures, or
153 preparations included within this definition.

154 (15) “Nonintoxicating beer floor plan extension” means
155 a temporary one-day extension of an existing Class A
156 licensee’s floor plan to a contiguous, adjoining and bounded
157 area, such as a parking lot or outdoor area, which shall for
158 the temporary period encompass the licensee’s licensed
159 premises; further the license shall be endorsed or approved
160 by the county or municipality where the license is located;
161 the license shall be in good standing with the commissioner,
162 and further such temporary event shall cease on or before
163 midnight of the approved temporary one-day event.

164 (16) “Nonintoxicating beer sampling event” means an
165 event approved by the commissioner for a Class A retail
166 licensee to hold a nonintoxicating beer sampling authorized
167 pursuant to §11-16-11a of this code.

168 (17) “Nonintoxicating beer sampling day” means any
169 days and hours of the week where Class A retail licensees
170 may sell nonintoxicating beer pursuant to §11-16-11a and
171 §11-16-18(a)(1) of this code, and is approved, in writing, by
172 the commissioner to conduct a nonintoxicating beer
173 sampling event.

174 (18) “Nonintoxicating craft beer” means any beverage
175 obtained by the natural fermentation of barley, malt, hops,
176 or any other similar product or substitute and containing not

177 less than one half of one percent by volume and not more
178 than 15 percent alcohol by volume or 11.9 percent alcohol
179 by weight with no caffeine infusion or any additives
180 masking or altering the alcohol effect.

181 (19) “Original container” means the container used by a
182 resident brewer or brewer at the place of manufacturing,
183 bottling, or otherwise producing nonintoxicating beer or
184 nonintoxicating craft beer for sale at wholesale.

185 (20) “Person” means and includes an individual, firm,
186 partnership, limited partnership, limited liability company,
187 association, or corporation.

188 (21) “Private club” means a license issued pursuant to
189 §60-7-1 *et seq.* of this code.

190 (22) “Resident brewer” means any brewer or
191 manufacturer of nonintoxicating beer or nonintoxicating
192 craft beer whose principal place of business and
193 manufacture is located in the State of West Virginia and
194 which does not brew or manufacture more than 25,000
195 barrels of nonintoxicating beer or nonintoxicating craft beer
196 annually, and does not self-distribute more than 10,000
197 barrels thereof in the State of West Virginia annually.

198 (23) “Retailer” means any person selling, serving, or
199 otherwise dispensing nonintoxicating beer and all products
200 regulated by this article, including, but not limited to, malt
201 coolers at his or her established and licensed place of
202 business.

203 (24) “Tax Commissioner” means the Tax
204 Commissioner of the State of West Virginia or the
205 commissioner’s designee.

**§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, and that the applicant is 21 years
7 of age. If the applicant is a firm, association, partnership,
8 limited partnership, limited liability company, or
9 corporation, the application shall include the residence of
10 the members or officers. If a person, firm, partnership,
11 limited partnership, limited liability company, association,
12 corporation, or trust applies for a license as a distributor, the
13 person, or in the case of a firm, partnership, limited
14 partnership, limited liability company, association or trust,
15 the members, officers, trustees or other persons in active
16 control of the activities of the limited liability company,
17 association or trust relating to the license, shall include the
18 residency for these persons on the application. All
19 applicants and licensees must include a manager on the
20 applicant's license application, or a licensee's renewal
21 application who must meet all other requirements of
22 licensure, including, but not limited to, United States
23 citizenship or naturalization, passing a background
24 investigation, being at least 21 years of age, being a suitable
25 person, being of good morals and character, and other
26 requirements, all as set forth in this article and the rules,
27 promulgated thereunder, all in the interest of protecting
28 public health and safety and being a suitable applicant or
29 licensee. In order to maintain licensure, a licensee shall
30 notify the commissioner immediately of a change in
31 managers. If the applicant is a trust or has a trust as an
32 owner, the trustees or other persons in active control of the
33 activities of the trust relating to the license shall provide a
34 certification of trust as described in §44D-10-1013 of this
35 code. This certification of trust shall include the excerpts
36 described in §44D-10-1013(e), of this code and shall further
37 state, under oath, the names, addresses, Social Security
38 numbers and birth dates of the beneficiaries of the trust and
39 certify that the trustee and beneficiaries are 21 years of age
40 or older. If a beneficiary is not 21 years of age, the

41 certification of trust must state that the beneficiary's interest
42 in the trust is represented by a trustee, parent, or legal
43 guardian who is 21 years of age and who will direct all
44 actions on behalf of the beneficiary related to the trust with
45 respect to the distributor until the beneficiary is 21 years of
46 age. Any beneficiary who is not 21 years of age or older
47 shall have his or her trustee, parent, or legal guardian
48 include in the certification of trust and state under oath his
49 or her name, address, Social Security number, and birth
50 date;

51 (2) The place of birth of applicant, that he or she is a
52 citizen of the United States and of good moral character and,
53 if a naturalized citizen, when and where naturalized. If the
54 applicant is a corporation organized or authorized to do
55 business under the laws of the state, the application must
56 state when and where incorporated, the name and address of
57 each officer, and that each officer is a citizen of the United
58 States and a person of good moral character. If the applicant
59 is a firm, association, limited liability company, partnership,
60 limited partnership, trust, or has a trust as an owner, the
61 application shall provide the place of birth of each member
62 of the firm, association, limited liability company,
63 partnership or limited partnership and of the trustees,
64 beneficiaries, or other persons in active control of the
65 activities of the trust relating to the license and that each
66 member or trustee, beneficiary or other persons in active
67 control of the activities of the trust relating to the license is
68 a citizen of the United States, and if a naturalized citizen,
69 when and where naturalized, each of whom must qualify
70 and sign the application;

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

73 (4) The name of the owner of the building and, if the
74 owner is not the applicant, that the applicant is the actual
75 and bona fide lessee of the premises;

76 (5) That the place or building in which is proposed to do
77 business conforms to all applicable laws of health, fire, and
78 zoning regulations and is a safe and proper place or building
79 not within 300 feet of a school or church measured from
80 front door to front door, along the street or streets. This
81 requirement does not apply to a Class B license or to a place
82 occupied by a beer licensee so long as it is continuously so
83 occupied. The prohibition against locating a proposed
84 business in a place or building within 300 feet of a school
85 does not apply to a college or university that has notified the
86 commissioner, in writing, that it has no objection to the
87 location of a proposed business in a place or building within
88 300 feet of the college or university;

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

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

96 (8) That the applicant has not during five years
97 preceding the date of the application had a nonintoxicating
98 beer license revoked.

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

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

136 (d) The commissioner may refuse a license to any
137 applicant under the provisions of this article if the
138 commissioner is of the opinion:

139 (1) That the applicant or manager is not a suitable
140 person to be licensed;

141 (2) That the place to be occupied by the applicant is not
142 a suitable place or is within 300 feet of any school or church
143 measured from front door to front door along the street or
144 streets. This requirement does not apply to a Class B
145 licensee or to a place now occupied by a beer licensee so
146 long as it is continuously so occupied. The prohibition
147 against locating any such place within 300 feet of a school

148 does not apply to a college or university that has notified the
149 commissioner, in writing, that it has no objection to the
150 location of any such place within 300 feet;

151 (3) That the manager, owner, employee, or person is in
152 a contractual relationship to provide goods or services to the
153 applicant is an active employee of the commissioner; or

154 (4) That the license should not be issued for reason of
155 conduct declared to be unlawful by this article.

CHAPTER 16A. MEDICAL CANNABIS ACT.

ARTICLE 6. MEDICAL CANNABIS ORGANIZATIONS.

§16A-6-3. Granting of permit.

1 (a) The bureau may grant or deny a permit to a grower,
2 processor, or dispensary. In making a decision under this
3 subsection, the bureau shall determine that:

4 (1) The applicant will maintain effective control of and
5 prevent diversion of medical cannabis.

6 (2) The applicant will comply with all applicable laws
7 of this state.

8 (3) The applicant is ready, willing, and able to properly
9 carry on the activity for which a permit is sought.

10 (4) The applicant possesses the ability to obtain in an
11 expeditious manner sufficient land, buildings, and
12 equipment to properly grow, process, or dispense medical
13 cannabis.

14 (5) It is in the public interest to grant the permit.

15 (6) The applicant, including the financial backer or
16 principal, is of good moral character and has the financial
17 fitness necessary to operate.

18 (7) The applicant is able to implement and maintain
19 security, tracking, recordkeeping, and surveillance systems
20 relating to the acquisition, possession, growth, manufacture,
21 sale, delivery, transportation, distribution, or the dispensing
22 of medical cannabis as required by the bureau.

23 (8) The applicant satisfies any other conditions as
24 determined by the bureau.

25 (b) Nontransferability. — A permit issued under this
26 chapter shall be nontransferable.

27 (c) Privilege. — The issuance or renewal of a permit
28 shall be a revocable privilege.

29 (d) Dispensary location. — The bureau shall consider
30 the following when issuing a dispensary permit:

31 (1) Geographic location;

32 (2) Regional population;

33 (3) The number of patients suffering from serious
34 medical conditions;

35 (4) The types of serious medical conditions;

36 (5) Access to public transportation;

37 (6) Approval by local health departments;

38 (7) Whether the county has disallowed the location of a
39 grower, processor, or dispensary; and

40 (8) Any other factor the bureau deems relevant.

41 (e) Application procedure. — The bureau shall establish
42 a procedure for the fair and objective evaluation of all
43 applications for all medical cannabis organization permits.
44 The evaluations shall score each applicant numerically
45 according to standards set forth in this chapter.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-327. Resident of this state defined.

1 [Repealed.]

§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) The applicant has demonstrated the training,
7 education, business ability, and experience necessary to
8 establish, operate, and maintain the business for which the
9 license application is made;

10 (2) The applicant has secured any necessary financing
11 for the business for which the license application is made,
12 and the financing: (A) Is from a source that meets the
13 qualifications of this section; and (B) is adequate to support
14 the successful performance of the duties and responsibilities
15 of the licensee. A licensee shall request commission
16 approval of any change in financing or leasing arrangements
17 at least 30 days before the effective date of the change;

18 (3) The applicant has disclosed all financing or
19 refinancing arrangements for the purchase, lease, or other
20 acquisition of video lottery terminals and associated
21 equipment in the degree of detail requested by the Lottery
22 Commission;

23 (4) The applicant has filed with the Lottery Commission
24 a copy of any current or proposed agreement between the
25 applicant and any manufacturer for the sale, lease, or other
26 assignment to the operator of video lottery terminals, the

27 electronic computer components of the terminals, the
28 random number generators of the terminals, or the cabinets
29 in which they are housed; and

30 (5) The applicant does not hold any other license under
31 this article, §19-23-1 *et seq.* of this code, §29-22-1 *et seq.* of
32 this code, §29-22A-1 *et seq.* of this code, or §29-25-1 *et seq.*
33 of this code, except that an applicant may also be licensed
34 as a service technician. In addition, an applicant may also
35 be licensed as a limited video lottery retailer: *Provided,*
36 That a licensed operator that also is a licensed retailer may
37 operate limited video lottery terminals as a limited video
38 lottery retailer at no more than 10 locations: *Provided,*
39 *however,* That the director may authorize the operator to
40 operate limited video lottery terminals as a limited video
41 lottery retailer at more than 10 locations if the applicant
42 provides sufficient justification that such approval is
43 necessary to sustain state revenues without a detrimental
44 impact on public interest, further shows that a qualified
45 retailer is unavailable and a good faith effort to identify a
46 qualified retailer was made prior to the request, and an
47 explanation of other relevant information supporting the
48 request.

49 (b)(1) A person or a member of his or her immediate
50 family who has an ownership interest in a business entity
51 that submits an application for an operator's license may
52 not: (A) Submit an application for another operator's license
53 as an individual; (B) serve as an officer, director, member,
54 or partner of a business entity that submits an application
55 for another operator's license; or (C) have an ownership
56 interest in any other business entity that submits an
57 application for an operator's license.

58 (2) Business entities that have common owners or
59 common officers, directors, members, or partners may not
60 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 of this code, the applicant satisfies all
5 of the following qualifications:

6 (1) The applicant has disclosed to the Lottery
7 Commission the identity of each person who has control of
8 the applicant, as control is described in §29-22B-507 of this
9 code;

10 (2) The applicant holds either: (A) A valid license issued
11 under §60-7-1 *et seq.* of this code to operate a private club;
12 (B) a valid Class A license issued under §11-16-1 *et seq.* of
13 this code to operate a business where nonintoxicating beer
14 is sold for consumption on the premises; or (C) both
15 licenses;

16 (3) The applicant has demonstrated the training,
17 education, business ability, and experience necessary to
18 establish, operate and maintain the business for which the
19 license application is made;

20 (4) The applicant has secured any necessary financing
21 for the business for which the license application is made
22 and the financing: (A) Is from a source that meets the
23 qualifications of this section; and (B) is adequate to support
24 the successful performance of the duties and responsibilities
25 of the licensee;

26 (5) The applicant has disclosed all financing or
27 refinancing arrangements for placement on the applicant's
28 premises of video lottery terminals and associated
29 equipment in the degree of detail requested by the Lottery
30 Commission;

31 (6) The applicant has filed with the Lottery Commission
32 a copy of any current or proposed agreement between the
33 applicant and a licensed operator for the placement on the
34 applicant's premises of video lottery terminals;

35 (7) The applicant has filed with the Lottery Commission
36 a copy of any current or proposed agreement between the
37 applicant and a licensed operator or other person for the
38 servicing and maintenance of video lottery terminals by
39 licensed service technicians; and

40 (8) The applicant does not hold any other license under
41 this article, §19-23-1 *et seq.* of this code, or §29-22A-1 *et*
42 *seq.* of this code, or §29-25-1 *et seq.* of this code except that
43 an applicant may also be licensed as a service technician. In
44 addition, an applicant may also be licensed as an operator,
45 subject to the provisions of §29-22B-503(a)(6) of this code.

§29-22B-512. Review of continuing eligibility for license.

1 The Lottery Commission shall determine on a
2 continuing basis the eligibility of licensees to hold a license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

1 For the purposes of this chapter:

2 (1) “Alcohol” means ethyl alcohol whatever its origin
3 and shall include synthetic ethyl alcohol but not denatured
4 alcohol.

5 (2) “Alcoholic liquor” includes alcohol, beer, wine, and
6 spirits, and any liquid or solid capable of being used as a
7 beverage, but shall not include nonintoxicating beer.

8 (3) “An agency” means a drugstore, grocery store, or
9 general store designated by the commission as a retail
10 distributor of alcoholic liquor for the West Virginia Alcohol
11 Beverage Control Commission.

12 (4) “Beer” means any beverage obtained by the
13 fermentation of barley, malt, hops, or any other similar

14 product or substitute, and containing more alcohol than that
15 of nonintoxicating beer.

16 (5) "Brewery" means an establishment where beer is
17 manufactured or in any way prepared.

18 (6) "Commissioner" or "commission" means the West
19 Virginia Alcohol Beverage Control Commissioner.

20 (7) "Department" means the organization through
21 which the commission exercises powers imposed upon it by
22 this chapter.

23 (8) "Distillery" means an establishment where alcoholic
24 liquor other than wine or beer is manufactured or in any way
25 prepared.

26 (9) "Intoxicated" means a person's faculties are
27 impaired by alcohol or other substance to the point where
28 physical or mental control or both are markedly diminished.

29 (10) "Manager" means an individual who is the
30 applicant's or licensee's on-premises employee, member,
31 partner, shareholder, director, or officer who meets the
32 licensure requirements of §11-16-1 *et seq.* of this code and
33 rules promulgated thereunder who actively manages,
34 conducts, and carries on the day-to-day operations of the
35 applicant or licensee with full and apparent authority or
36 actual authority to act on behalf of the applicant or licensee.
37 Such duties include but are not limited to: coordinating
38 staffing; reviewing and approving payroll; ordering and
39 paying for inventory, such as nonintoxicating beer, wine,
40 and liquor, as applicable; and managing security staff,
41 security systems, video and other security equipment; and
42 any further acts or actions involved in managing the affairs
43 of the business, on behalf of owners, partners, members,
44 shareholders, officers, or directors.

45 (11) "Manufacture" means to distill, rectify, ferment,
46 brew, make, mix, concoct, process, blend, bottle, or fill an
47 original package with any alcoholic liquor.

48 (12) “Manufacturer” means any person engaged in the
49 manufacture of any alcoholic liquor, and among others
50 includes a distiller, a rectifier, a wine maker, and a brewer.

51 (13) “Nonintoxicating beer” means any beverage
52 obtained by the fermentation of barley, malt, hops, or
53 similar products or substitute, and containing not more
54 alcohol than that specified by §11-16-2 of this code.

55 (14) “Original package” means any closed or sealed
56 container or receptacle used for holding alcoholic liquor.

57 (15) “Person” means an individual, firm, partnership,
58 limited partnership, corporation, or voluntary association.

59 (16) “Powdered alcohol” means an alcohol
60 manufactured in a powder or crystalline form for either
61 direct use or reconstitution as an alcoholic liquor or food.
62 For purposes of this chapter, powdered alcohol excludes any
63 material intended for industrial purposes.

64 (17) “Public place” means any place, building, or
65 conveyance to which the public has, or is permitted to have
66 access, including restaurants, soda fountains, hotel dining
67 rooms, lobbies, and corridors of hotels and any highway,
68 street, lane, park, or place of public resort or amusement:
69 *Provided*, That the term “public place” shall not mean or
70 include any of the above-named places or any portion or
71 portions thereof which qualify and are licensed under the
72 provisions of this chapter to sell alcoholic liquors for
73 consumption on the premises: *Provided, however*, That the
74 term “public place” shall not mean or include any legally
75 demarcated area designated solely for the consumption of
76 beverages and freshly prepared food that directly connects
77 and adjoins any portion or portions of a premise that
78 qualifies and is licensed under the provisions of this chapter
79 to sell alcoholic liquors for consumption thereupon:
80 *Provided further*, That the term “public place” shall not
81 include a facility constructed primarily for the use of a
82 Division I, II, or III college or university that is a member

83 of the National Collegiate Athletic Association, or its
84 successor, and used as a football, basketball, baseball,
85 soccer, or other Division I, II, or III sports stadium which
86 holds a special license to sell wine pursuant to the provisions
87 of §60-8-3 of this code, in the designated areas of sale and
88 consumption of wine and other restrictions established by
89 that section and the terms of the special license issued
90 thereunder.

91 (18) “Sale” means any transfer, exchange, or barter in
92 any manner or by any means, for a consideration, and shall
93 include all sales made by a principal, proprietor, agent, or
94 employee.

95 (19) “Selling” includes solicitation or receipt of orders;
96 possession for sale; and possession with intent to sell.

97 (20) “Spirits” means any alcoholic beverage obtained by
98 distillation and mixed with potable water and other
99 substances in solution and includes brandy, rum, whiskey,
100 cordials, and gin.

101 (21) “State liquor store” means a store established and
102 operated by the commission under this chapter for the sale
103 of alcoholic liquor in the original package for consumption
104 off the premises.

105 (22) “Wine” means any alcoholic beverage obtained by
106 the fermentation of the natural content of fruits, or other
107 agricultural products, containing sugar.

108 (23) “Winery” means an establishment where wine is
109 manufactured or in any way prepared.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-8. Retail license application requirements; retail licensee qualifications.

1 (a) Prior to or simultaneously with the submission of a
2 bid for a retail license or the payment of a purchase option

3 for a Class A retail license, each applicant shall file an
4 application with the commissioner, stating under oath, the
5 following:

6 (1) If the applicant is an individual, his or her name and
7 residence address;

8 (2) If the applicant is other than an individual, the name
9 and business address of the applicant; the state of its
10 incorporation or organization; the names and residence
11 addresses of each executive officer and other principal
12 officer, partner, or member of the entity; a copy of the
13 entity's charter or other agreement under which the entity
14 operates; the names and residence addresses of any person
15 owning, directly or indirectly, at least 20 percent of the
16 outstanding stock, partnership, or other interests in the
17 applicant; and all applicants and licensees must list a
18 manager on the applicant's license application, or a
19 licensee's renewal application, and further that the manager
20 shall meet all other requirements of licensure, including, but
21 not limited to, United States citizenship or naturalization,
22 passing a background investigation, being at least 21 years
23 of age, being a suitable person, being of good morals and
24 character, and other requirements, all as set forth in the code
25 and the legislative rules, in order for the manager to be able
26 to meet and conduct any regulatory matters, including, but
27 not limited to, licensure or enforcement matters related to
28 the applicant or licensee all in the interest of protecting
29 public health and safety and being a suitable applicant or
30 licensee. In order to maintain active licensure, any change
31 by a licensee in any manager listed on an application must
32 be made immediately to the commissioner, in order to verify
33 that the new manager meets licensure requirements;

34 (3) That the applicant and manager have never been
35 convicted in this state or any other state of any felony or
36 other crime involving moral turpitude or convicted of any
37 felony in this or any other state court or any federal court
38 for a violation of any state or federal liquor law, and if the
39 applicant is other than an individual, that none of its

40 executive officers, other principal officers, partners, or
41 members, or any person owning, directly or indirectly, at
42 least 20 percent of the outstanding stock, partnership, or
43 other interests in the applicant, has been convicted; and

44 (4) That the applicant and the manager, each is a United
45 States citizen of good moral character and, if a naturalized
46 citizen, when and where naturalized; and, if a corporation
47 organized and authorized to do business under the laws of
48 this state, when and where incorporated, with the name and
49 address of each officer; that each officer is a citizen of the
50 United States and a person of good moral character; and if
51 a firm, association, partnership, or limited partnership, that
52 each member is a citizen of the United States and, if a
53 naturalized citizen, when and where naturalized, each of
54 whom must sign the application.

55 (b) An applicant and manager shall provide the
56 commissioner any additional information requested by the
57 commissioner including, but not limited to, authorization to
58 conduct a criminal background and credit records check.

59 (c) Whenever a change occurs in any information
60 provided to the commissioner, the change shall immediately
61 be reported to the commissioner in the same manner as
62 originally provided.

63 (d) The commissioner shall disqualify each bid
64 submitted by an applicant under §60-3A-10 of this code and
65 no applicant shall be issued or eligible to hold a retail license
66 under this article, if:

67 (1) The applicant has been convicted in this state of any
68 felony or other crime involving moral turpitude or convicted
69 of any felony in this or any other state court or any federal
70 court for a violation of any state or federal liquor law; or

71 (2) Any executive officer or other principal officer,
72 partner, or member of the applicant, or any person owning,
73 directly or indirectly, at least twenty percent of the

74 outstanding stock, partnership, or other interests in the
75 applicant, has been convicted in this state of any felony or
76 other crime involving moral turpitude or convicted of any
77 felony in this or any other state court or any federal court
78 for a violation of any state or federal liquor law.

79 (e) The commissioner shall not issue a retail license to
80 an applicant which does not hold a license issued pursuant
81 to federal law to sell liquor at wholesale.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§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 and residence of the applicant and list the
5 same for its manager;

6 (2) If the applicant is an unincorporated association, the
7 names and residence addresses of the members of its
8 governing board;

9 (3) If the applicant is a corporation, the names and
10 residence addresses of its officers and directors;

11 (4) The place at which the applicant will conduct its
12 operations and whether the same is owned or leased by the
13 applicant;

14 (5) The number of members of the applicant;

15 (6) A listed manager on the applicant's license
16 application, or a licensee's renewal application, and further
17 that the manager shall meet all other requirements of
18 licensure, including, but not limited to, United States
19 citizenship or naturalization, passing a background

20 investigation, being at least 21 years of age, being a suitable
21 person, being of good morals and character, being capable
22 of operating a bona fide private club of good reputation in
23 the community, and other requirements, all as set forth in
24 the code and the legislative rules, in order for the manager
25 to be able to meet and conduct any regulatory matters,
26 including, but not limited to: Licensure or enforcement
27 matters related to the applicant or licensee all in the interest
28 of protecting public health and safety and being a suitable
29 applicant or licensee. In order to maintain active licensure,
30 any change by a licensee in any manager listed on an
31 application shall be made immediately to the commissioner,
32 in order to verify that the new manager meets licensure
33 requirements;

34 (7) The name or names of any national organizations
35 with which the applicant is affiliated and the nature of the
36 affiliation;

37 (8) The size and nature of the dining and kitchen
38 facilities operated by applicant;

39 (9) Accurate and complete ownership information;

40 (10) An attestation that the information in the
41 application is true and accurate; and

42 (11) Such other information as the commissioner may
43 reasonably require of the applicant and manager which shall
44 include, but not be limited to, the criminal records, if any,
45 of each member of the applicant's governing board or its
46 officers and directors who have been convicted of a felony
47 or a crime involving moral turpitude.

48 (b) The application shall be verified by the manager,
49 each member of the governing board of the applicant if an
50 unincorporated association, or, if the applicant is a
51 corporation, by each of its officers and all members of its
52 board of directors. The application shall be accompanied by
53 the license fee hereinafter prescribed and by a bond of the

54 applicant in the penal sum of \$5,000 with a corporate surety
55 authorized to transact business in the state of West Virginia,
56 payable to the State of West Virginia, which bond shall be
57 conditioned on the payment of all fees herein prescribed and
58 on the faithful performance of and compliance with the
59 provisions of this article.

60 (c) Under no circumstance may any college fraternity or
61 sorority be issued a license to operate a private club.

62 (d) No license to operate a private club may be issued to
63 applicants who discriminate against any person or group of
64 persons because of race or color of the person or group of
65 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 the 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 appears that the
13 applicant is a bona fide private club of good reputation in
14 the community in which it shall operate and that the
15 applicant and the manager in the application or a licensee
16 and manager in the renewal application, subject to
17 investigation set forth in §60-7-4 of this code, have made no
18 false statement, no material misrepresentations, no hidden
19 ownership, or persons with an undisclosed pecuniary
20 interest, and no omissions or failures to disclose in the

21 application, as determined by the commissioner shall issue
22 a license authorizing the applicant to sell alcoholic liquors
23 as provided in §60-7-3 of this code, and otherwise shall
24 refuse to issue the license, except that in the case of an
25 application by a corporation or association to operate a
26 private club in connection with:

27 (1) A state park, the Director of the Department of
28 Natural Resources shall grant his or her approval before the
29 license can be issued; or

30 (2) A county or municipal park, or an airport, the
31 authority governing the park or airport shall grant its
32 approval before the license can be issued.

33 A license may not be issued for a private club in any
34 state park unless a dining facility comparable to the dining
35 facility for the proposed private club will be available to
36 serve meals to the general public. A license may not be
37 issued for a private club in any county or municipal park, or
38 an airport, unless a dining facility comparable to the dining
39 facility for the proposed private club will be available to
40 serve meals to the general public.

41 (b) Upon refusal to issue such license the commissioner
42 shall make and enter an order denying the application,
43 which denial and refusal shall be final unless a hearing is
44 requested in accordance with the provisions of §60-7-13 of
45 this code. When the refusal or denial becomes final the
46 commissioner shall forthwith refund to the applicant his or
47 her fees and bond accompanying the application.

48 (c) The license shall be of such form and design as the
49 commissioner may prescribe by reasonable rule or
50 regulation and shall authorize the licensee to sell alcoholic
51 liquors at only one location.

52 (d) The license shall expire on June 30 next following
53 the date of issue and may be renewed upon the same
54 showing as required for the issuance of the initial license,

55 together with the payment of fees and filing of the bond as
56 required by this article.

57 (e) A license issued under the provisions of this article
58 may not be transferable.

ARTICLE 8. SALE OF WINES.

§60-8-16. Application for license.

1 (a) Any person desiring a license under this article shall
2 file a written application for a license with the commissioner
3 and in the application shall state under oath:

4 (1) The name of the applicant, including his or her trade
5 name if any, his or her residence address and the length of
6 his or her residence;

7 (2) The address of the place of business for which the
8 license is desired, or other description that definitely locates
9 it; and that the place of business conforms to all health and
10 fire laws and regulations applicable thereto;

11 (3) The name of the owner of the premises upon which
12 the business is to be conducted and, if the owner is not the
13 applicant, that the applicant is the bona fide lessee of the
14 business;

15 (4) If the application is for a retailer's license, that the
16 applicant is the proprietor or owner of a bona fide grocery
17 store, private wine bed and breakfast, private wine
18 restaurant, private wine spa, or wine specialty shop;

19 (5) That the applicant intends to carry on the business
20 authorized by the license for himself or herself or under his
21 or her immediate supervision or direction;

22 (6) That the applicant is a citizen of the United States;

23 (7) That the applicant shall include a manager on the
24 applicant's license application, or a licensee's renewal
25 application, and further that the manager shall meet all other

26 requirements of an applicant for licensure set forth in this
27 section, including, but not limited to, United States
28 citizenship or naturalization, passing a background
29 investigation, being at least 21 years of age, being a suitable
30 person, being of good morals and character, and other
31 requirements, all as set forth in the code and the legislative
32 rules, in order for the manager to be able to meet and
33 conduct any regulatory matters, including, but not limited
34 to: Licensure or enforcement matters related to the applicant
35 or licensee all in the interest of protecting public health and
36 safety and being a suitable applicant or licensee. In order to
37 maintain active licensure, any change by a licensee in any
38 manager listed on an application must be made immediately
39 to the commissioner, in order to verify that the new manager
40 meets licensure requirements;

41 (8) That the applicant is not less than 21 years of age;

42 (9) That the applicant has not been convicted of a felony
43 or other crime involving moral turpitude within the three
44 years next preceding the filing of the application; and that
45 he or she has not, within the two years next preceding the
46 filing of the application, been convicted of violating the
47 liquor laws of any state or of the United States;

48 (10) That the applicant has not during the five years next
49 preceding the date of said application had any license
50 revoked under this chapter or under the liquor laws of any
51 other state;

52 (11) If the applicant is a firm, association, partnership,
53 limited partnership, limited liability company, or
54 corporation, the application shall state the matters required
55 in subdivisions (6), (8), (9), and (10) of this subsection, with
56 respect to each of the members and the manager thereof, and
57 each of said members and the manager must meet all the
58 requirements in said subdivisions;

59 (12) If the applicant is a corporation, organized or
60 authorized to do business in this state, the application shall

61 state the matters required in subdivisions (6), (8), (9), and
62 (10) of this subsection, with respect to the manager and each
63 of the officers and directors thereof, and any stockholder
64 owning 20 percent or more of the stock of the corporation
65 and any other persons who conduct and manage the licensed
66 premises for the corporation. Each of said individuals must
67 meet all the requirements provided in those subdivisions
68 except that the requirements as to citizenship may not apply
69 to the officers, directors, and stockholders of a corporation
70 applying for a retailer's license; and

71 (13) If the applicant is a trust or has a trust as an owner,
72 the trustees or other persons in active control of the activities
73 of the trust relating to the license shall provide a certification
74 of trust as described in §44D-10-1013 of this code. This
75 certification of trust shall include the excerpts described in
76 §44D-10-1013(e) of this code and shall further state, under
77 oath, the names, addresses, Social Security numbers, and
78 birth dates of the beneficiaries of the trust and certify that
79 the trustee and beneficiaries are 21 years of age or older. If
80 a beneficiary is not 21 years of age, the certification of trust
81 must state that the beneficiary's interest in the trust is
82 represented by a trustee, parent, or legal guardian who is 21
83 years of age and who will direct all actions on behalf of the
84 beneficiary related to the trust with respect to the distributor
85 until the beneficiary is 21 years of age. Any beneficiary who
86 is not 21 years of age or older shall have his or her trustee,
87 parent, or legal guardian include in the certification of trust
88 and state under oath his or her name, address, Social
89 Security number, and birth date.

90 (14) Any other information that the commissioner may
91 reasonably require of the applicant, or licensee, or the
92 applicant or licensee's manager.

93 The foregoing statements required in an application are
94 mandatory prerequisites for the issuance of a license.

95 The application must be verified by the owner, manager,
96 or in the case of a firm, partnership, limited partnership,

97 limited liability company, association, or trust, the
98 members, officers, trustees, or other persons in active
99 control of the activities of the limited liability company,
100 association, or trust relating to the license. The application
101 of a corporation applying for a retailer's license need be
102 verified only by its president or vice president.

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

§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 applicant or manager. For the purposes
6 of conducting such investigation, the commissioner may
7 withhold the granting or refusal to grant a license for a
8 period not to exceed 30 days or until the applicant has
9 completed the conditions set forth in §60-8-16 of this code.
10 If it appears that the applicant, and the manager in the
11 application or a licensee and manager in the renewal
12 application, subject to investigation set forth in this section,
13 is a suitable person, is located at a suitable premise, there is
14 no false statement, no material misrepresentations, no
15 hidden ownership, no persons with an undisclosed
16 pecuniary interest contained in the application, and that the
17 issuance of the license would not be in conflict with any of
18 the provisions of this chapter, the commissioner shall issue

19 the license. Otherwise the commissioner shall refuse to
20 issue the license.

21 (b) The commissioner shall refuse the license of any
22 applicant if he or she finds that any such applicant or
23 manager is not a suitable person, that the place of business
24 of the applicant is not a suitable place, or that the applicant
25 has not complied with the provisions of this chapter. Upon
26 refusal to issue the license, the commissioner shall enter an
27 order refusing such application. The refusal is final unless a
28 hearing is requested in accordance with the provisions of
29 §60-8-18 of this code. When the refusal becomes final the
30 commissioner shall immediately refund to the applicant his
31 or her fees and bond accompanying the application.

32 (c) The license expires on June 30 next following the
33 date it was issued and may be renewed upon the same
34 showing as required for the issuance of the initial license,
35 together with the payment of fee and filing of any bond
36 required by this article.

37 (d) A licensee that fails to complete a renewal
38 application and make payment of its annual license fee in
39 renewing its license on or before June 30 of any subsequent
40 year, after initial application, shall be charged an additional
41 \$150 reactivation fee. The licensee must pay the applicable
42 full-year annual license fee and the reactivation fee prior to
43 the processing of any renewal application. A licensee who
44 continues to operate upon the expiration of its license is
45 subject to all fines, penalties, and sanctions available in §11-
46 16-23 of this code, as determined by the commissioner.

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



CHAPTER 160

(Com. Sub. for S. B. 657 - By Senators Rucker, Blair, Smith, Trump, Cline, Sypolt and Roberts)

[Passed February 25, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 5, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-1-9, relating to authorizing the Department of Commerce to assist qualifying tourism development projects and tourism development expansion projects in the creation of tourism development districts by approved companies; prohibiting certain municipalities from restricting tourism development projects and tourism development expansion projects in a tourism development district and from imposing or enforcing ordinances concerning such districts and tourism development projects and tourism development expansion projects therein; limiting certain rights of a municipality's home rule powers; establishing requirements of application for and designation of tourism development districts; providing that decision of development office regarding establishment of tourist development district is final; restricting number of such districts; providing for termination of tourism development districts; exempting districts and projects within them from certain municipal regulation and requirements; establishing that projects within tourism development districts are required to pay various taxes and fees and comply with certain state laws, State Building Code, and inspection standards of development office; allowing Department of Transportation to participate in tourism development projects; providing that failure to continue the Tourism Development Act does not affect the provisions of this section and created tourism development districts;

requiring rulemaking and promulgation of emergency rules; and providing severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-9. Authority to assist qualifying tourism development projects and tourism development expansion projects; legislative findings.

1 (a) The Department of Commerce may assist qualifying
2 tourism development projects and tourism development
3 expansion projects by approved companies pursuant to §5B-
4 2E-1 *et seq.* of this code which are located in, or partially in,
5 municipalities with a population of 2,000 or less, effective
6 as of the effective date of the most recent census, as
7 specified in §8-1-4 of this code relating to the creation of
8 tourism development districts.

9 (b) The Legislature finds and declares that the general
10 welfare and material well-being of the citizens of the state
11 depend, in large measure, upon the development and
12 expansion of tourism in the state, and that, beyond the
13 creation and expansion of tourism development projects and
14 tourism development expansion projects, it is in the best
15 interest of the state to induce and assist in tourism
16 development in small municipalities through the creation of
17 tourism development districts, in order to advance the
18 public purposes of relieving unemployment by preserving
19 and creating jobs, and preserving and creating new and
20 greater sources of revenues for the support of public
21 services provided by the state and local government; and
22 that tourism development districts are of paramount
23 importance to the state and its economy and for the state's
24 contribution to the national economy.

25 It is the intent of the Legislature to occupy the whole
26 field of the creation and regulation of tourism development
27 districts. The stated purpose of this section is to promote

28 uniform and consistent application of the act within the
29 state.

30 (c) This section prohibits:

31 (1) Certain municipalities, whether by ordinance,
32 resolution, administrative act, or otherwise, from enacting,
33 adopting, implementing, or enforcing ordinances,
34 regulations, or rules which limit, in any way, the creation of,
35 and acquisition, construction, equipping, development,
36 expansion, and operation of any tourism development
37 project or tourism development expansion project in a
38 tourism development district; and

39 (2) Certain municipalities from imposing or enforcing
40 local laws and ordinances concerning the creation or
41 regulation of any tourism development district and any
42 tourism development project or tourism development
43 expansion project therein.

44 (d) Any developer or owner of a tourism development
45 project or tourism development expansion project which has
46 been determined by the West Virginia Development Office,
47 pursuant to §5B-2E-1 *et seq.* of this code, to be an approved
48 company and which has entered into an agreement with the
49 development office pursuant to §5B-2E-6 of this code to
50 provide the approved company with a credit against the
51 West Virginia consumers sales and service tax imposed by
52 §11-15-1 *et seq.* of this code may apply to the development
53 office for designation of a tourism development district
54 encompassing the area where the tourism development
55 project or the tourism development expansion project is to
56 be acquired, constructed, equipped, developed, expanded,
57 and operated: *Provided,* That notwithstanding any provision
58 of §5B-2E-5(c)(2) of this code to the contrary, only tourism
59 development projects and tourism development expansion
60 projects with aggregate projected costs of construction,
61 reconstruction, restoration, rehabilitation, or upgrading of
62 not less than \$25 million shall be eligible for designation as
63 a tourism development district.

64 (e) Applicants for the creation of a tourism development
65 district shall demonstrate that the district, when designated,
66 will create significant economic development activity:

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

71 (2) The applicant shall own, control, or have the right of
72 use to, all real property within the proposed tourism
73 development district and shall provide evidence of such
74 ownership, control, or right of use in the application to the
75 development office.

76 (f) The proposed district shall be entirely or partially
77 within the corporate limits of a municipality which has a
78 population of 2,000 or less as of the effective date of the
79 most recent census, as specified in §8-1-4 of this code.

80 (g) All costs for the application shall be borne by the
81 applicant.

82 (h) The application submitted by the applicant to the
83 development office pursuant to §5B-2E-1 *et seq.* of this
84 code may be considered by the development office to be
85 sufficient to meet some of the requirements of this section.

86 (i) The decision of the development office to designate
87 a tourism development district shall be final.

88 (j) The total number of approved tourism development
89 districts may not exceed five. When the total number of
90 designated tourism development districts equals five, no
91 further designations may be approved by the development
92 office.

93 (k) Each tourism development district shall terminate by
94 operation of law 99 years from the date approved by the
95 development office, unless a shorter time period for
96 termination is agreed to by the applicant and the

97 development office. The development office may terminate
98 a tourism development district if the development office
99 determines that the tourism development project or tourism
100 development expansion project has been abandoned or
101 ceased operations for five consecutive years.

102 (l) In accordance with subsections (b) and (c) of this
103 section, and notwithstanding any provision of this code to
104 the contrary, or any municipality's home rule powers with
105 respect to ordinances and ordinance procedures, including
106 any authority pursuant to the Municipal Home Rule
107 Program under §8-1-5a of this code, designated tourism
108 development districts, and the tourism development projects
109 or tourism development expansion projects therein, may not
110 be subject to the following:

111 (1) Municipal zoning, historic preservation,
112 horticultural, noise, viewshed, lighting, development, or
113 land use ordinances, restrictions, limitations, or approvals;

114 (2) Municipal regulation of the sale of alcoholic liquor,
115 nonintoxicating beer, or wine for consumption within the
116 tourism development district;

117 (3) Municipal building permitting, inspection, or code
118 enforcement;

119 (4) Municipal license requirements;

120 (5) The legal jurisdiction of the municipality in which
121 the tourism development district is entirely or partially
122 located, except as specifically provided in this article;

123 (6) The implementation of any tax, fee, or charge by the
124 municipality, except as specifically provided in this section;
125 or

126 (7) Any requirement under state law for the consent or
127 approval of the municipality in which the tourism
128 development district is entirely or partially located of any
129 state or county action pursuant to this code, specifically

130 including, but not limited to, §7-11B-1 *et seq.* of this code,
131 for formal consent of the governing body of a municipality
132 for county or state action regarding the establishment of tax
133 increment financing development or redevelopment
134 districts or the approval of tax increment financing
135 development or redevelopment plans.

136 (m) Notwithstanding the creation of the tourism
137 development district, the owner, operator, or manager, as
138 applicable, and all concessions and licensees thereof, of the
139 tourism development project or tourism development
140 expansion project located therein shall:

141 (1) Pay business and occupation tax, if applicable,
142 pursuant to §8-13-5 of this code, to the municipality in the
143 same manner as any other business or commercial venture
144 located within the municipality;

145 (2) Collect and remit municipal sales and service tax and
146 municipal use tax, if applicable, pursuant to §8-1-5a, §8-
147 13C-4, and §8-13C-5 of this code, to the municipality in the
148 same manner as any other business or commercial venture
149 located within the municipality;

150 (3) Pay ad valorem real and personal property tax
151 pursuant to the same millage rates as any other business or
152 commercial venture located within the municipality;

153 (4) Collect and remit hotel occupancy tax, if applicable,
154 to the municipality or county in accordance with §7-18-1 of
155 this code;

156 (5) Pay all municipal service fees enacted pursuant to
157 §8-13-13 of this code, including, but not limited to, fire,
158 police, sanitation, or city service fees;

159 (6) Pay all municipal utility rates, fees, and charges for
160 utilities used or consumed during construction and
161 operation of premises within the tourism development
162 district, including, but not limited to, water, sewer,
163 stormwater, and garbage and recycling collection:

164 *Provided*, That (i) The rates, fees, and charges for such
165 services shall be based on the cost of providing such service
166 and the municipality shall enter into a contract for each such
167 service with the developer and any contracts for water
168 service or sewer service with the municipality shall be
169 subject to review and approval by the Public Service
170 Commission of West Virginia; and (ii) the developer shall
171 only be required to pay any capacity improvement fee or
172 impact fee to the extent that capital additions, betterments,
173 and improvements must be designed, acquired, constructed,
174 and equipped by the municipality to provide such service to
175 the project and any such capacity improvement fee or
176 impact fee for water or sewer service shall be subject to
177 review and approval by the Public Service Commission of
178 West Virginia;

179 (7) Comply with state laws, regulations, and licensure
180 requirements concerning state control of alcoholic liquors
181 pursuant to chapter 60 of this code and control of
182 nonintoxicating beer pursuant to §11-16-1 *et seq.* of this
183 code;

184 (8) Be entitled to municipal police protection and
185 municipal fire protection, if available, in the same manner
186 as any other business or commercial venture located within
187 the municipality;

188 (9) Design, acquire, construct, and equip the tourism
189 development project or the tourism development expansion
190 project pursuant to the State Building Code in accordance
191 with §8-12-13 of this code and corresponding State Rule 87
192 CSR 4; and

193 (10) Provide for inspection of the design, acquisition,
194 construction, and equipping, and any subsequent expansion
195 of the tourism development project or the tourism
196 development expansion project pursuant to standards
197 approved by the West Virginia Development Office.

198 (n) The West Virginia Department of Transportation
199 may take actions necessary in support of the development
200 of any tourism development project or tourism development
201 expansion project in a tourism development district
202 specifically, including, but not limited to, the development
203 or improvement of such highways, roads, thoroughfares,
204 and sidewalks within the municipality in which the tourism
205 development district is partially or entirely located.

206 (o) Failure of the Legislature to renew the Tourism
207 Development Act, §5B-2E-1 *et seq.* of this code, may not,
208 in any way, modify or alter the designation and vested rights
209 of any tourism development district created prior to the
210 failure of the Legislature to renew the Tourism
211 Development Act and any such tourism development
212 district shall continue to exist beyond the termination of the
213 Tourism Development Act.

214 (p) The development office shall propose rules for
215 legislative approval in accordance with §29A-3-1 *et seq.* of
216 this code to implement this section, and the rules shall
217 include, but not be limited to:

218 (1) The application and timeline process;

219 (2) A nonbinding review of the existing planning and
220 zoning ordinances of any municipality in which the tourism
221 development district is located;

222 (3) Notice provisions;

223 (4) The method and timeline for receiving statements of
224 support or opposition from any municipality within or
225 partially within the tourism development district;

226 (5) Additional application consideration criteria; and

227 (6) Application fees sufficient to cover the costs of
228 consideration of an application.

229 (q) The development office shall promulgate emergency
230 rules pursuant to §29A-3-15 of this code by July 1, 2020, to
231 facilitate the implementation of this section.

232 (r) Pursuant to §2-2-10 of this code, if any provision of
233 this section or the application thereof to any person or
234 circumstance is held unconstitutional or invalid, the
235 unconstitutionality or invalidity shall not affect other
236 provisions or applications of this section, and to this end the
237 provisions of this section are declared to be severable.

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CHAPTER 161

**(Com. Sub. for S. B. 738 - By Senators Maynard and
Plymale)**

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-9-1, relating to creating the Flatwater Trail Commission; describing role, function, and duties of the commission; establishing criteria qualifications for the appointment of members; specifying duties; declaring the responsibilities of the Department of Commerce regarding the commission; providing for reimbursement of the expenses for members; and defining a quorum to conduct business.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. FLATWATER TRAIL COMMISSION.

§5B-9-1. Flatwater Trail Commission; members, appointment, and expenses.

1 (a) The Flatwater Trail Commission is hereby created as
2 an independent body corporate. It shall be a commission
3 advisory to the secretary and to the Department of
4 Commerce.

5 (b) The Flatwater Trail Commission shall consist of five
6 members, who shall be residents and citizens of the state.
7 The commission members shall be appointed by the
8 Governor, by and with the advice and consent of the Senate.
9 Throughout the operation of the commission, at least two of
10 the members shall have knowledge of and experience with
11 nonmotorized watercraft recreation, and at least two
12 members shall have knowledge of and experience with
13 motorized watercraft recreation. Each member shall serve
14 a term of five years. Of the members first appointed, two
15 shall be appointed for a term ending December 31, 2021,
16 and one each for terms ending one, two, and three years
17 thereafter. Commission members may be reappointed to
18 additional terms.

19 (c) The chair of the Flatwater Trail Commission shall be
20 appointed by the Governor from members then serving on
21 the commission and serves at the will and pleasure of the
22 Governor.

23 (d) It is the duty of the commission:

24 (1) To unify and coordinate efforts to develop and
25 establish successful flatwater trails in this state;

26 (2) To standardize procedures, programs, research, and
27 support for the development and establishment of flatwater
28 trails;

29 (3) To disseminate information for the purpose of
30 educating the public as to the existence and functions of the
31 commission and as to the availability of state, federal, and
32 nongovernmental resources and support for the
33 development and establishment of flatwater trails; and

34 (4) To advise, consult, and cooperate with other offices
35 of the Department of Commerce and other agencies of state
36 government, and to receive assistance therefrom in the
37 development of activities and programs of beneficial
38 interest to water recreation and flatwater trails.

39 (e) The Department of Commerce shall assist the
40 commission in its functions and operations, including, but
41 not limited to, providing administrative, clerical, and
42 technical support, publishing materials developed by the
43 commission, and preparation of proposed legislation to
44 further the purposes of the commission.

45 (f) Members of the Flatwater Trail Commission are not
46 entitled to compensation for services performed as
47 members. Each member is entitled to reimbursement for
48 reasonable expenses incurred in the discharge of their
49 official duties. All expenses incurred by members shall be
50 paid in a manner consistent with guidelines of the Travel
51 Management Office of the Department of Administration
52 and are payable solely from the funds of the Department of
53 Commerce or from funds appropriated for that purpose by
54 the Legislature. Liability or obligation is not incurred by
55 the commission beyond the extent to which moneys are
56 available from funds of the authority or from the
57 appropriations.

58 (g) Members shall meet at least quarterly as designated
59 and scheduled by the chair. The presence of three members,
60 in person or by real-time electronic communication,
61 constitutes a quorum to conduct business at a meeting.

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CHAPTER 162

**(Com. Sub. for H. B. 2696 - By Delegates Howell,
Bibby, Phillips, Sypolt, Cadle, Azinger, D. Jeffries
and Hott)**

[Passed January 29, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 7, 2020.]

AN ACT to amend and reenact §14-1-20 and §14-1-21 of the Code of West Virginia, 1931, as amended, all relating to creating an additional index system for state-owned lands; providing that the county courts submit a list of lands the state obtained to the Auditor; providing that the Auditor create an index system; providing that the Auditor create a standard naming system; and providing for rule-making authority relating to the index system.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. CLAIMS DUE THE STATE.

§14-1-20. Lands of state — List by clerk.

1 The clerks of the county courts shall transmit to the
2 Auditor a list of all lands in their respective counties
3 obtained by the state, under the provisions of §14-1-16 of
4 this code, and set forth in such list all the information which
5 they can obtain in relation to the lands mentioned therein.
6 For each tract of land or lot so mentioned by any clerk of
7 the county court, he or she shall receive \$1 from the
8 Treasury.

§14-1-21. Lands of state — Registration by Auditor.

1 (a) The Auditor shall, in a book kept for the purpose,
2 register all lands in the lists described in §14-1-20 of this

3 code, describing when, how, and of whom, they were
4 obtained, their situation, quantity and the title thereto,
5 together with the price paid therefor by the state.

6 (b) The Auditor shall create an index system to
7 reference lands purchased by the state, similar to those
8 created and maintained by the counties of this state. The
9 Auditor shall create a standard naming system to easily
10 cross reference lands purchased by the state in the county
11 indexes. The naming system, at a minimum, must include:

12 (1) The state agency purchasing the lands; and

13 (2) The county or counties where the land is located.

14 (c) The Auditor shall have rule-making authority
15 relating to this index system under §29A-3-1 *et seq.* of this
16 code. Any deed for state lands purchased after December
17 31, 2020, shall be recorded pursuant to the provisions of this
18 section.



CHAPTER 163

**(Com. Sub. for H. B. 2924 - By Delegates Howell,
Pack, C. Martin and Hamrick)**

[Passed February 12, 2020; in effect ninety days from passage.]

[Approved by the Governor on February 24, 2020.]

AN ACT to amend and reenact §5B-2I-4 of the Code of West Virginia, 1931, as amended, relating to permitting the West Virginia Tourism Office to contract with the Division of Highways to sell advertising space on the WV511 website to promote in-state tourism and to raise capital for technological improvements to the website; permitting 50 percent of the funds from such sale to be deposited into the Tourism

Promotion Fund; and permitting 50 percent of the fund from such sale be remitted to the Division of Highways pursuant to the contract.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2I. WEST VIRGINIA TOURISM OFFICE.

§5B-2I-4. Powers and duties of the West Virginia Tourism Office.

1 (a) The West Virginia Tourism Office, under the
2 direction and charge of the Executive Director of the West
3 Virginia Tourism Office, shall develop and implement a
4 comprehensive tourism advertising, promotion and
5 development strategy for West Virginia. “Comprehensive
6 tourism advertising, promotion and development strategy”
7 means a plan that outlines strategies and activities designed
8 to continue, diversify and expand the tourism base of the
9 state as a whole; create tourism jobs; develop a highly
10 skilled tourism workforce; facilitate business access to
11 capital for tourism; advertise and market the resources
12 offered by the state with respect to tourism advertising,
13 promotion and development; facilitate cooperation among
14 local, regional and private tourism enterprises; improve
15 infrastructure on a state, regional and community level in
16 order to facilitate tourism development; improve the
17 tourism business climate generally; and leverage funding
18 from sources other than the state, including local, federal
19 and private sources. In addition to all other power and
20 duties of the West Virginia Tourism Office by other
21 provisions of this code, the West Virginia Tourism Office
22 shall:

23 (1) Coordinate media events to promote a positive
24 image of West Virginia and new investment in the tourist
25 industry;

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

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

29 (4) Provide advertising, marketing and communications
30 goods and services, including, without limitation, a
31 cooperative advertising program to facilitate and allow
32 participation in the West Virginia Tourism Office's
33 advertising and marketing campaigns and activities, to state
34 agencies, departments, units of state or local government,
35 private tourism enterprises and other persons, entities or
36 private enterprises, including, without limitation,
37 convention and visitors' bureaus; and

38 (5) Distribute West Virginia informational publications
39 and manage the West Virginia Welcome Centers.

40 (b) In developing its strategies, plans and campaigns,
41 the West Virginia Tourism Office shall consider the
42 following:

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

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

49 (c) The West Virginia Tourism Office shall have the
50 power and duty:

51 (1) To acquire for the state in the name of the West
52 Virginia Tourism Office by purchase, lease or agreement,
53 or accept or reject for the state, in the name of the West
54 Virginia Tourism Office, gifts, donations, contributions,
55 bequests or devises of money, security or property, both real
56 and personal, and any interest in such property, to effectuate
57 or support the purposes of this article;

58 (2) To make recommendations to the Governor and the
59 Legislature of any legislation deemed necessary to facilitate
60 the carrying out of any of the foregoing powers and duties
61 and to exercise any other power that may be necessary or
62 proper for the orderly conduct of the business of the West

63 Virginia Tourism Office and the effective discharge of the
64 duties of the West Virginia Tourism Office;

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

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

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

81 (6) To take such additional factors as may be necessary
82 to carry out the duties and programs described in this article;
83 and

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

88 (d) The West Virginia Tourism Office may contract
89 with the Division of Highways to sell advertising space on
90 the WV511 website to promote in-state tourism and raise
91 capital for technological improvements to the website:
92 *Provided*, That 50 percent of the money collected for sale of
93 advertising space is deposited into the Tourism Promotion
94 Fund and the other 50 percent of the money collected from
95 the sale of advertising space is remitted to the Division of
96 Highways pursuant to the contract.

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

104 (f) The West Virginia Tourism Office may engage and
105 retain one or more advertising and marketing agencies,
106 consultants, enterprises, firms or persons, as deemed by the
107 Executive Director of the West Virginia Tourism Office, in
108 his or her sole discretion, necessary or advisable to assist the
109 West Virginia Tourism Office in carrying out its powers and
110 duties as set forth in this article. In the procurement of
111 advertising agencies, consultants, enterprises or persons,
112 from time to time, estimated to cost \$250,000 or more, the
113 Executive Director of the West Virginia Tourism Office
114 shall encourage such advertising and marketing agencies,
115 consultants, enterprises, firms or persons to submit an
116 expression of interest, which shall include a statement of
117 qualifications, including anticipated concepts and proposed
118 advertising, marketing and advertising campaigns. All
119 potential contracts shall be announced by public notice
120 published as a Class II legal advertisement in compliance
121 with the provisions of §59-3-3 of this code. A committee of
122 three to five representatives of the West Virginia Tourism
123 Office or the Tourism Commission, as selected by the chair
124 of the Tourism Commission, shall evaluate the statements
125 of qualifications and other materials submitted by interested
126 firms and select three firms which, in their opinion, are best
127 qualified to perform the desired service. The committee
128 shall then rank, in order of preference, the three firms
129 selected and shall commence scope of service and price
130 negotiations with the first ranked firm. If the West Virginia
131 Tourism Office is unable to negotiate a satisfactory contract
132 with the first ranked firm, at a fee determined to be fair and
133 reasonable, price negotiations with the firm of second
134 choice shall commence. Failing accord with the second

135 ranked firm, the committee shall undertake price
136 negotiations with the third ranked firm. If the West Virginia
137 Tourism Office is unable to negotiate a satisfactory contract
138 with any of the selected firms, the office shall select
139 additional firms in order of their competence and
140 qualifications and it shall continue negotiations in
141 accordance with this section until an agreement is reached.

142 If the procurement of the services is estimated by the
143 executive director to cost less than \$250,000, the West
144 Virginia Tourism Office shall conduct discussions with
145 three or more firms solicited on the basis of known or
146 submitted qualifications for the assignment prior to the
147 awarding of any contract: *Provided*, That if a judgment is
148 made that special circumstances exist and that seeking
149 competition is not practical, the West Virginia Tourism
150 Office may, with the prior written approval of the Secretary
151 of Commerce, select a firm on the basis of previous
152 satisfactory performance and knowledge of the West
153 Virginia Tourism Office's needs. After selection, the West
154 Virginia Tourism Office and selected firm shall develop the
155 scope of desired services and negotiate a contract.

156 (g) The Executive Director of the West Virginia
157 Tourism Office may, in order to carry out the powers and
158 duties of the West Virginia Tourism Office described in this
159 article, employ necessary personnel, contract with
160 professional or technical experts or consultants and
161 purchase or contract for the necessary equipment or
162 supplies.

163 (h) The Executive Director of the West Virginia
164 Tourism Office may designate, in writing, with the written
165 consent of the Secretary of Commerce, a list of positions
166 within the West Virginia Tourism Office that shall be
167 exempt from coverage under the state's classified service.

168 (i) The West Virginia Tourism Office shall submit a
169 report annually to the Governor, Secretary of Commerce
170 and the Legislature about the development of the tourism

171 industry in the state and the necessary funding required by
172 the state to continue the development of the tourism
173 industry.

174 (j) The West Virginia Tourism Office and the Executive
175 Director of the West Virginia Tourism Office shall engage,
176 collaborate, assist and cooperate with the West Virginia
177 Development Office, when and as appropriate, to facilitate
178 retention, expansion, recruitment and location of existing
179 and new tourism-related enterprises.



CHAPTER 164

**(Com. Sub. for H. B. 4004 - By Delegates D. Kelly,
Waxman, Hanna, Mandt, Robinson, Miller and
Canestraro)**

[Passed March 7, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §15-9-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §15-9C-1, §15-9C-2, §15-9C-3, §15-9C-4, §15-9C-5, and §15-9C-6, all relating to creating the West Virginia Sentencing Commission as a subcommittee of the Governor's Committee on Crime, Delinquency and Correction; authorizing the commission to seek and use funding and grants; setting forth legislative findings; setting forth the purpose of the commission; establishing composition and membership of commission; setting forth the powers and duties of the commission; setting forth objectives for the commission; directing commission provide assessment and recommendations to the Legislature; authorizing the commission to make additional recommendations to the Legislature; and establishing an internal effective date and termination date for the subcommittee.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 9. GOVERNOR’S COMMITTEE ON CRIME,
DELINQUENCY, AND CORRECTION.**

§15-9-4. Sentencing Commission Subcommittee.

1 Effective July 1, 2020, the Governor’s Committee on
2 Crime, Delinquency, and Correction shall establish a
3 subcommittee to be known as the West Virginia Sentencing
4 Commission. To the extent requested or necessary, the
5 commission shall be staffed and supported by the Division
6 of Administrative Services of the Department of Military
7 Affairs and Public Safety. The commission, by and through
8 the division, may seek and use funding and grants in
9 furtherance of the purposes and mission of the commission.

**ARTICLE 9C. WEST VIRGINIA SENTENCING
COMMISSION.**

§15-9C-1. Legislative findings.

1 The Legislature finds and declares that there is:
2 (1) A need for fair and uniform sentencing;
3 (2) A need for research on issues regarding sentencing
4 in order to promote a fuller understanding of the efficient,
5 just, and fair operation of this state’s criminal justice
6 system;
7 (3) A need for establishing priorities with regard to the
8 severity of the criminal offenses; and
9 (4) A need to use the limited correctional resources in
10 the state in a manner best able to fulfill the goals of criminal
11 punishment, rehabilitation, and protection of the public
12 while preventing disparate treatment of offenders based on
13 racial, ethnic, cultural, economic, or other factors related to
14 the social status of the offender.

§15-9C-2. Creation of Sentencing Commission; purpose; composition.

1 (a) The West Virginia Sentencing Commission is
2 hereby created as a subcommittee of the Governor's
3 Committee on Crime, Delinquency, and Correction.

4 (b) The purpose of the commission is to promote a fuller
5 understanding of this state's criminal justice sentencing
6 system, and shall include the review and research of issues
7 of sentence length imposed, actual sentence length served,
8 parole eligibility, parole revocation, determinate or
9 indeterminate sentences, availability of alternatives to
10 incarceration for certain offenses, and the respective roles
11 that each of these and other criminal sanction issues may
12 play in the increased demand for prison bed space.

13 (c) The commission consists of the following members,
14 who serve without compensation:

15 (1) The Secretary of the Department of Military Affairs
16 and Public Safety, or his or her designee;

17 (2) Two prosecuting attorneys, or assistant prosecuting
18 attorneys, from two different counties chosen by the
19 President of the West Virginia Prosecuting Attorneys
20 Association;

21 (3) Two public defenders, or assistant public defenders,
22 or panel attorneys who primarily do court-appointed
23 criminal representation, from two different judicial circuits
24 chosen by the Director of the Public Defender Services;

25 (4) One representative from the West Virginia Chief of
26 Police Association who shall be chosen by the executive
27 director of that organization;

28 (5) One representative from the West Virginia Sheriff's
29 Association who shall be chosen by the executive director
30 of that organization;

31 (6) Two representatives from the West Virginia Judicial
32 Association who are current or senior status circuit court
33 judges and chosen by the executive committee of that
34 organization, who shall serve as ex officio members;

35 (7) One member of the West Virginia Association on
36 Alcoholism and Drug Abuse Counselors who shall be
37 chosen by the president of the organization;

38 (8) Two members of the West Virginia Legislature, one
39 chosen by the Speaker of the House and one chosen by the
40 President of the Senate, who shall serve as ex officio
41 members of the commission; and

42 (9) One professor of law with experience in the practice
43 and teaching of criminal law appointed by the Dean of the
44 West Virginia University College of Law.

45 (d) Each member serves a two-year term, except for the
46 ex officio members who serve as long as they hold their
47 respective offices.

48 (e) The chairperson of this commission shall be elected
49 by the other members of the commission. The first meeting
50 shall be chaired by the Director of the Division of
51 Administrative Services of the Department of Military
52 Affairs and Public Safety.

53 (f) Six members of the commission shall constitute a
54 quorum.

55 (g) The Director of the Division of Administrative
56 Services serves as executive director of the commission and
57 the division shall provide administrative services to the
58 commission.

§15-9C-3. Powers and duties of the commission.

1 (a) The Sentencing Commission established pursuant to
2 this article:

3 (1) May request information, data, and reports from any
4 officer or agency of the state government, as required by the
5 commission and as may be produced consistent with other
6 laws;

7 (2) Issue invitations requesting the attendance and
8 testimony of witnesses and the production of any evidence
9 that relates directly to a matter with respect to which the
10 commission or any member of the commission is
11 empowered to make a determination under this article;

12 (3) Shall establish a research and development program
13 within the commission for the purpose of:

14 (A) Serving as a clearinghouse and information center
15 for the collection, preparation, and dissemination of
16 information on sentencing practices; and

17 (B) Assisting and serving in a consulting capacity to
18 state courts, departments, and agencies in the development,
19 maintenance, and coordination of sound sentencing
20 practices;

21 (4) Shall collect data obtained from studies, research,
22 and the empirical experience of public and private agencies
23 concerning the sentencing processes;

24 (5) Shall publish data concerning the sentencing
25 process;

26 (6) Shall collect and disseminate information
27 concerning sentences actually imposed;

28 (7) Shall collect and disseminate information regarding
29 effectiveness of sentences imposed;

30 (8) Shall make recommendations to the Legislature
31 concerning modification or enactment of sentencing and
32 correctional statutes which the commission finds to be
33 necessary and advisable to carry out an effective, humane,
34 and rational sentencing policy;

35 (9) Shall establish a plan and timetable to collect and
36 disseminate information relating to incapacitation,
37 recidivism, deterrence, and overall effectiveness of
38 sentences imposed;

39 (10) Shall provide recommendations to the Legislature
40 for the creation of programs and establishment of facilities
41 in the state that provide how the state can best shift its
42 expenditures in a revenue-neutral fashion away from
43 incarceration to treatment programs, facilities, and related
44 services;

45 (11) Shall conduct a comprehensive review and study of
46 national and local trends and programs that have proven
47 successful in addressing and overcoming addiction and
48 identifying the nature of the causes of addiction and
49 criminal behavior related to drug addiction; and

§15-9C-4. Objectives of the commission.

1 In performing its powers and duties, the commission
2 shall pursue the following objectives:

3 (1) Promoting sentencing that more accurately reflects
4 the time that an offender will actually be incarcerated;

5 (2) Reducing unwarranted disparity in sentences for
6 offenders who have committed similar offenses and have
7 similar criminal histories;

8 (3) Preserving meaningful judicial discretion in the
9 imposition of sentences and sufficient flexibility to permit
10 individualized sentences;

11 (4) Ensuring that sentencing judges in every jurisdiction
12 in the state are able to impose the most appropriate criminal
13 penalties, including correctional options programs for
14 appropriate nonviolent offenders; and

15 (5) Determining whether the state needs to set out all
16 criminal offenses in terms of priority and in order of severity
17 and harm to society, and to provide alternatives to
18 incarceration for certain offenses.

§15-9C-5. Recommendations to Legislature.

1 (a) In addition to the dissemination of information set
2 forth in §15-9C-3 of this code, the commission shall
3 provide, on or before January 1, 2022, an assessment and
4 report to the Legislature as its findings, analysis, and
5 recommendations, if any, as to the state's sentencing and
6 correctional laws and policies.

7 (b) As part of the report set forth in subsection (a) of this
8 section, the commission may, or at the request of the
9 President of the Senate and the Speaker of the House of
10 Delegates, shall make recommendations regarding the
11 following issues:

12 (1) Whether the state should adopt discretionary
13 sentencing guidelines and, if so, what type of discretionary
14 sentencing guidelines should be adopted;

15 (2) Whether the state should alter the manner in which
16 an inmate obtains credit for good time;

17 (3) Whether the state needs to take action to ensure that
18 there is a coordinated system of alternatives to incarceration
19 at the state and county levels and, if so, what action should
20 be taken;

21 (4) Whether the state should establish additional
22 guidelines and procedures to examine or reexamine the
23 reduction of long-term sentences of individuals who are not
24 a danger to public safety; and

25 (5) Any other matters relating to state and local laws and
26 policies governing sentencing, parole, mandatory
27 supervision, and correctional alternative programs.

§15-9C-6. Sunset.

1 The Sentencing Commission Subcommittee established
2 in this article terminates on June 30, 2023, unless continued
3 by the Legislature.

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CHAPTER 165

**(Com. Sub. for H. B. 4042 - By Delegates Howell,
Bibby, J. Jeffries, Waxman, J. Kelly and Cadle)**

[Passed February 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 17, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-1-12, relating to requiring agencies exempt from some or all of state purchasing requirements to adopt procedural rules establishing their purchasing procedures.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-12. Procedural rules required for exempt agencies.

1 (a) An agency that has been exempted from some or all
2 of the requirements of this chapter, by either a provision of
3 this chapter or in another provision of this code, shall adopt
4 procedural rules, under §29A-3-1 *et seq.* or §29A-3A-1 *et*
5 *seq.* of this code, establishing its purchasing procedures.

6 (b) For agencies that have been exempted prior to the
7 effective date of this section, the written procedures shall be
8 filed no later than September 1, 2020. After September 1,
9 2020, any agency which has not filed its procedural rule as
10 required by this section shall follow the procurement
11 requirements established by the Purchasing Division.

12 (c) For agencies that are exempted after the effective
13 date of this section, the written procedures shall be filed
14 before the exemption may take effect.

CHAPTER 166

(H. B. 4130 - By Delegates D. Jeffries and Hanna)

[Passed January 30, 2020; in effect from passage.]

[Approved by the Governor on February 5, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §5-22-1a, relating to competitive bidding for government construction contracts arising out of declared states of emergency; allowing contracts for construction projects to be procured through competitive bidding on an open-ended basis as to quantity or by unit pricing on estimated quantities; allowing the establishment of multiple award construction contracts; eliminating need for emergency construction contract to specify the exact location of construction involved in the solicitation for bids; making the requirement that the entity to whom the contract is awarded furnish payment or performance bonds discretionary for residential projects; requiring contractor to provide release of claims before final payment is released if bonds are not required; and making the award of such contracts subject to other competitive bidding requirements of said code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1a. Permitting government construction contracts arising out of declared states of emergency on open-ended quantity or unit price basis; types of contracts allowed for construction projects; specific location of construction project not required in solicitation; certain bonds discretionary; other bidding requirements applicable.

1 (a) The state, not including its subdivisions, may solicit
2 competitive bids for construction projects arising out of a
3 state of emergency declared pursuant to §15-5-6 of this
4 code, in a manner that is open-ended as to quantity only, or
5 for unit prices on estimated quantities, and may also award
6 contracts to multiple qualified responsible bidders, thereby
7 creating a pool of qualified responsible bidders, so long as
8 the nature of the contract is fully disclosed in the solicitation
9 in a way that allows for fair and competitive bidding. The
10 state reserves the right to reject a bid that it deems to be
11 nonresponsive, a bid from a bidder that is not qualified
12 responsible, as defined in the first section of this article, or
13 a bid that is higher than the state is willing to pay.

14 (b) If the state creates a pool of qualified responsible
15 bidders, it must first offer work available to the multiple
16 contract holders to the contract holder identified as the
17 lowest qualified responsible bidder, and if that vendor is
18 unable or unwilling to perform, then the same work must be
19 extended to the contract holder identified as the second
20 lowest qualified responsible bidder, and so on, until the
21 work is either accepted or there are no remaining qualified
22 responsible bidders holding a contract that are willing to
23 perform the work. If no vendors accept the work, the state
24 may revise the work and reoffer it to the lowest qualified
25 responsible bidder, then the second lowest qualified
26 responsible bidder, and so on.

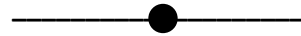
27 (c) Solicitations or contracts under this section are not
28 required to specify the exact addresses or identify the
29 locations of the construction project, so long as the
30 solicitation and resulting contract clearly articulate the
31 mechanism by which the exact address or location will be
32 identified prior to work being performed.

33 (d) For projects limited to the construction or
34 replacement of one or more residential dwellings or
35 appurtenances, the state agency responsible for overseeing
36 the work may, in its discretion, choose not to require an
37 entity to whom the contract is awarded to furnish payment

38 or performance bonds, but only if it clearly indicates in the
39 solicitation for bids that payment or performance bonds will
40 not be required: *Provided*, That in the event a payment or
41 performance bond is not required, the entity responsible for
42 the contract shall provide to the state agency responsible for
43 overseeing the work a document certifying that all of the
44 claims of subcontractors, laborers, materialmen, and all
45 persons furnishing material have been paid, satisfied, and
46 discharged before final payment is released.

47 (e) A vendor or contractor that has been debarred
48 pursuant to §5A-3-33f of this code may not bid on or be
49 awarded a contract under this section.

50 (f) Except where other provisions of this article conflict
51 with the provisions of this section, the other provisions of
52 this article remain in effect.



CHAPTER 167

**(H. B. 4141 - By Delegates Butler, Fast, Kessinger, D.
Jeffries, Bibby, Pack, McGeehan, P. Martin, J.
Jeffries, Graves and Bates)**

[Passed February 13, 2020; in effect ninety days from passage.]

[Approved by the Governor on February 24, 2020.]

AN ACT to amend and reenact §5A-2-33 of the Code of West Virginia, 1931, as amended, relating to requiring the Department of Administration to publish its comprehensive annual financial report by the end of December of the calendar year in which the fiscal year reported upon ended.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. FINANCE DIVISION.

§5A-2-33. Financial accounting and reporting section; comptroller; powers and responsibilities.

1 (a) The financial accounting and reporting section
2 created under section one of this article shall be under the
3 control and supervision of a comptroller. The provisions of
4 this section shall apply to all component units of state
5 government, as defined by generally accepted accounting
6 principles.

7 (b) The comptroller, under the direction and supervision
8 of the director of the Finance Division, has the power and
9 responsibility to:

10 (1) Maintain financial records supporting the
11 Comprehensive Annual Financial Report required under
12 subdivision (8) of this subsection, in accordance with
13 generally accepted accounting principles;

14 (2) Maintain the official chart of accounts of the state;

15 (3) Maintain the centralized accounting system;

16 (4) Maintain the statewide accounting policies and
17 procedures;

18 (5) Direct the establishment and maintenance of an
19 adequate internal control structure by the various
20 component units of state government;

21 (6) Verify the periodic reconciliation of assets as
22 reported by the board of Investments and budgetary fund
23 balances as reported by the State Auditor;

24 (7) Issue management financial reports by component
25 unit and department, as well as consolidated management
26 financial reports, as follows:

27 (A) Monthly budgetary basis reports by revenue and
28 expense, budget compared to actual, and encumbrances; and

29 (B) Financial position reports, including, but not limited
30 to, cash, investments, indebtedness, obligations and
31 accounts payable.

32 (8) Issue a comprehensive annual financial report.

33 (A) When all state agencies meet the financial reporting
34 deadlines set by the financial accounting and reporting
35 section, the report shall be issued on or before December 31
36 of the calendar year in which the reporting period ends.

37 (B) When any agency fails to meet the reporting
38 deadline, the report shall be issued within 60 days of
39 receiving the last agency report.

40 (C) The financial report will be prepared in accordance
41 with generally accepted accounting principles;

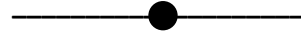
42 (9) Have the general purpose financial statements of the
43 state audited annually by independent certified public
44 accountants;

45 (10) Require the state pension systems, workers'
46 compensation commission, Public Employees Insurance
47 Agency, Board of Risk and Insurance Management and the
48 various other component units of the state to prepare
49 financial statements audited by independent certified public
50 accountants and submit the audited financial statements to
51 the financial accounting and reporting section in the form
52 and within the time frames established by the financial
53 accounting and reporting section;

54 (11) Maintain controls over access to the centralized
55 accounting system and the required modifications, as well
56 as edits, controls and tables;

57 (12) Promulgate legislative rules in accordance with
58 §29A-3-1 *et seq.* of this code to effectuate the intent and
59 purpose of this section: *Provided*, That such rules may
60 initially be implemented by emergency rule; and

61 (13) Do all things necessary and convenient to maintain
62 the centralized accounting system, to issue financial reports
63 of the state and to carry out its powers and responsibilities.



CHAPTER 168

**(Com. Sub. for H. B. 4461 – By Delegate Hanshaw
(Mr. Speaker)
[By Request]**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §6-7-2a of the Code of West Virginia, 1931, as amended, relating to requiring the Governor to fix the annual salaries of certain state appointed officers after the office is vacated or after July 1, 2020, whichever occurs first; requiring that the salary be within the current budget allocation; requiring the amount of the annual salary for appointed state officer be set forth in a line-item in the budget bill; limiting payment of salary to amount approved in budget bill; allowing lower salaries; and requiring that the salary of each such appointed state officer be listed in the appointment letter for the position.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.

1 (a) Each of the following appointive state officers
2 named in this subsection shall be appointed by the
3 Governor, by and with the advice and consent of the Senate.
4 Each of the appointive state officers serves at the will and
5 pleasure of the Governor for the term for which the
6 Governor was elected and until the respective state officers'
7 successors have been appointed and qualified. Each of the

8 appointive state officers are subject to the existing
9 qualifications for holding each respective office and each
10 has and is hereby granted all of the powers and authority and
11 shall perform all of the functions and services heretofore
12 vested in and performed by virtue of existing law respecting
13 each office.

14 The annual salary of each named appointive state officer
15 is as follows:

16 Commissioner, Division of Highways, \$92,500;
17 Commissioner, Division of Corrections and Rehabilitation,
18 \$90,000; Director, Division of Natural Resources, \$75,000;
19 Superintendent, State Police, \$85,000; Commissioner,
20 Division of Financial Institutions, \$75,000; Commissioner,
21 Division of Culture and History, \$65,000; Commissioner,
22 Alcohol Beverage Control Commission, \$75,000;
23 Commissioner, Division of Motor Vehicles, \$75,000;
24 Director, Human Rights Commission, \$55,000;
25 Commissioner, Division of Labor, \$70,000; Chairperson,
26 Board of Parole, \$55,000; members, Board of Parole,
27 \$50,000; members, Employment Security Review Board,
28 \$17,000; and Commissioner, Workforce West Virginia,
29 \$75,000. Secretaries of the departments shall be paid an
30 annual salary as follows: Health and Human Resources,
31 \$95,000: *Provided*, That effective July 1, 2013, the
32 Secretary of the Department of Health and Human
33 Resources shall be paid an annual salary not to exceed
34 \$175,000; Transportation, \$95,000: *Provided, however*,
35 That if the same person is serving as both the Secretary of
36 Transportation and the Commissioner of Highways, he or
37 she shall be paid \$120,000; Revenue, \$95,000; Military
38 Affairs and Public Safety, \$95,000; Administration,
39 \$95,000; Education and the Arts, \$95,000; Commerce,
40 \$95,000; Veterans' Assistance, \$95,000; and
41 Environmental Protection, \$95,000: *Provided further*, That
42 any officer specified in this subsection whose salary is
43 increased by more than \$5,000 as a result of the amendment
44 and reenactment of this section during the 2011 regular
45 session of the Legislature shall be paid the salary increase

46 in increments of \$5,000 per fiscal year beginning July 1,
47 2011, up to the maximum salary provided in this subsection.

48 (b) Each of the state officers named in this subsection
49 shall continue to be appointed in the manner prescribed in
50 this code and shall be paid an annual salary as follows:

51 Director, Board of Risk and Insurance Management,
52 \$80,000; Director, Division of Rehabilitation Services,
53 \$70,000; Director, Division of Personnel, \$70,000;
54 Executive Director, Educational Broadcasting Authority,
55 \$75,000; Secretary, Library Commission, \$72,000;
56 Director, Geological and Economic Survey, \$75,000;
57 Executive Director, Prosecuting Attorneys Institute,
58 \$80,000; Executive Director, Public Defender Services,
59 \$70,000; Commissioner, Bureau of Senior Services,
60 \$75,000; Executive Director, Women's Commission,
61 \$45,000; Director, Hospital Finance Authority, \$35,000;
62 member, Racing Commission, \$12,000; Chairman, Public
63 Service Commission, \$85,000; members, Public Service
64 Commission, \$85,000; Director, Division of Forestry,
65 \$75,000; and Executive Director of the Health Care
66 Authority, \$80,000.

67 (c) Each of the following appointive state officers
68 named in this subsection shall be appointed by the
69 Governor, by and with the advice and consent of the Senate.
70 Each of the appointive state officers serves at the will and
71 pleasure of the Governor for the term for which the
72 Governor was elected and until the respective state officers'
73 successors have been appointed and qualified. Each of the
74 appointive state officers are subject to the existing
75 qualifications for holding each respective office and each
76 has and is hereby granted all of the powers and authority and
77 shall perform all of the functions and services heretofore
78 vested in and performed by virtue of existing law respecting
79 each office.

80 The annual salary of each named appointive state officer
81 shall be as follows:

82 Commissioner, State Tax Division, \$92,500; Insurance
83 Commissioner, \$92,500; Director, Lottery Commission,
84 \$92,500; Director, Division of Homeland Security and
85 Emergency Management, \$65,000; and Adjutant General,
86 \$125,000.

87 (d) No increase in the salary of any appointive state
88 officer pursuant to this section may be paid until and unless
89 the appointive state officer has first filed with the State
90 Auditor and the Legislative Auditor a sworn statement, on a
91 form to be prescribed by the Attorney General, certifying
92 that his or her spending unit is in compliance with any
93 general law providing for a salary increase for his or her
94 employees. The Attorney General shall prepare and
95 distribute the form to the affected spending units.

96 (e) The annual salary of each appointive state officer
97 named in this section shall continue in the amount as set
98 forth in this section from the effective date of the
99 amendments to this section enacted in 2020, whichever
100 occurs first. After the vacancy or after July 1, 2020,
101 whichever occurs first, unless otherwise prohibited by law,
102 the annual salary of each appointed state officer named in
103 this section shall be fixed by the Governor within the current
104 budget allocation. In the event the annual salary fixed by the
105 Governor for an appointed state officer named in this
106 section exceeds the amount set forth in this section for the
107 appointed state officer, the amount of the annual salary for
108 the appointed state officer shall be set forth in a line-item in
109 the budget bill, and payment of an annual salary to the
110 appointed state officer may not exceed that amount but may
111 be lower than the salary approved in the budget bill or
112 established in this section. The salary of a newly appointed
113 state officer named in this section shall be included in the
114 appointment letter for the position.

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CHAPTER 169

**(Com. Sub. for H. B. 4509 - By Delegates Shott,
Steele, N. Brown and Maynard)
[By Request of the Department of Military Affairs
and Public Safety]**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §62-12-12 of the Code of West Virginia, 1931, as amended, relating to transferring the Parole Board to the Division of Corrections and Rehabilitation for purposes of administrative and other support; removing the residency requirements pertaining to counties; continuing terms of current members; specifying the powers and duties of the chairperson; setting forth the process for selecting a vice chairperson; specifying the powers and duties of the vice chairperson; clarifying how a vacancy occurs on the board; creating the position of substitute board member; creating a substitute board member list; establishing qualifications, powers and duties of substitute board members; and clarifying how moneys for the board should be appropriated.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-12. Parole Board generally.

- 1 (a) The West Virginia Parole Board is continued as part
- 2 of the Division of Corrections and Rehabilitation. The board
- 3 shall consist of nine members, each of whom shall have
- 4 been a resident of this state for at least five consecutive
- 5 years prior to his or her appointment. No more than five of
- 6 the board members may at any one time belong to the same
- 7 political party, except as provided in subsection (b) of this
- 8 section. The board shall be appointed by the Governor, by

9 and with the advice and consent of the Senate and shall
10 serve at the will and pleasure of the Governor.

11 Appointments shall be made in such a manner that each
12 congressional district is represented and so that no more
13 than four and no less than two members of the board reside
14 in any one congressional district.

15 (b) The Governor shall appoint one of the nine members
16 to serve as chairperson at the Governor's will and pleasure.
17 In addition to all other powers, duties, and responsibilities
18 granted and assigned to the chairperson by law and rule, the
19 chairperson has the following powers and duties:

20 (1) To provide for the management of facilities and
21 personnel of the board;

22 (2) To supervise the administration and operation of the
23 board;

24 (3) To delegate the powers and duties of his or her office
25 to the vice chairperson or other members of the board, who
26 shall act under the direction of the chairperson and for
27 whose acts he or she is responsible: *Provided*, That if the
28 position of chairperson becomes vacant by death,
29 resignation, or otherwise, the vice chairperson shall assume
30 all the powers and duties of the chairperson until such time
31 as a new chairperson is appointed pursuant to the provisions
32 of this subsection;

33 (4) To employ one full-time administrative employee,
34 who shall be a classified exempt employee; and

35 (5) To exercise all other powers and perform all other
36 duties necessary and proper in carrying out his or her
37 responsibilities as chairperson.

38 (c) The board, from its membership, shall elect a vice
39 chairperson, at least once every year, to serve as chair in the
40 absence of a chairperson. In the absence of or at the
41 direction of the chairperson, the vice chairperson may

42 exercise the powers and duties of the chairperson. The vice
43 chairperson shall, while performing the duties and
44 responsibilities of the chairperson, have all of the statutorily
45 authorized power and duties of the chairperson.

46 (d) Any person initially appointed to the board on or
47 after July 1, 2012, shall have a degree from an accredited
48 college or university or at least five years of actual
49 experience in the fields of corrections, law enforcement,
50 sociology, law, education, psychology, social work, or
51 medicine, or a combination thereof, and shall be otherwise
52 competent to perform the duties of his or her office. All
53 members currently serving on the board shall continue the
54 terms they are currently serving, unless otherwise removed.
55 The members shall be appointed for overlapping terms of
56 six years. Members are eligible for reappointment. The
57 members of the board shall devote their full time and
58 attention to their board duties.

59 (e) The Governor may, if he or she is informed that a
60 vacancy is imminent, appoint a member to fill the imminent
61 vacancy prior to it becoming vacant: *Provided*, That the new
62 member may be appointed no more than 30 days prior to the
63 vacancy occurring and only for purposes of training. He or
64 she may not assume the powers and duties of the position
65 until the vacancy has actually occurred.

66 (f) The Governor may appoint no more than five persons
67 to a list of substitute board members. Substitute board
68 members shall meet the qualifications set forth in subsection
69 (d) of this section. The persons on the list shall be used in a
70 rotating fashion. If a full-time board member is unable to
71 serve, a substitute board member may serve in his or her
72 place. These substitute board members shall have the same
73 powers and duties of the fulltime board members while
74 acting as a substitute. These members shall be reimbursed
75 for expenses and paid a per diem rate set by the secretary.

76 (g) The Division of Corrections and Rehabilitation shall
77 provide administrative and other services to the board as the

78 board requires. Expenses of the board shall be included
 79 within the annual budget of the Division of Corrections and
 80 Rehabilitation: *Provided*, That the salaries of the members
 81 appointed pursuant to subsection (b) of this section are to be
 82 included in a separate budget for the Parole Board.

CHAPTER 170

(Com. Sub. for H. B. 4581 - By Delegates Pack and Hill)

[Passed March 6, 2020; in effect ninety days from passage.]
 [Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §16-49-1, §16-49-2, §16-49-3, §16-49-4, §16-49-5, §16-49-6, §16-49-7, and §16-49-8 of the Code of West Virginia, 1931, as amended; all relating to employment screening; including the screening of West Virginia Department of Health and Human Resources employees in the background check process; and streamlining the variance procedures.

Be it enacted by the Legislature of West Virginia:

ARTICLE 49. WEST VIRGINIA CLEARANCE FOR ACCESS: REGISTRY AND EMPLOYMENT SCREENING ACT.

§16-49-1. Definitions.

1 As used in this article:

2 “Applicant” means an individual who is being
 3 considered for employment or engagement with the
 4 department, a covered provider or covered contractor.

5 “Background check” means a prescreening of registries
6 specified by the secretary by rule and a fingerprint-based
7 search of state and federal criminal history record
8 information.

9 “Bureau” means a division within the Department of
10 Health and Human Resources.

11 “Covered contractor” means an individual or entity,
12 including their employees and subcontractors, that contracts
13 with a covered provider to perform services that include any
14 direct access services.

15 “Covered provider” means the following facilities or
16 providers:

17 (i) A skilled nursing facility;

18 (ii) A nursing facility;

19 (iii) A home health agency;

20 (iv) A provider of hospice care;

21 (v) A long-term care hospital;

22 (vi) A provider of personal care services;

23 (vii) A provider of adult day care;

24 (viii) A residential care provider that arranges for, or
25 directly provides, long-term care services, including an
26 assisted living facility;

27 (ix) An intermediate care facility for individuals with
28 intellectual disabilities; and

29 (x) Any other facility or provider required to participate
30 in the West Virginia Clearance for Access: Registry and
31 Employment Screening program as determined by the
32 secretary by legislative rule.

33 “Department” means the Department of Health and
34 Human Resources.

35 “Department employee” means any prospective or
36 current part-time employee, full-time employee, temporary
37 employee, independent contractor, or volunteer of the
38 department.

39 “Direct access” means physical contact with a resident,
40 member, beneficiary or client, or access to their property,
41 personally identifiable information, protected health
42 information or financial information.

43 “Direct access personnel” means an individual who has
44 direct access by virtue of ownership, employment,
45 engagement or agreement with the department, a covered
46 provider, or covered contractor. Direct access personnel
47 does not include volunteers or students performing irregular
48 or supervised functions or contractors performing repairs,
49 deliveries, installations or similar services for the covered
50 provider. The secretary shall determine by legislative rule
51 whether the position in question involves direct access.

52 “Disqualifying offense” means:

53 (A) A conviction of any crime described in 42 U. S. C.
54 §1320a-7(a); or

55 (B) A conviction of any other crime specified by the
56 secretary in rule, which shall include crimes against care-
57 dependent or vulnerable individuals, crimes of violence,
58 sexual offenses and financial crimes.

59 “Negative finding” means a finding in the prescreening
60 that excludes an applicant from direct access personnel
61 positions.

62 “Notice of ineligibility” means a notice pursuant to §16-
63 49-3 of this code that the secretary’s review of the
64 applicant’s criminal history record information reveals a
65 disqualifying offense.

66 “Prescreening” means a mandatory search of databases
67 and registries specified by the secretary in legislative rule
68 for exclusions and licensure status prior to the submission
69 of fingerprints for a criminal history record information
70 check.

71 “Rap back” means the notification to the department
72 when an individual who has undergone a fingerprint-based,
73 state or federal criminal history record information check
74 has a subsequent state or federal criminal history event.

75 “Secretary” means the Secretary of the West Virginia
76 Department of Health and Human Resources, or his or her
77 designee.

78 “State Police” means the West Virginia State Police
79 Criminal Identification Bureau.

**§16-49-2. Background check program for the department,
covered providers, and covered contractors.**

1 (a) The secretary shall create and implement a
2 background check program to facilitate the processing and
3 analysis of the criminal history and background of
4 applicants to the department, covered providers, and
5 covered contractors with direct access. This program shall
6 be called the West Virginia Clearance for Access: Registry
7 and Employment Screening.

8 (b) The purpose of the program is to protect West
9 Virginia’s vulnerable populations by requiring registry and
10 criminal background checks for all direct access personnel
11 of the department, covered providers, and covered
12 contractors.

13 (c) The program shall include:

14 (1) A centralized Internet-based system of registries to
15 allow the department, covered providers, and covered
16 contractors to perform a mandatory prescreening of
17 applicants;

18 (2) Fingerprint-based state and federal criminal
19 background checks on all direct access personnel; and

20 (3) An integrated Rap Back Program with the State
21 Police to allow retention of fingerprints and updates of state
22 and federal criminal information on all direct access
23 personnel until such time as the individual is no longer
24 employed or engaged by the department, the covered
25 provider, or covered contractor.

26 (d) The department shall notify applicants subject to a
27 criminal history record check that their fingerprints shall be
28 retained by the State Police Criminal Identification Bureau
29 and the Federal Bureau of Investigation.

§16-49-3. Prescreening and criminal background checks.

1 (a) Except as otherwise permitted in this article, the
2 department, covered provider, or covered contractor may
3 not employ or engage an applicant prior to completing the
4 background check process.

5 (b) If the applicant has a negative finding on any
6 required prescreening registry or database, the employer
7 shall notify the individual of such finding.

8 (c) If the applicant has a negative finding on any
9 required prescreening registry or database, that individual
10 may not immediately be engaged by the department,
11 covered provider, or covered contractor.

12 (d) If the applicant does not have a negative finding in
13 the prescreening process, the applicant shall submit to
14 fingerprinting for a state and federal criminal history record
15 information check.

16 (e) The State Police shall notify the secretary of the
17 results of the criminal history record information check.

18 (f) If the secretary's review of the criminal history
19 record information reveals that the applicant does not have

20 a disqualifying offense, the secretary shall provide written
21 notice to the bureau, covered provider, or covered
22 contractor that the individual may be engaged.

§16-49-4. Notice of ineligibility; prohibited participation as direct access personnel or department employee.

1 (a) If the secretary's review of the applicant's criminal
2 history record information reveals a disqualifying offense,
3 the secretary shall provide written notice to the bureau,
4 covered provider, or covered contractor advising that the
5 applicant is ineligible for work. The secretary may not
6 disseminate the criminal history record information.

7 (b) The department, covered provider, or covered
8 contractor may not engage an applicant with a disqualifying
9 offense as direct access personnel. If the applicant has been
10 provisionally employed pursuant to §16-49-6 of this code,
11 the employer shall terminate the provisional employment
12 upon receipt of the notice.

§16-49-5. Variance; appeals.

1 (a) If the secretary issues a notice of ineligibility, the
2 applicant, or the employer on the applicant's behalf, may
3 file a written request for a variance with the secretary not
4 later than 30 days after the date of the notice required by
5 §16-49-3 or §16-49-4 of this code.

6 (b) The secretary may grant a variance if:

7 (1) Mitigating circumstances surrounding the negative
8 finding or disqualifying offense is provided; and

9 (2) The secretary finds that the individual will not pose
10 a danger or threat to residents, members and their property.

11 (c) The secretary shall establish in legislative rule
12 factors that qualify as mitigating circumstances.

13 (d) The secretary shall mail to the applicant and the
14 bureau, covered provider, or covered contractor a written

15 decision within 60 days of receipt of the request indicating
16 whether a variance has been granted or denied.

17 (e) If an applicant believes that their criminal history
18 record information within this state is incorrect or
19 incomplete, they may challenge the accuracy of such
20 information by writing to the State Police for a personal
21 review. However, if the discrepancies are at the charge or
22 final disposition level, the applicant must address this with
23 the court or arresting agency that submitted the record to the
24 State Police.

25 (f) If an applicant believes that their criminal history
26 record information outside this state is incorrect or
27 incomplete, they may appeal the accuracy of such
28 information by contacting the Federal Bureau of
29 Investigation for instructions.

30 (g) If any changes, corrections, or updates are made in
31 the criminal history record information, the State Police
32 shall notify the secretary that the applicant has appealed the
33 accuracy of the criminal history records and provide the
34 secretary with the updated results of the criminal history
35 record information check, which the secretary shall review
36 de novo in accordance with the provisions of this article.

§16-49-6. Provisional employment pending completion of background check.

1 (a) The department, covered provider, or covered
2 contractor may permit an applicant to work on a provisional
3 basis for not more than 60 days pending notification from
4 the secretary regarding the results of the criminal
5 background check if:

6 (1) The applicant is subject to direct on-site supervision,
7 as specified in rule by the secretary, during the course of the
8 provisional period; and

9 (2) In a signed statement the applicant:

10 (A) Affirms that he or she has not committed a
11 disqualifying offense;

12 (B) Acknowledges that a disqualifying offense reported
13 in the required criminal history record information check
14 shall constitute good cause for termination; and

15 (C) Acknowledges that the department, covered
16 provider, or covered contractor may terminate the
17 individual if a disqualifying offense is reported in the
18 background check.

19 (b) Provisional employees who have requested a
20 variance shall not be required to sign such a statement. The
21 department, covered provider, or covered contractor may
22 continue to employ an applicant if an applicant applies for a
23 variance of his or her fitness determination until the
24 variance is resolved.

§16-49-7. Clearance for subsequent employment.

1 (a) An applicant is not required to submit to
2 fingerprinting and a criminal background check if:

3 (1) The individual previously submitted to
4 fingerprinting and a full criminal background check as
5 required by this article;

6 (2) The prior criminal background check confirmed that
7 the individual did not have a disqualifying offense or the
8 individual received prior approval from the secretary to
9 work for or with the same type of covered provider or
10 covered contractor; and

11 (3) The Rap Back Program has not identified any
12 criminal activity that constitutes a disqualifying offense.

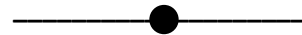
13 (b) The secretary shall provide notice of prior clearance
14 for direct access status upon request by a subsequent bureau,
15 covered provider, or covered contractor inquiries.

§16-49-8. Fees.

1 In order to enforce the requirements and intent of this
2 article, the following fees may be charged:

3 (1) The State Police may assess a fee to the department,
4 applicants, covered providers, or covered contractors for
5 conducting the criminal background check and for
6 collecting and retaining fingerprints for Rap Back as
7 authorized under this article.

8 (2) The secretary may assess a fee to applicants, covered
9 providers, or covered contractors for the maintenance of the
10 Internet-based system required by this article. The
11 assessment shall be deposited into a special revenue account
12 within the State Treasurer's office to be known as the
13 DHHR Criminal Background Administration Account.
14 Expenditures from the account shall be made by the
15 secretary for purposes set forth in this article and are
16 authorized from collections. The account shall be
17 administered by the secretary and may not be deemed a part
18 of the general revenue of the state.



CHAPTER 171

**(Com. Sub. for H. B. 4747 - By Delegates Howell and
C. Martin)**

[By Request of the Secretary of State]

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §29-19-2, §29-19-5, §29-19-6, and §29-19-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §39-4A-2 of said code; and to amend and reenact §47-2-1 and §47-2-3, all relating generally to extending current laws allowing electronic submission of

applications and forms to the Secretary of State's Office relating to licensure or regulation of charities, nonprofit organizations, out-of-state commissioners, and trademarks; providing new definitions for the term "sign" and "signature" relating to applications or forms in the foregoing regulated industries; providing for more efficient application processes in the foregoing regulated industries; and technical typographical changes to distinguish the Secretary of State from an entity's secretary or administrative assistant.

Be it enacted by the Legislature of West Virginia:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-2. Definitions.

1 As used in this article:

2 (1) "Audit" means the systematic examination of
3 records and documents and the securing of other evidence
4 by confirmation, physical inspection, or otherwise, that
5 includes a written assurance that financial statements and
6 reports are fairly presented in conformity with generally
7 accepted accounting principles issued by the American
8 Institute of Certified Public Accountants.

9 (2) "Charitable organization" means a person who is or
10 holds itself out to be a benevolent, educational,
11 philanthropic, humane, patriotic, religious or eleemosynary
12 organization, or any person who solicits or obtains
13 contributions solicited from the public for charitable
14 purposes, or any person who in any manner employs any
15 appeal for contributions which may be reasonably
16 interpreted to suggest that any part of those contributions
17 will be used for charitable purposes. A chapter, branch, area,
18 office or similar affiliate or any person soliciting
19 contributions within the state for a charitable organization

20 which has its principal place of business outside the state is
21 a charitable organization for the purposes of this article.

22 (3) “Contribution” means the promise or grant of any
23 money or property of any kind or value.

24 (4) “Financial review” means an examination of
25 financial statements in accordance with generally accepted
26 accounting principles issued by the American Institute of
27 Certified Public Accountants, in which a certified public
28 accountant has a reasonable basis for expressing limited
29 assurance that the reviewed statements are free of material
30 misstatements or false or missing information and are found
31 to be accurate, complete and fairly presented to meet the
32 requirements of the generally accepted accounting
33 principles.

34 (5) “Solicit” and “solicitation” means the request or
35 appeal, directly or indirectly, for any contribution on the
36 plea or representation that the contribution will be used for
37 a charitable purpose, including, without limitation, the
38 following methods of requesting a contribution:

39 (A) Any oral or written request;

40 (B) Any announcement to the press, over the radio or
41 television, or by telephone, electronic mail or messaging,
42 electronic bulletin board, or Internet technology, concerning
43 an appeal or campaign to which the public is requested to
44 make a contribution for any charitable purpose connected
45 therewith;

46 (C) The distribution, circulation, posting or publishing
47 of any handbill, written advertisement or other publication
48 which directly or by implication seeks to obtain public
49 support; or

50 (D) The sale of, offer or attempt to sell, any
51 advertisement, advertising space, subscription, ticket or any
52 service or tangible item in connection with which any
53 appeal is made for any charitable purpose or where the name

54 of any charitable or civic organization is used or referred to
55 in an appeal as an inducement or reason for making the sale,
56 or when or where in connection with the sale, any statement
57 is made that the whole, or any part of, the proceeds from the
58 sale will be donated to any charitable purpose.

59 “Solicitation”, as defined herein, occurs when the
60 request is made, at the place the request is received, whether
61 or not the person making the request actually receives any
62 contribution.

63 (6) “Federated fund-raising organization” means a
64 federation of independent charitable organizations which
65 have voluntarily joined together, including, but not limited
66 to, a united fund or community chest, for purposes of raising
67 and distributing money for and among themselves and
68 where membership does not confer operating authority and
69 control of the individual agencies upon the federated group
70 organization.

71 (7) “Parent organization” is that part of a charitable
72 organization which coordinates, supervises or exercises
73 control over policy, fund raising and expenditures, or
74 assists, receives funds from or advises one or more chapters,
75 branches or affiliates in the state.

76 (8) “Person” means any individual, organization, trust,
77 foundation, group, association, partnership, corporation,
78 society or any combination of them.

79 (9) “Professional fund-raising counsel” means any
80 person who for a flat fixed fee under a written agreement
81 plans, conducts, manages, carries on, advises or acts as a
82 consultant, whether directly or indirectly, in connection
83 with soliciting contributions for, or on behalf of any
84 charitable organization but who actually solicits no
85 contributions as a part of the services. A bona fide salaried
86 officer or employee of a charitable organization maintaining
87 a permanent establishment within the state is not a
88 professional fund-raising counsel.

89 (10) “Professional solicitor” means any person who, for
90 a financial or other consideration, solicits contributions for,
91 or on behalf of a charitable organization, whether the
92 solicitation is performed personally or through that person’s
93 agents, servants or employees specially employed by, or for
94 a charitable organization, who are engaged in the
95 solicitation of contributions under the direction of that
96 person, or a person who plans, conducts, manages, carries
97 on, advises or acts as a consultant to a charitable
98 organization in connection with the solicitation of
99 contributions but does not qualify as “professional fund-
100 raising counsel” within the meaning of this article. A bona
101 fide salaried officer or employee of a charitable
102 organization maintaining a permanent establishment within
103 the state is not a professional solicitor.

104 No attorney, investment counselor or banker, who
105 advises any person to make a contribution to a charitable
106 organization, is considered, as the result of the advice, a
107 professional fund-raising counsel or a professional solicitor.

108 (11) “Sign” means the action of affixing a person’s
109 signature to any document or record, whether by manual,
110 written, or approved electronic means.

111 (12) “Signature” means any mark, symbol, facsimile, or
112 electronic mark or symbol, that depicts a person’s name on
113 any document or record, affixed to the document or record
114 by the person with the intent to authenticate, assert, certify,
115 or agree to the matters, validity, information, or attestation
116 set forth in the document or record.

§29-19-5. Registration of charitable organizations; fee.

1 (a) Every charitable organization, except as provided in
2 section six of this article, which intends to solicit
3 contributions, donations or grants within this state or to have
4 funds solicited or received on its behalf shall, prior to any
5 solicitation, register with the Secretary of State, in a manner
6 or method authorized and upon forms prescribed by him or

7 her which shall be good for one full year and which shall be
8 refiled in the next and each following year in which the
9 charitable organization is engaged in solicitation activities.
10 If an organization discontinues solicitation at any time after
11 its last registration filing, then it shall file a registration
12 statement reflecting its activities during its last fiscal year in
13 which solicitation in West Virginia took place. The
14 president, chairman, or principal officer of the charitable
15 organization signed by an authorized agent of the charitable
16 organization shall file the statements required under this
17 article. The statements shall be sworn to and shall contain
18 the following information:

19 (1) The name of the organization and the purpose for
20 which it was organized;

21 (2) The principal address of the organization and the
22 address of any offices in this state. If the organization does
23 not maintain an office, the name and address of the person
24 having custody of its financial records;

25 (3) The names and addresses of any chapters, branches
26 or affiliates in this state;

27 (4) The place where and the date when the organization
28 was legally established and the form of its organization;

29 (5) The names and addresses of the officers, directors,
30 trustees and the principal salaried executive staff officer;

31 (6) A copy of a balance sheet and a statement or report
32 of income and expenses for the organization's immediately
33 preceding fiscal year or a financial statement reporting
34 information showing the kind and amount of funds raised
35 during the preceding fiscal year, the costs and expenses
36 incidental to the fundraising and showing how the funds
37 were disbursed or allocated for the same fiscal year:
38 *Provided*, That in addition to the financial documents
39 required by this subdivision:

40 (A) Charitable organizations raising more than
41 \$500,000 per year in contributions, excluding grants from
42 governmental agencies or private foundations, shall submit
43 a report of an audit by an independent certified public
44 accountant; and

45 (B) Charitable organizations raising more than
46 \$200,000 per year, but less than \$500,000 per year in
47 contributions, excluding grants from governmental agencies
48 or private foundations, shall submit a statement of financial
49 review by an independent certified public accountant;

50 (7) A copy of any determination of the organization's
51 tax-exempt status under the provisions of 26 U.S.C.
52 §501(c)(3) and a copy of the last filed Internal Revenue
53 Service Form 990 and Schedule A for every charitable
54 organization and any parent organization;

55 (8) Whether the organization intends to solicit
56 contributions, donations or grants from the public directly
57 or have other solicitation done on its behalf by others;

58 (9) Whether the organization is authorized by any other
59 governmental authority to solicit contributions, donations or
60 grants and whether it is or has ever been enjoined by any
61 court from soliciting contributions;

62 (10) The general purpose or purposes for which the
63 contributions to be solicited shall be used;

64 (11) The name or names under which it intends to solicit
65 contributions;

66 (12) The names of the individuals or officers of the
67 organization who will have final responsibility for the
68 custody of the contributions;

69 (13) The names of the individuals or officers of the
70 organization responsible for the final distribution of the
71 contributions;

72 (14) Copies of all contract documentation from
73 professional fund-raising counsels and professional
74 solicitors as provided in subsection (d), section seven of this
75 article; and

76 (15) The amount of money received in the state and the
77 amount spent in the state for charitable purposes.

78 (b) Each chapter, branch or affiliate, except an
79 independent member agency of a federated fundraising
80 organization, may separately report the information
81 required by this section or report the information to its
82 parent organization which shall then furnish the information
83 regarding its West Virginia affiliates, chapters and branches
84 in a consolidated form to the Secretary of State. An
85 independent member agency of a federated fundraising
86 organization, as defined in section two of this article, shall
87 comply with the provisions of this article independently.
88 Each organization shall file a separate registration form for
89 each name under which funds will be solicited.

90 (c) The registration forms and any other documents
91 prescribed by the Secretary of State shall be signed by an
92 authorized agent, officer or by an independent public
93 accountant and by the chief fiscal officer of the charitable
94 organization.

95 (d) Every charitable organization receiving less than \$1
96 million during any year which submits an independent
97 registration to the Secretary of State shall pay an annual
98 registration fee of \$15; every charitable organization
99 collecting more than \$1 million during one year which
100 submits an independent registration to the Secretary of State
101 shall pay an annual registration fee of \$50; and a parent
102 organization filing on behalf of one or more chapters,
103 branches or affiliates or a single organization filing under
104 different names shall pay a single annual registration fee of
105 \$50 for itself and the chapters, branches or affiliates
106 included in the registration statement. All fees and moneys
107 collected by the Secretary of State pursuant to the provisions
108 of this article shall be deposited by the Secretary of State as

109 follows: One-half shall be deposited in the State General
110 Revenue Fund and one-half shall be deposited in the
111 services fees and collections account established by §59-1-
112 2 of this code for the operation of the office of the Secretary
113 of State. The Secretary of State shall dedicate sufficient
114 resources from that fund or other funds to provide the
115 services required in this article.

116 (e) For good cause shown, the Secretary of State may
117 extend the due date for the annual filing of a registration
118 statement or report by a charitable organization or a
119 professional fundraiser for a period not to exceed 90 days.
120 During that period, the previously filed registration
121 statement or report of the charitable organization which has
122 been granted the extension remains in effect.

123 (f) In addition to the registration fee required by this
124 section, a charitable organization or professional fundraiser,
125 or both, which fails to file a registration statement or report
126 by the original or extended due date for filing as required by
127 this section shall, for each month or part of the month
128 thereafter in which the registration statement or report is not
129 filed, pay an additional fee of \$25: *Provided*, That the total
130 amount of the additional fees for a registration statement or
131 report required to be filed in any one year may not exceed
132 \$500. All fees and moneys collected by the Secretary of
133 State pursuant to the provisions of this article shall be
134 deposited by the Secretary of State as follows: One-half
135 shall be deposited in the State General Revenue Fund and
136 one-half shall be deposited in the service fees and
137 collections account established by §59-1-2 of this code for
138 the operation of the office of the Secretary of State. The
139 Secretary of State shall dedicate sufficient resources from
140 that fund or other funds to provide the services required in
141 this article.

***§29-19-6. Certain persons and organizations exempt from registration.**

1 The following charitable organizations are not required
2 to file an annual registration statement with the Secretary of
3 State:

*NOTE: This section was also amended by H. B. 4714 (Chapter 340), which passed prior to this act.

1 (1) Educational institutions, the curriculums of which,
2 in whole or in part, are registered or approved by the State
3 Board of Education, either directly or by acceptance of
4 accreditation by an accrediting body recognized by the State
5 Board of Education; and any auxiliary associations,
6 foundations and support groups which are directly
7 responsible to the educational institutions;

8 (2) Persons requesting contributions for the relief of any
9 individual specified by name at the time of the solicitation
10 when all of the contributions collected without any
11 deductions whatsoever are turned over to the named
12 beneficiary for his or her use;

13 (3) Hospitals and licensed nursing homes which are
14 nonprofit and charitable;

15 (4) Organizations which solicit only within the
16 membership of the organization by the members thereof:
17 *Provided*, That the term "membership" does not include
18 those persons who are granted a membership upon making
19 a contribution as the result of solicitation. For the purpose
20 of this section, "member" means a person having
21 membership in a nonprofit corporation, or other
22 organization, in accordance with the provisions of its
23 articles of incorporation, bylaws or other instruments
24 creating its form and organization; and having bona fide
25 rights and privileges in the organization, including the right
26 to vote, to elect officers, directors and issues, to hold office
27 or otherwise as ordinarily conferred on members of the
28 organizations;

29 (5) Churches, synagogues, associations or conventions
30 of churches, religious orders or religious organizations that
31 are an integral part of a church which qualifies as tax exempt
32 under the provisions of 26 U.S.C. §501(c)(3) and which
33 qualifies as being exempt from filing an annual return under
34 the provisions of 26 U.S.C. §6033;

35 (6) Any person, firm, corporation or organization that
36 sponsors a single fundraising event for the benefit of a
37 named charitable organization where all or part of the funds
38 collected are donated to the named charitable organization:
39 *Provided*, That the named charitable organization receiving
40 the funds is registered pursuant to this article, reports each
41 of these donations individually and certifies that no funds
42 were withheld by the organization that solicited the funds;

43 (7) Any charitable organization that does not employ a
44 professional solicitor or fundraiser and does not intend to
45 solicit and receive and does not actually raise or receive
46 contributions, donations or grants from the public in excess
47 of \$50,000 during a calendar year.

48 Charitable organizations which do not intend to solicit
49 and receive contributions, donations or grants in excess of
50 \$50,000, but do receive in excess of that amount from the
51 public, shall file the annual registration statement within 30
52 days after contributions are in excess of \$50,000.

§29-19-9. Registration of professional fundraising counsel and professional solicitor; bonds; records; books.

1 (a) No person may act as a professional fundraising
2 counsel or professional solicitor for a charitable
3 organization subject to the provisions of this article unless
4 he or she has first registered with the Secretary of State. The
5 registration application shall be submitted in a manner or
6 method authorized by the Secretary of State and contain the
7 information he or she requires. The registration application
8 by professional fundraising counsel or professional solicitor
9 shall be accompanied by an annual fee in the sum of \$100.
10 A partnership or corporation, which is a professional
11 fundraising counsel or professional solicitor, may register
12 for and pay a single fee on behalf of all its members,
13 officers, agents and employees. However, the names and
14 addresses of all officers, agents and employees of
15 professional fundraising counsel and all professional
16 solicitors, their officers, agents, servants or employees

17 employed to work under the direction of a professional
18 solicitor shall be listed in the application. All fees and
19 moneys collected by the Secretary of State pursuant to the
20 provisions of this article shall be deposited by the Secretary
21 of State as follows: One-half shall be deposited in the state
22 General Revenue Fund and one-half shall be deposited in
23 the service fees and collections account established by §59-
24 1-2 of this code for the operation of the office of the
25 Secretary of State. The Secretary of State shall dedicate
26 sufficient resources from that fund or other funds to provide
27 the services required in this article.

28 (b) The applicant shall, at the time of the making of an
29 application, file with and have approved by the Secretary of
30 State a bond in which the applicant shall be the principal
31 obligor in the sum of \$10,000 and which shall have one or
32 more sureties satisfactory to the Secretary of State whose
33 liability in the aggregate as such sureties will at least equal
34 the said sum and maintain the bond in effect so long as a
35 registration is in effect. The bond shall run to the state for
36 the use of the Secretary of State and any person who may
37 have a cause of action against the obligor of the bonds for
38 any losses resulting from malfeasance, nonfeasance or
39 misfeasance in the conduct of solicitation activities. A
40 partnership or corporation which is a professional
41 fundraising counsel or professional solicitor may file a
42 consolidated bond on behalf of all its members, officers and
43 employees.

44 (c) Each registration is valid throughout the state for a
45 period of one year and may be renewed for additional one-
46 year periods upon application submitted to the Secretary of
47 State in a manner or method authorized and in the form
48 prescribed by the Secretary of State and the payment of the
49 fee prescribed in this section.

50 (d) The Secretary of State or his or her designee shall
51 examine each application and if he or she finds it to be in
52 conformity with the requirements of this article and all
53 relevant rules and the registrant has complied with the

54 requirements of this article and all relevant rules, he or she
55 shall approve the registration.

CHAPTER 39. RECORDS AND PAPERS.

ARTICLE 4A. OUT-OF-STATE COMMISSIONERS.

§39-4A-2. Powers of commissioners; official seals.

1 (a) Upon approval of a successful application,
2 commissioners shall hold office for 10 years, unless
3 removed by the Secretary of State under the grounds set
4 forth in §39-4A-1(e) of this code.

5 (b) When any oath may lawfully be administered, or
6 affidavit or deposition taken, within the state, territory or
7 district for which any such commissioner is appointed, to be
8 used in this state, it may be done by the commissioner.

9 (c) Each commissioner shall have an official seal, which
10 shall be a rubber stamp and shall contain:

11 (1) The words "Official Seal";

12 (2) The words "Commissioner for West Virginia";

13 (3) The commissioner's name exactly as it is written as
14 an official signature;

15 (4) The city and state of residence of the commissioner;
16 and

17 (5) The words "My Commission Expires" and the date
18 of expiration of the commission.

19 (d) Commissioners may take, within or any place out of
20 the State of West Virginia, the acknowledgements of deeds
21 and other writings to be admitted to the record in the State
22 of West Virginia, but each acknowledgement shall reflect
23 where the acknowledgement was taken, including, but not
24 limited to, the state and county or territory.

25 (e) Every certificate of the commissioner shall be
26 authenticated by his or her signature and official seal.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 2. TRADEMARKS IN GENERAL.

§47-2-1. Definitions.

1 As used in this article:

2 (1) The term “trademark” means any word, name,
3 symbol or device or any combination thereof used by a
4 person to identify and distinguish the goods of such person,
5 including a unique product, from those manufactured and
6 sold by others, and to indicate the source of the goods, even
7 if that source is unknown.

8 (2) The term “service mark” means any word, name,
9 symbol or device or any combination thereof used by a
10 person to identify and distinguish the services of one person,
11 including a unique service, from the services of others, and
12 to indicate the source of the services, even if that source is
13 unknown. Titles, character names used by a person, and
14 other distinctive features of radio or television programs
15 may be registered as service marks notwithstanding that
16 they, or the programs, may advertise the goods of the
17 sponsor.

18 (3) The term “mark” includes any trademark or service
19 mark, entitled to registration under this article whether
20 registered or not.

21 (4) The term “trade name” means any name used by a
22 person to identify a business or vocation of such person.

23 (5) The term “person” and any other word or term used
24 to designate the applicant or other party entitled to a benefit
25 or privilege or rendered liable under the provisions of this
26 article includes a juristic person as well as a natural person.
27 The term “juristic person” includes a firm, partnership,

28 corporation, union, association or other organization
29 capable of suing and being sued in a court of law.

30 (6) The term “applicant” embraces the person filing an
31 application for registration of a mark under this article, and
32 the legal representatives, successors or assigns of that
33 person.

34 (7) The term “registrant” as used herein embraces the
35 person to whom the registration of a mark under this article
36 is issued, and the legal representatives, successors or assigns
37 of that person.

38 (8) The term “use” means the bona fide use of a mark in
39 the ordinary course of trade, and not made merely to reserve
40 a right in a mark. For the purposes of this article, a mark is
41 considered to be in use: (A) On goods when it is placed in
42 any manner on the goods or other containers or the displays
43 associated therewith or on the tags or labels affixed thereto,
44 or if the nature of the goods makes such placement
45 impracticable, then on documents associated with the goods
46 or their sale, and the goods are sold or transported in
47 commerce in this state; and (B) on services when it is used
48 or displayed in the sale or advertising of services and the
49 services are rendered in this state.

50 (9) A mark is considered to be “abandoned” when either
51 of the following occurs:

52 (A) When its use has been discontinued with intent not
53 to resume that use. Intent not to resume may be inferred
54 from circumstances. Nonuse for two consecutive years shall
55 constitute prima facie evidence of abandonment.

56 (B) When any course of conduct of the owner, including
57 acts of omission as well as commission, causes the mark to
58 lose its significance as a mark.

59 (10) The term “secretary” means the Secretary of State
60 or the designee of the secretary charged with the
61 administration of this article.

62 (11) The term “dilution” means the lessening of the
63 capacity of registrant’s mark to identify and distinguish
64 goods or services, regardless of the presence or absence of:
65 (A) Competition between the parties; or (B) likelihood of
66 confusion, mistake or deception.

67 (12) “Retail value” means:

68 (A) For items that bear a counterfeit mark and are
69 components of a finished product, the regular selling price
70 of the finished product in which the component would be
71 utilized.

72 (B) For items that bear a counterfeit mark other than
73 items described in paragraph (A) of this subdivision and for
74 services that are identified by a counterfeit mark, the regular
75 selling price of the item or service.

76 (13) “Sign” means the action of affixing a person’s
77 signature to any document or record, whether by manual,
78 written or approved electronic means.

79 (14) “Signature” means any mark, symbol, facsimile or
80 electronic mark or symbol, that depicts a person’s name on
81 any document or record, affixed to the document or record
82 by the person with the intent to authenticate, assert, certify
83 or agree to the matters, validity, information or attestation
84 set forth in the document or record.

§47-2-3. Application for registration.

1 (a) Subject to the limitations set forth in this article, any
2 person who uses a mark may file in the office of the
3 secretary, in a manner complying with the requirements of
4 the secretary, an application for registration of that mark
5 setting forth, but not limited to, the following information:

6 (1) The name and business address of the person
7 applying for such registration; and, if a corporation, the state
8 of incorporation, or if a partnership, the state in which the
9 partnership is organized and the names of the general
10 partners, as specified by the secretary;

11 (2) The goods or services on or in connection with
12 which the mark is used and the mode or manner in which
13 the mark is used on or in connection with such goods or
14 services and the class in which such goods or services fall;

15 (3) The date when the mark was first used anywhere and
16 the date when it was first used in this state by the applicant
17 or a predecessor in interest; and

18 (4) A statement that the applicant is the owner of the
19 mark, that the mark is in use, and that, to the knowledge of
20 the person verifying the application, no other person has
21 registered, either federally or in this state, or has the right to
22 use such mark either in the identical form thereof or in such
23 near resemblance thereto as to be likely, when applied to the
24 goods or services of such other person, to cause confusion,
25 or to cause mistake, or to deceive.

26 (b) The secretary may also require a statement as to
27 whether an application to register the mark, or portions or a
28 composite thereof, has been filed by the applicant or a
29 predecessor in interest in the United States Patent and
30 Trademark Office; and, if so, the applicant shall provide full
31 particulars with respect thereto including the filing date and
32 serial number of each application, the status thereof and, if
33 any application was finally refused registration or has
34 otherwise not resulted in a registration, the reasons therefor.

35 (c) The secretary may also require that a drawing of the
36 mark, complying with such requirements as the secretary
37 may specify, accompany the application.

38 (d) The application shall be signed manually in writing
39 or electronically by the applicant or by a member of the firm
40 or an officer of the corporation or association applying.

41 (e) The application shall be accompanied by three
42 specimens showing the mark as actually used.

43 (f) The application shall be accompanied by the
44 application fee payable to the Secretary of State.

●

CHAPTER 172

**(S. B. 703 - By Senators Prezioso, Azinger, Beach,
Clements, Hamilton, Plymale, Rucker, Weld, Cline,
Hardesty, Jeffries, Romano and Roberts)**

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18B-1-1d of the Code of West Virginia, 1931, as amended, relating to an increase in the earning limit for employees who accept a separation incentive under this article and subsequently return to employment; and amending or removing obsolete, duplicative, or unnecessary language from state code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GOVERNANCE.

§18B-1-1d. Retirement and separation incentives.

1 (a) Notwithstanding any other provisions of this code to
2 the contrary, each state institution of higher education may
3 develop plans that offer various incentives for voluntary,
4 early, or phased retirement of employees or voluntary
5 separation from employment when necessary to implement
6 programmatic changes effectively pursuant to the findings,
7 directives, goals, and objectives of this article: *Provided,*
8 That such incentives for voluntary, early, or phased
9 retirement of employees or voluntary separation from
10 employment must be approved by the institution's
11 governing board and presented to the legislative Joint
12 Committee on Pensions and Retirement and approved
13 before such plans are implemented by the institution.

14 (b) The plans may include the following provisions:

15 (1) Payment of a lump sum to an employee to resign or
16 retire;

17 (2) Continuation of full salary to an employee for a
18 predetermined period of time prior to the employee's
19 resignation or retirement and a reduction in the employee's
20 hours of employment during the predetermined period of
21 time;

22 (3) Continuation of insurance coverage pursuant to the
23 provisions of §5-16-1 *et seq.* of this code for a
24 predetermined period;

25 (4) Continuation of full employer contributions to an
26 employee's retirement plan during a phased retirement
27 period; and

28 (5) That an employee retiring pursuant to an early or
29 phased retirement plan may begin collecting an annuity
30 from the employee's retirement plan prior to the statutorily
31 designated retirement date without terminating his or her
32 service with the institution.

33 (c) No incentive provided for in this section shall be
34 granted except in furtherance of programmatic changes
35 undertaken pursuant to the findings, directives, goals, and
36 objectives set forth in this article.

37 (d) No plan proposed by an institution pursuant to this
38 section shall be implemented without approval of the
39 legislative joint committee on pensions and retirement.

40 Any costs associated with any incentive adopted or
41 implemented in accordance with this section shall be borne
42 entirely by the institutions and no incentive shall be granted
43 that imposes costs on the retirement systems of the state or
44 the Public Employees Insurance Agency unless those costs
45 are paid entirely by the institutions.

46 (e) The Legislature further finds and declares that there
47 is a compelling state interest in restricting the availability
48 and application of these incentives to individual employees
49 determined by the institutions to be in furtherance of the
50 aims of this section and nothing herein shall be interpreted
51 as granting a right or entitlement of any such incentive to
52 any individual or group of individuals. Any employee
53 granted incentives shall be ineligible for reemployment by
54 the institutions during or after the negotiated period of his
55 or her incentive concludes, including contract employment
56 in excess of \$25,000 per fiscal year.

57 (f) The West Virginia network for educational
58 telecomputing may utilize the incentives contained in any
59 plan approved by the legislative Joint Committee on
60 Pensions and Retirement pursuant to this section.



CHAPTER 173

(Com. Sub. for S. B. 760 - By Senator Rucker)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-1-1f; to amend and reenact §18B-1-2 of said code; to amend and reenact §18B-1B-4 and §18B-1B-6 of said code; to amend and reenact §18B-1D-7 of said code; and to amend and reenact §18B-19-4 of said code, all relating to higher education; providing findings; defining terms; allowing any state college and university to apply to the Higher Education Policy Commission for designation as an administratively exempted school; requiring Higher Education Policy Commission to propose rules for legislative approval that address loss of an administratively exempted designation; setting forth specific

exemptions for a college and university designated as an administratively exempted school; requiring Higher Education Policy Commission report to the Legislative Oversight Commission on Education Accountability certain information pertaining to the administratively exempted schools eligibility criteria; updating institution names; referring to exempted schools as statutorily exempted schools; removing obsolete language; updating code to reflect removal of statewide master plan and compact requirements by prior legislation; removing requirement for Higher Education Policy Commission to advise and confirm in the appointment of presidents of the institutions of higher education under its jurisdiction; amending the powers and duties of the Higher Education Policy Commission, consistent with the specific exemptions provided for administratively exempted schools; clarifying that Higher Education Policy Commission can use certain appropriated incentive funds to influence behavior of statutorily and administratively exempted schools; amending requirements pertaining to the required report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability that includes a recommendation for the allocation of general revenue to be appropriated to the institutions; removing requirement for Higher Education Policy Commission to confirm appointment of institutional presidents; requiring classified employees, if any are employed by the institution, be used when doing evaluations of institutional presidents; updating language to be consistent with replacing institutional and statewide report cards with a data reporting system in prior legislation; removing unnecessary language; declaring that the geographic areas of responsibility for the West Virginia School of Osteopathic Medicine, Marshall University, and West Virginia University are statewide; and removing requirement for Higher Education Policy Commission confirmation of campus development plans.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GOVERNANCE.

§18B-1-1f. State college and university exemption status.

1 (a) The Legislature finds that:

2 (1) Efficiencies, entrepreneurialism, and the
3 effectiveness of governing boards in fulfilling certain goals
4 can be incentivized through the accountability and
5 autonomy associated with exemption status for state
6 colleges and universities based on meeting certain criteria;
7 and

8 (2) Leading higher education authorities in the nation
9 identify common, key performance indicators as an
10 important measure of institutional effectiveness, including,
11 but not limited to, enrollment benchmarks, fiscal
12 benchmarks, and student success benchmarks.

13 (b) The following definitions apply to terms used in this
14 section:

15 (1) “Administratively exempted schools” means state
16 colleges and universities:

17 (A) That achieve and maintain three out of five of the
18 following:

19 (i) Graduation rates: A three-year average graduation
20 rate of not less than 45 percent;

21 (ii) Retention rates: A three-year average retention rate
22 of not less than 60 percent; and

23 (iii) Credit head count enrollment: A three-year credit
24 head count enrollment increase, or a decrease of not more
25 than five percent over the same period;

26 (iv) Days of cash reserved: A three-year average of not
27 less than 50 days cash reserved; and

28 (v) Composite Financial Index: A Composite Financial
29 Index of not less than one as reported in the college and
30 university’s audited financial statements; or

31 (B) Whose governing board requests a review by the
32 chancellor of any special circumstances and the commission
33 grants administratively exempted status based on those
34 special circumstances as verified by the chancellor after his
35 or her review.

36 (2) “Composite Financial Index” means the
37 benchmarking tool used by the Higher Learning
38 Commission as a financial indicator and developed
39 specifically for the higher education industry and is a
40 combination of several different ratios, each of which is
41 comprised of data that, when analyzed further, can provide
42 insight into an institution’s financial health and inform
43 decision-making processes;

44 (3) “Credit headcount enrollment” means the total
45 number of unique students, but not counting dual-enrolled
46 high school students, who enrolled in credit-bearing classes
47 during the fall, spring, and summer terms in a given
48 academic year at a specific institution;

49 (4) “Days of cash reserved” means the audited end of
50 fiscal year cash balance, multiplied by 365, and then divided
51 by the audited total expenses less depreciation, and less
52 other post employment benefit and pension liability
53 expenses;

54 (5) “Graduation rates” means the proportion of first time
55 in college students who obtain a bachelor’s degree within
56 six years, as further defined by and reported to the
57 commission;

58 (6) “Retention rates” means the proportion of first-time,
59 fall term, full-time freshmen students who are in continuing
60 enrollment in the fall term of the next succeeding year; and

61 (7) “State college and university” shall have the same
62 meaning as provided in §18B-1-2 of this code.

63 (c) Any state college and university may apply to the
64 commission for designation as an administratively

65 exempted school. The commission shall make its
66 determination as to whether to grant or deny exemption
67 designation based on the definition of administratively
68 exempted school. The commission shall propose rules for
69 legislative approval pursuant to §29A-3A-1 *et seq.* of this
70 code to implement the provisions of this section and that
71 addresses loss of an administratively exempted designation.
72 The rule shall at least include the following:

73 (1) After the first year an administratively exempted
74 school fails to meet three of the five criteria under the
75 definition of administratively exempted schools, the
76 commission may advise the institution on strategies that
77 may be implemented in order to meet three of the five
78 criteria before the following year;

79 (2) An institution may not lose its designation as an
80 administratively exempted school until it has failed to meet
81 three of the five criteria under the definition of
82 administratively exempted schools for two consecutive
83 years;

84 (3) If an institution is administratively exempt based on
85 special circumstances, the commission may revoke the
86 administratively exempted status of a state college and
87 university if it determines that the special circumstance that
88 the state college and university's administratively exempted
89 status is based on no longer exists; and

90 (4) The commission shall provide notice to the
91 institution at least 30 days before revoking the institution's
92 administratively exempted status.

93 (d) Notwithstanding any other provision of this code to
94 the contrary:

95 (1) West Virginia University, including West Virginia
96 University Potomac State College and West Virginia
97 University Institute of Technology; Marshall University;
98 and the West Virginia School of Osteopathic Medicine,

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which are statutorily exempted schools under §18B-1-2 of this code, are institutions of unique characteristics and their continuing inclusion as a statutorily exempted school is confirmed; and

(2) No other state institution of higher education maintains exempted school status pursuant to any other provision of this code except any exempted school status designated by the commission pursuant to this section.

(e) Notwithstanding any other provision of this code to the contrary, any state college and university that applies and is designated by the commission as an administratively exempted school is exempt from the following:

(1) The required approval of capital projects to ensure that capital projects and facility needs are managed effectively pursuant to §18B-1B-4(a)(10) of this code;

(2) The development and approval of institutional mission definitions pursuant to §18B-1B-4(a)(34) of this code;

(3) The program approval required pursuant to §18B-1B-4(a)(35) of this code;

(4) The rules providing guidance to the governing boards in filling vacancies in the office of the president pursuant to §18B-1B-6(d) of this code;

(5) The commission's rule governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, upon adoption by the board of governors of said school of its own rule governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, following the procedures for adoption of rules provided for in this code;

(6) The required approval of capital improvement projects exceeding \$3 million pursuant to §18B-19-6 of this code;

132 (7) The required approval of lease-purchase agreements
133 for capital improvements and equipment of \$1.5 million or
134 greater pursuant to §18B-19-11 of this code; and

135 (8) The required approval of real estate transactions,
136 lease purchase, and new building construction exceeding \$1
137 million pursuant to §18B-19-13 of this code.

138 (f) Not later than the January interims of each year, the
139 commission shall submit a report to the Legislative
140 Oversight Commission on Education Accountability
141 relating to the administratively exempted schools eligibility
142 criteria established by this section, providing the data for
143 each of the three preceding years, as available, and the three-
144 year average thereof, for each of the state institutions of
145 higher education under its jurisdiction. The commission
146 shall share the report with the institutions.

§18B-1-2. Definitions.

1 The following words when used in this chapter and
2 chapter 18C of this code have the meanings ascribed to them
3 unless the context clearly indicates a different meaning:

4 “Administratively linked community and technical
5 college” means a state institution of higher education
6 delivering community and technical college education and
7 programs which has maintained a contractual agreement to
8 receive essential services from another accredited state
9 institution of higher education prior to July 1, 2008;

10 “Advanced technology center” means a facility
11 established under the direction of an independent
12 community and technical college or the council for the
13 purpose of implementing and delivering education and
14 training programs for high-skill, high-performance 21st
15 century workplaces;

16 “Approve” or “approval”, when used in reference to
17 action by the commission or the council, means action in
18 which the governance rationale of a governing board under

19 its jurisdiction is given due consideration, and the action of
20 the commission is to additionally establish whether the
21 proposed institutional action is consistent with law and
22 established policy and is an appropriate advancement of the
23 public interest;

24 “Board of visitors” means the advisory board previously
25 appointed for the West Virginia Graduate College and the
26 advisory board previously appointed for West Virginia
27 University Institute of Technology, which provide guidance
28 to the Marshall University Graduate College and West
29 Virginia University Institute of Technology, respectively;

30 “Broker” or “brokering” means serving as an agent on
31 behalf of students, employers, communities, or
32 responsibility areas to obtain education services not offered
33 at that institution. These services include courses, degree
34 programs, or other services contracted through an
35 agreement with a provider of education services either in-
36 state or out of state;

37 “Chancellor” means the Chancellor for Higher
38 Education where the context refers to a function of the
39 Higher Education Policy Commission. “Chancellor” means
40 the Chancellor for Community and Technical College
41 Education where the context refers to a function of the West
42 Virginia Council for Community and Technical College
43 Education;

44 “Chancellor for Community and Technical College
45 Education” means the chief executive officer of the West
46 Virginia Council for Community and Technical College
47 Education employed pursuant to §18B-2B-3 of this code;

48 “Chancellor for Higher Education” means the chief
49 executive officer of the Higher Education Policy
50 Commission employed pursuant to §18B-1B-5 of this code;

51 “Collaboration” means entering into an agreement with
52 one or more providers of education services in order to

53 enhance the scope, quality, or efficiency of education
54 services;

55 “Community and technical college”, in the singular or
56 plural, means the free-standing community and technical
57 colleges and other state institutions of higher education
58 which deliver community and technical college education.
59 This definition includes Blue Ridge Community and
60 Technical College, BridgeValley Community and
61 Technical College, Eastern West Virginia Community and
62 Technical College, Mountwest Community and Technical
63 College, New River Community and Technical College,
64 Pierpont Community and Technical College, Southern West
65 Virginia Community and Technical College, West Virginia
66 Northern Community and Technical College, and West
67 Virginia University at Parkersburg;

68 “Community and technical college education” means
69 the programs, faculty, administration, and funding
70 associated with the delivery of community and technical
71 college education programs;

72 “Community and technical college education program”
73 means any college-level course or program beyond the high
74 school level provided through a public institution of higher
75 education resulting in or which may result in a two-year
76 associate degree award including an associate of arts, an
77 associate of science, and an associate of applied science;
78 certificate programs and skill sets; developmental
79 education; continuing education; collegiate credit and
80 noncredit workforce development programs; and transfer
81 and baccalaureate parallel programs. All programs are
82 under the jurisdiction of the council. Any reference to “post-
83 secondary vocational education programs” means
84 community and technical college education programs as
85 defined in this subdivision;

86 “Confirm” or “confirmation”, when used in reference to
87 action by the commission, means action in which substantial
88 deference is allocated to the governing authority of a

89 governing board under its jurisdiction and the action of the
90 commission is to review whether the proposed institutional
91 action is consistent with law and established policy;

92 “Council” means the West Virginia Council for
93 Community and Technical College Education created by
94 §18B-2B-1 *et seq.* of this code;

95 “Dual credit course” or “dual enrollment course” means
96 a credit-bearing college-level course offered in a high
97 school by a state institution of higher education for high
98 school students in which the students are concurrently
99 enrolled and receiving credit at the secondary level;

100 “Essential conditions” means those conditions which
101 shall be met by community and technical colleges as
102 provided in §18B-3C-3 of this code;

103 “Exempted schools” or “statutorily exempted schools”
104 means West Virginia University, including West Virginia
105 University Potomac State College and West Virginia
106 University Institute of Technology; Marshall University;
107 and the West Virginia School of Osteopathic Medicine;

108 “Governing boards” or “boards” means the institutional
109 boards of governors created by §18B-2A-1 of this code;

110 “Higher Education Policy Commission”, “policy
111 commission” or “commission” means the commission
112 created by §18B-1B-1 of this code;

113 “Independent community and technical college” means
114 a state institution of higher education under the jurisdiction
115 of the council, which is independently accredited, is
116 governed by its own independent governing board, and may
117 not be operated as a branch or off-campus location of any
118 other state institution of higher education. This definition
119 includes Blue Ridge Community and Technical College,
120 BridgeValley Community and Technical College, Eastern
121 West Virginia Community and Technical College,
122 Mountwest Community and Technical College, New River

123 Community and Technical College, Pierpont Community
124 and Technical College, Southern West Virginia Community
125 and Technical College, West Virginia Northern Community
126 and Technical College, and West Virginia University at
127 Parkersburg;

128 “Institutional operating budget” or “operating budget”
129 means for any fiscal year an institution’s total unrestricted
130 education and general funding from all sources, including,
131 but not limited to, tuition and fees and legislative
132 appropriation, and any adjustments to that funding as
133 approved by the commission or council based on
134 comparisons with peer institutions or to reflect consistent
135 components of peer operating budgets;

136 “Rule” or “rules” means a regulation, standard, policy,
137 or interpretation of general application and future effect;

138 “Sponsoring institution” means a state institution of
139 higher education that maintained an administrative link to a
140 community and technical college providing essential
141 services prior to July 1, 2008. This definition includes
142 institutions whose governing boards had under their
143 jurisdiction a community and technical college, regional
144 campus, or a division delivering community and technical
145 college education and programs;

146 “State college and university” means Bluefield State
147 College, Concord University, Fairmont State University,
148 Glenville State College, Shepherd University, West Liberty
149 University, or West Virginia State University;

150 “State institution of higher education” means any
151 university, college, or community and technical college
152 under the jurisdiction of a governing board as that term is
153 defined in this section;

154 “Statewide network of independently accredited
155 community and technical colleges” or “community and
156 technical college network” means the state institutions of

157 higher education under the jurisdiction of the West Virginia
158 Council for Community and Technical College Education
159 which are independently accredited, each governed by its
160 own independent governing board, and each having a core
161 mission of providing affordable access to and delivering
162 high quality community and technical education in every
163 region of the state; and

164 “Vice chancellor for administration” means the person
165 employed in accordance with §18B-4-2 of this code. Any
166 reference in this chapter or chapter 18C of this code to
167 “senior administrator” means vice chancellor for
168 administration.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-4. Powers and duties of Higher Education Policy Commission.

1 (a) The primary responsibility of the commission is to
2 provide shared services in a cost-effective manner upon
3 request to the state colleges and universities, the council,
4 and the community and technical colleges; undertake
5 certain statewide and regional initiatives as specifically
6 designated in this chapter, including those related to the
7 administration of grants and scholarships and including
8 those in conjunction with the council; to review, confirm, or
9 approve certain actions undertaken by governing boards, as
10 delineated in this chapter; and assist in the development of
11 policy that will achieve the goals, objectives and priorities
12 found in §18B-1-1a and §18B-1D-1 of this code. The
13 commission shall exercise its authority and carry out its
14 responsibilities in a manner that is consistent and not in
15 conflict with the powers and duties assigned by law to the
16 West Virginia Council for Community and Technical
17 College Education and the powers and duties assigned to the
18 governing boards. To that end, the commission has the
19 following powers and duties relating to the governing
20 boards under its jurisdiction:

21 (1) Develop and advance the public policy agenda
22 pursuant to §18B-1D-1 *et seq.* of this code to address major
23 challenges facing the state, including, but not limited to, the
24 goals, objectives, and priorities established in this chapter;
25 and

26 (2) Develop, oversee, and advance the promulgation and
27 implementation of a financing rule for state institutions of
28 higher education under its jurisdiction except the statutorily
29 exempted schools. The rule shall meet the following
30 criteria:

31 (A) Provide for an adequate level of educational and
32 general funding for institutions pursuant to §18B-1A-5 of
33 this code;

34 (B) Serve to maintain institutional assets, including, but
35 not limited to, human and physical resources and
36 eliminating deferred maintenance; and

37 (C) Invest and provide incentives for achieving the
38 priority goals in the public policy agenda, including, but not
39 limited to, those found in §18B-1-1a and §18B-1D-1 *et seq.*
40 of this code;

41 (3) In collaboration with the council and the governing
42 boards:

43 (A) Building public consensus around and sustaining
44 attention to a long-range public policy agenda. In
45 developing the agenda, the commission and council shall
46 seek input from the Legislature, the Governor, the
47 governing boards, and specifically from the State Board of
48 Education and local school districts in order to create the
49 necessary linkages to assure smooth, effective and seamless
50 movement of students through the public education and
51 post-secondary education systems and to ensure that the
52 needs of public school courses and programs can be fulfilled
53 by the graduates produced and the programs offered;

54 (B) Assisting governing boards to carry out their duty
55 effectively to govern the individual institutions of higher
56 education;

57 (4) Serve as a point of contact to state policymakers:

58 (A) The Governor for the public policy agenda; and

59 (B) The Legislature by maintaining a close working
60 relationship with the legislative leadership and the
61 Legislative Oversight Commission on Education
62 Accountability;

63 (5) Upon request, provide shared services to a state
64 institution of higher education;

65 (6) Administer scholarship and grant programs as
66 provided for in this code;

67 (7) Establish and implement the benchmarks and
68 performance indicators for state colleges and universities
69 necessary to measure institutional progress in achieving
70 state policy priorities and institutional missions pursuant to
71 §18B-1D-7 of this code;

72 (8) Establish a formal process for recommending capital
73 investment needs and for determining priorities for state
74 colleges and universities for these investments for
75 consideration by the Governor and the Legislature as part of
76 the appropriation request process pursuant to §18B-19-1 *et*
77 *seq.* of this code;

78 (9) Except the statutorily exempted schools and the
79 administratively exempted schools, develop standards and
80 evaluate governing board requests for capital project
81 financing in accordance with §18B-19-1 *et seq.* of this code;

82 (10) Except the statutorily exempted schools and
83 administratively exempted schools, ensure that governing
84 boards manage capital projects and facilities needs

85 effectively, including review and approval of capital
86 projects, in accordance with §18B-19-1 *et seq.* of this code;

87 (11) Acquire legal services as considered necessary,
88 including representation of the commission, the governing
89 boards, employees, and officers before any court or
90 administrative body, notwithstanding any other provision of
91 this code to the contrary. The counsel may be employed
92 either on a salaried basis or on a reasonable fee basis. In
93 addition, the commission may, but is not required to, call
94 upon the Attorney General for legal assistance and
95 representation as provided by law;

96 (12) Employ a Chancellor for Higher Education
97 pursuant to §18B-1B-5 of this code;

98 (13) Employ other staff as necessary and appropriate to
99 carry out the duties and responsibilities of the commission
100 and the council, in accordance with §18B-4-1 *et seq.* of this
101 code;

102 (14) Provide suitable offices in Kanawha County for the
103 chancellor, vice chancellors, and other staff;

104 (15) Approve the total compensation package from all
105 sources for presidents of institutions under its jurisdiction,
106 except the statutorily exempted schools, as proposed by the
107 governing boards. The governing boards, except the
108 governing boards of the statutorily exempted schools, must
109 obtain approval from the commission of the total
110 compensation package both when institutional presidents
111 are employed initially and afterward when any change is
112 made in the amount of the total compensation package:
113 *Provided*, That the commission will receive notice, but need
114 not approve or confirm, an increase in the compensation of
115 an institutional president that is exactly in the ratio of
116 compensation increases allocated to all institutional
117 employees and approved by the governing board to
118 expressly include the president;

119 (16) Assist and facilitate the work of the institutions to
120 implement the policy of the state to assure that parents and
121 students have sufficient information at the earliest possible
122 age on which to base academic decisions about what is
123 required for students to be successful in college, other post-
124 secondary education and careers related, as far as possible,
125 to results from current assessment tools in use in West
126 Virginia;

127 (17) Approve and implement a uniform standard jointly
128 with the council to determine which students shall be placed
129 in remedial or developmental courses. The standard shall be
130 aligned with college admission tests and assessment tools
131 used in West Virginia and shall be applied uniformly by the
132 governing boards. The chancellors shall develop a clear,
133 concise explanation of the standard which they shall
134 communicate to the State Board of Education and the state
135 superintendent of schools;

136 (18) Jointly with the council, develop and implement an
137 oversight plan to manage systemwide technology except for
138 the statutorily exempted schools, including, but not limited
139 to, the following:

140 (A) Expanding distance learning and technology
141 networks to enhance teaching and learning, promote access
142 to quality educational offerings with minimum duplication
143 of effort; and

144 (B) Increasing the delivery of instruction to
145 nontraditional students, to provide services to business and
146 industry and increase the management capabilities of the
147 higher education system.

148 (C) Notwithstanding any other provision of law or this
149 code to the contrary, the council, commission, and
150 governing boards are not subject to the jurisdiction of the
151 Chief Technology Officer for any purpose;

152 (19) Establish and implement policies and procedures to
153 ensure that a student may transfer and apply toward the
154 requirements for a bachelor's degree the maximum number
155 of credits earned at any regionally accredited in-state or out-
156 of-state community and technical college with as few
157 requirements to repeat courses or to incur additional costs
158 as are consistent with sound academic policy;

159 (20) Establish and implement policies and procedures to
160 ensure that a student may transfer and apply toward the
161 requirements for any degree the maximum number of
162 credits earned at any regionally accredited in-state or out-
163 of-state higher education institution with as few
164 requirements to repeat courses or to incur additional costs
165 as are consistent with sound academic policy;

166 (21) Establish and implement policies and procedures to
167 ensure that a student may transfer and apply toward the
168 requirements for a master's degree the maximum number of
169 credits earned at any regionally accredited in-state or out-
170 of-state higher education institution with as few
171 requirements to repeat courses or to incur additional costs
172 as are consistent with sound academic policy;

173 (22) Establish and implement policies and programs, in
174 cooperation with the council and the governing boards,
175 through which a student who has gained knowledge and
176 skills through employment, participation in education, and
177 training at vocational schools or other education
178 institutions, or Internet-based education programs, may
179 demonstrate by competency-based assessment that he or she
180 has the necessary knowledge and skills to be granted
181 academic credit or advanced placement standing toward the
182 requirements of an associate's degree or a bachelor's degree
183 at a state institution of higher education;

184 (23) Seek out and attend regional, national, and
185 international meetings and forums on education and
186 workforce development-related topics as, in the
187 commission's discretion, are critical for the performance of

188 their duties as members, for the purpose of keeping abreast
189 of education trends and policies to aid it in developing the
190 policies for this state to meet the established education
191 goals, objectives, and priorities pursuant to §18B-1-1a and
192 §18B-1D-1 *et seq.* of this code;

193 (24) Promulgate and implement a rule for higher
194 education governing boards and institutions, except for the
195 statutorily exempted schools and administratively exempted
196 schools, to follow when considering capital projects
197 pursuant to §18B-19-1 *et seq.* of this code, which rule shall
198 provide for appropriate deference to the value judgments of
199 governing boards under the jurisdiction of the commission;

200 (25) Submit to the appropriate agencies of the executive
201 and legislative branches of state government an
202 appropriation request that reflects recommended
203 appropriations for the commission and the governing boards
204 under its jurisdiction. The commission shall submit as part
205 of its appropriation request the separate recommended
206 appropriation request it received from the council, both for
207 the council and for the governing boards under the council's
208 jurisdiction. The commission annually shall submit the
209 proposed allocations based on subsection (d) of this section;

210 (26) Promulgate rules allocating reimbursement of
211 appropriations, if made available by the Legislature, to
212 governing boards for qualifying noncapital expenditures
213 incurred in providing services to students with physical,
214 learning, or severe sensory disabilities;

215 (27) Pursuant to §29A-3A-1 *et seq.* and §18B-1-6 of this
216 code, promulgate rules necessary or expedient to fulfill the
217 purposes of this chapter;

218 (28) Determine when a joint rule among the governing
219 boards under its jurisdiction is necessary or required by law
220 and, in those instances, in consultation with the governing
221 boards under its jurisdiction, promulgate the joint rule;

222 (29) Promulgate and implement a rule jointly with the
223 council whereby course credit earned at a community and
224 technical college transfers for program credit at any other
225 state institution of higher education and is not limited to
226 fulfilling a general education requirement;

227 (30) Promulgate a rule pursuant to §18B-10-1 of this
228 code establishing tuition and fee policy for all governing
229 boards under the jurisdiction of the commission, except the
230 exempted schools. The rule shall include, but is not limited
231 to, the following:

232 (A) Differences among institutional missions;

233 (B) Strategies for promoting student access;

234 (C) Consideration of charges to out-of-state students;
235 and

236 (D) Such other policies as the commission and council
237 consider appropriate;

238 (31) Assist governing boards in actions to implement
239 general disease awareness initiatives to educate parents and
240 students, particularly dormitory residents, about
241 meningococcal meningitis; the potentially life-threatening
242 dangers of contracting the infection; behaviors and activities
243 that can increase risks; measures that can be taken to prevent
244 contact or infection; and potential benefits of vaccination.
245 The commission shall encourage governing boards that
246 provide medical care to students to provide access to the
247 vaccine for those who wish to receive it;

248 (32) Notwithstanding any other provision of this code to
249 the contrary sell, lease, convey, or otherwise dispose of all
250 or part of any real property that it owns, in accordance with
251 §18B-19-1 *et seq.* of this code;

252 (33) Policy analysis and research focused on issues
253 affecting institutions of higher education generally or a
254 geographical region thereof;

255 (34) Development and approval of institutional mission
256 definitions except the statutorily exempted schools and
257 administratively exempted schools: *Provided*, That the
258 commission may use funds appropriated by the Legislature
259 for incentive funds to influence institutional behavior in
260 ways that are consistent with public priorities, including the
261 statutorily exempted schools and administratively exempted
262 schools;

263 (35) Academic program review and approval for
264 governing boards under its jurisdiction. The review and
265 approval includes use of institutional missions as a template
266 to judge the appropriateness of both new and existing
267 programs and the authority to implement needed changes.

268 (A) The commission's authority to review and approve
269 academic programs for the statutorily exempted and
270 administratively exempted schools is limited to programs
271 that are proposed to be offered at a new location not
272 presently served by that institution: *Provided*, That West
273 Virginia University and the West Virginia University
274 Institute of Technology are subject to the commission's
275 authority as provided in §18B-1C-2 of this code.

276 (B) In reviewing and approving academic programs, the
277 commission shall focus on the following policy concerns:

278 (i) New programs should not be implemented which
279 change the institutional mission, unless the institution also
280 receives approval for expanding the institutional mission;

281 (ii) New programs which will require significant
282 additional expense investments for implementation should
283 not be implemented unless the institution demonstrates that:

284 (I) The expenses will be addressed by effective
285 reallocations of existing institutional resources; or

286 (II) The expenses can be legitimately spread out over
287 future years and will be covered by reasonably anticipated
288 additional net revenues from new enrollments;

289 (iii) A new undergraduate program which is
290 significantly similar to an existing program already in the
291 geographic service area should not be implemented unless
292 the institution requesting the new program demonstrates a
293 compelling need in the service area that is not being met by
294 the existing program: *Provided*, That the academic
295 programs of the statutorily exempted and administratively
296 exempted schools are not to be taken into consideration
297 except as it relates to academic programs offered at West
298 Virginia University in Beckley and West Virginia
299 University Institute of Technology in Beckley.

300 (C) The commission shall approve or disapprove
301 proposed academic degree programs in those instances
302 where approval is required as soon as practicable. The
303 commission shall maintain by rule a format model by which
304 a new program approval shall be requested by an institution.
305 When a request for approval of a new program is submitted
306 to the commission, the chancellor shall provide notice
307 within two weeks as to whether the submission meets the
308 required format, and if it does not the chancellor shall
309 identify each specific deficiency and return the request to
310 the institution. The institution may refile the request for
311 approval with the commission to address any identified
312 deficiencies. Within 30 days after the chancellor's
313 confirmation that the request meets the required format, the
314 commission shall either approve or disapprove the request
315 for the new program. The commission may not withhold
316 approval unreasonably.

317 (36) Distribution of funds appropriated to the
318 commission, including incentive and performance-based
319 funds;

320 (37) Administration of state and federal student aid
321 programs under the supervision of the vice chancellor for
322 administration, including promulgation of rules necessary to
323 administer those programs;

324 (38) Serving as the agent to receive and disburse public
325 funds when a governmental entity requires designation of a
326 statewide higher education agency for this purpose;

327 (39) Developing and distributing information,
328 assessment, accountability and personnel systems for state
329 colleges and universities, including maintaining statewide
330 data systems that facilitate long-term planning and accurate
331 measurement of strategic outcomes and performance
332 indicators;

333 (40) Jointly with the council, promulgating and
334 implementing rules for licensing and oversight for both
335 public and private degree-granting and nondegree-granting
336 institutions that provide post-secondary education courses
337 or programs in the state. The council has authority and
338 responsibility for approval of all post-secondary courses or
339 programs providing community and technical college
340 education as defined in §18B-1-2 of this code;

341 (41) Developing, facilitating, and overseeing statewide
342 and regional projects and initiatives related to providing
343 post-secondary education at the baccalaureate level and
344 above such as those using funds from federal categorical
345 programs or those using incentive and performance-based
346 funds from any source;

347 (42) (A) For all governing boards under its jurisdiction,
348 except for the statutorily exempted schools, the commission
349 shall review institutional operating budgets, review, and
350 approve capital budgets, and distribute incentive and
351 performance-based funds.

352 (B) For the governing boards of the statutorily exempted
353 schools, the commission shall distribute incentive and
354 performance-based funds and may review and comment
355 upon the institutional operating budgets and capital budgets.
356 The commission's comments, if any, shall be made part of
357 the governing board's minute record and shall be filed with

358 the Legislative Oversight Commission on Education
359 Accountability;

360 (43) May provide information, research, and
361 recommendations to state colleges and universities relating
362 to programs and vocations with employment rates greater
363 than 90 percent within six months post-graduation; and

364 (44) May provide information, research, and
365 recommendations to state colleges and universities on
366 coordinating with the West Virginia State Board of
367 Education about complimentary programs.

368 (b) In addition to the powers and duties provided in
369 subsections (a) and (c) of this section and any other powers
370 and duties assigned to it by law, the commission has other
371 powers and duties necessary or expedient to accomplish the
372 purposes of this article: *Provided*, That the provisions of this
373 subsection shall not be construed to shift management
374 authority from the governing boards to the commission.

375 (c) The commission may withdraw specific powers of a
376 governing board under its jurisdiction for a period not to
377 exceed two years, if the commission determines that any of
378 the following conditions exist:

379 (1) The commission has received information,
380 substantiated by independent audit, of significant
381 mismanagement or failure to carry out the powers and duties
382 of the governing board according to state law; or

383 (2) Other circumstances which, in the view of the
384 commission, severely limit the capacity of the governing
385 board to exercise its powers or carry out its duties and
386 responsibilities.

387 The commission may not withdraw specific powers for
388 a period exceeding two years. During the withdrawal
389 period, the commission shall take all steps necessary to
390 reestablish sound, stable and responsible institutional
391 governance.

392 (d) The Higher Education Policy Commission shall
393 examine the question of general revenue appropriations to
394 individual higher education institutions per student, and per
395 credit hour, and by other relevant measures at state institutions
396 of higher education under its jurisdiction and the council shall
397 undertake the same analysis for the community and technical
398 colleges, and on or before October 1 of each year the
399 commission and council shall each deliver a report to the Joint
400 Committee on Government and Finance and the Legislative
401 Oversight Commission on Education Accountability. These
402 reports shall include a recommendation to the Legislature on a
403 formula or methodology for the allocation of general revenue
404 to be appropriated to such institutions that provides for ratable
405 funding across all four-year institutions and community and
406 technical colleges on a ratable basis, by enrolled student, by
407 credit hour or by other relevant measures. The commission and
408 council shall take into consideration the needs of each
409 institution relating to a base level of appropriation support and
410 mission differentiation. On such basis, the commission and
411 council shall each make a recommendation to the Legislature
412 as to the amounts that each such institution should have
413 appropriated to it in the general revenue budget for the next
414 fiscal year, based upon the total general revenue appropriations
415 that such institutions receive in aggregate in the enacted budget
416 for the current fiscal year. The commission and council shall
417 engage with the four-year institutions and community and
418 technical colleges, as appropriate, to seek to develop a
419 consensus on the formulas and methodologies underlying any
420 recommendations required by this subsection. The
421 commission and council shall provide the four-year
422 institutions and community and technical colleges with at least
423 30 days written notice to comment on any recommendations
424 before any report contemplated by this subsection is provided
425 to the Legislature.

§18B-1B-6. Appointment of institutional presidents; evaluation.

- 1 (a) *Appointment of institutional presidents.* —
- 2 Appointment of presidents of the state institutions of higher

3 education, except the statutorily exempted schools, shall be
4 made as follows:

5 (1) The initial contract term for a president may not
6 exceed two years. At the end of the initial contract period,
7 and subject to the provisions of subsection (c) of this
8 section, the governing board may offer the president a
9 contract of longer duration, but not to exceed five years.

10 (2) The president of a state institution of higher
11 education serves at the will and pleasure of the appointing
12 governing board.

13 (3) The governing boards of the following institutions,
14 appoint a president: Bluefield State College, Concord
15 University, Fairmont State University, Glenville State
16 College, Shepherd University, West Liberty University and
17 West Virginia State University, West Virginia University,
18 Marshall University, and the West Virginia School of
19 Osteopathic Medicine.

20 (4) Subject to the approval of the council, the governing
21 board of the community and technical college appoints a
22 president for Blue Ridge Community and Technical
23 College, Bridge Valley Community and Technical College,
24 Eastern West Virginia Community and Technical College,
25 Mountwest Community and Technical College, New River
26 Community and Technical College, Pierpont Community
27 and Technical College, Southern West Virginia Community
28 and Technical College, West Virginia Northern Community
29 and Technical College, and West Virginia University at
30 Parkersburg.

31 (b) *Other appointments.* — The President of West
32 Virginia University appoints a campus president to be the
33 administrative head of Potomac State College of West
34 Virginia University and a campus president to be the
35 administrative head of West Virginia University Institute of
36 Technology.

37 (c) *Evaluation of presidents.* —

38 (1) The appointing governing board shall conduct
39 written performance evaluations of the institution's
40 president. Evaluations shall be done at the end of the initial
41 contract period and in every third year of employment as
42 president thereafter, recognizing unique characteristics of
43 the institution and using institutional personnel including
44 classified employees if any are employed by the institution,
45 boards of advisors as appropriate, staff of the appropriate
46 governing board, and persons knowledgeable in higher
47 education matters who are not otherwise employed by a
48 governing board. A part of the evaluation shall be a
49 determination of the success of the institution in meeting the
50 requirements of its institutional compact and in achieving
51 the goals, objectives, and priorities established in §18B-1-1
52 *et seq.* and §18B-1D-1 *et seq.* of this code.

53 (2) After reviewing the evaluations, the governing board
54 shall decide by majority vote of its members on continuing
55 employment and the compensation level for the president in
56 accordance with subsection (a) of this section.

57 (d) The legislative rules of the commission and council
58 promulgated in accordance with §18B-1-6 and §29A-3A-1
59 *et seq.* of this code which are in effect on January 1, 2014,
60 continue in effect unless amended or repealed. The rules
61 provide guidance for the governing boards, but are not
62 applicable to the statutorily exempted or the
63 administratively exempted schools, in filling vacancies in
64 the office of president in accordance with this chapter and
65 shall include, but are not limited to, clarifying the powers,
66 duties and roles of the governing boards, commission,
67 council, and chancellors in the presidential appointment
68 process.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

**§18B-1D-7. Findings; establishment of institutional compacts;
compact elements; submission date; review and approval
process; rule required.**

1 (a) The Legislature finds that West Virginia long has
2 recognized the value of education and, on a per capita
3 income basis, ranks very high among the states in its
4 investment to support public education. The Legislature
5 further finds that a combination of state and national
6 demographic and economic factors as well as significant
7 changes in methods of course and program delivery compel
8 both the state and public higher education to create a process
9 that will strengthen institutional capacity to provide the
10 services so valued by the citizens of the state and so
11 essential to promoting economic vitality.

12 (b) The commission and council each shall organize the
13 statements of legislative goals and objectives contained in
14 this article and §18B-1-1a of this code in a manner that
15 facilitates the purposes therein.

16 (c) *Assignment of geographic areas of responsibility.* —

17 (1) The commission shall assign geographic areas of
18 responsibility to the state institutions of higher education
19 under its jurisdiction, except for the statutorily exempted
20 schools. For institutions other than the statutorily exempted
21 schools, the geographic areas of responsibility shall be
22 assigned in such a way as to ensure that all areas of the state
23 are provided necessary programs and services to achieve
24 state goals and objectives. The commission and the council
25 each shall develop data-based measures to determine the
26 extent to which institutions, with the exception of the
27 statutorily exempted schools, under their respective
28 jurisdictions are providing higher education services
29 aligned with state goals and objectives and institutional
30 missions within their geographic areas of responsibility.
31 This information shall be reported in the statewide data
32 reporting system established pursuant to §18B-1D-8 of this
33 code.

34 (2) The council shall assign geographic areas of
35 responsibility to the state institutions of higher education
36 under its jurisdiction.

37 (3) The geographic areas of responsibility for the state
38 institutions of higher education known as West Virginia
39 School of Osteopathic Medicine, Marshall University, and
40 West Virginia University are statewide.

41 (4) Each state institution of higher education shall
42 establish benchmarks in collaboration with the commission
43 or council, as applicable, which include measures of
44 programs and services by geographic area throughout the
45 assigned geographic area of responsibility.

46 (d) The benchmarks shall be used to determine progress
47 toward meeting the state's higher education objectives. The
48 benchmarks shall meet the following criteria:

49 (1) They shall be objective;

50 (2) They shall be directly linked to the established
51 objectives;

52 (3) They shall be measured by the indicators described
53 in subsection (e) of this section; and

54 (4) Where applicable, they shall be used to measure
55 progress in geographic areas of responsibility.

56 (e) The rules required by §18B-1D-1(c) of this code
57 shall include indicators which measure the degree to which
58 the goals and objectives set forth in this article and §18B-1-
59 1a of this code are being met by the institutions under the
60 jurisdiction of the commission and the council, respectively.

61 (1) The rules pertaining to benchmarks and indicators in
62 effect for the commission and the council on the effective
63 date of this section remain in effect for the institutions under
64 their respective jurisdictions until amended, modified,
65 repealed, or replaced by the commission or the council,
66 respectively, pursuant to the provisions of this article, §18B-
67 1-6 of this code, and §29A-3A-1 *et seq.* of this code.

68 (2) The rules shall set forth at least the following as
69 pertains to all state institutions of higher education, except
70 the statutorily exempted schools:

71 (A) The indicators used to measure the degree to which
72 the goals and objectives are being met;

73 (B) Uniform definitions for the various data elements to
74 be used in establishing the indicators;

75 (C) Guidelines for the collection and reporting of data;
76 and

77 (D) Sufficient detail within the benchmarks and
78 indicators to provide the following information:

79 (i) Measurable evidence that the pursuits of the
80 institution are focused on the education needs of the citizens
81 of the state and are aligned with the objectives required
82 pursuant to this section;

83 (ii) Delineation of the objectives and benchmarks for an
84 institution so that the commission or council can precisely
85 measure the degree to which progress is being made toward
86 achieving the goals and objectives provided in this article
87 and §18B-1-1a of this code: *Provided*, That the commission
88 has no authority regarding the objectives and benchmarks
89 for statutorily exempted schools; and

90 (iii) Identification of specific objectives that are not
91 being met or toward which sufficient progress is not being
92 made.

93 (3) In addition to any other requirement, the rule
94 established by the council shall set forth at least the
95 following as pertains to community and technical college
96 education:

97 (A) Benchmarks and indicators which are targeted to
98 identify the following:

99 (i) The degree to which progress is being made by
100 institutions toward meeting state goals and objectives and
101 the essential conditions for community and technical
102 college education pursuant to §18B-3C-3 of this code;

103 (ii) Information and data necessary to be considered by
104 the council in making the determination required by §18B-
105 2C-3 of this code; and

106 (B) Sufficient detail within the benchmarks and
107 indicators to provide clear evidence to support an objective
108 determination by the council that an institution's progress
109 toward achieving state goals and objectives and the essential
110 conditions for community and technical college education
111 is so deficient that implementation of the provisions of
112 §18B-2C-4 of this code is warranted and necessary.

ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.

§18B-19-4. Campus development plans.

1 (a) Each governing board shall update its current
2 campus development plan and submit the updated plan to
3 the commission or council, as appropriate. The submission
4 of a plan or updated plan to the council is for approval. A
5 campus development plan shall be adopted by each
6 governing board for a 10-year period and shall align with
7 criteria specified in the following sources:

8 (1) The system capital development oversight policy;

9 (2) The institution's approved master plan; and

10 (3) The current campus development plan objectives.

11 (b) Campus development plans are intended to be
12 aspirational; however, an institution's plan shall be
13 appropriate to its size, mission, and enrollment and to the
14 fiscal constraints within which the institution operates. At a

15 minimum the campus development plan shall include the
16 following:

- 17 (1) The governing board's development strategy;
- 18 (2) An assessment of the general condition and
19 suitability of buildings and facilities, including deferred
20 maintenance, life-safety and building code issues, ADA
21 requirements, and energy efficiency;
- 22 (3) An assessment of the impact of projected enrollment
23 and demographic changes on building and facility needs;
- 24 (4) A comprehensive list of major deferred maintenance
25 projects, individually exceeding \$75,000 in cost, that need
26 to be addressed for each campus by building or facility
27 including an estimated cost for each;
- 28 (5) An analysis as to all buildings and facilities as to the
29 need for renovations, additions, demolition, or any
30 combination thereof;
- 31 (6) A list of major site improvements that are needed,
32 including vehicular and pedestrian circulation, parking, and
33 landscaping;
- 34 (7) An analysis of telecommunications, utilities, and
35 other infrastructure improvements that are needed;
- 36 (8) A delineation of clear property acquisition
37 boundaries that are reasonably appropriate for campus
38 expansion;
- 39 (9) A list of proposed new facilities and building sites;
- 40 (10) A list of capital projects in priority order;
- 41 (11) Estimates of the timing, phasing, and projected
42 costs associated with individual projects;
- 43 (12) If an institution has multiple campuses in close
44 proximity, a delineation of how the campuses should

45 interact and support each other to minimize duplication of
46 facilities, improve efficiency and be aesthetically
47 compatible;

48 (13) A statement of the impact of the plan upon the local
49 community and the input afforded local and regional
50 government entities and the public with respect to its
51 implementation; and

52 (14) Any other requirement established by the
53 commission and council in the rules required by §18B-19-
54 17 of this code.

55 (c) Campus development plans shall incorporate all
56 current and proposed facilities, including educational and
57 general and auxiliary facilities.

58 (d) Not later than the next regularly scheduled meeting
59 of the commission or council, as applicable, following the
60 fifth anniversary date after the commission receives or
61 council approves, as appropriate, the development plan of a
62 governing board the governing board shall report on the
63 progress made in the first five years to implement the
64 campus development plan for each campus under its
65 jurisdiction. In addition, the governing board shall report on
66 its plans to implement the remaining five-year period of its
67 campus development plan.

68 (e) Each governing board shall update its campus
69 development plan at least once during each 10-year period
70 and any update shall be submitted to the commission or
71 council, as appropriate and those submitted to the council
72 are subject to the approval of the council.

73 (f) A governing board may not implement a campus
74 development plan or plan update that has not been submitted
75 to the commission or submitted to and approved by the
76 council, as appropriate.

●

CHAPTER 174

(S. B. 781 - By Senators Rucker, Plymale, Stollings and Cline)

[Passed March 3, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18B-3C-16 of the Code of West Virginia, 1931, as amended, relating to modifying information required to be included in report to the Legislature and the Governor regarding the collaborative agreements between community and technical colleges and federally registered apprenticeship programs.

Be it enacted by the Legislature of West Virginia:

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 apprenticeship 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, and* the
19 number of community and technical colleges credits earned
20 by students in such apprenticeship programs, and, if
21 available, information on the number of students employed,
22 and the average hours they worked in a relevant field, during
23 such apprenticeship programs.

●

CHAPTER 175

**(S. B. 839 - By Senators Roberts, Weld, Baldwin,
Boley, Jeffries, Rucker, Smith, Stollings and Tarr)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-1D-11, relating to creating the State Advisory Council on Postsecondary Attainment Goals; designating members of the council; providing for the powers and duties of the council; requiring certain state agencies to cooperate with the council; and establishing a sunset date for the council.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-11. State Advisory Council on Postsecondary Attainment Goals.

1 (a) There is hereby created the State Advisory Council
2 on Postsecondary Attainment Goals. The council's purpose

*NOTE: This word (and) was contained in the enrolled bill.

3 is to ensure that students are provided opportunities to learn
4 and earn the most relevant industry-demanded knowledge,
5 skills, and credentials to prepare students for the challenges
6 of college, careers, and life, while helping the state and its
7 employers attain economic growth through collaboration
8 with K-12 education leaders, employers and industry
9 leaders, state agency leaders, the Higher Education Policy
10 Commission, and the Council for Community and
11 Technical College Education to identify high-value and in-
12 demand postsecondary credentials, and to develop a plan to
13 assist the state in achieving its postsecondary attainment
14 goal of having 60 percent of West Virginians between the
15 ages of 25 and 64 hold a degree, certificate, or other
16 postsecondary workforce credential of value in the
17 workplace by 2030.

18 (b) The State Advisory Council on Postsecondary
19 Attainment Goals shall consist of the following members:

20 (1) The Chancellor of the Higher Education Policy
21 Commission, or his or her designee;

22 (2) The State Superintendent of Schools, or his or her
23 designee;

24 (3) The Secretary of the Department of Commerce, or
25 his or her designee;

26 (4) The Director of WorkForce West Virginia, or his or
27 her designee;

28 (5) Two presidents representing the state's four-year
29 institutions of higher education, at least one of which shall
30 be the president of a regional institution, appointed jointly
31 by the President of the Senate and the Speaker of the House
32 of Delegates;

33 (6) Two presidents representing the state's community
34 and technical colleges appointed jointly by the President of
35 the Senate and the Speaker of the House of Delegates;

36 (7) Representatives from at least two employers,
37 industry associations, or chambers of commerce, appointed
38 jointly by the President of the Senate and the Speaker of the
39 House of Delegates;

40 (8) Representatives from at least two regional economic
41 development and workforce investment boards, appointed
42 jointly by the President of the Senate and the Speaker of the
43 House of Delegates;

44 (9) The chair of the Senate Committee on Education as
45 an ex officio nonvoting member;

46 (10) The chair of the House Committee on Education as
47 an ex officio nonvoting member; and

48 (11) Any other individuals deemed appropriate and
49 appointed jointly by the President of the Senate and the
50 Speaker of the House of Delegates.

51 (c) The council shall be chaired by the Chancellor of the
52 Higher Education Policy Commission. The council shall
53 meet at least quarterly and at the call of the chair. Quorum
54 shall be a simple majority of the council. The administrative
55 functions of the council are the responsibility of the joint
56 staff of the Higher Education Policy Commission and the
57 Council for Community and Technical Education.

58 (d) The council shall consult with and advise the
59 Legislature on matters related to the progress toward
60 achieving the state's postsecondary attainment goal as
61 established in subsection (a) of this section, including
62 identifying high-value and in-demand postsecondary
63 credentials. The council may:

64 (1) Make recommendations to the Legislature as
65 required by this section;

66 (2) Provide guidance to the Legislature on potential
67 statutory solutions relative to achievement of the state's
68 postsecondary attainment goal;

69 (3) Establish workgroups or subcommittees as the
70 council considers necessary to address pertinent issues
71 related to achievement of the state's postsecondary
72 attainment goal, and to provide consistency in the
73 development of further regulation, if further regulation is
74 determined to be necessary by the council;

75 (4) Consult with entities and persons with expertise in
76 the areas being studied by the council as the council
77 considers necessary in the fulfillment of its duties, including
78 public and private sector partnerships; and

79 (5) Provide a forum for a full and fair discussion of
80 issues relating to achievement of the state's postsecondary
81 attainment goal.

82 (e) The council shall provide leadership, strategic
83 direction, and evaluation of the state's investments in, and
84 progress toward, implementing high-quality career and
85 technical education programs that are accessible to all
86 students and improves the career readiness of the state's
87 workforce by conducting an annual review of career and
88 technical education offerings in K-12 and the state's
89 community college and technical education system to
90 determine the alignment of existing offerings with employer
91 demand, postsecondary degree or certificate programs, and
92 professional industry certifications. The review shall
93 identify career and technical education offerings that are
94 linked to occupations that are in high-demand by employers,
95 require high-level skills, and provide middle- and high-level
96 wages. The review shall include analyses of:

97 (1) Participating students and their outcomes, including
98 the following:

99 (A) Academic achievement;

100 (B) Attainment of industry certifications;

101 (C) Program completion;

- 102 (D) Applied learning experiences;
- 103 (E) College credit attainment through the career and
104 technical education program, including dual enrollment or
105 articulation;
- 106 (F) Postsecondary enrollment and credential attainment,
107 including enrollment in four-year degree programs for state
108 college system students; and
- 109 (G) Employment outcomes, including wages;
- 110 (2) Demographics of participating students by pathway
111 and credential attainment;
- 112 (3) Educational settings of the courses;
- 113 (4) Alignment with high-growth, high-demand, and
114 high-wage employment opportunities;
- 115 (5) Current and projected economic, labor, and wage
116 data on the needs of the state, regional, and global economy
117 and workforce;
- 118 (6) Alignment with certificate or degree programs
119 offered at the postsecondary level or professional industry
120 certifications;
- 121 (7) Employment outcomes, including wages, by career
122 and technical education program offerings;
- 123 (8) Apprenticeship and pre-apprenticeship offerings;
- 124 (9) Qualifications and specialized knowledge and
125 expertise of instructors and the opportunities for these
126 educators to upskill in the latest in-demand skills of
127 employers; and
- 128 (10) Extent to which federal, state, and local funding is
129 used to foster career and technical education program
130 success and program efficiency.

131 (f) The council shall report its findings to the Legislative
132 Oversight Commission on Education Accountability and
133 the Joint Committee on Government and Finance by
134 December 31, 2020, and annually thereafter until the
135 council terminates, pursuant to the provisions of this
136 section. The report shall include, at a minimum, the
137 following:

138 (1) Conclusions and recommendations about the means
139 to achieve the state's postsecondary attainment goal;

140 (2) Recommendations for statutory and regulatory
141 modifications, if the council determines that such
142 modifications are necessary;

143 (3) Identification of any action that the Legislature may
144 take to better foster awareness of the actions being taken to
145 achieve the state's postsecondary attainment goal; and

146 (4) Any other ancillary issues relative to achievement of
147 the state's postsecondary attainment goal.

148 (g) The State Board of Education, the Superintendent of
149 Schools, the Department of Commerce, WorkForce West
150 Virginia, the presidents of the state's public institutions of
151 higher education, and all other entities of state government
152 shall cooperate with the council in the exchange of data,
153 information, and expertise, if so requested by the council,
154 including, but not limited to:

155 (1) Providing the entity's plans to assist in achievement
156 of the state's postsecondary attainment goal;

157 (2) Identifying equity gaps among certain high-risk
158 populations, including, but not limited to, returning adults,
159 academically underprepared students, the economically
160 disadvantaged, and underrepresented racial or ethnic
161 minorities;

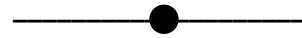
162 (3) Sharing information on the economic impact of
163 achievement of the state's postsecondary goal on the State
164 of West Virginia;

165 (4) Providing an assessment of the benefits of
166 implemented programs and activities aimed at achieving the
167 state's postsecondary attainment goal;

168 (5) Assisting in the development or revision of detailed
169 action plans to achieve the state's postsecondary attainment
170 goal; and

171 (6) Providing resources required to implement the plan
172 to achieve the state's postsecondary attainment goal.

173 (h) The council and all provisions of this section shall
174 terminate and no longer be in effect on December 31, 2023.



CHAPTER 176

**(H. B. 4022 - By Delegates Ellington, Hanna,
Hamrick, Higginbotham and Espinosa)**

[Passed March 5, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18B-1B-5 of the Code of West Virginia, 1931, as amended, clarifying the qualifications of the Chancellor of the Higher Education Policy Commission; modifying provisions pertaining to salary of Chancellor of the Higher Education Policy Commission; retitling the Vice Chancellor for Health Sciences; and abolishing the statutory position of Vice Chancellor for State Colleges.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**§18B-1B-5. Employment of Chancellor for Higher Education; office; powers and duties generally; employment of Vice Chancellors and other staff.**

1 (a) The commission, created by §18B-1B-1 of this code,
2 shall employ a Chancellor for Higher Education who is the
3 Chief Executive Officer of the Commission and who serves
4 at its will and pleasure.

5 (b) The commission shall set the qualifications for the
6 position of chancellor and, when a vacancy occurs, shall
7 conduct a thorough nationwide search for qualified
8 candidates. A qualified candidate is one who meets at least
9 the following criteria:

10 (1) Possesses an excellent academic and administrative
11 background;

12 (2) Demonstrates strong communication skills;

13 (3) Has significant experience and an established
14 national reputation as a professional in the field of higher
15 education;

16 (4) Is free of institutional or regional biases; and

17 (5) Holds or retains no other administrative position
18 within a system of higher education while employed as
19 chancellor: *Provided*, That nothing contained in this
20 subsection may preclude the Chancellor of the commission
21 from also serving as the Chancellor Of The Council for
22 Community and Technical College Education, as provided
23 in §18B-2B-3 of this code.

24 (c) The commission shall conduct written performance
25 evaluations of the chancellor annually and may offer the
26 chancellor a contract not to exceed three years. At the end
27 of each contract period, the commission shall review the

28 evaluations and make a determination by vote of its
29 members on continuing employment and compensation
30 level.

31 (d) When filling a vacancy in the position of chancellor,
32 the commission shall enter into an initial employment
33 contract for one year with the candidate selected. At the end
34 of the initial contract period, and each contract period
35 thereafter, the commission shall review the evaluations and
36 make a determination by vote of its members on continuing
37 employment and compensation level for the chancellor.

38 (e) The commission sets the chancellor's salary. The
39 salary may not exceed by more than 20 percent the average
40 annual salary of the chief executive officers of state systems
41 of higher education in the states that comprise the
42 membership of the Southern Regional Education Board.
43 Pursuant to §6B-2-5(l) of this code, the chancellor may
44 receive only one form of salary if such person serves as the
45 chancellor for both the higher education policy commission
46 and the council for community and technical colleges.

47 (f) The commission may employ a Senior Director for
48 Health Sciences who serves at the will and pleasure of the
49 commission. The Senior Director for Health Sciences shall
50 coordinate the West Virginia University School of
51 Medicine, the Marshall University School of Medicine and
52 the West Virginia School of Osteopathic Medicine and also
53 shall provide assistance to the governing boards on matters
54 related to medical education and health sciences. The Senior
55 Director for Health Sciences shall perform all duties
56 assigned by the chancellor, the commission and state law. If
57 there is a vacancy in the office of Senior Director of Health
58 Sciences, the duties assigned to this office by law are the
59 responsibility of the chancellor or a designee.

60 (g) The commission shall employ a Vice Chancellor for
61 Administration pursuant to §18B-4-2 of this code.

62 (h) On behalf of the commission, the chancellor may
63 enter into agreements with any state agency or political
64 subdivision of the state, any state institution of higher
65 education or any other person or entity to enlist staff
66 assistance to implement the powers and duties assigned by
67 the commission or by state law.

68 (i) The chancellor is responsible for the daily operations
69 of the commission and has the following responsibilities
70 relating to the commission and the governing boards under
71 its jurisdiction:

72 (1) To carry out policy and program directives of the
73 commission;

74 (2) To develop and submit annual reports on the
75 implementation plan to achieve the goals and objectives set
76 forth in §18B-1-1a and §18B-1-1d of this code, and in the
77 compacts;

78 (3) To prepare and submit to the commission for its
79 approval the proposed budget of the commission including
80 the offices of the chancellor and the vice chancellors;

81 (4) To assist the governing boards in developing rules,
82 subject to §18B-1-6 of this code. Nothing in this chapter
83 requires the rules of the governing boards to be filed
84 pursuant to the rule-making procedures provided in §29A-
85 3A-1 *et seq.* of this code. The commission and the council,
86 either separately or jointly as appropriate, are responsible
87 for ensuring that any policy which is required to be uniform
88 across the institutions is applied in a uniform manner;

89 (5) To consult with institutions on human relations
90 policies and rules;

91 (6) To perform all other duties and responsibilities
92 assigned by the commission or by state law.

93 (j) The chancellor shall be reimbursed for all actual and
94 necessary expenses incurred in the performance of all
95 assigned duties and responsibilities.

96 (k) The chancellor, with the commission, advises the
97 Legislature on matters of higher education in West Virginia.
98 The Chancellor shall work closely with the Legislative
99 Oversight Commission on Education Accountability and
100 with the elected leadership of the state to ensure that they
101 are fully informed about higher education issues and that the
102 commission fully understands the goals, objectives and
103 priorities for higher education that the Legislature has
104 established by law.

105 (l) The chancellor may design and develop for
106 consideration by the commission new statewide or region-
107 wide initiatives in accordance with the goals set forth in
108 §18B-1-1a and §18B-1D-1 *et seq.* of this code, and the
109 public policy agenda articulated by the commission. In
110 those instances where the initiatives to be proposed have a
111 direct and specific impact or connection to community and
112 technical college education as well as to baccalaureate and
113 graduate education, the Chancellor for Higher Education
114 and the Chancellor for Community and Technical College
115 Education shall design and develop the initiatives jointly for
116 consideration by the commission and the council.

117 (m) To further the goals of cooperation and coordination
118 between the commission and the State Board of Education,
119 the chancellor serves as an ex officio, nonvoting member of
120 the state board. The chancellor shall work closely with
121 members of the State Board of Education and with the State
122 Superintendent of Schools to assure that the following goals
123 are met:

124 (1) Development and implementation of a seamless
125 kindergarten-through-college system of education; and

126 (2) Appropriate coordination of missions and programs.

●

CHAPTER 177

**(Com. Sub. for H. B. 4077 - By Delegates
Higginbotham and Ellington)
[By Request of the Higher Education
Policy Commission]**

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18B-2B-9 of the Code of West Virginia, 1931, as amended, relating to increasing the amount of the bond required to be posted by proprietary schools; establishing methods of bonding; and requiring suspension of a proprietary school's permit if there is not required bond coverage.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2B. WEST VIRGINIA COUNCIL FOR
COMMUNITY AND TECHNICAL COLLEGE
EDUCATION.**

§18B-2B-9. Permits required for correspondence, business, occupational and trade schools; surety bonds amount and method of bonding; fees; issuance, renewal and revocation of permit; reports; rules; penalty and enforcement.

1 (a) The following words when used in this section have
2 the meaning hereinafter ascribed to them unless the context
3 clearly indicates a different meaning:

4 (1) "Proprietary schools that award specialized
5 associate degrees" means institutions of higher education;
6 and

7 (2) "Specialized associate degrees" means degrees
8 awarded by such institutions pursuant to a program of not
9 fewer than two academic years.

10 (b) Nothing in this section qualifies proprietary schools
11 for additional state moneys not otherwise qualified under
12 other provisions of this code.

13 (c) It is unlawful for any person representing a
14 correspondence, business, occupational or trade school
15 inside or outside this state, as these are defined by the
16 council by rule promulgated in accordance with §29A-3A-
17 1 *et seq.* of this code, to solicit, sell or offer to sell courses
18 of instruction to any resident of this state for consideration
19 or remuneration unless the school first applies for a permit,
20 or obtains a permit, from the council in the manner and on
21 the terms herein prescribed, except this section does not
22 apply to private organizations which offer only tax return
23 preparation courses. The rule previously promulgated by the
24 state College System Board of Directors and transferred to
25 the council by §18B-2B-6 of this code remains in effect until
26 rescinded or amended by the council.

27 (1) All private training or educational institutions,
28 schools or academies or other organizations shall apply for
29 a permit from the council on forms provided by the council.

30 (2) Each initial application shall be accompanied by a
31 nonrefundable fee of \$2,000. The council also may assess
32 an additional fee based on any additional expense required
33 to evaluate the application.

34 (3) The council shall make a determination on the initial
35 permit application within 90 days after receipt of the
36 application and fee.

37 (4) An applicant for an initial permit shall show proof at
38 the time of filing an application that adequate facilities are
39 available and ready for occupancy and that all instructional
40 equipment, books and supplies and personnel are in place
41 and ready for operation. A representative of the council
42 shall make an on-site visit to the facilities of all new
43 applicants to confirm their readiness for operation prior to

44 issuance of the initial permit if the facilities are located in
45 West Virginia.

46 (5) A school is considered to be established under the
47 provisions of this article on the date it first begins to operate
48 lawfully. An established school is not required to reapply
49 for a permit as a result of changes in governance;
50 administration; ownership; or form of operation.

51 (6) After the first permit year, an annual fee of \$500 is
52 imposed on each school for each campus it operates in this
53 state.

54 (d) Each application for a proprietary school that has its
55 physical facilities in this state shall be accompanied by a
56 penal bond, on a form to be prescribed and furnished by the
57 council, payable to the State of West Virginia and
58 conditioned upon the school faithfully performing all of the
59 requirements of this section, the rules promulgated
60 hereunder, and the permit. The penal amount of the bond,
61 as determined by the council, may not be less than \$50,000
62 nor more than \$100,000.

63 (1) If the school has changed ownership within the last
64 10 years by transfer of ownership control to a person who is
65 a spouse, parent, sibling, child or grandchild of the previous
66 owner, the surety bond shall continue in the penal sum as
67 determined by the council. The period of liability for bond
68 coverage begins with the issuance of the permit and
69 continues for the full term of the permit, plus any renewals
70 thereof. The council shall release the bond upon satisfaction
71 that the conditions thereof have been fully performed. Upon
72 release of the bond, any cash or collateral securities
73 deposited by the school shall be returned to the school that
74 deposited the same.

75 (2) Any school which has operated in West Virginia for
76 fewer than 10 years, excluding those schools which have
77 changed ownership within the last 10 years as provided in
78 subdivision (1) of this section, and any school located in

79 another state which applies for a permit hereunder, shall
80 provide a surety bond as determined by the council. The
81 form of the bond shall be approved by the Chancellor and
82 may include, at the option of the school, surety bonding,
83 collateral bonding (including cash and securities),
84 establishment of an escrow account, submission of a letter
85 of credit or a combination of these methods. If collateral
86 bonding is used, the school may elect to deposit cash or
87 collateral securities or certificates as follows: bonds of the
88 United States or its possessions; full faith and credit general
89 obligations bonds of the State of West Virginia or other
90 states and of any county, district or municipality of the State
91 of West Virginia or other states; or certificates of deposit in
92 a bank in this state, which certificates shall be in favor of
93 the council. The cash deposit or market value of the
94 securities or certificates shall be equal to or greater than the
95 penal sum of the bond. The Chancellor shall, upon receipt
96 of any deposit of cash, securities or certificates, promptly
97 place the same with the Treasurer of the State of West
98 Virginia, whose duty it is to receive and hold the deposit in
99 the name of the state in trust for the purpose for which the
100 deposit is made when the permit is issued. The school
101 making the deposit is entitled, from time to time, to receive
102 from the State Treasurer, upon the written approval of the
103 Chancellor, the whole or any portion of any cash, securities
104 or certificates so deposited, upon depositing with him or her
105 in lieu thereof cash or other securities or certificates of the
106 classes specified in this subsection having value equal to or
107 greater than the sum of the bond.

108 (3) Any school may be required to increase its bond to
109 \$150,000 if either of the following conditions apply:

110 (A) The school's accreditation is terminated for cause;
111 or

112 (B) The school's institutional eligibility under the
113 Higher Education Act of 1965, as amended, has been
114 terminated for cause. Expiration, nonrenewal or voluntary
115 relinquishment of accreditation or institutional eligibility

116 under the Higher Education Act, or failure to meet the
117 requirements of one or more programs under the Act, are
118 not considered to be a termination for cause.

119 (4) Any school may be required to increase its bond to
120 an amount not to exceed \$400,000 if, in accordance with the
121 standards of the American Institute of Certified Public
122 Accountants, the school's audited financial statements are
123 qualified because the school's continued financial viability
124 as an ongoing concern is in doubt and the council
125 determines an increased bond is reasonably necessary to
126 protect the financial obligations legally due the students
127 then enrolled at the institution.

128 (A) A school may be required to maintain the increased
129 bonding requirements described above until all students
130 attending classes at the date of termination either graduate
131 or withdraw.

132 (B) The bond may be continuous and shall be
133 conditioned to provide indemnification to any student
134 suffering loss as a result of any fraud or misrepresentation
135 used in procuring the student's enrollment, failure of the
136 school to meet contractual obligations, or failure of the
137 school to meet the requirements of this section.

138 (C) The bond shall be given by the school itself as a
139 blanket bond covering all of its representatives.

140 (5) The surety on a bond or other collateral may be
141 released upon giving 30 days' notice in writing to the
142 principal on the bond and to the council and thereafter shall
143 be relieved of liability for any breach of condition occurring
144 after the effective date of the release. Upon 10 days' written
145 notice, the council shall suspend the permit when the
146 proprietary school is no longer covered by a surety bond or
147 other collateral as required by this section, and the
148 suspension shall remain in effect until the school obtains
149 another bond or establishes other collateral and posts it in

150 the same manner and like amount as required for the initial
151 bond.

152 (e) A permit is valid for one year corresponding to the
153 effective date of the bond and may be renewed upon
154 application, accompanied by the required fee and the surety
155 bond as herein required. All fees collected for the issuance
156 or renewal of a permit shall be deposited in the State
157 Treasury to the credit of the council.

158 (f) The council may refuse a permit to any school if the
159 council finds that the school engages in practices which are
160 inconsistent with this section or with rules issued pursuant
161 thereto.

162 (g) A permit issued hereunder may be suspended or
163 revoked by the council for fraud or misrepresentation in
164 soliciting or enrolling students, for failure of the school to
165 fulfill its contract with one or more students who are
166 residents of West Virginia or for violation of or failure to
167 comply with any provision of this section or with any
168 regulation of the council pertinent thereto.

169 (1) Before taking any action to suspend or revoke a
170 school's permit, the council shall give the school 15 days'
171 notice and convene a hearing, if a hearing is requested by
172 the school.

173 (2) Prior to the council taking any adverse action,
174 including refusal, suspension or revocation of a permit, the
175 council shall give the school reasonable opportunity to take
176 corrective measures.

177 (3) Any refusal, suspension or revocation of a permit, or
178 any other adverse action against a school, shall comply with
179 all constitutional provisions, including due process, relating
180 to the protection of property rights.

181 (h) All correspondence, business, occupational or trade
182 schools which have been issued a permit shall make annual
183 reports to the council on forms furnished by the council and

184 shall provide such appropriate information as the council
185 reasonably may require. All correspondence, business,
186 occupational or trade schools which have been issued a
187 permit shall furnish to the council a list of its official
188 representatives. Each school shall be issued a certificate of
189 identification by the council for each of its official
190 representatives.

191 (i) The issuance of a permit pursuant to this section does
192 not constitute approval or accreditation of any course or
193 school. No school, nor any representative of a school, may
194 make any representation stating, asserting or implying that
195 a permit issued pursuant to this section constitutes approval
196 or accreditation by the State of West Virginia, council or
197 any other department or agency of the state.

198 (j) The council may adopt rules and conduct on-site
199 reviews to evaluate academic standards maintained by
200 schools for the awarding of certificates, diplomas, associate
201 degrees and specialized associate degrees.

202 (1) These standards may include curriculum, personnel,
203 facilities, materials and equipment.

204 (2) For accredited correspondence, business,
205 occupational and trade schools under permit on July 1,
206 1979, which have their physical facilities located in this
207 state and which are accredited by the appropriate nationally
208 recognized accrediting agency or association approved by
209 the United States Department of Education, the accrediting
210 agency's standards, procedures and criteria are accepted as
211 meeting applicable laws, standards and rules of the council.

212 (3) Institutions which are institutionally accredited by
213 accrediting agencies recognized by the United States
214 Department of Education to establish academic standards
215 for post-secondary education may offer post-secondary
216 educational programs leading to certificates, diplomas and
217 associate degrees and may award certificates, diplomas and
218 associate degrees to graduates who successfully complete

219 required programs in accordance with the academic
220 standards required by such accrediting agency.

221 (4) If a review undertaken by the council indicates there
222 may be deficiencies in the academic standards the
223 institution maintains in its educational programs and if such
224 deficiencies are of such a material nature that they
225 jeopardize continued accreditation, the council shall notify
226 the institution. If the council and the institution are unable
227 to agree on the deficiencies or the steps necessary to correct
228 the deficiencies, the council shall consult with the
229 institution's accrediting agency regarding an academically
230 appropriate resolution which may include a joint on-site
231 review by the council and the accrediting agency.

232 (5) The council also may review the academic standards
233 of unaccredited institutions and may require such
234 institutions to maintain recognized academic standards that
235 are reasonably appropriate to the nature of the institution
236 and the training offered.

237 (k) The council may authorize an investigation of
238 written student complaints alleging a violation of this
239 section, council rules or accreditation standards and may
240 take appropriate action based on the findings of such an
241 investigation.

242 (l) All evaluations or investigations of correspondence,
243 business, occupational and trade schools and actions
244 resulting from such evaluations or investigations shall be
245 made in accordance with rules promulgated by the council
246 pursuant to §29A-3A-1 *et seq.* of this code.

247 (m) In regard to private, proprietary educational
248 institutions operating under this section of the code,
249 accredited by a national or regional accrediting agency or
250 association recognized by the United States Department of
251 Education and which provide training at a campus located
252 in this state:

253 (1) Any rule or standard which is authorized by this or
254 any section of the code or other law and which is now in
255 effect or promulgated hereafter by the council (or other
256 agency with jurisdiction) shall be clearly, specifically and
257 expressly authorized by narrowly construed enabling law
258 and shall be unenforceable and without legal effect unless
259 authorized by an Act of the Legislature under the provisions
260 of §29A-3A- 1 *et seq.* of this code.

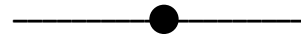
261 (2) Notwithstanding any other provision of this section
262 or other law to the contrary, the institution's accrediting
263 agency standards, procedures and criteria shall be accepted
264 as the standards and rules of the council (or other agency
265 with jurisdiction) and as meeting other law or legal
266 requirements relating to the operation of proprietary
267 institutions which such council or other agency has the legal
268 authority to enforce under any section of the code or other
269 law. Nothing in this section denies students the use of
270 remedies that would otherwise be available under state or
271 federal consumer laws or federal law relating to federal
272 college financial assistance programs.

273 (3) Accredited institutions operating hereunder are
274 hereby recognized as postsecondary. Academic progress is
275 measured and reported in credit hours and all
276 reports/documents are filed on a credit-hour basis unless the
277 institution notifies the council that it utilizes clock hours as
278 its unit of measurement.

279 (n) A representative of any school who solicits, sells or
280 offers to sell courses of instruction to any resident of this
281 state for consideration or remuneration unless the school
282 first applies for a permit, or obtains a permit, is guilty of a
283 misdemeanor and, upon conviction thereof, shall be fined
284 not more than \$200 per day per violation, or confined in jail
285 not more than 60 days, or both fined and confined. No
286 correspondence, business, occupational or trade school may
287 maintain an action in any court of this state to recover for
288 services rendered pursuant to a contract solicited by the
289 school if the school did not hold a valid permit at the time

290 the contract was signed by any of the parties thereto. The
291 Attorney General or any county prosecuting attorney, at the
292 request of the council or upon his or her own motion, may
293 bring any appropriate action or proceeding in any court of
294 competent jurisdiction for the enforcement of the provisions
295 of this section relating to permits, bonds and sureties.

296 (o) In regard to institutions operating under this section,
297 all substantive standards and procedural requirements
298 established by the council (or the West Virginia state
299 program review entity or other agency with jurisdiction over
300 institutions operating hereunder) shall meet all substantive
301 and procedural standards of due process relating to the
302 protection of an individual citizen's property rights as
303 provided under the United States Constitution and shall
304 follow the substantive standards and procedural
305 requirements established by or under authority of this
306 section.



CHAPTER 178

**(H. B. 4365 - By Delegates Higginbotham, Ellington,
Jennings, Hanna, R. Thompson, Hamrick, Barnhart
and Porterfield)**

[Passed March 2, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §18B-14-3,
relating to authorizing granting of college credit hours for
learning English as a second language; authorizing state
higher education institutions to grant college credit hours for
English learned as a second language and to accept English
learned as a foreign language to satisfy college foreign

language requirement; requiring jointly proposed rules to set and identify required test scores.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. MISCELLANEOUS.

§18B-14-3. College credit authorized for learning English as second language.

1 State Institutions of higher education are authorized to
2 offer college credit hours for English learned as a second
3 language and may accept English learned as a second
4 language to satisfy an institution's foreign language
5 requirement. To obtain college credit the student must be
6 enrolled in the institution granting credit and be certified as
7 having reached a satisfactory score on the test of English as
8 a foreign language.

9 The Higher Education Policy Commission and the
10 Council for Community and Technical College Education
11 shall jointly propose rules to set and identify scores required
12 on the test of English as a foreign language for course credit
13 being offered.



CHAPTER 179

**(H. B. 4412 - By Delegates Fleischauer, Bibby,
Jennings, Walker, Hansen, Cooper, Rowan, Butler,
Pethel, Longstreth and Angelucci)**

[Passed March 2, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §15-1B-21 of the Code of West Virginia, 1931, as amended, relating to providing education

benefits to members of the West Virginia Army National Guard and West Virginia Air National Guard.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. NATIONAL GUARD.

§15-1B-21. Tuition and fees for guard members at institutions of higher education.

1 (a) Any member of the Army National Guard or Air
2 National Guard who is enrolled in an educational program
3 which leads to a certificate, undergraduate degree, master's
4 degree, doctor of medicine, or doctor of osteopathic
5 medicine, and is attending any accredited community and
6 technical college, college, university, or business, career-
7 technical, vocational, trade, or aviation school, located in
8 West Virginia, may be entitled to payment of tuition and
9 fees for that program during the period of his or her service
10 in the National Guard.

11 (1) The Adjutant General may prescribe criteria of
12 eligibility for payment of tuition and fees. The payment is
13 contingent upon appropriations being made by the
14 Legislature for the express purpose of this section.

15 (2) A member may receive payment for only one
16 certificate, undergraduate degree, and master's degree
17 pursuant to this section.

18 (3) Not more than two members a year may be selected
19 by the Adjutant General to receive payment for either a
20 doctor of medicine or doctor of osteopathic medicine degree
21 program. Any candidate selected for this program must
22 remain a member of the Army National Guard or the Air
23 National Guard and practice medicine in the state of West
24 Virginia for a minimum of 10 years after receiving a doctor
25 of medicine or doctor of osteopathic medicine degree, or be
26 subject to recoupment for all moneys paid pursuant to this
27 subdivision.

28 (b) The amount of the payment for a member attending
29 a state-supported school is determined by the Adjutant
30 General and may not exceed the actual cost of tuition and
31 fees at the school. The amount of the payment for a member
32 attending a private school is determined by the Adjutant
33 General and may not exceed the highest amount payable at
34 any state-supported school.

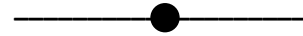
35 (c) Any member of the Army National Guard or Air
36 National Guard who is receiving payments under a federally
37 funded continuing education system and is eligible to
38 receive tuition and fee payments pursuant to this section
39 may be entitled to payment of tuition and fees under this
40 section. The sum of payments received under this section
41 and a federally funded continuing education system may not
42 exceed the actual amount of tuition and fees at the school
43 and in any event may not exceed the highest amount payable
44 at any state-supported school. If a member of the Army
45 National Guard or Air National Guard uses education
46 benefits that are administered by the U.S. Department of
47 Veterans Affairs, such as the Post 9/11 GI Bill or any other
48 program that pays tuition or fees directly to the institutions
49 of higher education, the institution of higher education shall
50 first assess the U.S. Department of Veterans Affairs for
51 payment of tuition and fees payable by those programs, with
52 the remaining tuition and fees, if any, then being payable in
53 accordance with this section.

54 (d) For any member of the West Virginia Army National
55 Guard or West Virginia Air National Guard who is
56 participating in the PROMISE Scholarship program
57 provided in §18C-7-1 *et seq.* of this code, the Adjutant
58 General may pay directly to the member an amount equal to
59 the amount of tuition and fees which otherwise would have
60 been paid to the school.

61 (e) A member of the West Virginia Army National
62 Guard or West Virginia Air National Guard who is
63 receiving payments for tuition and fees under this section
64 and is discharged from the military service due to wounds

65 or injuries received in the line of duty may continue to
 66 receive payments for tuition and fees under this section as if
 67 he or she were still a member.

68 (f) The Adjutant General shall administer the tuition and
 69 fee payments authorized under this section and shall
 70 establish policies to implement the provisions of this
 71 section.



CHAPTER 180

**(Com. Sub. for H. B. 4729 - By Delegates Linville,
 Ellington, Summers, Higginbotham, Barnhart,
 Maynard, Graves, Foster, McGeehan, Hanna and
 Pack)**

[Passed March 3, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18B-10-14 of the Code of West Virginia, 1931, as amended, relating to the purchase of educational materials at institutions of higher education; establishing or continuing an educational materials affordability committee; requiring that the educational materials affordability committee make certain recommendations to the institutional governing boards; and defining the term “educational materials”.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-14. Bookstores.

1 (a) Each governing board may establish and operate a
 2 bookstore at the institutions under its jurisdiction to sell

3 educational materials, books, stationery, and other school
4 and office supplies generally carried in college bookstores.

5 (b) The prices to be charged may not be less than the
6 prices fixed by any fair trade agreements and shall, in all
7 cases, include in addition to the purchase price paid by the
8 bookstore, a sufficient handling charge to cover all expenses
9 incurred for personal and other services, supplies and
10 equipment, storage, and other operating expenses.

11 (c) Each governing board shall establish, or if already
12 established, continue, an educational materials affordability
13 committee consisting of faculty, students, administrators
14 and bookstore representatives and the committee shall make
15 recommendations to the governing board to:

16 (1) Ensure that bookstores operated at institutions under
17 its jurisdiction minimize the costs to students of purchasing
18 educational materials;

19 (2) Ensure appropriate, high quality course educational
20 materials are selected by course instructors;

21 (3) Encourage and incentivize the use of previous or
22 older versions of basic educational materials to the extent
23 those older versions are available and less costly to students
24 and remain relevant, high quality educational materials with
25 up-to-date information and content;

26 (4) Require the repurchase and resale of educational
27 materials on an institutional basis;

28 (5) Provide for the use of certain basic educational
29 materials for a reasonable number of years;

30 (6) Encourage and incentivize the use of emerging
31 technologies, such as electronic textbooks, online
32 textbooks, print-on-demand services, and other open
33 resource materials; and

34 (7) Prohibit employees from profiteering by requiring
35 the purchase of one-time use materials (such as worksheets)
36 or receiving payment or other consideration as an
37 inducement to require students to purchase particular
38 textbooks.

39 (d) The Legislature recognizes that in 2004, the
40 Congress of the United States commissioned the United
41 States Government Accountability Office to study the high
42 prices of college textbooks. Upon completion of the study,
43 the Legislative Oversight Commission on Education
44 Accountability shall obtain the results and any related
45 reports produced by the office.

46 (e) An employee of a governing board:

47 (1) May not:

48 (A) Receive a payment, loan, subscription, advance,
49 deposit of money, service, benefit or thing of value, present
50 or promised, as an inducement for requiring students to
51 purchase a specific textbook for coursework or instruction;
52 or

53 (B) Require for any course a textbook that includes his
54 or her own writing or work if the textbook incorporates
55 either detachable worksheets or workbook-style pages
56 intended to be written on or removed from the textbook.
57 This provision does not prohibit an employee from
58 requiring as a supplement to a textbook any workbook or
59 similar material which is published independently from the
60 textbook; and

61 (2) May receive:

62 (A) Sample copies, instructor's copies and instructional
63 material which are not to be sold; and

64 (B) Royalties or other compensation from sales of
65 textbooks that include the employee's own writing or work.

66 (f) A governing board shall provide to students a listing
67 of textbooks required or assigned for any course offered at
68 the institution.

69 (1) The listing shall be prominently posted:

70 (A) In a central location at the institution;

71 (B) In any campus bookstore; and

72 (C) On the institution's website.

73 (2) The list shall include for each textbook the
74 International Standard Book Number (ISBN), the edition
75 number and any other relevant information.

76 (3) An institution shall post a book to the listing when
77 the adoption process is complete and the textbook is
78 designated for order by the bookstore.

79 (g) All moneys derived from the operation of the
80 bookstore shall be paid into a special revenue fund as
81 provided in §12-2-2 of this code. Subject to the approval of
82 the Governor, each governing board periodically shall
83 change the amount of the revolving fund necessary for the
84 proper and efficient operation of each bookstore.

85 (h) Moneys derived from the operation of the bookstore
86 shall be used first to replenish the stock of goods and to pay
87 the costs of operating and maintaining the bookstore.
88 Notwithstanding any other provision of this section, any
89 institution that has contracted with a private entity for
90 bookstore operation shall deposit into an appropriate
91 account all revenue generated by the operation and enuring
92 to the benefit of the institution. The institution shall use the
93 funds for nonathletic scholarships.

94 (i) Each governing board shall promulgate a rule in
95 accordance with the provisions of section six, article one of
96 this chapter to implement the provisions of this section.

97 (j) This section applies to textbook sales and bookstores
98 supported by an institution's auxiliary services and those
99 operated by a private contractor.

100 (k) "Educational Materials" means textbooks and other
101 supplementary course materials that come at a cost to the
102 student, regardless of format.

CHAPTER 181

**(H. B. 4737 - By Delegates Rowan, Toney, Sypolt,
Linville, Graves, Zukoff, Bartlett, Pethtel, Maynard,
Queen and Williams)**

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §18C-1-1 of the Code of West Virginia, 1931, as amended, relating to the qualifications for state financial aid.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.

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

1 (a) The Legislature makes the following findings:

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

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

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

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

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

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

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

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

30 (2) The Medical Student Loan Program;

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

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

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

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

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

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

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

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

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

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

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

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

59 (e) Notwithstanding any provision of this code to the
60 contrary, the qualifications for state financial aid are
61 separate and apart from the requirements for federal
62 financial aid, and the inability of a student to complete the
63 Free Application for Federal Student Aid (FAFSA) because
64 of extenuating family circumstances, as determined by the
65 vice chancellor for administration in consultation with the
66 student's high school, shall not affect the student's
67 eligibility for state financial aid. This provision in no way
68 determines the student's compliance with federal rules or
69 eligibility relating to federal student financial aid programs.

70 (f) The vice chancellor for administration shall publish
71 comprehensive data to the official websites of the commission
72 and council regarding the implementation of the financial aid
73 programs identified in subsection (d) of this section which are
74 administered under his or her supervision, including data
75 regarding how many students had to avail themselves of the
76 provisions of subsection (e) above. A concise summary report
77 shall be provided to the commission and the council and shall
78 be presented to the Legislative Oversight Commission on
79 Education Accountability no later than January 1 annually.
80 The report shall address all financial aid issues for which
81 reports are required in this code, as well as any findings and
82 recommendations.



CHAPTER 182

**(Com. Sub. for S. B. 648 - By Senators Takubo,
Mann, Maroney, Prezioso, Stollings, Weld, Baldwin,
Cline, Hardesty, Lindsay, Palumbo, Plymale, Unger,
Roberts and Rucker)**

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-12a, relating to providing dental coverage for adult Medicaid recipients; providing limitations; defining terms; designating the Department of Health and Human Resources as the responsible department to implement these provisions; providing for the Department of Health and Human Resources to seek authority from the Centers for Medicare and Medicaid Services to implement the program; and making the provisions on the section effective only upon the approval by the Centers for Medicare and Medicaid Services for specified provider taxes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-12a. Medicaid program; dental care.

1 (a) The following terms are defined:

2 (1) “Cosmetic services” means dental work that
3 improves the appearance of the teeth, gums, or bite,
4 including, but not limited to, inlays or onlays, composite
5 bonding, dental veneers, teeth whitening, or braces.

6 (2) “Diagnostic and preventative services” means dental
7 work that maintains good oral health and includes oral
8 evaluations, routine cleanings, x-rays, fluoride treatment,
9 fillings, and extractions.

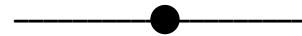
10 (3) “Restorative services” means dental work that
11 involves tooth replacement, including, but not limited to,
12 dentures, dental implants, bridges, crowns, or corrective
13 procedures such as root canals.

14 (b) The Department of Health and Human Resources
15 shall extend Medicaid coverage to adults age 21 and over
16 covered by the Medicaid program for diagnostic and
17 preventative dental services and restorative dental services,
18 excluding cosmetic services. This coverage is limited to
19 \$1,000 each budget year. Recipients must pay for services
20 over the \$1,000 yearly limit. No provision in this section
21 shall restrict the department in exercising new options
22 provided by, or to be in compliance with, new federal
23 legislation that further expands eligibility for dental care for
24 adult recipients.

25 (c) The Department of Health and Human Resources is
26 responsible for the implementation of, and program design
27 for, a dental care system to reduce the continuing harm and
28 continuing impact on the health care system in West
29 Virginia. The dental health system design shall include
30 oversight, quality assurance measures, case management,

31 and patient outreach activities. The Department of Health
32 and Human Resources shall assume responsibility for
33 claims processing in accordance with established fee
34 schedules and financial aspects of the program necessary to
35 receive available federal dollars and to meet federal rules
36 and regulations. The Department of Health and Human
37 Resources shall seek authority from the Centers for
38 Medicare and Medicaid Services to implement the
39 provisions of this section.

40 (d) The provisions of this section enacted during the
41 2020 regular legislative session shall only become effective
42 upon approval from the federal Centers for Medicare and
43 Medicaid Services of the provider tax as set forth in §11-27-
44 10a of this code.



CHAPTER 183

**(Com. Sub. for S. B. 716 - By Senators Takubo and
Stollings)**

[Passed March 7, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §9-5-12 of the Code of West Virginia, 1931, as amended, relating to requiring Department of Health and Human Resources to make payment for tubal ligation without requiring at least 30 days between the date of informed consent and date of the tubal ligation procedure; and removing obsolete language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

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

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

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

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

31 (b) The department shall:

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

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

43 (3) Elect the federal options provided under COBRA,
44 SOBRA, and OBRA impacting pregnant women and
45 children below the poverty level: *Provided*, That no
46 provision in this article shall restrict the department in
47 exercising new options provided by or to be in compliance
48 with new federal legislation that further expands eligibility
49 for children and pregnant women.

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

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

64 (c) In order to be in compliance with the provisions of
65 OBRA through rules and regulations, the department shall
66 ensure that pregnant women and children whose incomes
67 are above the Aid to Families and Dependent Children
68 (AFDC) payment level are not required to apply for
69 entitlements under the AFDC program as a condition of
70 eligibility for Medicaid coverage. Further, the department
71 shall develop a short, simplified pregnancy/pediatric

72 application of no more than three pages, paralleling the
73 simplified OBRA standards.

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

79 (e) The department shall make payment for tubal
80 ligation without requiring at least 30 days between the date
81 of informed consent and the date of the tubal ligation
82 procedure.



CHAPTER 184

**(Com. Sub. for S. B. 717 - By Senators Maroney,
Cline, Hamilton, Prezioso, Rucker, Swope, Sypolt,
Takubo, Trump, Weld, Stollings and Smith)**

[Passed March 6, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §9-6-1, §9-6-2, §9-6-3, §9-6-4, §9-6-5, §9-6-6, §9-6-7, §9-6-8, §9-6-9, §9-6-10, §9-6-11, §9-6-13, and §9-6-16 of the Code of West Virginia, 1931, as amended, all relating to adult protective services, abuse, neglect, and vulnerable adults; defining terms; replacing old terms and adding new terms; and providing for the release of investigative summaries of substantiated and unsubstantiated reports of abuse, neglect, or financial exploitation to certain individuals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-1. Definitions.

1 As used in this article:

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

5 (2) “Adult protective services” means services provided
6 to vulnerable adults as the secretary may specify and may
7 include, but are not limited to, services such as:

8 (A) Receiving reports of adult abuse, neglect, or
9 exploitation;

10 (B) Investigating the reports of abuse, neglect, or
11 exploitation;

12 (C) Case planning, monitoring, evaluation, and other
13 case work and services; and

14 (D) Providing, arranging for, or facilitating the
15 provision of medical, social service, economic, legal,
16 housing, law enforcement, or other protective, emergency,
17 or support services;

18 (3) “Abuse” means the infliction or threat of physical or
19 psychological harm, including the use of undue influence or
20 the imprisonment of any vulnerable adult or facility
21 resident;

22 (4) “Neglect” means the unreasonable failure by a
23 caregiver to provide the care necessary to maintain the
24 safety or health of a vulnerable adult or self-neglect by a
25 vulnerable adult, including the use of undue influence by a
26 caregiver to cause self-neglect;

27 (5) “Vulnerable adult” means any person over the age
28 of 18, or an emancipated minor, who by reason of physical
29 or mental condition is unable to independently carry on the
30 daily activities of life necessary to sustaining life and
31 reasonable health and protection;

32 (6) “Emergency” or “emergency situation” means a
33 situation or set of circumstances which presents a
34 substantial and immediate risk of death or serious injury to
35 a vulnerable adult;

36 (7) “Financial exploitation” means the intentional
37 misappropriation, misuse, or use of undue influence to
38 cause the misuse of funds or assets of a vulnerable adult or
39 facility resident, but does not apply to a transaction or
40 disposition of funds or assets where a person made a good-
41 faith effort to assist the vulnerable adult or facility resident
42 with the management of his or her money or other things of
43 value;

44 (8) “Legal representative” means a person lawfully
45 invested with the power, and charged with the duty, of
46 taking care of another person or with managing the property
47 and rights of another person, including, but not limited to, a
48 guardian, conservator, durable power of attorney
49 representative, springing power of attorney representative,
50 financial power of attorney representative, medical power
51 of attorney representative, trustee, or other duly appointed
52 person;

53 (9) “Nursing home” or “facility” means any institution,
54 residence, intermediate care facility for individuals with an
55 intellectual disability, care home, or any other adult
56 residential facility, or any part or unit thereof, that is subject
57 to the provisions of §16-5C-1 *et seq.*, §16-5D-1 *et seq.*, §16-
58 5E-1 *et seq.*, or §16-5H-1 *et seq.* of this code;

59 (10) “Regional long-term care ombudsman” means any
60 paid staff of a designated regional long-term care
61 ombudsman program who has obtained appropriate
62 certification from the Bureau of Senior Services and meets
63 the qualifications set forth in §16-5L-7 of this code;

64 (11) “Facility resident” means an individual living in a
65 nursing home or other facility, as that term is defined in
66 subdivision (9) of this section;

67 (12) “State long-term care ombudsman” means an
68 individual who meets the qualifications of §16-5L-5 of this
69 code and who is employed by the State Bureau of Senior
70 Services to implement the State Long-term Care
71 Ombudsman Program;

72 (13) “Secretary” means the Secretary of the Department
73 of Health and Human Resources;

74 (14) “Caregiver” means an individual who is
75 responsible for the care of a vulnerable adult or a facility
76 resident, either voluntarily, by contract, by receipt of
77 payment for care, or as a result of the operation of law, and
78 means a family member or other individual who provides
79 (on behalf of such individual or of a public or private
80 agency, organization, or institution) compensated or
81 uncompensated care to an adult with disabilities or a facility
82 resident who needs supportive services in any setting; and

83 (15) “Fiduciary” means a person or entity with the legal
84 responsibility to make decisions on behalf of and for the
85 benefit of another person; to act in good faith and with
86 fairness; and includes a trustee, a guardian, a conservator,
87 an executor or an agent under a financial power of attorney.

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

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

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

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

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

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

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

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

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

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

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

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

52 (d) An adult protective services caseworker may not be
53 held personally liable for any professional decision or
54 action arrived at in the performance of his or her official
55 duties as set forth in this section or agency rules
56 promulgated: *Provided*, That nothing in this subsection
57 protects any adult protective services worker from any
58 liability arising from the operation of a motor vehicle or
59 for any loss caused by willful and wanton misconduct or
60 intentional misconduct.

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

§9-6-3. Cooperation among agencies; termination and reduction of assistance by commissioner.

1 The secretary shall direct the coordination of the
2 investigation of complaints of abuse, neglect, or financial
3 exploitation made pursuant to this article, and the various
4 agencies of the department, the adult protective services
5 system, the state and regional long-term care ombudsmen,
6 administrators of nursing homes or other residential
7 facilities, county prosecutors, and any other applicable state
8 or federal agency shall cooperate among each other for the
9 purposes of observing, reporting, investigating, and acting
10 upon complaints of abuse, neglect, or financial exploitation
11 of any vulnerable adult or facility resident in this state.

§9-6-4. Action to abate abuse, neglect, emergency, or financial exploitation.

1 The department or any reputable person may bring and
2 maintain an action against any person having actual care,
3 custody, or control of a vulnerable adult, for injunctive
4 relief, including a preliminary injunction, to restrain and
5 abate any abuse, neglect, or financial exploitation of a
6 vulnerable adult or to abate an emergency situation. In any
7 such proceeding the court shall appoint a guardian ad litem,
8 to protect the interests of the vulnerable adult, who shall not
9 be an employee of the state, nor be a party to the proceeding,
10 nor be selected by, or in the employ of, any party to the
11 proceeding: *Provided*, That the court may by order
12 terminate assistance granted or paid to any person found to
13 have abused, neglected, or financially exploited a
14 vulnerable adult and order any such assistance to be paid to
15 another person solely for the use and benefit of such abused,
16 neglected, or financially exploited person, and grant such
17 other equitable relief as may be appropriate in the
18 circumstances to restrain and abate such abuse or neglect:
19 *Provided, however*, That in the case of an action to abate an
20 emergency situation, the court may grant the relief
21 authorized in §9-6-5 of this code.

§9-6-5. Emergency immediate remedial treatment; procedure.

1 Whenever a circuit court shall find in an action to abate
2 an emergency situation that there is probable cause to
3 believe that a vulnerable adult is in an emergency situation
4 and that the person or persons having the immediate care,
5 custody, and control of such vulnerable adult refuses to take
6 necessary steps to alleviate such emergency, or that such
7 vulnerable adult is without the actual care, custody, and
8 control of any persons, it may issue an order of attachment
9 for such vulnerable adult and direct that the peace officer
10 executing the same deliver such vulnerable adult in his
11 custody to a hospital or other safe place except a jail, for
12 immediate remedial treatment to reduce or avoid the risk of

13 death or serious injury. In the event that an order of
14 attachment is issued pursuant to this section, any peace
15 officer executing the order, and such employees of the
16 department the peace officer directs to accompany him, may
17 enter into the place of abode to remove such vulnerable
18 person, notwithstanding the residence therein of other
19 persons.

20 If any employee or officer of the department shall by
21 direct observation of a vulnerable adult not in the immediate
22 care, custody, or control of another, have reasonable cause
23 to believe that such vulnerable person is then and there in
24 an emergency situation, then such officer or employee may
25 offer transportation to a hospital or other safe place, other
26 than a jail, to such vulnerable adult for immediate remedial
27 treatment to reduce or avoid the risk of death or serious
28 injury.

29 Immediately upon delivery of any vulnerable person to
30 such hospital or other safe place, such officer or employee
31 shall apply to the circuit court for and the court shall
32 appoint, and in the case of an attachment the court shall
33 contemporaneously with its issuance appoint, a guardian ad
34 litem who shall not be an employee of the state, nor be an
35 interested party, nor be selected by, nor in the employ of,
36 any interested party, to represent the interests of such
37 vulnerable adult, and the court shall fix a time, not later than
38 one judicial day later, to determine if such remedial
39 treatment shall continue or such vulnerable adult should be
40 released. A copy of that attachment and notice of such
41 hearing shall be served on any person in whose actual care,
42 custody, and control such vulnerable adult is found. If
43 further remedial treatment is required, application shall be
44 promptly made to the county commission or such other
45 proper tribunal for appropriate relief: *Provided*, That the
46 commitment for further remedial treatment may be
47 continued until proceedings for such appropriate relief be
48 concluded: *Provided, however*, That application for release
49 from such remedial treatment may be made and granted at
50 any time that the emergency ceases.

§9-6-6. Payment and termination of payment for services to a vulnerable adult.

1 If any vulnerable adult requires and is granted remedial
2 treatment for an emergency, or the department determines
3 that a vulnerable adult is abused, neglected, or financially
4 exploited, the department may pay any assistance granted
5 for the use and benefit of such vulnerable adult to the person
6 actually providing care for such adult, and terminate
7 payments to any person alleged or shown to have abused,
8 neglected, or financially exploited such vulnerable adult, or
9 to whom such payments were made prior to such remedial
10 treatment, for so long as such remedial treatment continues,
11 or until such abuse, neglect, or financial exploitation is
12 abated, and such vulnerable adult continues to be in the
13 immediate care, custody, and control of such person.

§9-6-7. Comprehensive system of adult protective services; compulsory assistance prohibited.

1 The department shall develop a plan for a
2 comprehensive system of adult protective services,
3 including social casework, medical and psychiatric services,
4 home care, day care, counseling, research, and others to
5 achieve the goals of this article.

6 It shall offer such services as are available and
7 appropriate in the circumstances to persons who, other than
8 for compensation, have or intend to have the actual, physical
9 custody and control of a vulnerable adult and to such
10 vulnerable adults or to adults who may request and be
11 entitled to such protective services: *Provided*, That except
12 as expressly provided in this article, the department may not
13 directly or indirectly compel the acceptance of such services
14 by any person or discriminate against a person who refuses
15 such services.

§9-6-8. Confidentiality of records.

1 (a) Except as otherwise provided in this section, all
2 records of the department, state and regional long-term care

3 ombudsmen, nursing home or facility administrators, the
4 Office of Health Facility Licensure and Certification, and
5 all protective services agencies concerning an adult or
6 facility resident under this article are confidential and may
7 not be released, except in accordance with the provisions of
8 §9-6-11 of this code.

9 (b) Unless the vulnerable adult concerned is receiving
10 adult protective services, or unless there are pending
11 proceedings regarding the vulnerable adult, the records
12 maintained by the adult protective services agency shall be
13 destroyed 30 years following their preparation.

14 (c) Notwithstanding the provisions of subsection (a) of
15 this section or any other provision of this code to the
16 contrary, records concerning reports of abuse, neglect, or
17 financial exploitation of a vulnerable adult, including all
18 records generated as a result of such reports, may be made
19 available to:

20 (1) Employees or agents of the department who need
21 access to the records for official business;

22 (2) Any law-enforcement agency investigating a report
23 of known or suspected abuse, neglect, or financial
24 exploitation of a vulnerable adult;

25 (3) The prosecuting attorney of the judicial circuit in
26 which the vulnerable adult resides or in which the alleged
27 abuse, neglect, or financial exploitation occurred;

28 (4) A circuit court or the Supreme Court of Appeals
29 subpoenaing the records. The court shall, before permitting
30 use of the records in connection with any court proceeding,
31 review the records for relevancy and materiality to the
32 issues in the proceeding. The court may issue an order to
33 limit the examination and use of the records or any part of
34 the record;

35 (5) A grand jury, by subpoena, upon its determination
36 that access to the records is necessary in the conduct of its
37 official business;

38 (6) The recognized protection and advocacy agency for
39 the disabled of the State of West Virginia;

40 (7) The victim; and

41 (8) The victim's legal representative, unless he or she is
42 the subject of an investigation under this article.

43 (d) Notwithstanding the provisions of subsection (a) of
44 this section or any other provision of this code to the
45 contrary, summaries concerning substantiated investigative
46 reports of abuse, neglect, or financial exploitation of
47 vulnerable adults may be made available to:

48 Any person who the department has determined to have
49 abused, neglected, or financially exploited the victim.

50 (e) Notwithstanding the provisions of subsection (a) of
51 this section or any other provision of this code to the
52 contrary, summaries concerning substantiated and
53 unsubstantiated investigative reports of abuse, neglect, or
54 financial exploitation of vulnerable adults may be made
55 available to:

56 (1) Any appropriate official of the state or regional long-
57 term care ombudsman investigating a report of known or
58 suspected abuse, neglect or financial exploitation of a
59 vulnerable adult;

60 (2) Any person engaged in bona fide research or
61 auditing, as defined by the department. However,
62 information identifying the subjects of the report may not be
63 made available to the researcher;

64 (3) Employees or agents of an agency of another state
65 that has jurisdiction to investigate known or suspected
66 abuse, neglect, or exploitation of vulnerable adults;

67 (4) A professional person when the information is
68 necessary for the diagnosis and treatment of, and service
69 delivery to, a vulnerable adult; and

70 (5) A department administrative hearing officer when
71 the hearing officer determines the information is necessary
72 for the determination of an issue before the officer.

73 (f) The identity of any person reporting abuse, neglect,
74 or financial exploitation of a vulnerable adult may not be
75 released without that person's written consent to any person
76 other than employees of the department responsible for
77 protective services or the appropriate prosecuting attorney
78 or law-enforcement agency. This subsection grants
79 protection only for the person who reported the abuse,
80 neglect, or financial exploitation and protects only the fact
81 that the person is the reporter. This subsection does not
82 prohibit the subpoena of a person reporting the abuse,
83 neglect, or financial exploitation when deemed necessary by
84 the prosecuting attorney or the department to protect a
85 vulnerable adult who is the subject of a report, if the fact
86 that the person made the report is not disclosed.

**§9-6-9. Mandatory reporting of incidences of abuse, neglect,
financial exploitation, or emergency situation.**

1 (a) If any medical, dental, or mental health professional,
2 Christian Science practitioner, religious healer, social
3 service worker, law-enforcement officer, humane officer, or
4 any employee of any nursing home or other residential
5 facility, has reasonable cause to believe that a vulnerable
6 adult or facility resident is or has been neglected, abused,
7 financially exploited or placed in an emergency situation, or
8 if such person observes a vulnerable adult or facility
9 resident being subjected to conditions that are likely to
10 result in abuse, neglect, financial exploitation, or an
11 emergency situation, the person shall immediately report
12 the circumstances pursuant to the provisions of §9-6-11 of
13 this code: *Provided*, That nothing in this article is intended
14 to prevent individuals from reporting on their own behalf.

15 (b) In addition to those persons and officials specifically
16 required to report situations involving suspected abuse,
17 neglect, or financial exploitation of a vulnerable adult or
18 facility resident, or the existence of an emergency situation,
19 any other person may make such a report.

20 (c) The Department of Health and Human Resources
21 shall develop and implement a procedure to notify any
22 person mandated to report suspected abuse and neglect of a
23 vulnerable adult or facility resident of whether an
24 investigation into the reported suspected abuse, neglect, or
25 financial exploitation has been initiated and when the
26 investigation is completed.

27 (d) Financial institutions and their employees, as
28 defined by §31A-2A-1 of this code and as permitted by
29 §31A-2A-4(13) of this code, others engaged in financially
30 related activities, as defined by §31A-8C-1 of this code,
31 caregivers, relatives, and other concerned persons are
32 permitted to report suspected cases of financial exploitation
33 to state or federal law-enforcement authorities, the county
34 prosecuting attorney, and to the Department of Health and
35 Human Resources, Adult Protective Services Division, or
36 Medicaid Fraud Division, as appropriate. Public officers
37 and employees are required to report suspected cases of
38 financial exploitation to the appropriate entities as stated
39 above. The requisite agencies shall investigate or cause the
40 investigation of the allegations.

**§9-6-10. Mandatory reporting to medical examiner or
coroner; postmortem investigation.**

1 (a) Any person or official who is required under §9-6-9
2 of this code to report cases of suspected abuse, neglect, or
3 financial exploitation, and who has probable cause to
4 believe that a vulnerable adult or facility resident has died
5 as a result of abuse or neglect, shall report that fact to the
6 appropriate medical examiner or coroner.

7 (b) Upon the receipt of such a report, the medical
8 examiner or coroner shall cause an investigation to be made
9 and shall report the findings to the local law-enforcement
10 agency, the local prosecuting attorney, the department's
11 local adult protective services agency, and, if the institution
12 making a report is a hospital, nursing home, or other
13 residential facility, to the administrator of the facility, the
14 state and regional long-term care ombudsman, and the
15 Office of Health Facility Licensure and Certification.

§9-6-11. Reporting procedures.

1 (a) A report of neglect, abuse, or financial exploitation
2 of a vulnerable adult or facility resident, or of an emergency
3 situation involving such an adult, shall be made
4 immediately, and not more than 48 hours after suspecting
5 abuse, neglect or financial exploitation, to the department's
6 adult protective services agency by a method established by
7 the department. The department shall, upon receiving any
8 such report, take such action as may be appropriate and shall
9 maintain a record thereof. The department shall receive
10 reports on its 24-hour, seven-day-a-week, toll-free number
11 established to receive calls reporting cases of suspected or
12 known adult abuse or neglect.

13 (b) A copy of any report of abuse, neglect, financial
14 exploitation, or emergency situation shall be immediately
15 filed with the following agencies:

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

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

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

21 (c) If the person who is alleged to be abused, neglected,
22 or financially exploited is a resident of a nursing home or
23 other residential facility, a copy of the report shall also be

24 filed with the state or regional long-term care ombudsman
25 and the administrator of the nursing home or facility.

26 (d) Reports of known or suspected institutional abuse,
27 neglect, or financial exploitation of a vulnerable adult or
28 facility resident, or the existence of an emergency situation
29 in an institution, nursing home, or other residential facility
30 shall be made, received, and investigated in the same
31 manner as other reports provided for in this article. In the
32 case of a report regarding an institution, nursing home, or
33 residential facility, the department shall immediately cause
34 an investigation to be conducted.

§9-6-13. Abrogation of privileged communications.

1 The privileged status of communications between
2 husband and wife, and with any person required to make
3 reports under §9-6-9 or §9-6-10 of this code, except
4 communications between an attorney and his or her client,
5 is hereby abrogated in circumstances involving suspected or
6 known abuse, neglect, or financial exploitation of a
7 vulnerable adult, or where the vulnerable adult is in a known
8 or suspected emergency situation.

§9-6-16. Compelling production of information.

1 (a)(1) In order to obtain information regarding the
2 location of an adult who is the subject of an allegation of
3 abuse, neglect, or financial exploitation, the Secretary of the
4 Department of Health and Human Resources may serve, by
5 certified mail, personal service, or facsimile, an
6 administrative subpoena on any corporation, partnership,
7 business, or organization for production of information
8 leading to determining the location of the adult. In case of
9 disobedience to the subpoena, the Division of Adult
10 Protective Services may petition any circuit court to require
11 the production of information.

12 (2) In case of disobedience to the subpoena, in
13 compelling the production of information, the secretary may
14 invoke the aid of: (A) The circuit court with jurisdiction

15 over the served party, if the entity served is located in this
16 state; or (B) the circuit court of the county in which the local
17 protective services office conducting the investigation is
18 located, if the entity served is a nonresident.

19 (3) A circuit court shall not enforce an administrative
20 subpoena unless it finds that: (A) The investigation is one
21 the Division of Adult Protective Services is authorized to
22 make and is being conducted pursuant to a legitimate
23 purpose; (B) the inquiry is relevant to that purpose; (C) the
24 inquiry is not too broad or indefinite; (D) the information
25 sought is not already in the possession of the Division of
26 Adult Protective Services; and (E) any administrative steps
27 required by law have been followed.

28 (4) If circumstances arise where the secretary, or his or
29 her designee, determines it necessary to compel an
30 individual to provide information regarding the location of
31 an adult who is the subject of an allegation of abuse, neglect,
32 or financial exploitation, the secretary, or his or her
33 designee, may seek a subpoena from the circuit court with
34 jurisdiction over the individual from whom the information
35 is sought.



CHAPTER 185

(S. B. 740 - By Senator Blair)

[Passed March 6, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18-10L-5 of the Code of West Virginia, 1931, as amended, relating to clarifying authorized uses of the Ron Yost Personal Assistance Services Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10L. RON YOST PERSONAL ASSISTANCE SERVICES ACT.

§18-10L-5. Funding.

1 (a) There is hereby created in the State Treasury a
2 special fund designated the Ron Yost Personal Assistance
3 Services Fund. The fund shall be an appropriated account
4 within the Division of Rehabilitation Services and the
5 moneys shall be expended exclusively for the purposes of
6 this article.

7 (b) Funds made available under this article may be used
8 only for the Ron Yost Personal Assistance Program,
9 including planning; designing; delivering; and
10 administering services, functional assessment evaluations,
11 and training. The Division of Rehabilitation Services may
12 use not more than seven percent of the total allocation for
13 administrative costs.

14 (c) The Division of Rehabilitation Services or the
15 contracted program administrator may apply for and use all
16 other funding sources to carry out this program, including
17 state, federal, and other grants and donations.

18 (d) Funds shall be disbursed in a manner that ensures
19 maximum consumer control of the services provided under
20 the program.

21 (e) Personal assistance services shall be available only
22 to the extent funding is available through annual
23 appropriations of state, federal, and other allotted funds.

24 (f) Funds or services provided to eligible individuals by
25 the personal assistance services program under this article
26 is not income to those individuals for any purpose under this
27 code or under the rules of any agency of state government.

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CHAPTER 186

(Com. Sub. for S. B. 291 - By Senators Weld and Woelfel)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §33-15-4a of the Code of West Virginia, 1931, as amended; to repeal §33-16-3a of said code; to amend and reenact §5-16-7 of said code; to amend said code by adding thereto a new section, designated §33-15-4u; to amend said code by adding thereto a new section, designated §33-16-3ff; to amend and reenact §33-24-4 of said code; to amend said code by adding thereto a new section, designated §33-24-7u; to amend and reenact §33-25-6 of said code; to amend said code by adding thereto a new section, designated §33-25-8r; and to amend said code by adding thereto a new section, designated §33-25A-8u, all relating to requiring the Public Employees Insurance Agency and other health insurance providers to provide mental health parity between behavioral health, mental health, substance use disorders, and medical and surgical procedures; providing definitions; providing for mandatory reporting; providing for rulemaking; and setting forth an effective date.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE, AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

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

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

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

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

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

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

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

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

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

49 (A) The coverage does not include custodial care,
50 residential care, or schooling. For purposes of this section,
51 "serious mental illness" means an illness included in the
52 American Psychiatric Association's diagnostic and
53 statistical manual of mental disorders, as periodically
54 revised, under the diagnostic categories or
55 subclassifications of: (i) Schizophrenia and other psychotic
56 disorders; (ii) bipolar disorders; (iii) depressive disorders;
57 (iv) substance-related disorders with the exception of
58 caffeine-related disorders and nicotine-related disorders; (v)
59 anxiety disorders; and (vi) anorexia and bulimia. With
60 regard to a covered individual who has not yet attained the
61 age of 19 years, "serious mental illness" also includes
62 attention deficit hyperactivity disorder, separation anxiety
63 disorder, and conduct disorder.

64 (B) The agency shall not discriminate between medical-
65 surgical benefits and mental health benefits in the

66 administration of its plan. With regard to both medical-
67 surgical and mental health benefits, it may make
68 determinations of medical necessity and appropriateness
69 and it may use recognized health care quality and cost
70 management tools including, but not limited to, limitations
71 on inpatient and outpatient benefits, utilization review,
72 implementation of cost-containment measures,
73 preauthorization for certain treatments, setting coverage
74 levels, setting maximum number of visits within certain
75 time periods, using capitated benefit arrangements, using
76 fee-for-service arrangements, using third-party
77 administrators, using provider networks, and using patient
78 cost sharing in the form of copayments, deductibles, and
79 coinsurance. Additionally, the agency shall comply with the
80 financial requirements and quantitative treatment
81 limitations specified in 45 CFR 146.136(c)(2) and (c)(3), or
82 any successor regulation. The agency may not apply any
83 nonquantitative treatment limitations to benefits for
84 behavioral health, mental health, and substance use
85 disorders that are not applied to medical and surgical
86 benefits within the same classification of benefits:
87 *Provided*, That any service, even if it is related to the
88 behavioral health, mental health, or substance use diagnosis
89 if medical in nature, shall be reviewed as a medical claim
90 and undergo all utilization review as applicable;

91 (7) Coverage for general anesthesia for dental
92 procedures and associated outpatient hospital or ambulatory
93 facility charges provided by appropriately licensed health
94 care individuals in conjunction with dental care if the
95 covered person is:

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

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

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

125 (B) The coverage shall include, but not be limited to,
126 applied behavior analysis which shall be provided or
127 supervised by a certified behavior analyst. The annual
128 maximum benefit for applied behavior analysis required by
129 this subdivision shall be in an amount not to exceed \$30,000
130 per individual for three consecutive years from the date
131 treatment commences. At the conclusion of the third year,
132 coverage for applied behavior analysis required by this
133 subdivision shall be in an amount not to exceed \$2,000 per
134 month, until the individual reaches 18 years of age, as long
135 as the treatment is medically necessary and in accordance
136 with a treatment plan developed by a certified behavior
137 analyst pursuant to a comprehensive evaluation or
138 reevaluation of the individual. This subdivision does not
139 limit, replace, or affect any obligation to provide services to

140 an individual under the Individuals with Disabilities
141 Education Act, 20 U. S. C. §1400 *et seq.*, as amended from
142 time to time, or other publicly funded programs. Nothing in
143 this subdivision requires reimbursement for services
144 provided by public school personnel.

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

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

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

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

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

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

168 (i) "Applied behavior analysis" means the design,
169 implementation, and evaluation of environmental
170 modifications using behavioral stimuli and consequences in
171 order to produce socially significant improvement in human
172 behavior and includes the use of direct observation,

173 measurement, and functional analysis of the relationship
174 between environment and behavior.

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

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

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

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

200 (9) For plans that include maternity benefits, coverage
201 for the same maternity benefits for all individuals
202 participating in or receiving coverage under plans that are
203 issued or renewed on or after January 1, 2014: *Provided*,
204 That to the extent that the provisions of this subdivision
205 require benefits that exceed the essential health benefits
206 specified under section 1302(b) of the Patient Protection
207 and Affordable Care Act, Pub. L. No. 111-148, as amended,

208 the specific benefits that exceed the specified essential
209 health benefits shall not be required of a health benefit plan
210 when the plan is offered in this state.

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

222 (i) Immunoglobulin E and nonimmunoglobulin E-
223 medicated allergies to multiple food proteins;

224 (ii) Severe food protein-induced enterocolitis
225 syndrome;

226 (iii) Eosinophilic disorders as evidenced by the results
227 of a biopsy; and

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

231 (B) The coverage required by paragraph (A) of this
232 subdivision shall include medical foods for home use for
233 which a physician has issued a prescription and has declared
234 them to be medically necessary, regardless of methodology
235 of delivery.

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

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

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

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

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

255 (2) All teaching and professional employees of state
256 public institutions of higher education and county boards of
257 education;

258 (3) All nonteaching employees of the Higher Education
259 Policy Commission, West Virginia Council for Community
260 and Technical College Education, and county boards of
261 education; or

262 (4) Any other categorization which would ensure the
263 stability of the overall program.

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

273 (e) The agency shall establish procedures to authorize
274 treatment with a nonparticipating provider if a covered

275 service is not available within established time and distance
276 standards and within a reasonable period after service is
277 requested, and with the same coinsurance, deductible, or
278 copayment requirements as would apply if the service were
279 provided at a participating provider, and at no greater cost
280 to the covered person than if the services were obtained at
281 or from a participating provider.

282 (f) If the Public Employees Insurance Agency offers a
283 plan that does not cover services provided by an out-of-
284 network provider, it may provide the benefits required in
285 paragraph (A), subdivision (6), subsection (a) of this section
286 if the services are rendered by a provider who is designated
287 by and affiliated with the Public Employees Insurance
288 Agency, and only if the same requirements apply for
289 services for a physical illness.

290 (g) In the event of a concurrent review for a claim for
291 coverage of services for the prevention of, screening for,
292 and treatment of behavioral health, mental health, and
293 substance use disorders, the service continues to be a
294 covered service until the Public Employees Insurance
295 Agency notifies the covered person of the determination of
296 the claim.

297 (h) Unless denied for nonpayment of premium, a denial
298 of reimbursement for services for the prevention of,
299 screening for, or treatment of behavioral health, mental
300 health, and substance use disorders by the Public Employees
301 Insurance Agency shall include the following language:

302 (1) A statement explaining that covered persons are
303 protected under this section, which provides that limitations
304 placed on the access to mental health and substance use
305 disorder benefits may be no greater than any limitations
306 placed on access to medical and surgical benefits;

307 (2) A statement providing information about the internal
308 appeals process if the covered person believes his or her
309 rights under this section have been violated; and

310 (3) A statement specifying that covered persons are
311 entitled, upon request to the Public Employees Insurance
312 Agency, to a copy of the medical necessity criteria for any
313 behavioral health, mental health, and substance use disorder
314 benefit.

315 (i) On or after June 1, 2021, and annually thereafter, the
316 Public Employees Insurance Agency shall submit a written
317 report to the Joint Committee on Government and Finance
318 that contains the following information regarding plans
319 offered pursuant to this section:

320 (1) Data that demonstrates parity compliance for
321 adverse determination regarding claims for behavioral
322 health, mental health, or substance use disorder services and
323 includes the total number of adverse determinations for such
324 claims;

325 (2) A description of the process used to develop and
326 select:

327 (A) The medical necessity criteria used in determining
328 benefits for behavioral health, mental health, and substance
329 use disorders; and

330 (B) The medical necessity criteria used in determining
331 medical and surgical benefits;

332 (3) Identification of all nonquantitative treatment
333 limitations that are applied to benefits for behavioral health,
334 mental health, and substance use disorders and to medical
335 and surgical benefits within each classification of benefits;
336 and

337 (4) The results of analyses demonstrating that, for
338 medical necessity criteria described in subdivision (2) of
339 this subsection and for each nonquantitative treatment
340 limitation identified in subdivision (3) of this subsection, as
341 written and in operation, the processes, strategies,
342 evidentiary standards, or other factors used in applying the
343 medical necessity criteria and each nonquantitative

344 treatment limitation to benefits for behavioral health, mental
345 health, and substance use disorders within each
346 classification of benefits are comparable to, and are applied
347 no more stringently than, the processes, strategies,
348 evidentiary standards, or other factors used in applying the
349 medical necessity criteria and each nonquantitative
350 treatment limitation to medical and surgical benefits within
351 the corresponding classification of benefits.

352 (5) The Public Employees Insurance Agency's report of
353 the analyses regarding nonquantitative treatment limitations
354 shall include at a minimum:

355 (A) Identify factors used to determine whether a
356 nonquantitative treatment limitation will apply to a benefit,
357 including factors that were considered but rejected;

358 (B) Identify and define the specific evidentiary
359 standards used to define the factors and any other evidence
360 relied on in designing each nonquantitative treatment
361 limitation;

362 (C) Provide the comparative analyses, including the
363 results of the analyses, performed to determine that the
364 processes and strategies used to design each nonquantitative
365 treatment limitation, as written, and the written processes
366 and strategies used to apply each nonquantitative treatment
367 limitation for benefits for behavioral health, mental health,
368 and substance use disorders are comparable to, and are
369 applied no more stringently than, the processes and
370 strategies used to design and apply each nonquantitative
371 treatment limitation, as written, and the written processes
372 and strategies used to apply each nonquantitative treatment
373 limitation for medical and surgical benefits;

374 (D) Provide the comparative analysis, including the
375 results of the analyses, performed to determine that the
376 processes and strategies used to apply each nonquantitative
377 treatment limitation, in operation, for benefits for behavioral
378 health, mental health, and substance use disorders are

379 comparable to, and are applied no more stringently than, the
380 processes and strategies used to apply each nonquantitative
381 treatment limitation, in operation, for medical and surgical
382 benefits; and

383 (E) Disclose the specific findings and conclusions
384 reached by the Public Employees Insurance Agency that the
385 results of the analyses indicate that each health benefit plan
386 offered by the Public Employees Insurance Agency
387 complies with paragraph (B), subdivision (6), subsection (a)
388 of this section.

389 (6) After the initial report required by this subsection,
390 annual reports are only required for any year thereafter
391 during which the Public Employees Insurance Agency
392 makes significant changes to how it designs and applies
393 medical management protocols.

394 (j) The Public Employees Insurance Agency shall
395 update its annual plan document to reflect its
396 comprehensive parity compliance. An annual report shall
397 also be filed with the Joint Committee on Government and
398 Finance and the Public Employees Insurance Agency
399 Finance Board.

400 (k) This section is effective for policies, contracts, plans
401 or agreements, beginning on or after January 1, 2021. This
402 section applies to all policies, contracts, plans, or
403 agreements, subject to this article that are delivered,
404 executed, issued, amended, adjusted, or renewed in this
405 state on or after the effective date of this section.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4a. Required policy provisions-mental illness.

1 [Repealed.]

§33-15-4u. Mental health parity.

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

4 To the extent that coverage is provided “behavioral
5 health, mental health, and substance use disorder” means a
6 condition or disorder, regardless of etiology, that may be the
7 result of a combination of genetic and environmental factors
8 and that falls under any of the diagnostic categories listed in
9 the mental disorders section of the most recent version of:

10 (A) The International Statistical Classification of
11 Diseases and Related Health Problems;

12 (B) The Diagnostic and Statistical Manual of Mental
13 Disorders; or

14 (C) The Diagnostic Classification of Mental Health and
15 Developmental Disorders of Infancy and Early Childhood;
16 and

17 Includes autism spectrum disorder: *Provided*, That any
18 service, even if it is related to the behavioral health, mental
19 health, or substance use disorder diagnosis if medical in
20 nature, shall be reviewed as a medical claim and undergo all
21 utilization review as applicable.

22 (b) The carrier is required to provide coverage for the
23 prevention of, screening for, and treatment of behavioral
24 health, mental health, and substance use disorders that is no
25 less extensive than the coverage provided for any physical
26 illness and that complies with the requirements of this
27 section. This screening shall include, but is not limited to,
28 unhealthy alcohol use for adults, substance use for adults
29 and adolescents, and depression screening for adolescents
30 and adults.

31 (c) The carrier shall:

32 (1) Include coverage and reimbursement for behavioral
33 health screenings using a validated screening tool for
34 behavioral health, which coverage and reimbursement is no
35 less extensive than the coverage and reimbursement for the
36 annual physical examination;

37 (2) Comply with the nonquantitative treatment
38 limitation requirements specified in 45 CFR
39 §146.136(c)(4), or any successor regulation, regarding any
40 limitations that are not expressed numerically but otherwise
41 limit the scope or duration of benefits for treatment, which
42 in addition to the limitations and examples listed in 45 CFR
43 §146.136(c)(4)(ii) and (c)(4)(iii), or any successor
44 regulation and 78 FR 68246, include the methods by which
45 the carrier establishes and maintains its provider network
46 and responds to deficiencies in the ability of its networks to
47 provide timely access to care;

48 (3) Comply with the financial requirements and
49 quantitative treatment limitations specified in 45 CFR
50 §146.136(c)(2) and (c)(3), or any successor regulation;

51 (4) Not apply any nonquantitative treatment limitations
52 to benefits for behavioral health, mental health, and
53 substance use disorders that are not applied to medical and
54 surgical benefits within the same classification of benefits;

55 (5) Establish procedures to authorize treatment with a
56 nonparticipating provider if a covered service is not
57 available within established time and distance standards and
58 within a reasonable period after service is requested, and
59 with the same coinsurance, deductible, or copayment
60 requirements as would apply if the service were provided at
61 a participating provider, and at no greater cost to the covered
62 person than if the services were obtained at, or from a
63 participating provider; and

64 (6) If a covered person obtains a covered service from a
65 nonparticipating provider because the covered service is not
66 available within the established time and distance standards,

67 reimburse treatment or services for behavioral health,
68 mental health, or substance use disorders required to be
69 covered pursuant to this subsection that are provided by a
70 nonparticipating provider using the same methodology that
71 the carrier uses to reimburse covered medical services
72 provided by nonparticipating providers and, upon request,
73 provide evidence of the methodology to the person or
74 provider.

75 (d) If the carrier offers a plan that does not cover
76 services provided by an out-of-network provider, it may
77 provide the benefits required in subsection (c) of this section
78 if the services are rendered by a provider who is designated
79 by and affiliated with the carrier only if the same
80 requirements apply for services for a physical illness.

81 (e) In the event of a concurrent review for a claim for
82 coverage of services for the prevention of, screening for,
83 and treatment of behavioral health, mental health, and
84 substance use disorders, the service continues to be a
85 covered service until the carrier notifies the covered person
86 of the determination of the claim.

87 (f) Unless denied for nonpayment of premium, a denial
88 of reimbursement for services for the prevention of,
89 screening for, or treatment of behavioral health, mental
90 health, and substance use disorders by the carrier must
91 include the following language:

92 (1) A statement explaining that covered persons are
93 protected under this section, which provides that limitations
94 placed on the access to mental health and substance use
95 disorder benefits may be no greater than any limitations
96 placed on access to medical and surgical benefits;

97 (2) A statement providing information about the
98 Consumer Services Division of the West Virginia Office of
99 the Insurance Commissioner if the covered person believes
100 his or her rights under this section have been violated; and

101 (3) A statement specifying that covered persons are
102 entitled, upon request to the carrier, to a copy of the medical
103 necessity criteria for any behavioral health, mental health,
104 and substance use disorder benefit.

105 (g) On or after June 1, 2021, and annually thereafter, the
106 Insurance Commissioner shall submit a written report to the
107 Joint Committee on Government and Finance that contains
108 the following information on plans which fall under this
109 section regarding plans offered pursuant to this section:

110 (1) Data that demonstrates parity compliance for
111 adverse determination regarding claims for behavioral
112 health, mental health, or substance use disorder services and
113 includes the total number of adverse determinations for such
114 claims;

115 (2) A description of the process used to develop and
116 select:

117 (A) The medical necessity criteria used in determining
118 benefits for behavioral health, mental health, and substance
119 use disorders; and

120 (B) The medical necessity criteria used in determining
121 medical and surgical benefits;

122 (3) Identification of all nonquantitative treatment
123 limitations that are applied to benefits for behavioral health,
124 mental health, and substance use disorders and to medical
125 and surgical benefits within each classification of benefits;
126 and

127 (4) The results of analyses demonstrating that, for
128 medical necessity criteria described in subdivision (2) of
129 this subsection and for each nonquantitative treatment
130 limitation identified in subdivision (3) of this subsection, as
131 written and in operation, the processes, strategies,
132 evidentiary standards, or other factors used in applying the
133 medical necessity criteria and each nonquantitative
134 treatment limitation to benefits for behavioral health, mental

135 health, and substance use disorders within each
136 classification of benefits are comparable to, and are applied
137 no more stringently than, the processes, strategies,
138 evidentiary standards, or other factors used in applying the
139 medical necessity criteria and each nonquantitative
140 treatment limitation to medical and surgical benefits within
141 the corresponding classification of benefits.

142 (5) The Insurance Commissioner's report of the
143 analyses regarding nonquantitative treatment limitations
144 shall include at a minimum:

145 (A) Identifying factors used to determine whether a
146 nonquantitative treatment limitation will apply to a benefit,
147 including factors that were considered but rejected;

148 (B) Identify and define the specific evidentiary
149 standards used to define the factors and any other evidence
150 relied on in designing each nonquantitative treatment
151 limitation;

152 (C) Provide the comparative analyses, including the
153 results of the analyses, performed to determine that the
154 processes and strategies used to design each nonquantitative
155 treatment limitation, as written, and the written processes
156 and strategies used to apply each nonquantitative treatment
157 limitation for benefits for behavioral health, mental health,
158 and substance use disorders are comparable to, and are
159 applied no more stringently than, the processes and
160 strategies used to design and apply each nonquantitative
161 treatment limitation, as written, and the written processes
162 and strategies used to apply each nonquantitative treatment
163 limitation for medical and surgical benefits;

164 (D) Provide the comparative analyses, including the
165 results of the analyses, performed to determine that the
166 processes and strategies used to apply each nonquantitative
167 treatment limitation, in operation, for benefits for behavioral
168 health, mental health, and substance use disorders are
169 comparable to, and are applied no more stringently than, the

170 processes and strategies used to apply each nonquantitative
171 treatment limitation, in operation, for medical and surgical
172 benefits; and

173 (E) Disclose the specific findings and conclusions
174 reached by the Insurance Commissioner that the results of
175 the analyses indicate that each health benefit plan offered
176 under the provisions of this section complies with
177 subsection (c) of this section.

178 (h) The Insurance Commissioner shall adopt legislative
179 rules to comply with the provisions of this section. These
180 rules shall specify the information and analyses that carriers
181 shall provide to the Insurance Commissioner necessary for
182 the Insurance Commissioner to complete the report
183 described in subsection (g) of this section and shall delineate
184 the format in which the carriers shall submit such
185 information and analyses. These rules or amendments to
186 rules shall be proposed pursuant to the provisions of §29A-
187 3-1 *et seq.* of this code within the applicable time limit to be
188 considered by the Legislature during its regular session in
189 the year 2021. The rules shall require that each carrier first
190 submit the report to the Insurance Commissioner no earlier
191 than one year after the rules are promulgated, and any year
192 thereafter during which the carrier makes significant
193 changes to how it designs and applies medical management
194 protocols.

195 (i) This section is effective for policies, contracts, plans,
196 or agreements, beginning on or after January 1, 2021. This
197 section applies to all policies, contracts, plans, or
198 agreements, subject to this article that are delivered,
199 executed, issued, amended, adjusted, or renewed in this
200 state on or after the effective date of this section.

201 (j) The Insurance Commissioner shall enforce this
202 section and may conduct a financial examination of the
203 carrier to determine if it is in compliance with this section,
204 including, but not limited to, a review of policies and
205 procedures and a sample of mental health claims to

206 determine these claims are treated in parity with medical
207 and surgical benefits. The results of this examination shall
208 be reported to the Legislature. If the Insurance
209 Commissioner determines that the carrier is not in
210 compliance with this section, the Insurance Commissioner
211 may fine the carrier in conformity with the fines established
212 in the legislative rule.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3a. Same-mental health.

1 [Repealed.]

§33-16-3ff. Mental health parity.

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

4 To the extent that coverage is provided “behavioral,
5 mental health, and substance use disorder” means a
6 condition or disorder, regardless of etiology, that may be the
7 result of a combination of genetic and environmental factors
8 and that falls under any of the diagnostic categories listed in
9 the mental disorders section of the most recent version of:

10 (1) The International Statistical Classification of
11 Diseases and Related Health Problems;

12 (2) The Diagnostic and Statistical Manual of Mental
13 Disorders; or

14 (3) The Diagnostic Classification of Mental Health and
15 Developmental Disorders of Infancy and Early Childhood;
16 and

17 Includes autism spectrum disorder: *Provided*, That any
18 service, even if it is related to the behavioral health, mental
19 health, or substance use disorder diagnosis if medical in

20 nature, shall be reviewed as a medical claim and undergo all
21 utilization review as applicable.

22 (b) The carrier is required to provide coverage for the
23 prevention of, screening for, and treatment of behavioral
24 health, mental health, and substance use disorders that is no
25 less extensive than the coverage provided for any physical
26 illness and that complies with the requirements of this
27 section. This screening shall include but is not limited to
28 unhealthy alcohol use for adults, substance use for adults
29 and adolescents, and depression screening for adolescents
30 and adults.

31 (c) The carrier shall:

32 (1) Include coverage and reimbursement for behavioral
33 health screenings using a validated screening tool for
34 behavioral health, which coverage and reimbursement is no
35 less extensive than the coverage and reimbursement for the
36 annual physical examination;

37 (2) Comply with the nonquantitative treatment
38 limitation requirements specified in 45 CFR
39 §146.136(c)(4), or any successor regulation, regarding any
40 limitations that are not expressed numerically but otherwise
41 limit the scope or duration of benefits for treatment, which
42 in addition to the limitations and examples listed in 45 CFR
43 §146.136(c)(4)(ii) and (c)(4)(iii), or any successor
44 regulation and 78 FR 68246, include the methods by which
45 the carrier establishes and maintains its provider network
46 and responds to deficiencies in the ability of its networks to
47 provide timely access to care;

48 (3) Comply with the financial requirements and
49 quantitative treatment limitations specified in 45 CFR
50 §146.136(c)(2) and (c)(3), or any successor regulation;

51 (4) Not apply any nonquantitative treatment limitations
52 to benefits for behavioral health, mental health, and

53 substance use disorders that are not applied to medical and
54 surgical benefits within the same classification of benefits;

55 (5) Establish procedures to authorize treatment with a
56 nonparticipating provider if a covered service is not
57 available within established time and distance standards and
58 within a reasonable period after service is requested, and
59 with the same coinsurance, deductible, or copayment
60 requirements as would apply if the service were provided at
61 a participating provider, and at no greater cost to the covered
62 person than if the services were obtained at, or from a
63 participating provider; and

64 (6) If a covered person obtains a covered service from a
65 nonparticipating provider because the covered service is not
66 available within the established time and distance standards,
67 reimburse treatment or services for behavioral health,
68 mental health, or substance use disorders required to be
69 covered pursuant to this subsection that are provided by a
70 nonparticipating provider using the same methodology that
71 the carrier uses to reimburse covered medical services
72 provided by nonparticipating providers and, upon request,
73 provide evidence of the methodology to the person or
74 provider.

75 (d) If the carrier offers a plan that does not cover
76 services provided by an out-of-network provider, it may
77 provide the benefits required in subsection (c) of this section
78 if the services are rendered by a provider who is designated
79 by and affiliated with the carrier only if the same
80 requirements apply for services for a physical illness.

81 (e) In the event of a concurrent review for a claim for
82 coverage of services for the prevention of, screening for,
83 and treatment of behavioral health, mental health, and
84 substance use disorders, the service continues to be a
85 covered service until the carrier notifies the covered person
86 of the determination of the claim.

87 (f) Unless denied for nonpayment of premium, a denial
88 of reimbursement for services for the prevention of,
89 screening for, or treatment of behavioral health, mental
90 health, and substance use disorders by the carrier must
91 include the following language:

92 (1) A statement explaining that covered persons are
93 protected under this section, which provides that limitations
94 placed on the access to mental health and substance use
95 disorder benefits may be no greater than any limitations
96 placed on access to medical and surgical benefits;

97 (2) A statement providing information about the
98 Consumer Services Division of the Office of the West
99 Virginia Insurance Commissioner if the covered person
100 believes his or her rights under this section have been
101 violated; and

102 (3) A statement specifying that covered persons are
103 entitled, upon request to the carrier, to a copy of the medical
104 necessity criteria for any behavioral health, mental health,
105 and substance use disorder benefit.

106 (g) On or after June 1, 2021, and annually thereafter, the
107 Insurance Commissioner shall submit a written report to the
108 Joint Committee on Government and Finance that contains
109 the following information regarding plans offered pursuant
110 to this section:

111 (1) Data that demonstrates parity compliance for
112 adverse determination regarding claims for behavioral
113 health, mental health, or substance use disorder services and
114 includes the total number of adverse determinations for such
115 claims;

116 (2) A description of the process used to develop and
117 select:

118 (A) The medical necessity criteria used in determining
119 benefits for behavioral health, mental health, and substance
120 use disorders; and

121 (B) The medical necessity criteria used in determining
122 medical and surgical benefits;

123 (3) Identification of all nonquantitative treatment
124 limitations that are applied to benefits for behavioral health,
125 mental health, and substance use disorders and to medical
126 and surgical benefits within each classification of benefits;
127 and

128 (4) The results of analyses demonstrating that, for
129 medical necessity criteria described in subdivision (2) of
130 this subsection and for each nonquantitative treatment
131 limitation identified in subdivision (3) of this subsection, as
132 written and in operation, the processes, strategies,
133 evidentiary standards, or other factors used in applying the
134 medical necessity criteria and each nonquantitative
135 treatment limitation to benefits for behavioral health, mental
136 health, and substance use disorders within each
137 classification of benefits are comparable to, and are applied
138 no more stringently than, the processes, strategies,
139 evidentiary standards, or other factors used in applying the
140 medical necessity criteria and each nonquantitative
141 treatment limitation to medical and surgical benefits within
142 the corresponding classification of benefits.

143 (5) The Insurance Commissioner's report of the
144 analyses regarding nonquantitative treatment limitations
145 shall include at a minimum:

146 (A) Identifying factors used to determine whether a
147 nonquantitative treatment limitation will apply to a benefit,
148 including factors that were considered but rejected;

149 (B) Identify and define the specific evidentiary
150 standards used to define the factors and any other evidence
151 relied on in designing each nonquantitative treatment
152 limitation;

153 (C) Provide the comparative analyses, including the
154 results of the analyses, performed to determine that the

155 processes and strategies used to design each nonquantitative
156 treatment limitation, as written, and the written processes
157 and strategies used to apply each nonquantitative treatment
158 limitation for benefits for behavioral health, mental health,
159 and substance use disorders are comparable to, and are
160 applied no more stringently than, the processes and
161 strategies used to design and apply each nonquantitative
162 treatment limitation, as written, and the written processes
163 and strategies used to apply each nonquantitative treatment
164 limitation for medical and surgical benefits;

165 (D) Provide the comparative analyses, including the
166 results of the analyses, performed to determine that the
167 processes and strategies used to apply each nonquantitative
168 treatment limitation, in operation, for benefits for behavioral
169 health, mental health, and substance use disorders are
170 comparable to, and are applied no more stringently than, the
171 processes and strategies used to apply each nonquantitative
172 treatment limitation, in operation, for medical and surgical
173 benefits; and

174 (E) Disclose the specific findings and conclusions
175 reached by the Insurance Commissioner that the results of
176 the analyses indicate that each health benefit plan which
177 falls under the provisions of this section complies with
178 subsection (c) of this section.

179 (h) The Insurance Commissioner shall adopt legislative
180 rules to comply with the provisions of this section. These
181 rules shall specify the information and analyses that carriers
182 shall provide to the Insurance Commissioner necessary for
183 the commissioner to complete the report described in
184 subsection (g) of this section and shall delineate the format
185 in which carriers shall submit such information and
186 analyses. These rules or amendments to rules shall be
187 proposed pursuant to the provisions of §29A-3-1 *et seq.* of
188 this code within the applicable time limit to be considered
189 by the Legislature during its regular session in the year
190 2021. The rules shall require that each carrier first submit
191 the report to the Insurance Commissioner no earlier than one

192 year after the rules are promulgated, and any year thereafter
193 during which the carrier makes significant changes to how
194 it designs and applies medical management protocols.

195 (i) This section is effective for policies, contracts, plans
196 or agreements, beginning on or after January 1, 2021. This
197 section applies to all policies, contracts, plans, or
198 agreements, subject to this article that are delivered,
199 executed, issued, amended, adjusted, or renewed in this
200 state on or after the effective date of this section.

201 (j) The Insurance Commissioner shall enforce this
202 section and may conduct a financial examination of the
203 carrier to determine if it is in compliance with this section,
204 including, but not limited to, a review of policies and
205 procedures and a sample of mental health claims to
206 determine these claims are treated in parity with medical
207 and surgical benefits. The results of this examination shall
208 be reported to the Legislature. If the Insurance
209 Commissioner determines that the carrier is not in
210 compliance with this section, the Insurance Commissioner
211 may fine the carrier in conformity with the fines established
212 in the legislative rule.

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

§33-24-4. Exemptions; applicability of insurance laws.

1 (a) Every corporation defined in §33-24-2 of this code
2 is hereby declared to be a scientific, nonprofit institution
3 and exempt from the payment of all property and other
4 taxes. Every corporation, to the same extent the provisions
5 are applicable to insurers transacting similar kinds of
6 insurance and not inconsistent with the provisions of this
7 article, shall be governed by and be subject to the provisions
8 as herein below indicated, of the following articles of this
9 chapter: §33-2-1 *et seq.* of this code (Insurance

10 Commissioner); §33-4-1 *et seq.* of this code (general
11 provisions), except that §33-4-16 of this code may not be
12 applicable thereto; §33-5-20 of this code (borrowing by
13 insurers); §33-6-34 of this code (fee for form, rate and rule
14 filing); §33-6C-1 *et seq.* of this code (guaranteed loss ratios
15 as applied to individual sickness and accident insurance
16 policies); §33-7-1 *et seq.* of this code (assets and liabilities);
17 §33-8A-1 *et seq.* of this code (use of clearing corporations
18 and Federal Reserve book-entry system); §33-11-1 *et seq.* of
19 this code (unfair trade practices); §33-12-1 *et seq.* of this code
20 (insurance producers and solicitors), except that the agent's
21 license fee shall be \$25; §33-15-2a of this code (definitions);
22 §33-15-2b of this code (guaranteed issue; limitation of
23 coverage; election; denial of coverage; network plans); §33-
24 15-2d of this code (exceptions to guaranteed renewability);
25 §33-15-2e of this code (discontinuation of particular type of
26 coverage; uniform termination of all coverage; uniform
27 modification of coverage); §33-15-2f of this code
28 (certification of creditable coverage); §33-15-2g
29 (applicability); §33-15-4e of this code (benefits for mothers
30 and newborns); §33-15-14 of this code (policies
31 discriminating among health care providers); §33-15-16 of
32 this code (policies not to exclude insured's children from
33 coverage; required services; coordination with other
34 insurance); §33-15-18 of this code (equal treatment of state
35 agency); §33-15-19 of this code (coordination of benefits
36 with Medicaid); §33-15A-1 *et seq.* of this code (West
37 Virginia Long-Term Care Insurance Act); §33-15C-1 *et seq.*
38 of this code (diabetes insurance); §33-16-3 of this code
39 (required policy provisions); §33-16-3a of this code (same -
40 mental health); §33-16-3d of this code (Medicare supplement
41 insurance); §33-16-3f of this code (required policy provisions
42 - treatment of temporomandibular joint disorder and
43 craniomandibular disorder); §33-16-3j of this code (hospital
44 benefits for mothers and newborns); §33-16-3k of this code
45 (limitations on preexisting condition exclusions for health
46 benefit plans); §33-16-3l of this code (renewability and
47 modification of health benefit plans); §33-16-3m of this code
48 (creditable coverage); §33-16-3n of this code (eligibility for

49 enrollment); §33-16-11 of this code (group policies not to
50 exclude insured's children from coverage; required services;
51 coordination with other insurance); §33-16-13 of this code
52 (equal treatment of state agency); §33-16-14 of this code
53 (coordination of benefits with Medicaid); §33-16-16 of this
54 code (insurance for diabetics); §33-16A-1 *et seq.* of this code
55 (group health insurance conversion); §33-16C-1 *et seq.* of
56 this code (employer group accident and sickness insurance
57 policies); §33-16D-1 *et seq.* of this code (marketing and rate
58 practices for small employer accident and sickness insurance
59 policies); §33-26A-1 *et seq.* of this code (West Virginia Life
60 and Health Insurance Guaranty Association Act), after
61 October 1, 1991, §33-27-1 *et seq.* of this code (insurance
62 holding company systems); §33-28-1 *et seq.* of this code
63 (individual accident and sickness insurance minimum
64 standards); §33-33-1 *et seq.* of this code (annual audited
65 financial report); §33-34-1 *et seq.* of this code (administrative
66 supervision); §33-34A-1 *et seq.* of this code (standards and
67 commissioner's authority for companies considered to be in
68 hazardous financial condition); §33-35-1 *et seq.* of this code
69 (criminal sanctions for failure to report impairment); §33-37-
70 1 *et seq.* of this code (managing general agents); §33-40A-1
71 *et seq.* of this code (risk-based capital for health
72 organizations); and §33-41-1 *et seq.* of this code (Insurance
73 Fraud Prevention Act) and no other provision of this chapter
74 may apply to these corporations unless specifically made
75 applicable by the provisions of this article. If, however, the
76 corporation is converted into a corporation organized for a
77 pecuniary profit or if it transacts business without having
78 obtained a license as required by §33-24-5 of this code, it
79 shall thereupon forfeit its right to these exemptions.

80 (b) Every corporation subject to this article shall comply
81 with mental health parity requirements in this chapter.

§33-24-7u. Mental health parity.

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

4 To the extent that coverage is provided “behavioral
5 health, mental health, and substance use disorder” means a
6 condition or disorder, regardless of etiology, that may be the
7 result of a combination of genetic and environmental factors
8 and that falls under any of the diagnostic categories listed in
9 the mental disorders section of the most recent version of:

10 (1) The International Statistical Classification of
11 Diseases and Related Health Problems;

12 (2) The Diagnostic and Statistical Manual of Mental
13 Disorders; or

14 (3) The Diagnostic Classification of Mental Health and
15 Developmental Disorders of Infancy and Early Childhood;
16 and

17 Includes autism spectrum disorder: *Provided*, That any
18 service, even if it is related to the behavioral health, mental
19 health, or substance use disorder diagnosis if medical in
20 nature, shall be reviewed as a medical claim and undergo all
21 utilization review as applicable.

22 (b) The carrier is required to provide coverage for the
23 prevention of, screening for, and treatment of behavioral
24 health, mental health, and substance use disorders that is no
25 less extensive than the coverage provided for any physical
26 illness and that complies with the requirements of this
27 section. This screening shall include, but is not limited to,
28 unhealthy alcohol use for adults, substance use for adults
29 and adolescents, and depression screening for adolescents
30 and adults.

31 (c) The carrier shall:

32 (1) Include coverage and reimbursement for behavioral
33 health screenings using a validated screening tool for
34 behavioral health, which coverage and reimbursement is no
35 less extensive than the coverage and reimbursement for the
36 annual physical examination;

37 (2) Comply with the nonquantitative treatment
38 limitation requirements specified in 45 CFR
39 §146.136(c)(4), or any successor regulation, regarding any
40 limitations that are not expressed numerically but otherwise
41 limit the scope or duration of benefits for treatment, which
42 in addition to the limitations and examples listed in 45 CFR
43 §146.136(c)(4)(ii) and (c)(4)(iii), or any successor
44 regulation and 78 FR 68246, include the methods by which
45 the carrier establishes and maintains its provider network
46 and responds to deficiencies in the ability of its networks to
47 provide timely access to care;

48 (3) Comply with the financial requirements and
49 quantitative treatment limitations specified in 45 CFR
50 §146.136(c)(2) and (c)(3), or any successor regulation;

51 (4) Not apply any nonquantitative treatment limitations
52 to benefits for behavioral health, mental health, and
53 substance use disorders that are not applied to medical and
54 surgical benefits within the same classification of benefits;

55 (5) Establish procedures to authorize treatment with a
56 nonparticipating provider if a covered service is not
57 available within established time and distance standards and
58 within a reasonable period after service is requested, and
59 with the same coinsurance, deductible, or copayment
60 requirements as would apply if the service were provided at,
61 a participating provider;

62 (6) If a covered person obtains a covered service from a
63 nonparticipating provider because the covered service is not
64 available within the established time and distance standards,
65 reimburse treatment or services for behavioral health,
66 mental health, or substance use disorders required to be
67 covered pursuant to this subsection that are provided by a
68 nonparticipating provider using the same methodology that
69 the carrier uses to reimburse covered medical services
70 provided by nonparticipating providers and, upon request,
71 provide evidence of the methodology to the person or
72 provider.

73 (d) If the carrier offers a plan that does not cover
74 services provided by an out-of-network provider, it may
75 provide the benefits required in subsection (c) of this section
76 if the services are rendered by a provider who is designated
77 by and affiliated with the carrier only if the same
78 requirements apply for services for a physical illness.

79 (e) In the event of a concurrent review for a claim for
80 coverage of services for the prevention of, screening for,
81 and treatment of behavioral health, mental health, and
82 substance use disorders, the service continues to be a
83 covered service until the carrier notifies the covered person
84 of the determination of the claim.

85 (f) Unless denied for nonpayment of premium, a denial
86 of reimbursement for services for the prevention of,
87 screening for, or treatment of behavioral health, mental
88 health, and substance use disorders by the carrier must
89 include the following language:

90 (1) A statement explaining that covered persons are
91 protected under this section, which provides that limitations
92 placed on the access to mental health and substance use
93 disorder benefits may be no greater than any limitations
94 placed on access to medical and surgical benefits;

95 (2) A statement providing information about the
96 Consumer Services Division of the Office of the West
97 Virginia Insurance Commissioner if the covered person
98 believes his or her rights under this section have been
99 violated; and

100 (3) A statement specifying that covered persons are
101 entitled, upon request to the carrier, to a copy of the medical
102 necessity criteria for any behavioral health, mental health,
103 and substance use disorder benefit.

104 (g) On or after June 1, 2021, and annually thereafter, the
105 Insurance Commissioner shall submit a written report to the
106 Joint Committee on Government and Finance that contains

107 the following information regarding plans offered pursuant
108 to this section:

109 (1) Data that demonstrates parity compliance for
110 adverse determination regarding claims for behavioral
111 health, mental health, or substance use disorder services and
112 includes the total number of adverse determinations for such
113 claims;

114 (2) A description of the process used to develop and
115 select:

116 (A) The medical necessity criteria used in determining
117 benefits for behavioral health, mental health, and substance
118 use disorders; and

119 (B) The medical necessity criteria used in determining
120 medical and surgical benefits;

121 (3) Identification of all nonquantitative treatment
122 limitations that are applied to benefits for behavioral health,
123 mental health, and substance use disorders and to medical
124 and surgical benefits within each classification of benefits;
125 and

126 (4) The results of analyses demonstrating that, for
127 medical necessity criteria described in subdivision (2) of
128 this subsection and for each nonquantitative treatment
129 limitation identified in subdivision (3) of this subsection, as
130 written and in operation, the processes, strategies,
131 evidentiary standards, or other factors used in applying the
132 medical necessity criteria and each nonquantitative
133 treatment limitation to benefits for behavioral health, mental
134 health, and substance use disorders within each
135 classification of benefits are comparable to, and are applied
136 no more stringently than, the processes, strategies,
137 evidentiary standards, or other factors used in applying the
138 medical necessity criteria and each nonquantitative
139 treatment limitation to medical and surgical benefits within
140 the corresponding classification of benefits.

141 (5) The Insurance Commissioner's report of the
142 analyses regarding nonquantitative treatment limitations
143 shall include at a minimum:

144 (A) Identifying factors used to determine whether a
145 nonquantitative treatment limitation will apply to a benefit,
146 including factors that were considered but rejected;

147 (B) Identify and define the specific evidentiary
148 standards used to define the factors and any other evidence
149 relied on in designing each nonquantitative treatment
150 limitation;

151 (C) Provide the comparative analyses, including the
152 results of the analyses, performed to determine that the
153 processes and strategies used to design each nonquantitative
154 treatment limitation, as written, and the written processes
155 and strategies used to apply each nonquantitative treatment
156 limitation for benefits for behavioral health, mental health,
157 and substance use disorders are comparable to, and are
158 applied no more stringently than, the processes and
159 strategies used to design and apply each nonquantitative
160 treatment limitation, as written, and the written processes
161 and strategies used to apply each nonquantitative treatment
162 limitation for medical and surgical benefits;

163 (D) Provide the comparative analyses, including the
164 results of the analyses, performed to determine that the
165 processes and strategies used to apply each nonquantitative
166 treatment limitation, in operation, for benefits for behavioral
167 health, mental health, and substance use disorders are
168 comparable to, and are applied no more stringently than, the
169 processes and strategies used to apply each nonquantitative
170 treatment limitation, in operation, for medical and surgical
171 benefits; and

172 (E) Disclose the specific findings and conclusions
173 reached by the Insurance Commissioner that the results of
174 the analyses indicate that each health benefit plan offered

175 pursuant to this section complies with subsection (c) of this
176 section.

177 (h) The Insurance Commissioner shall adopt legislative
178 rules to comply with the provisions of this section. These
179 rules shall specify the information and analyses that carriers
180 shall provide to the Insurance Commissioner necessary for
181 the commissioner to complete the report described in
182 subsection (g) of this section and shall delineate the format
183 in which carriers shall submit such information and
184 analyses. These rules or amendments to rules shall be
185 proposed pursuant to the provisions of §29A-3-1 *et seq.* of
186 this code within the applicable time limit to be considered
187 by the Legislature during its regular session in the year
188 2021. The rules shall require that each carrier first submit
189 the report to the Insurance Commissioner no earlier than one
190 year after the rules are promulgated, and any year thereafter
191 during which the carrier makes significant changes to how
192 it designs and applies medical management protocols.

193 (i) This section is effective for policies, contracts, plans
194 or agreements, beginning on or after January 1, 2021. This
195 section applies to all policies, contracts, plans, or
196 agreements, subject to this article that are delivered,
197 executed, issued, amended, adjusted, or renewed in this
198 state on or after the effective date of this section.

199 (j) The Insurance Commissioner shall enforce this
200 section and may conduct a financial examination of the
201 carrier to determine if it is in compliance with this section,
202 including, but not limited to, a review of policies and
203 procedures and a sample of mental health claims to
204 determine these claims are treated in parity with medical
205 and surgical benefits. The results of this examination shall
206 be reported to the Legislature. If the Insurance
207 Commissioner determines that the carrier is not in
208 compliance with this section, the Insurance Commissioner
209 may fine the carrier in conformity with the fines established
210 in the legislative rule.

ARTICLE 25. HEALTH CARE CORPORATIONS.**§33-25-6. Supervision and regulation by Insurance Commissioner; exemption from insurance laws.**

1 (a) Corporations organized under this article are subject
2 to supervision and regulation of the Insurance
3 Commissioner. The corporations organized under this
4 article, to the same extent these provisions are applicable to
5 insurers transacting similar kinds of insurance and not
6 inconsistent with the provisions of this article, shall be
7 governed by and be subject to the provisions as herein below
8 indicated of the following articles of this chapter: §33-4-1
9 *et seq.* of this code (general provisions), except that §33-4-
10 16 of this code shall not be applicable thereto; §33-6C-1 *et*
11 *seq.* of this code (guaranteed loss ratio); §33-7-1 *et seq.* of
12 this code (assets and liabilities); §33-8-1 *et seq.* of this code
13 (investments); §33-10-1 *et seq.* of this code (rehabilitation
14 and liquidation); §33-15-2a of this code (definitions); §33-
15 15-2b of this code (guaranteed issue); §33-15-2d of this
16 code (exception to guaranteed renewability); §33-15-2e of
17 this code (discontinuation of coverage); §33-15-2f of this
18 code (certification of creditable coverage); §33-15-2g of
19 this code (applicability); §33-15-4e of this code (benefits for
20 mothers and newborns); §33-15-14 of this code (individual
21 accident and sickness insurance); §33-15-16 of this code
22 (coverage of children); §33-15-18 of this code (equal
23 treatment of state agency); §33-15-19 of this code
24 (coordination of benefits with Medicaid); §33-15C-1 of this
25 code (diabetes insurance); §33-16-3 of this code (required
26 policy provisions); §33-16-3a of this code (mental health);
27 §33-16-3j of this code (benefits for mothers and newborns);
28 §33-16-3k of this code (preexisting condition exclusions);
29 §33-16-3l of this code (guaranteed renewability); §33-16-
30 3m of this code (creditable coverage); §33-16-3n of this
31 code (eligibility for enrollment); §33-16-11 of this code
32 (coverage of children); §33-16-13 of this code (equal
33 treatment of state agency); §33-16-14 of this code
34 (coordination of benefits with Medicaid); §33-16-16 of this
35 code (diabetes insurance); §33-16A-1 *et seq.* of this code

36 (group health insurance conversion); §33-16C-1 *et seq.* of
37 this code (small employer group policies); §33-16D-1 *et*
38 *seq.* of this code (marketing and rate practices for small
39 employers); §33-25F-1 *et seq.* of this code (coverage for
40 patient cost of clinical trials); §33-26A-1 *et seq.* of this code
41 (West Virginia Life and Health Insurance Guaranty
42 Association Act); §33-27-1 *et seq.* of this code (insurance
43 holding company systems); §33-33-1 *et seq.* of this code
44 (annual audited financial report); §33-34A-1 *et seq.* of this
45 code (standards and commissioner's authority for
46 companies considered to be in hazardous financial
47 condition); §33-35-1 *et seq.* of this code (criminal sanctions
48 for failure to report impairment); §33-37-1 *et seq.* of this
49 code (managing general agents); §33-40A-1 *et seq.* of this
50 code (risk-based capital for health organizations); and §33-
51 41-1 *et seq.* of this code (privileges and immunity); and no
52 other provision of this chapter may apply to these
53 corporations unless specifically made applicable by the
54 provisions of this article.

55 (b) Every corporation subject to this article shall comply
56 with mental health parity requirements in this chapter.

§33-25-8r. Mental health parity.

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

4 To the extent that coverage is provided “behavioral
5 health, mental health, and substance use disorder” means a
6 condition or disorder, regardless of etiology, that may be the
7 result of a combination of genetic and environmental factors
8 and that falls under any of the diagnostic categories listed in
9 the mental disorders section of the most recent version of:

10 (1) The International Statistical Classification of
11 Diseases and Related Health Problems;

12 (2) The Diagnostic and Statistical Manual of Mental
13 Disorders; or

14 (3) The Diagnostic Classification of Mental Health and
15 Developmental Disorders of Infancy and Early Childhood;
16 and

17 Includes autism spectrum disorder: *Provided*, That any
18 service, even if it is related to the behavioral health, mental
19 health, or substance use disorder diagnosis if medical in
20 nature, shall be reviewed as a medical claim and undergo all
21 utilization review as applicable.

22 (b) The carrier is required to provide coverage for the
23 prevention of, screening for, and treatment of behavioral
24 health, mental health, and substance use disorders that is no
25 less extensive than the coverage provided for any physical
26 illness and that complies with the requirements of this
27 section. This screening shall include, but is not limited to,
28 unhealthy alcohol use for adults, substance use for adults
29 and adolescents, and depression screening for adolescents
30 and adults.

31 (c) The carrier shall:

32 (1) Include coverage and reimbursement for behavioral
33 health screenings using a validated screening tool for
34 behavioral health, which coverage and reimbursement is no
35 less extensive than the coverage and reimbursement for the
36 annual physical examination;

37 (2) Comply with the nonquantitative treatment
38 limitation requirements specified in 45 CFR
39 §146.136(c)(4), or any successor regulation, regarding any
40 limitations that are not expressed numerically but otherwise
41 limit the scope or duration of benefits for treatment, which
42 in addition to the limitations and examples listed in 45 CFR
43 §146.136(c)(4)(ii) and (c)(4)(iii), or any successor
44 regulation and 78 FR 68246, include the methods by which
45 the carrier establishes and maintains its provider network
46 and responds to deficiencies in the ability of its networks to
47 provide timely access to care;

48 (3) Comply with the financial requirements and
49 quantitative treatment limitations specified in 45 CFR
50 §146.136(c)(2) and (c)(3), or any successor regulation;

51 (4) Not apply any nonquantitative treatment limitations
52 to benefits for behavioral health, mental health, and
53 substance use disorders that are not applied to medical and
54 surgical benefits within the same classification of benefits;

55 (5) Establish procedures to authorize treatment with a
56 nonparticipating provider if a covered service is not
57 available within established time and distance standards and
58 within a reasonable period after service is requested, and
59 with the same coinsurance, deductible, or copayment
60 requirements as would apply if the service were provided at
61 a participating provider, and at no greater cost to the covered
62 person than if the services were obtained at, or from a
63 participating provider; and

64 (6) If a covered person obtains a covered service from a
65 nonparticipating provider because the covered service is not
66 available within the established time and distance standards,
67 reimburse treatment or services for behavioral health,
68 mental health, or substance use disorders required to be
69 covered pursuant to this subsection that are provided by a
70 nonparticipating provider using the same methodology that
71 the carrier uses to reimburse covered medical services
72 provided by nonparticipating providers and, upon request,
73 provide evidence of the methodology to the person or
74 provider.

75 (d) If the carrier offers a plan that does not cover
76 services provided by an out-of-network provider, it may
77 provide the benefits required in subsection (c) of this section
78 if the services are rendered by a provider who is designated
79 by and affiliated with the carrier only if the same
80 requirements apply for services for a physical illness.

81 (e) In the event of a concurrent review for a claim for
82 coverage of services for the prevention of, screening for,

83 and treatment of behavioral health, mental health, and
84 substance use disorders, the service continues to be a
85 covered service until the carrier notifies the covered person
86 of the determination of the claim.

87 (f) Unless denied for nonpayment of premium, a denial
88 of reimbursement for services for the prevention of,
89 screening for, or treatment of behavioral health, mental
90 health, and substance use disorders by the carrier must
91 include the following language:

92 (1) A statement explaining that covered persons are
93 protected under this section, which provides that limitations
94 placed on the access to mental health and substance use
95 disorder benefits may be no greater than any limitations
96 placed on access to medical and surgical benefits;

97 (2) A statement providing information about the
98 Consumer Services Division of the Office of the West
99 Virginia Insurance Commissioner if the covered person
100 believes his or her rights under this section have been
101 violated; and

102 (3) A statement specifying that covered persons are
103 entitled, upon request to the carrier, to a copy of the medical
104 necessity criteria for any behavioral health, mental health,
105 and substance use disorder benefit.

106 (g) On or after June 1, 2021, and annually thereafter, the
107 Insurance Commissioner shall submit a written report to the
108 Joint Committee on Government and Finance that contains
109 the following information regarding plans offered pursuant
110 to this section:

111 (1) Data that demonstrates parity compliance for
112 adverse determination regarding claims for behavioral
113 health, mental health, or substance use disorder services and
114 includes the total number of adverse determinations for such
115 claims;

116 (2) A description of the process used to develop and
117 select:

118 (A) The medical necessity criteria used in determining
119 benefits for behavioral health, mental health, substance use
120 disorders; and

121 (B) The medical necessity criteria used in determining
122 medical and surgical benefits;

123 (3) Identification of all nonquantitative treatment
124 limitations that are applied to benefits for behavioral health,
125 mental health, and substance use disorders and to medical
126 and surgical benefits within each classification of benefits;
127 and

128 (4) The results of analyses demonstrating that, for
129 medical necessity criteria described in subdivision (2) of
130 this subsection and for each nonquantitative treatment
131 limitation identified in subdivision (3) of this subsection, as
132 written and in operation, the processes, strategies,
133 evidentiary standards, or other factors used in applying the
134 medical necessity criteria and each nonquantitative
135 treatment limitation to benefits for behavioral health, mental
136 health, and substance use disorders within each
137 classification of benefits are comparable to, and are applied
138 no more stringently than, the processes, strategies,
139 evidentiary standards, or other factors used in applying the
140 medical necessity criteria and each nonquantitative
141 treatment limitation to medical and surgical benefits within
142 the corresponding classification of benefits.

143 (5) The Insurance Commissioner's report of the
144 analyses regarding nonquantitative treatment limitations
145 shall include at a minimum:

146 (A) Identifying factors used to determine whether a
147 nonquantitative treatment limitation will apply to a benefit,
148 including factors that were considered but rejected;

149 (B) Identify and define the specific evidentiary
150 standards used to define the factors and any other evidence
151 relied on in designing each nonquantitative treatment
152 limitation;

153 (C) Provide the comparative analyses, including the
154 results of the analyses, performed to determine that the
155 processes and strategies used to design each nonquantitative
156 treatment limitation, as written, and the written processes
157 and strategies used to apply each nonquantitative treatment
158 limitation for benefits for behavioral health, mental health,
159 and substance use disorders are comparable to, and are
160 applied no more stringently than, the processes and
161 strategies used to design and apply each nonquantitative
162 treatment limitation, as written, and the written processes
163 and strategies used to apply each nonquantitative treatment
164 limitation for medical and surgical benefits;

165 (D) Provide the comparative analyses, including the
166 results of the analyses, performed to determine that the
167 processes and strategies used to apply each nonquantitative
168 treatment limitation, in operation, for benefits for behavioral
169 health, mental health, and substance use disorders are
170 comparable to, and are applied no more stringently than, the
171 processes and strategies used to apply each nonquantitative
172 treatment limitation, in operation, for medical and surgical
173 benefits; and

174 (E) Disclose the specific findings and conclusions
175 reached by the Insurance Commissioner that the results of
176 the analyses indicate that each health benefit plan offered
177 pursuant to this section complies with subsection (c) of this
178 section.

179 (h) The Insurance Commissioner shall adopt legislative
180 rules to comply with the provisions of this section. These
181 rules shall specify the information and analyses that carriers
182 shall provide to the Insurance Commissioner necessary for
183 the commissioner to complete the report described in
184 subsection (g) of this section and shall delineate the format

185 in which carriers shall submit such information and
186 analyses. These rules or amendments to rules shall be
187 proposed pursuant to the provisions of §29A-3-1 *et seq.* of
188 this code within the applicable time limit to be considered
189 by the Legislature during its regular session in the year
190 2021. The rules shall require that each carrier first submit
191 the report to the Insurance Commissioner no earlier than one
192 year after the rules are promulgated, and any year thereafter
193 during which the carrier makes significant changes to how
194 it designs and applies medical management protocols.

195 (i) This section is effective for policies, contracts, plans
196 or agreements, beginning on or after January 1, 2021. This
197 section applies to all policies, contracts, plans, or
198 agreements, subject to this article that are delivered,
199 executed, issued, amended, adjusted, or renewed in this
200 state on or after the effective date of this section.

201 (j) The Insurance Commissioner shall enforce this
202 section and may conduct a financial examination of the
203 carrier to determine if it is in compliance with this section,
204 including, but not limited to, a review of policies and
205 procedures and a sample of mental health claims to
206 determine these claims are treated in parity with medical
207 and surgical benefits. The results of this examination shall
208 be reported to the Legislature. If the Insurance
209 Commissioner determines that the carrier is not in
210 compliance with this section, the Insurance Commissioner
211 may fine the carrier in conformity with the fines established
212 in the legislative rule.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8u. Mental health parity.

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

4 To the extent that coverage is provided “behavioral
5 health, mental health, and substance use disorder” means a
6 condition or disorder, regardless of etiology, that may be the
7 result of a combination of genetic and environmental factors
8 and that falls under any of the diagnostic categories listed in
9 the mental disorders section of the most recent version of:

10 (1) The International Statistical Classification of
11 Diseases and Related Health Problems;

12 (2) The Diagnostic and Statistical Manual of Mental
13 Disorders; or

14 (3) The Diagnostic Classification of Mental Health and
15 Developmental Disorders of Infancy and Early Childhood;
16 and

17 Includes autism spectrum disorder: *Provided*, That any
18 service, even if it is related to the behavioral health, mental
19 health, or substance use disorder diagnosis if medical in
20 nature, shall be reviewed as a medical claim and undergo all
21 utilization review as applicable.

22 (b) The carrier is required to provide coverage for the
23 prevention of, screening for, and treatment of behavioral
24 health, mental health, and substance use disorders that is no
25 less extensive than the coverage provided for any physical
26 illness and that complies with the requirements of this
27 section. This screening shall include, but is not limited to,
28 unhealthy alcohol use for adults, substance use for adults
29 and adolescents, and depression screening for adolescents
30 and adults.

31 (c) The carrier shall:

32 (1) Include coverage and reimbursement for behavioral
33 health screenings using a validated screening tool for
34 behavioral health, which coverage and reimbursement is no
35 less extensive than the coverage and reimbursement for the
36 annual physical examination;

37 (2) Comply with the nonquantitative treatment
38 limitation requirements specified in 45 CFR
39 §146.136(c)(4), or any successor regulation, regarding any
40 limitations that are not expressed numerically but otherwise
41 limit the scope or duration of benefits for treatment, which
42 in addition to the limitations and examples listed in 45 CFR
43 §146.136(c)(4)(ii) and (c)(4)(iii), or any successor
44 regulation and 78 FR 68246, include the methods by which
45 the carrier establishes and maintains its provider network
46 and responds to deficiencies in the ability of its networks to
47 provide timely access to care;

48 (3) Comply with the financial requirements and
49 quantitative treatment limitations specified in 45 CFR
50 §146.136(c)(2) and (c)(3), or any successor regulation;

51 (4) Not apply any nonquantitative treatment limitations
52 to benefits for behavioral health, mental health, and
53 substance use disorders that are not applied to medical and
54 surgical benefits within the same classification of benefits;

55 (5) Establish procedures to authorize treatment with a
56 nonparticipating provider if a covered service is not
57 available within established time and distance standards and
58 within a reasonable period after service is requested, and
59 with the same coinsurance, deductible, or copayment
60 requirements as would apply if the service were provided at
61 a participating provider, and at no greater cost to the covered
62 person than if the services were obtained at, or from a
63 participating provider;

64 (6) If a covered person obtains a covered service from a
65 nonparticipating provider because the covered service is not
66 available within the established time and distance standards,
67 reimburse treatment or services for behavioral health,
68 mental health, or substance use disorders required to be
69 covered pursuant to this subsection that are provided by a
70 nonparticipating provider using the same methodology that
71 the carrier uses to reimburse covered medical services
72 provided by nonparticipating providers and, upon request,

73 provide evidence of the methodology to the person or
74 provider.

75 (d) If the carrier offers a plan that does not cover
76 services provided by an out-of-network provider, it may
77 provide the benefits required in subsection (c) of this section
78 if the services are rendered by a provider who is designated
79 by and affiliated with the carrier only if the same
80 requirements apply for services for a physical illness.

81 (e) In the event of a concurrent review for a claim for
82 coverage of services for the prevention of, screening for,
83 and treatment of behavioral health, mental health, and
84 substance use disorders, the service continues to be a
85 covered service until the carrier notifies the covered person
86 of the determination of the claim.

87 (f) Unless denied for nonpayment of premium, a denial
88 of reimbursement for services for the prevention of,
89 screening for, or treatment of behavioral health, mental
90 health, and substance use disorders by the carrier must
91 include the following language:

92 (1) A statement explaining that covered persons are
93 protected under this section, which provides that limitations
94 placed on the access to mental health and substance use
95 disorder benefits may be no greater than any limitations
96 placed on access to medical and surgical benefits;

97 (2) A statement providing information about the
98 Division of Consumer Services of the Office of the West
99 Virginia Insurance Commissioner if the covered person
100 believes his or her rights under this section have been
101 violated; and

102 (3) A statement specifying that covered persons are
103 entitled, upon request to the carrier, to a copy of the medical
104 necessity criteria for any behavioral health, mental health,
105 and substance use disorder benefit.

106 (g) On or after June 1, 2021, and annually thereafter, the
107 Insurance Commissioner shall submit a written report to the
108 Joint Committee on Government and Finance that contains
109 the following information regarding plans offered pursuant
110 to this section:

111 (1) Data that demonstrates parity compliance for
112 adverse determination regarding claims for behavioral
113 health, mental health, or substance use disorder services and
114 includes the total number of adverse determinations for such
115 claims;

116 (2) A description of the process used to develop and
117 select:

118 (A) The medical necessity criteria used in determining
119 benefits for behavioral health, mental health, and substance
120 use disorders; and

121 (B) The medical necessity criteria used in determining
122 medical and surgical benefits;

123 (3) Identification of all nonquantitative treatment
124 limitations that are applied to benefits for behavioral health,
125 mental health, and substance use disorders and to medical
126 and surgical benefits within each classification of benefits;
127 and

128 (4) The results of analyses demonstrating that, for
129 medical necessity criteria described in subdivision (2) of
130 this subsection and for each nonquantitative treatment
131 limitation identified in subdivision (3) of this subsection, as
132 written and in operation, the processes, strategies,
133 evidentiary standards, or other factors used in applying the
134 medical necessity criteria and each nonquantitative
135 treatment limitation to benefits for behavioral health, mental
136 health, and substance use disorders within each
137 classification of benefits are comparable to, and are applied
138 no more stringently than, the processes, strategies,
139 evidentiary standards, or other factors used in applying the

140 medical necessity criteria and each nonquantitative
141 treatment limitation to medical and surgical benefits within
142 the corresponding classification of benefits.

143 (5) The Insurance Commissioner's report of the
144 analyses regarding nonquantitative treatment limitations
145 shall include at a minimum:

146 (A) Identifying factors used to determine whether a
147 nonquantitative treatment limitation will apply to a benefit,
148 including factors that were considered but rejected;

149 (B) Identifying and define the specific evidentiary
150 standards used to define the factors and any other evidence
151 relied on in designing each nonquantitative treatment
152 limitation;

153 (C) Provide the comparative analyses, including the
154 results of the analyses, performed to determine that the
155 processes and strategies used to design each nonquantitative
156 treatment limitation, as written, and the written processes
157 and strategies used to apply each nonquantitative treatment
158 limitation for benefits for behavioral health, mental health,
159 and substance use disorders are comparable to, and are
160 applied no more stringently than, the processes and
161 strategies used to design and apply each nonquantitative
162 treatment limitation, as written, and the written processes
163 and strategies used to apply each nonquantitative treatment
164 limitation for medical and surgical benefits;

165 (D) Provide the comparative analyses, including the
166 results of the analyses, performed to determine that the
167 processes and strategies used to apply each nonquantitative
168 treatment limitation, in operation, for benefits for behavioral
169 health, mental health, and substance use disorders are
170 comparable to, and are applied no more stringently than, the
171 processes and strategies used to apply each nonquantitative
172 treatment limitation, in operation, for medical and surgical
173 benefits; and

174 (E) Disclose the specific findings and conclusions
175 reached by the Insurance Commissioner that the results of
176 the analyses indicate that each health benefit plan offered
177 pursuant to this section complies with subsection (c) of this
178 section.

179 (h) The Insurance Commissioner shall adopt legislative
180 rules to comply with the provisions of this section. These
181 rules shall specify the information and analyses that carriers
182 shall provide to the Insurance Commissioner necessary for
183 the commissioner to complete the report described in
184 subsection (g) of this section and shall delineate the format
185 in which carriers shall submit such information and
186 analyses. These rules or amendments to rules shall be
187 proposed pursuant to the provisions of §29A-3-1 *et seq.* of
188 this code within the applicable time limit to be considered
189 by the Legislature during its regular session in the year
190 2021. The rules shall require that each carrier first submit
191 the report to the Insurance Commissioner no earlier than one
192 year after the rules are promulgated, and any year thereafter
193 during which the carrier makes significant changes to how
194 it designs and applies medical management protocols.

195 (i) This section is effective for policies, contracts, plans
196 or agreements, beginning on or after January 1, 2021. This
197 section applies to all policies, contracts, plans, or
198 agreements, subject to this article that are delivered,
199 executed, issued, amended, adjusted, or renewed in this
200 state on or after the effective date of this section.

201 (j) The Insurance Commissioner shall enforce this
202 section and may conduct a financial examination of the
203 carrier to determine if it is in compliance with this section,
204 including, but not limited to, a review of policies and
205 procedures and a sample of mental health claims to
206 determine these claims are treated in parity with medical
207 and surgical benefits. The results of this examination shall
208 be reported to the Legislature. If the Insurance
209 Commissioner determines that the carrier is not in
210 compliance with this section, the Insurance Commissioner
211 may fine the carrier in conformity with the fines established
212 in the legislative rule.

●

CHAPTER 187

(S. B. 641 - By Senator Maroney)

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §5-16B-6d of the Code of West Virginia, 1931, as amended, relating to the Children's Health Insurance Program; removing how reimbursements rates are calculated; and making other technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.

§5-16B-6d. Modified benefit plan implementation.

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

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

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

17 All provisions of §5-16B-1 *et seq.* of this code are
18 applicable to this expansion unless expressly addressed in
19 §5-16B-6d of this code.

20 (d) Nothing in §5-16B-6d of this code may be construed
21 to require any appropriation of state general revenue funds
22 for the payment of any benefit provided pursuant to this
23 section, except for the state appropriation used to match the
24 federal financial participation funds. In the event that
25 federal funds are no longer authorized for participation by
26 individuals eligible at income levels above 200 percent, the
27 board shall take immediate steps to terminate the expansion
28 provided for in this section and notify all enrollees of such
29 termination. In the event federal appropriations decrease for
30 the programs created pursuant to Title XXI of the Social
31 Security Act of 1997, the board is directed to make those
32 decreases in this expansion program before making changes
33 to the programs created for those children whose family
34 income is less than 200 percent of the federal poverty level.



CHAPTER 188

**(Com. Sub. for S. B. 787 - By Senators Tarr,
Hardesty, Maroney, Stollings and Plymale)**

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated †§33-56-1,
relating to providing benefits to pharmacists for pharmacist
care rendered within the pharmacist's scope of practice if
benefits would be provided for such services performed by
other health care providers; providing for reimbursement
pursuant to negotiations; excepting certain health plans,

† Redesignated

policies, contracts, or agreements from requirements; and providing for effective date.

Be it enacted by the Legislature of West Virginia:

†ARTICLE 56. HEALTH CARE SERVICES PROVIDED BY PHARMACISTS.

†§33-56-1. Services provided by pharmacists.

1 (a) For health plans, policies, contracts, or agreements
2 issued, amended, adjusted, or renewed on or after January
3 1, 2021:

4 (1) Benefits may not be denied for any health care
5 service performed by a pharmacist licensed under §30-5-1
6 *et seq.* of this code if:

7 (A) The service performed was within the lawful scope
8 of the pharmacist's license;

9 (B) The plan would have provided benefits if the service
10 had been performed by another health care provider; and

11 (C) The pharmacist is included in the plan's network of
12 participating providers.

13 (2) The health plan shall include an adequate number of
14 pharmacists in its network of participating health care
15 providers.

16 (b) The participation of pharmacies in the plan
17 network's drug benefit does not satisfy the requirement that
18 plans include pharmacists in their network of participating
19 health care providers.

20 (c) Health benefit plans, policies, contracts, or
21 agreements issued, amended, adjusted, or renewed on or
22 after January 1, 2020, but before January 1, 2021, that
23 delegate credentialing agreements to contracted health care
24 facilities shall accept credentialing for pharmacists
25 employed or contracted by those facilities. Health plans

26 shall reimburse facilities for covered services provided by
27 network pharmacists within the pharmacists' scope of
28 practice per negotiations with the facility.

29 (d) For purposes of this section, health plans, policies,
30 contracts, or agreements do not include Medicaid or
31 Children's Health Insurance Program health plans, policies,
32 contracts, or agreements that are approved by the
33 Department of Health and Human Resources Bureau of
34 Medical Services.

●

CHAPTER 189

**(S. B. 849 - By Senators Azinger, Baldwin, Beach,
Clements, Cline, Hardesty, Jeffries, Lindsay,
Maynard, Pitsenbarger, Romano, Rucker, Smith,
Weld and Trump)**

[Passed March 5, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-6-40, relating to military service as a factor in certain insurance coverage rates generally; prohibiting an insurance company from increasing premiums when reinstating an insurance contract or writing a new policy that was previously cancelled or suspended due to active duty military service of the insured; defining terms; and creating presumption of continuous coverage when lapse occurs while insured is on active duty.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-40. Military service as factor in insurance rates.

1 With respect to any fire, marine, or casualty insurance
2 contract, no person may deny, refuse to renew, cancel
3 coverage, or charge increased premiums for applicants or
4 insureds solely as a result of a uniformed service member's
5 performance of active military duty in the United States
6 armed forces or as a member of a reserve component of the
7 United States armed forces, to include the National Guard
8 of a state or territory, because the uniformed service
9 member fails to meet underwriting standards that require
10 continuous coverage unless the failure to maintain
11 continuous coverage existed prior to the applicant's or
12 insured's entry into active duty status and was not related in
13 any way to the applicant's or insured's military service. For
14 the purposes of this section, service in the National Guard
15 includes any full-time active duty for training in the
16 National Guard, active duty operational support, active duty
17 special work, state active duty as a member of a National
18 Guard unit, or any other periods of service pursuant to Title
19 32 of the United States Code or active service of the state or
20 territory. For purposes of determining premiums, an insurer
21 shall consider such persons as having maintained
22 continuous coverage.



CHAPTER 190

**(Com. Sub. for H. B. 4003 - By Delegates Maynard,
Toney, Linville, Porterfield, Householder, Sypolt,
Westfall and Bates)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §5-16-7b; to
amend said code by adding thereto a new section, designated

†§30-1-26; and to amend said code by adding thereto a new section, designated †§33-57-1*, all relating to telehealth requirements; providing rulemaking authority; requiring boards to regulate telehealth practice; defining terms; requiring insurance coverage of certain telehealth services; providing an effective date; and providing limitation of applicability.

Be it enacted by the Legislature of West Virginia:

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

§5-16-7b. Coverage for telehealth services.

1 (a) The following terms are defined:

2 (1) “Distant site” means the telehealth site where the
3 health care practitioner is seeing the patient at a distance or
4 consulting with a patient’s health care practitioner.

5 (2) “Health care practitioner” means a person licensed
6 under §30-1-1 *et seq.* of this code who provides health care
7 services.

8 (3) “Originating site” means the location where the
9 patient is located, whether or not accompanied by a health
10 care practitioner, at the time services are provided by a
11 health care practitioner through telehealth, including, but
12 not limited to, a health care practitioner’s office, hospital,
13 critical access hospital, rural health clinic, federally
14 qualified health center, a patient’s home, and other
15 nonmedical environments such as school-based health
16 centers, university-based health centers, or the work
17 location of a patient.

18 (4) “Remote patient monitoring services” means the
19 delivery of home health services using telecommunications
20 technology to enhance the delivery of home health care,
21 including monitoring of clinical patient data such as weight,
22 blood pressure, pulse, pulse oximetry, blood glucose, and
23 other condition-specific data; medication adherence

† Redesignated

*NOTE: Section number corrected.

24 monitoring; and interactive video conferencing with or
25 without digital image upload.

26 (5) “Telehealth services” means the use of synchronous
27 or asynchronous telecommunications technology by a
28 health care practitioner to provide health care services,
29 including, but not limited to, assessment, diagnosis,
30 consultation, treatment, and monitoring of a patient; transfer
31 of medical data; patient and professional health-related
32 education; public health services; and health administration.
33 The term does not include audio-only telephone calls, e-
34 mail messages, or facsimile transmissions.

35 (b) After July 1, 2020, the plan shall provide coverage
36 of health care services provided through telehealth services
37 if those same services are covered through face-to-face
38 consultation by the policy.

39 (c) After July 1, 2020, the plan may not exclude a
40 service for coverage solely because the service is provided
41 through telehealth services.

42 (d) The plan shall provide reimbursement for a
43 telehealth service at a rate negotiated between the provider
44 and the insurance company.

45 (e) The plan may not impose any annual or lifetime
46 dollar maximum on coverage for telehealth services other
47 than an annual or lifetime dollar maximum that applies in
48 the aggregate to all items and services covered under the
49 policy, or impose upon any person receiving benefits
50 pursuant to this section any copayment, coinsurance, or
51 deductible amounts, or any policy year, calendar year,
52 lifetime, or other durational benefit limitation or maximum
53 for benefits or services, that is not equally imposed upon all
54 terms and services covered under the policy, contract, or
55 plan.

56 (f) An originating site may charge the plan a site fee.

57 (g) The coverage required by this section shall include
58 the use of telehealth technologies as it pertains to medically
59 necessary remote patient monitoring services to the full
60 extent that those services are available.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

†§30-1-26. Telehealth practice.

1 (a) For the purposes of this section:

2 “Health care practitioner” means a person licensed
3 under §30-1-1 *et seq.* who provides health care services.

4 “Telehealth services” means the use of synchronous or
5 asynchronous telecommunications technology by a health
6 care practitioner to provide health care services, including,
7 but not limited to, assessment, diagnosis, consultation,
8 treatment, and monitoring of a patient; transfer of medical
9 data; patient and professional health-related education;
10 public health services; and health administration. The term
11 does not include audio-only telephone calls, e-mail
12 messages, or facsimile transmissions.

13 (b) Unless already provided for by statute or legislative
14 rule, a health care board, referred to in this chapter, shall
15 propose a rule for legislative approval in accordance with
16 the provisions of §29A-3-1 *et seq.* to regulate telehealth
17 practice by a telehealth practitioner. The proposed rule shall
18 consist of the following:

19 (1) The practice of the health care service occurs where
20 the patient is located at the time the telehealth technologies
21 are used;

22 (2) The health care practitioner who practices telehealth
23 must be licensed as provided in this chapter;

24 (3) When the health care practitioner patient
25 relationship is established;

26 (4) The standard of care;

27 (5) A prohibition of prescribing schedule II drugs,
28 unless authorized by another section; and

29 (6) Implement the provisions of this section while
30 ensuring competency, protecting the citizens of this state
31 from harm, and addressing issues specific to each
32 profession.

CHAPTER 33. INSURANCE.

†ARTICLE 57. REQUIRED COVERAGE FOR HEALTH INSURANCE.

†§33-57-1. Coverage of telehealth services.

1 (a) The following terms are defined:

2 (1) “Distant site” means the telehealth site where the
3 health care practitioner is seeing the patient at a distance or
4 consulting with a patient’s health care practitioner.

5 (2) “Health care practitioner” means a person licensed
6 under §30-1-1 *et seq.* of this code who provides health care
7 services.

8 (3) “Originating site” means the location where the
9 patient is located, whether or not accompanied by a health
10 care practitioner, at the time services are provided by a
11 health care practitioner through telehealth, including, but
12 not limited to, a health care practitioner’s office, hospital,
13 critical access hospital, rural health clinic, federally
14 qualified health center, a patient’s home, and other
15 nonmedical environments such as school-based health
16 centers, university-based health centers, or the work
17 location of a patient.

18 (4) “Remote patient monitoring services” means the
19 delivery of home health services using telecommunications
20 technology to enhance the delivery of home health care,
21 including monitoring of clinical patient data such as weight,
22 blood pressure, pulse, pulse oximetry, blood glucose, and
23 other condition-specific data; medication adherence
24 monitoring; and interactive video conferencing with or
25 without digital image upload.

26 (5) “Telehealth services” means the use of synchronous
27 or asynchronous telecommunications technology by a
28 health care practitioner to provide health care services,
29 including, but not limited to, assessment, diagnosis,
30 consultation, treatment, and monitoring of a patient; transfer
31 of medical data; patient and professional health-related
32 education; public health services; and health administration.
33 The term does not include audio-only telephone calls, e-
34 mail messages, or facsimile transmissions.

35 (b) Notwithstanding the provisions of §33-1-1 *et seq.* of
36 this code, an insurer subject to §33-15-1 *et seq.*, §33-16-1 *et*
37 *seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et*
38 *seq.* of this code which issues or renews a health insurance
39 policy on or after July 1, 2020, shall provide coverage of
40 health care services provided through telehealth services if
41 those same services are covered through face-to-face
42 consultation by the policy.

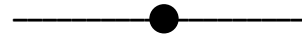
43 (c) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et*
44 *seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et*
45 *seq.* of this code which issues or renews a health insurance
46 policy on or after July 1, 2020, may not exclude a service
47 for coverage solely because the service is provided through
48 telehealth services.

49 (d) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et*
50 *seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et*
51 *seq.*, of this code shall provide reimbursement for a
52 telehealth service at a rate negotiated between the provider
53 and the insurance company.

54 (e) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et*
55 *seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et*
56 *seq.* of this code may not impose any annual or lifetime
57 dollar maximum on coverage for telehealth services other
58 than an annual or lifetime dollar maximum that applies in
59 the aggregate to all items and services covered under the
60 policy, or impose upon any person receiving benefits
61 pursuant to this section any copayment, coinsurance, or
62 deductible amounts, or any policy year, calendar year,
63 lifetime, or other durational benefit limitation or maximum
64 for benefits or services, that is not equally imposed upon all
65 terms and services covered under the policy, contract, or
66 plan.

67 (f) An originating site may charge an insurer subject to
68 §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-
69 1 *et seq.*, and §33-25A-1 *et seq.* of this code a site fee.

70 (g) The coverage required by this section shall include
71 the use of telehealth technologies as it pertains to medically
72 necessary remote patient monitoring services to the full
73 extent that those services are available.



CHAPTER 191

**(Com. Sub. for H. B. 4058 - By Delegates Hill, Pack
and Fleischauer)**

[Passed February 18, 2020; in effect ninety days from passage.]

[Approved by the Governor on February 28, 2020.]

AN ACT to amend and reenact §33-51-8 and §33-51-10 of the
Code of West Virginia, 1931, as amended, all relating to
pharmacy benefit managers; civil penalties; rules required.

Be it enacted by the Legislature of West Virginia:

ARTICLE 51. PHARMACY AUDIT INTEGRITY ACT.**§33-51-8. Licensure of pharmacy benefit managers.**

1 (a) A person or organization may not establish or
2 operate as a pharmacy benefits manager in the State of West
3 Virginia without first obtaining a license from the Insurance
4 Commissioner pursuant to this section: *Provided*, That a
5 pharmacy benefit manager registered pursuant to §33-51-7
6 of this code may continue to do business in the state until
7 the Insurance Commissioner has completed the legislative
8 rule as set forth in §33-51-10 of this code: *Provided*,
9 *however*, That additionally the pharmacy benefit manager
10 shall submit an application within six months of completion
11 of the final rule. The Insurance Commissioner shall make
12 an application form available on its publicly accessible
13 Internet website that includes a request for the following
14 information:

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

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

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

21 (4) Any other information the Insurance Commissioner
22 considers necessary and appropriate to establish the
23 qualifications to receive a license as a pharmacy benefit
24 manager to complete the licensure process, as set forth by
25 legislative rule promulgated by the Insurance
26 Commissioner pursuant to §33-51-10 of this code.

27 (b) *Term and fee.* —

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

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

37 (3) The amount of the initial application fees and
38 renewal application fees must be sufficient to fund the
39 Insurance Commissioner's duties in relation to his/her
40 responsibilities under this section, but a single fee may not
41 exceed \$10,000.

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

45 (c) *Licensure.* —

46 (1) The Insurance Commissioner shall propose
47 legislative rules, in accordance with §33-51-10 of this code,
48 establishing the licensing, fees, application, financial
49 standards, and reporting requirements of pharmacy benefit
50 managers.

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

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

64 (d) *Network adequacy.* —

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

68 (2) A pharmacy benefit manager shall provide a
69 pharmacy benefit manager's network report describing the
70 pharmacy benefit manager's network and the mix of mail-
71 order to physical stores in this state in a time and manner
72 required by rule issued by the Insurance Commissioner
73 pursuant to this section.

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

77 (e) *Enforcement.* —

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

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

95 (3) A person who violates this provision of this article
96 or the legislative rules implementing its provisions may be

97 fined not less than \$1,000 and not more than \$10,000 per
98 violation.

99 (f) *Applicability.* —

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

103 (2) The requirements of this section, and any rules
104 promulgated by the Insurance Commissioner pursuant to
105 §33-51-10 of this code, do not apply to the coverage of
106 prescription drugs under a plan that is subject to the
107 Employee Retirement Income Security Act of 1974 or any
108 information relating to such coverage.

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

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

CHAPTER 192

**(Com. Sub. for H. B. 4061 - By Delegates Hill, Pack,
Bates, Fleischauer and S. Brown)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto two new sections, designated †§33-15-4v
and §33-15-22; to amend said code by adding thereto two new
sections, designated †§33-16-3gg and §33-16-18; to amend
said code by adding thereto two new sections, designated †§33-
24-7v and §33-24-45; to amend said code by adding thereto

† Redesignated

two new sections, designated †§33-25-8s and §33-25-22; to amend said code by adding thereto two new sections, designated †§33-25A-8v and §33-25A-36; to amend said code by adding thereto a new article, designated †§33-55-1, †§33-55-2, †§33-55-3, †§33-55-4, †§33-55-5, †§33-55-6, †§33-55-7, †§33-55-8, †§33-55-9, †§33-55-10, §33-55-11, §33-55-12, and §33-55-13, all relating to health plan benefits and benefit networks; creating the Health Benefit Plan Network Access and Adequacy Act; incorporating references to the act into the insurance code; requiring honoring of the optional assignment of certain benefits in dental care insurance programs; detailing revocation and reimbursement requirements; and excluding Medicaid, CHIP, and contracts approved by the Department of Health and Human Resources Bureau for Medical Services.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

†§33-15-4v. Incorporation of the Health Benefit Plan Network Access and Adequacy Act.

1 The provisions of the Health Benefit Plan Network
2 Access and Adequacy Act codified at §33-53-1 *et seq.* of
3 this code are made applicable to the provisions of this
4 article.

§33-15-22. Assignment of certain benefits in dental care insurance coverage.

1 (a) Any entity regulated under this article that provides
2 dental care coverage to a covered person shall honor an
3 assignment, made in writing by the person covered under
4 the policy, of payments due under the policy to a dentist or
5 a dental corporation for services provided to the covered
6 person that are covered under the policy. Upon notice of the
7 assignment, the entity shall make payments directly to the
8 provider of the covered services. A dentist or dental
9 corporation with a valid assignment may bill the entity and
10 notify the entity of the assignment. Upon request of the

† Redesignated

11 entity, the dentist or dental corporation shall provide a copy
12 of the assignment to the entity.

13 (b) A covered person may revoke an assignment made
14 pursuant to subsection (a) of this section with or without the
15 consent of the provider. The revocation shall be in writing.
16 The covered person shall provide notice of the revocation to
17 the entity. The entity shall send a copy of the revocation
18 notice to the dentist or dental corporation subject to the
19 assignment. The revocation is effective when both the entity
20 and the provider have received a copy of the revocation
21 notice. The revocation is only effective for any charges
22 incurred after both parties have received the revocation
23 notice.

24 (c) If, under an assignment authorized in subsection (a)
25 of this section, a dentist or dental corporation collects
26 payment from a covered person and subsequently receives
27 payment from the entity, the dentist or dental corporation
28 shall reimburse the covered person, less any applicable
29 copayments, deductibles, or coinsurance amounts, within 45
30 days.

31 (d) Nothing in this section limits an entity's ability to
32 determine the scope of the entity's benefits, services, or any
33 other terms of the entity's policies or to negotiate any
34 contract with a licensed health care provider regarding
35 reimbursement rates or any other lawful provisions.

36 (e) Any entity providing dental care shall provide
37 conspicuous notice to the covered person that the
38 assignment of benefits is optional, and that additional
39 payments may be required if the assigned benefits are not
40 sufficient to pay for received services.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

†§33-16-3gg. Incorporation of the Health Benefit Plan Network Access and Adequacy Act.

1 The provisions of the Health Benefit Plan Network
2 Access and Adequacy Act codified at §33-53-1 *et seq.* of
3 this code are made applicable to the provisions of this
4 article.

§33-16-18. Assignment of certain benefits in dental care insurance coverage.

1 (a) Any entity regulated under this article that provides
2 dental care coverage to a covered person shall honor an
3 assignment, made in writing by the person covered under
4 the policy, of payments due under the policy to a dentist or
5 a dental corporation for services provided to the covered
6 person that are covered under the policy. Upon notice of the
7 assignment, the entity shall make payments directly to the
8 provider of the covered services. A dentist or dental
9 corporation with a valid assignment may bill the entity and
10 notify the entity of the assignment. Upon request of the
11 entity, the dentist or dental corporation shall provide a copy
12 of the assignment to the entity.

13 (b) A covered person may revoke an assignment made
14 pursuant to subsection (a) of this section with or without the
15 consent of the provider. The revocation shall be in writing.
16 The covered person shall provide notice of the revocation to
17 the entity. The entity shall send a copy of the revocation
18 notice to the dentist or dental corporation subject to the
19 assignment. The revocation is effective when both the entity
20 and the provider have received a copy of the revocation
21 notice. The revocation is only effective for any charges
22 incurred after both parties have received the revocation
23 notice.

24 (c) If, under an assignment authorized in subsection (a)
25 of this section, a dentist or dental corporation collects
26 payment from a covered person and subsequently receives
27 payment from the entity, the dentist or dental corporation

28 shall reimburse the covered person, less any applicable
29 copayments, deductibles, or coinsurance amounts, within 45
30 days.

31 (d) Nothing in this section limits an entity's ability to
32 determine the scope of the entity's benefits, services, or any
33 other terms of the entity's policies or to negotiate any
34 contract with a licensed health care provider regarding
35 reimbursement rates or any other lawful provisions.

36 (e) Any entity providing dental care shall provide
37 conspicuous notice to the covered person that the
38 assignment of benefits is optional, and that additional
39 payments may be required if the assigned benefits are not
40 sufficient to pay for received services.

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

†§33-24-7v. Incorporation of the Health Benefit Plan Network Access and Adequacy Act.

1 The provisions of the Health Benefit Plan Network
2 Access and Adequacy Act codified at §33-53-1 *et seq.* of
3 this code is made applicable to the provisions of this article.

§33-24-45. Assignment of certain benefits in dental care insurance coverage.

1 (a) Any entity regulated under this article that provides
2 dental care coverage to a covered person shall honor an
3 assignment, made in writing by the person covered under
4 the policy, of payments due under the policy to a dentist or
5 a dental corporation for services provided to the covered
6 person that are covered under the policy. Upon notice of the
7 assignment, the entity shall make payments directly to the
8 provider of the covered services. A dentist or dental
9 corporation with a valid assignment may bill the entity and

† Redesignated

10 notify the entity of the assignment. Upon request of the
11 entity, the dentist or dental corporation shall provide a copy
12 of the assignment to the entity.

13 (b) A covered person may revoke an assignment made
14 pursuant to subsection (a) of this section with or without the
15 consent of the provider. The revocation shall be in writing.
16 The covered person shall provide notice of the revocation to
17 the entity. The entity shall send a copy of the revocation
18 notice to the dentist or dental corporation subject to the
19 assignment. The revocation is effective when both the entity
20 and the provider have received a copy of the revocation
21 notice. The revocation is only effective for any charges
22 incurred after both parties have received the revocation
23 notice.

24 (c) If, under an assignment authorized in subsection (a)
25 of this section, a dentist or dental corporation collects
26 payment from a covered person and subsequently receives
27 payment from the entity, the dentist or dental corporation
28 shall reimburse the covered person, less any applicable
29 copayments, deductibles, or coinsurance amounts, within 45
30 days.

31 (d) Nothing in this section limits an entity's ability to
32 determine the scope of the entity's benefits, services, or any
33 other terms of the entity's policies or to negotiate any
34 contract with a licensed health care provider regarding
35 reimbursement rates or any other lawful provisions.

36 (e) Any entity providing dental care shall provide
37 conspicuous notice to the covered person that the
38 assignment of benefits is optional, and that additional
39 payments may be required if the assigned benefits are not
40 sufficient to pay for received services.

ARTICLE 25. HEALTH CARE CORPORATIONS.

†§33-25-8s. Incorporation of the Health Benefit Plan Network Access and Adequacy Act.

1 The provisions of the Health Benefit Plan Network
2 Access and Adequacy Act codified at §33-53-1 *et seq.* of
3 this code are made applicable to the provisions of this
4 article.

§33-25-22. Assignment of certain benefits in dental care insurance coverage.

1 (a) Any entity regulated under this article that provides
2 dental care coverage to a covered person shall honor an
3 assignment, made in writing by the person covered under
4 the policy, of payments due under the policy to a dentist or
5 a dental corporation for services provided to the covered
6 person that are covered under the policy. Upon notice of the
7 assignment, the entity shall make payments directly to the
8 provider of the covered services. A dentist or dental
9 corporation with a valid assignment may bill the entity and
10 notify the entity of the assignment. Upon request of the
11 entity, the dentist or dental corporation shall provide a copy
12 of the assignment to the entity.

13 (b) A covered person may revoke an assignment made
14 pursuant to subsection (a) of this section with or without the
15 consent of the provider. The revocation shall be in writing.
16 The covered person shall provide notice of the revocation to
17 the entity. The entity shall send a copy of the revocation
18 notice to the dentist or dental corporation subject to the
19 assignment. The revocation is effective when both the entity
20 and the provider have received a copy of the revocation
21 notice. The revocation is only effective for any charges
22 incurred after both parties have received the revocation
23 notice.

24 (c) If, under an assignment authorized in subsection (a)
25 of this section, a dentist or dental corporation collects
26 payment from a covered person and subsequently receives
27 payment from the entity, the dentist or dental corporation

28 shall reimburse the covered person, less any applicable
29 copayments, deductibles, or coinsurance amounts, within 45
30 days.

31 (d) Nothing in this section limits an entity's ability to
32 determine the scope of the entity's benefits, services, or any
33 other terms of the entity's policies or to negotiate any
34 contract with a licensed health care provider regarding
35 reimbursement rates or any other lawful provisions.

36 (e) Any entity providing dental care shall provide
37 conspicuous notice to the covered person that the
38 assignment of benefits is optional, and that additional
39 payments may be required if the assigned benefits are not
40 sufficient to pay for received services.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

†§33-25A-8v. Incorporation of the Health Benefit Plan Access and Adequacy Act.

1 The provisions of the Health Benefit Plan Network
2 Access and Adequacy Act codified at §33-53-1 *et seq.* of
3 this code is made applicable to the provisions of this article.

§33-25A-36. Assignment of certain benefits in dental care insurance coverage.

1 (a) Any entity regulated under this article that provides
2 dental care coverage to a covered person shall honor an
3 assignment, made in writing by the person covered under
4 the policy, of payments due under the policy to a dentist or
5 a dental corporation for services provided to the covered
6 person that are covered under the policy. Upon notice of the
7 assignment, the entity shall make payments directly to the
8 provider of the covered services. A dentist or dental
9 corporation with a valid assignment may bill the entity and
10 notify the entity of the assignment. Upon request of the
11 entity, the dentist or dental corporation shall provide a copy
12 of the assignment to the entity.

† Redesignated

13 (b) A covered person may revoke an assignment made
14 pursuant to subsection (a) of this section with or without the
15 consent of the provider. The revocation shall be in writing.
16 The covered person shall provide notice of the revocation to
17 the entity. The entity shall send a copy of the revocation
18 notice to the dentist or dental corporation subject to the
19 assignment. The revocation is effective when both the entity
20 and the provider have received a copy of the revocation
21 notice. The revocation is only effective for any charges
22 incurred after both parties have received the revocation
23 notice.

24 (c) If, under an assignment authorized in subsection (a)
25 of this section, a dentist or dental corporation collects
26 payment from a covered person and subsequently receives
27 payment from the entity, the dentist or dental corporation
28 shall reimburse the covered person, less any applicable
29 copayments, deductibles, or coinsurance amounts, within 45
30 days.

31 (d) Nothing in this section limits an entity's ability to
32 determine the scope of the entity's benefits, services, or any
33 other terms of the entity's policies or to negotiate any
34 contract with a licensed health care provider regarding
35 reimbursement rates or any other lawful provisions.

36 (e) Any entity providing dental care shall provide
37 conspicuous notice to the covered person that the
38 assignment of benefits is optional, and that additional
39 payments may be required if the assigned benefits are not
40 sufficient to pay for received services.

41 (f) The provisions of this section shall not apply to
42 insurers or managed care organizations with respect to their
43 Medicaid or CHIP plans or contracts which are reviewed
44 and approved by the Department of Health and Human
45 Resources Bureau for Medical Services.

†ARTICLE 55. HEALTH BENEFIT PLAN NETWORK ACCESS AND ADEQUACY ACT.

† Redesignated

†§33-55-1. Definitions.

1 For purposes of this article:

2 “Authorized representative” means:

3 (A) A person to whom a covered person has given
4 express written consent to represent the covered person;

5 (B) A person authorized by law to provide substituted
6 consent for a covered person; or

7 (C) The covered person’s treating health care
8 professional, only when the covered person is unable to
9 provide consent, or a family member of the covered person.

10 “Commissioner” means the Insurance Commissioner of
11 this state.

12 “Covered benefit” or “benefit” means those health care
13 services to which a covered person is entitled under the
14 terms of a health benefit plan.

15 “Covered person” means a policyholder, subscriber,
16 enrollee, or other individual participating in a health benefit
17 plan.

18 “Emergency medical condition” means a physical,
19 mental, or behavioral health condition that manifests itself
20 by acute symptoms of sufficient severity, including severe
21 pain that would lead a prudent layperson, possessing an
22 average knowledge of medicine and health, to reasonably
23 expect, in the absence of immediate medical attention, to
24 result in:

25 (A) Placing the individual’s physical, mental, or
26 behavioral health, or, with respect to a pregnant woman, the
27 woman’s or her fetus’s health in serious jeopardy;

28 (B) Serious impairment to a bodily function;

29 (C) Serious impairment of any bodily organ or part; or

30 (D) With respect to a pregnant woman who is having
31 contractions:

32 (i) Inadequate time to affect a safe transfer to another
33 hospital before delivery; or

34 (ii) When transfer to another hospital may pose a threat
35 to the health or safety of the woman or fetus.

36 “Emergency services” means, with respect to an
37 emergency condition:

38 (A) A medical or mental health screening examination
39 that is within the capability of the emergency department of
40 a hospital, including ancillary services routinely available to
41 the emergency department to evaluate the emergency
42 medical condition; and

43 (B) Any further medical or mental health examination
44 and treatment, to the extent they are within the capabilities
45 of the staff and facilities available at the hospital to stabilize
46 the patient.

47 “Essential community provider” or “ECP” means a
48 provider that:

49 (A) Serves predominantly low-income, medically
50 underserved individuals, including a health care provider
51 defined in Section 340B(a)(4) of the Public Health Service
52 Act (PHSA); or

53 (B) Is described in Section 1927(c)(1)(D)(i)(IV) of the
54 Social Security Act, as set forth by Section 221 of
55 Pub.L.111-8.

56 “Facility” means an institution providing health care
57 services or a health care setting, including, but not limited
58 to, hospitals and other licensed inpatient centers,
59 ambulatory surgical or treatment centers, skilled nursing
60 centers, residential treatment centers, urgent care centers,

61 diagnostic, laboratory, and imaging centers, and
62 rehabilitation and other therapeutic health settings.

63 “Health benefit plan” means a policy, contract,
64 certificate, or agreement entered into, offered, or issued by
65 a health carrier to provide, deliver, arrange for, pay for, or
66 reimburse any of the costs of health care services.

67 “Health care professional” means a physician or other
68 health care practitioner licensed, accredited, or certified to
69 perform specified (physical, mental, or behavioral) health
70 care services consistent with their scope of practice under
71 state law.

72 “Health care provider” or “provider” means a health
73 care professional, a pharmacy, or a facility.

74 “Health care services” means services for the diagnosis,
75 prevention, treatment, cure, or relief of a physical, mental,
76 or behavioral health condition, illness, injury, or disease,
77 including mental health and substance use disorders.

78 “Health carrier” or “carrier” means an entity subject to
79 the insurance laws and rules of this state, or subject to the
80 jurisdiction of the commissioner, that contracts or offers to
81 contract, or enters into an agreement to provide, deliver,
82 arrange for, pay for, or reimburse any of the costs of health
83 care services, including an insurer issuing an accident and
84 sickness insurance policy pursuant to §33-15-1 *et seq.* of
85 this code, an insurer issuing an accident and sickness group
86 policy pursuant to §33-16-1 *et seq.* of this code, a hospital
87 medical and dental corporation licensed pursuant to §33-24-
88 1 *et seq.* of this code, a health care corporation licensed
89 pursuant to §33-25-1 *et seq.* of this code, or a health
90 maintenance organization licensed pursuant to §33-25A-1
91 *et seq.* of this code. For purposes of this article, the term
92 “health carrier” or “carrier” does not include insurers or
93 managed care organizations with respect to their Medicaid
94 or Children’s Health Insurance Program (CHIP) plans or
95 contracts which are reviewed and approved by the

96 Department of Health and Human Resources Bureau for
97 Medical Services.

98 “Intermediary” means a person authorized to negotiate
99 and execute provider contracts with health carriers on behalf
100 of health care providers or on behalf of a network.

101 “Limited scope dental plan” means a plan that provides
102 coverage, substantially all of which is for treatment of the
103 mouth, including any organ or structure within the mouth,
104 which is provided under a separate policy, certificate, or
105 contract of insurance or is otherwise not an integral part of
106 a group benefit plan.

107 “Limited scope vision plan” means a plan that provides
108 coverage, substantially all of which is for treatment of the
109 eye, that is provided under a separate policy, certificate, or
110 contract of insurance or is otherwise not an integral part of
111 a group benefit plan.

112 “Network” means the group or groups of participating
113 providers providing services under a network plan.

114 “Network plan” means a health benefit plan that either
115 requires a covered person to use, or creates incentives,
116 including financial incentives, for a covered person to use
117 health care providers managed, owned, under contract with,
118 or employed by the health carrier.

119 “Participating provider” means a provider who, under a
120 contract with the health carrier or with its contractor or
121 subcontractor, has agreed to provide health care services to
122 covered persons with an expectation of receiving payment,
123 other than coinsurance, copayments, or deductibles, directly
124 or indirectly from the health carrier.

125 “Person” means an individual, a corporation, a
126 partnership, an association, a joint venture, a joint stock
127 company, a trust, an unincorporated organization, any
128 similar entity, or any combination of the foregoing.

129 “Primary care” means health care services for a range of
130 common physical, mental, or behavioral health conditions
131 provided by a physician or nonphysician primary care
132 professional.

133 “Primary care professional” means a participating
134 health care professional designated by the health carrier to
135 supervise, coordinate, or provide initial care or continuing
136 care to a covered person, and who may be required by the
137 health carrier to initiate a referral for specialty care and
138 maintain supervision of health care services rendered to the
139 covered person.

140 “Specialist” means a physician or non-physician health
141 care professional who:

142 (A) Focuses on a specific area of physical, mental, or
143 behavioral health or a group of patients; and

144 (B) Has successfully completed required training and is
145 recognized by the state in which he or she practices to
146 provide specialty care.

147 “Specialist” includes a subspecialist who has additional
148 training and recognition above and beyond his or her
149 specialty training.

150 “Specialty care” means advanced medically necessary
151 care and treatment of specific physical, mental, or
152 behavioral health conditions, or those health conditions
153 which may manifest in particular ages or subpopulations,
154 that are provided by a specialist, preferably in coordination
155 with a primary care professional or other health care
156 professional.

157 “Telemedicine” or “Telehealth” means health care
158 services provided through telecommunications technology
159 by a health care professional who is at a location other than
160 where the covered person is located.

161 “Tiered network” means a network that identifies and
162 groups some or all types of providers and facilities into
163 specific groups to which different provider reimbursement,
164 covered person cost-sharing, or provider access
165 requirements, or any combination thereof, apply for the
166 same services.

167 “To stabilize” means with respect to an emergency
168 medical condition to provide such medical treatment of the
169 condition as may be necessary to assure, within a reasonable
170 medical probability, that no material deterioration of the
171 condition is likely to result from or occur during the transfer
172 of the individual to or from a facility, or, with respect to an
173 emergency birth with no complications resulting in a
174 continued emergency to deliver the child and the placenta.

175 “Transfer” means the movement, including the
176 discharge, of an individual outside a hospital’s facilities at
177 the direction of any person employed by, or affiliated or
178 associated, directly or indirectly, with the hospital, but does
179 not include the movement of an individual who:

180 (A) Has been declared dead; or

181 (B) Leaves the facility without the permission of any
182 such person.

†§33-55-2. Applicability and scope.

1 (a) Except as provided in subsection (b) of this section,
2 this article applies to all health carriers that offer network
3 plans.

4 (b) The following provisions of this article do not apply
5 to health carriers that offer network plans that consist solely
6 of limited scope dental plans or limited scope vision plans:

7 (1) §33-53-3(a)(2) of this code;

8 (2) §33-53-3(f)(7)(E), §33-53-3(f)(8)(B) and §33-53-
9 3(f)(11) of this code;

10 (3) §33-53-4(b)(2) and (3) of this code; and

11 (4) §33-53-4(c)(1)(A) and (B), §33-53-4(c)(2), §33-53-
12 4(c)(3), §33-53-4(d)(1)(B) and §33-53-4(d)(1)(C) of this
13 code.

†§33-55-3. Network adequacy.

1 (a)(1) A health carrier providing a network plan shall
2 maintain a network that is sufficient in numbers and
3 appropriate types of providers, including those that serve
4 predominantly low-income, medically underserved
5 individuals, to assure that all covered services to covered
6 persons, including children and adults, will be accessible
7 without unreasonable travel or delay.

8 (2) Covered persons have access to emergency services
9 24 hours per day, seven days per week.

10 (b) The commissioner shall determine sufficiency in
11 accordance with the requirements of this section, and may
12 establish sufficiency by reference to any reasonable criteria,
13 which may include, but are not limited to:

14 (1) Provider-covered person ratios by specialty;

15 (2) Primary care professional-covered person ratios;

16 (3) Geographic accessibility of providers;

17 (4) Geographic variation and population dispersion;

18 (5) Waiting times for an appointment with participating
19 providers;

20 (6) Hours of operation;

21 (7) The ability of the network to meet the needs of
22 covered persons, which may include low-income persons,
23 children and adults with serious, chronic, or complex health
24 conditions or physical or mental disabilities, or persons with
25 limited English proficiency;

26 (8) Other health care service delivery system options,
27 such as telemedicine or telehealth, mobile clinics, centers of
28 excellence, and other ways of delivering care; and

29 (9) The volume of technological and specialty care
30 services available to serve the needs of covered persons
31 requiring technologically advanced or specialty care
32 services.

33 (c)(1) A health carrier shall have a process to assure that
34 a covered person obtains a covered benefit at an in-network
35 level of benefits, including an in-network level of cost-
36 sharing, from a nonparticipating provider, or make other
37 arrangements acceptable to the commissioner when:

38 (A) The health carrier has a sufficient network, but does
39 not have a type of participating provider available to provide
40 the covered benefit to the covered person, or it does not have
41 a participating provider available to provide the covered
42 benefit to the covered person without unreasonable travel or
43 delay; or

44 (B) The health carrier has an insufficient number or type
45 of participating providers available to provide the covered
46 benefit to the covered person without unreasonable travel or
47 delay.

48 (2) The health carrier shall specify and inform covered
49 persons of the process a covered person may use to request
50 access to obtain a covered benefit from a non-participating
51 provider as provided in subdivision (1) of this subsection
52 when:

53 (A) The covered person is diagnosed with a condition or
54 disease that requires specialized health care services or
55 medical services; and

56 (B) The health carrier:

57 (i) Does not have a participating provider of the required
58 specialty with the professional training and expertise to treat

59 or provide health care services for the condition or disease;
60 or

61 (ii) Cannot provide reasonable access to a participating
62 provider with the required specialty with the professional
63 training and expertise to treat or provide health care services
64 for the condition or disease without unreasonable travel or
65 delay.

66 (3) The health carrier shall treat the health care services
67 the covered person receives from a nonparticipating
68 provider pursuant to subdivision (2) of this subsection as if
69 the services were provided by a participating provider,
70 including counting the covered person's cost-sharing for
71 such services toward the maximum out-of-pocket limit
72 applicable to services obtained from participating providers
73 under the health benefit plan.

74 (4) The process described under subdivisions (1) and (2)
75 of this subsection shall ensure that requests to obtain a
76 covered benefit from a nonparticipating provider are
77 addressed in a timely fashion appropriate to the covered
78 person's condition.

79 (5) The health carrier shall have a system in place that
80 documents all requests to obtain a covered benefit from a
81 nonparticipating provider under this subsection and shall
82 provide this information to the commissioner upon request.

83 (6) The process established in this subsection is not
84 intended to be used by health carriers as a substitute for
85 establishing and maintaining a sufficient provider network
86 in accordance with the provisions of this article nor is it
87 intended to be used by covered persons to circumvent the
88 use of covered benefits available through a health carrier's
89 network delivery system options.

90 (7) Nothing in this section prevents a covered person
91 from exercising the rights and remedies available under

92 applicable state or federal law relating to internal and
93 external claims grievance and appeals processes.

94 (d)(1) A health carrier shall establish and maintain
95 adequate arrangements to ensure covered persons have
96 reasonable access to participating providers located near
97 their home or business address. In determining whether the
98 health carrier has complied with this provision, the
99 commissioner shall give due consideration to the relative
100 availability of health care providers with the requisite
101 expertise and training in the service area under
102 consideration.

103 (2) A health carrier shall monitor, on an ongoing basis,
104 the ability, clinical capacity, and legal authority of its
105 participating providers to furnish all contracted covered
106 benefits to covered persons.

107 (e)(1) Beginning January 1, 2021, a health carrier shall
108 file with the commissioner for review prior to or at the time
109 it files a newly offered network, in a manner and form
110 defined by rule of the commissioner, an access plan meeting
111 the requirements of this article.

112 (2)(A) The health carrier may request the commissioner
113 to deem sections of the access plan as proprietary
114 information that may not be made public. The health carrier
115 shall make the access plans, absent proprietary information,
116 available online, at its business premises, and to any person
117 upon request.

118 (B) For the purposes of this subsection, information is
119 proprietary if revealing the information would cause the
120 health carrier's competitors to obtain valuable business
121 information.

122 (3) The health carrier shall prepare an access plan prior
123 to offering a new network plan and shall notify the
124 commissioner of any material change to any existing
125 network plan within 15 business days after the change

126 occurs. The carrier shall include in the notice to the
127 commissioner a reasonable timeframe within which it will
128 submit to the commissioner for approval or file with the
129 commissioner, as appropriate, an update to an existing
130 access plan.

131 (f) The access plan shall describe or contain at least the
132 following:

133 (1) The health carrier's network, including how the use
134 of telemedicine or telehealth or other technology may be
135 used to meet network access standards, if applicable;

136 (2) The health carrier's procedures for making and
137 authorizing referrals within and outside its network, if
138 applicable;

139 (3) The health carrier's process for monitoring and
140 assuring on an ongoing basis the sufficiency of the network
141 to meet the health care needs of populations that enroll in
142 network plans;

143 (4) The factors used by the health carrier to build its
144 provider network, including a description of the network
145 and the criteria used to select providers;

146 (5) The health carrier's efforts to address the needs of
147 covered persons, including, but not limited to, children and
148 adults, including those with limited English proficiency or
149 illiteracy, diverse cultural or ethnic backgrounds, physical
150 or mental disabilities, and serious, chronic, or complex
151 medical conditions. This includes the carrier's efforts, when
152 appropriate, to include various types of ECPs in its network;

153 (6) The health carrier's methods for assessing the health
154 care needs of covered persons and their satisfaction with
155 services;

156 (7) The health carrier's method of informing covered
157 persons of the plan's covered services and features,
158 including, but not limited to:

- 159 (A) The plan's grievance and appeals procedures;
- 160 (B) Its process for choosing and changing providers;
- 161 (C) Its process for updating its provider directories for
162 each of its network plans;
- 163 (D) A statement of health care services offered,
164 including those services offered through the preventive care
165 benefit, if applicable; and
- 166 (E) Its procedures for covering and approving
167 emergency, urgent, and specialty care, if applicable;
- 168 (8) The health carrier's system for ensuring the
169 coordination and continuity of care:
- 170 (A) For covered persons referred to specialty
171 physicians; and
- 172 (B) For covered persons using ancillary services,
173 including social services and other community resources,
174 and for ensuring appropriate discharge planning;
- 175 (9) The health carrier's process for enabling covered
176 persons to change primary care professionals, if applicable;
- 177 (10) The health carrier's proposed plan for providing
178 continuity of care in the event of contract termination
179 between the health carrier and any of its participating
180 providers, or in the event of the health carrier's insolvency
181 or other inability to continue operations. The description
182 shall explain how covered persons will be notified of the
183 contract termination, or the health carrier's insolvency or
184 other cessation of operations, and transitioned to other
185 providers in a timely manner;
- 186 (11) The health carrier's process for monitoring access
187 to physician specialist services in emergency room care,
188 anesthesiology, radiology, hospitalist care, and

189 pathology/laboratory services at their participating
190 hospitals; and

191 (12) Any other information required by the
192 commissioner to determine compliance with the provisions
193 of this article.

†§33-55-4. **Provider directories.**

1 (a)(1)(A) A health carrier shall post electronically a
2 current and accurate provider directory for each of its
3 network plans with the information and search functions, as
4 described in subsection (b) of this section.

5 (B) In making the directory available electronically, the
6 carrier shall ensure that the general public is able to view all
7 of the current providers for a plan through a clearly
8 identifiable link or tab and without creating or accessing an
9 account or entering a policy or contract number.

10 (2)(A) The health carrier shall update each network plan
11 provider directory at least monthly.

12 (B) The health carrier shall periodically audit at least a
13 reasonable sample size of its provider directories for
14 accuracy, and retain documentation of such an audit to be
15 made available to the commissioner upon request.

16 (3) A health carrier shall provide a print copy, or a print
17 copy of the requested directory information of a current
18 provider directory with the information described in
19 subsection (b) of this section upon request of a covered
20 person or a prospective covered person.

21 (4) For each network plan, a health carrier shall include
22 in plain language, in both the electronic and print directory,
23 the following general information:

24 (A) In plain language, a description of the criteria the
25 carrier has used to build its provider network;

26 (B) If applicable, in plain language, a description of the
27 criteria the carrier has used to tier providers;

28 (C) If applicable, in plain language, how the carrier
29 designates the different provider tiers or levels in the
30 network and identifies for each specific provider, hospital,
31 or other type of facility in the network which tier each is
32 placed, for example, by name, symbols, or grouping, in
33 order for a covered person or a prospective covered person
34 to be able to identify the provider tier; and

35 (D) If applicable, note that authorization or referral may
36 be required to access some providers.

37 (5)(A) A health carrier shall make it clear for both its
38 electronic and print directories what provider directory
39 applies to which network plan, such as including the
40 specific name of the network plan as marketed and issued in
41 this state.

42 (B) The health carrier shall include in both its electronic
43 and print directories a customer service email address and
44 telephone number or electronic link that covered persons or
45 the general public may use to notify the health carrier of
46 inaccurate provider directory information.

47 (6) For the pieces of information required pursuant to
48 subsections (b), (c), and (d) of this section in a provider
49 directory pertaining to a health care professional, a hospital,
50 or a facility other than a hospital, the health carrier shall
51 make available through the directory the source of the
52 information and any limitations, if applicable.

53 (7) A provider directory, whether in electronic or print
54 format, shall accommodate the communication needs of
55 individuals with disabilities, and include a link to or
56 information regarding available assistance for persons with
57 limited English proficiency.

58 (b) The health carrier shall make available through an
59 electronic provider directory, for each network plan, the
60 information under this subsection in a searchable format:

61 (1) For health care professionals:

62 (A) Name;

63 (B) Gender;

64 (C) Participating office location(s);

65 (D) Specialty, if applicable;

66 (E) Medical group affiliations, if applicable;

67 (F) Facility affiliations, if applicable;

68 (G) Participating facility affiliations, if applicable;

69 (H) Languages spoken other than English, if applicable;

70 and

71 (I) Whether accepting new patients.

72 (2) For hospitals:

73 (A) Hospital name;

74 (B) Hospital type (i. e., acute, rehabilitation, children's,
75 cancer);

76 (C) Participating hospital location;

77 (D) Hospital accreditation status; and

78 (3) For facilities, other than hospitals, by type:

79 (A) Facility name;

80 (B) Facility type;

81 (C) Types of services performed; and

82 (D) Participating facility location(s).

83 (c) For the electronic provider directories, for each
84 network plan, a health carrier shall make available the
85 following information in addition to all of the information
86 available under subsection (b) of this section:

87 (1) For health care professionals:

88 (A) Contact information;

89 (B) Board certification(s); and

90 (C) Languages spoken other than English by clinical
91 staff, if applicable.

92 (2) For hospitals: Telephone number; and

93 (3) For facilities other than hospitals: Telephone
94 number.

95 (d)(1) The health carrier shall make available in print,
96 upon request, the following provider directory information
97 for the applicable network plan:

98 (A) For health care professionals:

99 (i) Name;

100 (ii) Contact information;

101 (iii) Participating office location(s);

102 (iv) Specialty, if applicable;

103 (v) Languages spoken other than English, if applicable;
104 and

105 (vi) Whether accepting new patients.

106 (B) For hospitals:

107 (i) Hospital name;

108 (ii) Hospital type, (i. e., acute, rehabilitation, children's,
109 cancer); and

110 (iii) Participating hospital location and telephone
111 number; and

112 (C) For facilities, other than hospitals, by type:

113 (i) Facility name;

114 (ii) Facility type;

115 (iii) Types of services performed; and

116 (iv) Participating facility location(s) and telephone
117 number.

118 (2) The health carrier shall include a disclosure in the
119 directory that the information in subdivision (1) of this
120 subsection, included in the directory, is accurate as of the
121 date of printing, and that covered persons or prospective
122 covered persons should consult the carrier's electronic
123 provider directory on its website to obtain current provider
124 directory information.

†§33-55-5. Intermediaries.

1 A contract between a health carrier and an intermediary
2 shall satisfy all the requirements contained in this section.

3 (a) A health carrier's statutory responsibility to monitor
4 the offering of covered benefits to covered persons may not
5 be delegated or assigned to the intermediary.

6 (b) A health carrier has the right to approve or
7 disapprove participation status of a subcontracted provider
8 in its own or a contracted network for the purpose of
9 delivering covered benefits to the carrier's covered persons.

10 (c) A health carrier shall maintain copies of all
11 intermediary health care subcontracts at its principal place
12 of business in the state, or ensure that it has access to all

13 intermediary subcontracts, including the right to make
14 copies to facilitate regulatory review, upon 20 days prior
15 written notice from the health carrier.

16 (d) If applicable, an intermediary shall transmit
17 utilization documentation and claims-paid documentation
18 to the health carrier. The carrier shall monitor the timeliness
19 and appropriateness of payments made to providers and
20 health care services received by covered persons.

21 (e) If applicable, an intermediary shall maintain the
22 books, records, financial information, and documentation of
23 services provided to covered persons at its principal place
24 of business in the state and preserve them for two years in a
25 manner that facilitates regulatory review.

26 (f) An intermediary shall allow the commissioner access
27 to the intermediary's books, records, financial information,
28 and any documentation of services provided to covered
29 persons, as necessary to determine compliance with this
30 article.

31 (g) A health carrier has the right, in the event of the
32 intermediary's insolvency, to require the assignment to the
33 health carrier of the provisions of a provider's contract
34 addressing the provider's obligation to furnish covered
35 services. If a health carrier requires assignment, the health
36 carrier remains obligated to pay the provider for furnishing
37 covered services under the same terms and conditions as the
38 intermediary prior to the insolvency.

39 (h) Notwithstanding any other provision of this section,
40 to the extent the health carrier delegates its responsibilities
41 to the intermediary, the carrier shall retain full responsibility
42 for the intermediary's compliance with the requirements of
43 this article.

†§33-55-6. Filing requirements and state administration.

1 (a) At the time a health carrier files its access plan, the
2 health carrier shall file for approval with the commissioner

3 sample contract forms proposed for use with its
4 participating providers and intermediaries.

5 (b) A health carrier shall submit material changes to a
6 contract that would affect a provision required under this
7 article or implementing regulations to the commissioner for
8 approval at least 30 days prior to use.

9 (c) The health carrier shall maintain provider and
10 intermediary contracts at its principal place of business in
11 the state, or the health carrier shall have access to all
12 contracts and provide copies to facilitate regulatory review
13 upon 20 days prior written notice from the commissioner.

†§33-55-7. **Contracting.**

1 (a) The execution of a contract by a health carrier does
2 not relieve the health carrier of its liability to any person
3 with whom it has contracted for the provision of services,
4 nor of its responsibility for compliance with the law or
5 applicable regulations.

6 (b) All contracts shall be in writing and subject to
7 review.

8 (c) All contracts shall comply with applicable
9 requirements of the law and applicable regulations.

†§33-55-8. **Enforcement.**

1 (a) If the commissioner determines that a health carrier
2 has not contracted with a sufficient number of participating
3 providers to assure that covered persons have accessible
4 health care services in a geographic area, or that a health
5 carrier's network access plan does not assure reasonable
6 access to covered benefits, or that a health carrier has
7 entered into a contract that does not comply with this article,
8 or that a health carrier has not complied with a provision of
9 this article, the commissioner shall require a modification to
10 the access plan or institute a corrective action plan, as
11 appropriate, that shall be followed by the health carrier, or

12 may use any of the commissioner's other enforcement
13 powers to obtain the health carrier's compliance with this
14 article.

15 (b) The commissioner will not act to arbitrate, mediate,
16 or settle disputes regarding a decision not to include a
17 provider in a network plan or in a provider network or
18 regarding any other dispute between a health carrier, its
19 intermediaries, or one or more providers arising under or by
20 reason of a provider contract or its termination.

†§33-55-9. **Rulemaking.**

1 The commissioner shall propose a rule for legislative
2 approval in accordance with the provisions of §29A-3-1 *et*
3 *seq.* of this code to implement the provisions of this article.

†§33-55-10. **Penalties.**

1 A violation of this article shall be penalized in
2 accordance with §33-4-11 of this code.



CHAPTER 193

**(H. B. 4146 - By Delegates Westfall, Nelson,
Porterfield and Espinosa)**

[By Request of the West Virginia Insurance Commission]

[Passed March 4, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §33-4-15a of the Code of West Virginia, 1931, as amended, relating to credit for reinsurance; allowing a credit on an insurer's annual statement when reinsurance is ceded to an assuming insurer and the assuming insurer is licensed in a reciprocal jurisdiction; defining terms; setting forth the criteria required regarding the credit for reinsurance; removing emergency rulemaking authority;

† Redesignated

providing rulemaking authority; imposing requirements and obligations on assuming insurer; imposing requirements for reinsurance agreements; imposing requirements on Insurance Commissioner; providing Insurance Commissioner authority concerning reciprocal jurisdictions and assuming insurers; requiring the Insurance Commissioner to create and publish a list of reciprocal jurisdictions and assuming insurers; and adding effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15a. Credit for reinsurance.

1 (a) The purpose of this section is to protect the interest
2 of insureds, claimants, ceding insurers, assuming insurers,
3 and the public generally. The Legislature hereby declares its
4 intent is to ensure adequate regulation of insurers and
5 reinsurers, and the adequate protection for those to whom
6 they owe obligations. In furtherance of that stated interest,
7 it is hereby mandated that upon the insolvency of a non-
8 United States insurer or reinsurer that provides security to
9 fund its United States obligations in accordance with this
10 section, the assets representing the security shall be
11 maintained in the United States and claims shall be filed
12 with and valued by the state Insurance Commissioner with
13 regulatory oversight, and the assets shall be distributed, in
14 accordance with the insurance laws of the state in which the
15 trust is domiciled that are applicable to the liquidation of
16 domestic United States insurance companies. The
17 Legislature further declares that the matters contained in
18 this section are fundamental to the business of insurance in
19 accordance with 15 U.S.C. §§1011-1012.

20 (b) (1) Credit for reinsurance shall be allowed a
21 domestic ceding insurer as either an asset or a reduction
22 from liability on account of reinsurance ceded only when
23 the reinsurer meets the requirements of §33-4-15a(b)(2)(A),
24 §33-4-15a(b)(2)(B), §33-4-15a(b)(2)(C), §33-4-
25 15a(b)(2)(D), §33-4-15a(b)(2)(E), §33-4-15a(b)(2)(F), or

26 §33-4-15a(b)(2)(G) of this code: *Provided*, That the
27 commissioner may adopt by rule pursuant to §33-4-
28 15a(e)(2) of this code additional requirements relating to or
29 setting forth:

30 (A) The valuation of assets or reserve credits;

31 (B) The amount and forms of security supporting
32 reinsurance arrangements described in §33-4-15a(e)(2) of
33 this code; and/or

34 (C) The circumstances pursuant to which credit will be
35 reduced or eliminated.

36 (2) Credit shall be allowed under §33-4-15a(b)(2)(A),
37 §33-4-15a(b)(2)(B), or §33-4-15a(b)(2)(C) of this code only
38 with respect to cessions of those kinds or classes of business
39 which the assuming insurer is licensed or otherwise
40 permitted to write or assume in its state of domicile or, in
41 the case of a United States branch of an alien assuming
42 insurer, in the state through which it is entered and licensed
43 to transact insurance or reinsurance. Credit shall be allowed
44 under §33-4-15a(b)(2)(C) or §33-4-15a(b)(2)(D) of this
45 code only if the applicable requirements of §33-4-
46 15a(b)(2)(H) of this code have been satisfied.

47 (A) Credit shall be allowed when the reinsurance is
48 ceded to an assuming insurer that is licensed to transact
49 insurance or reinsurance in this state.

50 (B) Credit shall be allowed when the reinsurance is
51 ceded to an assuming insurer that is accredited by the
52 commissioner as a reinsurer in this state. To be eligible for
53 accreditation, a reinsurer must:

54 (i) File with the commissioner evidence of its
55 submission to this state's jurisdiction;

56 (ii) Submit to this state's authority to examine its books
57 and records;

58 (iii) Be licensed to transact insurance or reinsurance in
59 at least one state, or in the case of a United States branch of
60 an alien assuming insurer, be entered through and licensed
61 to transact insurance or reinsurance in at least one state;

62 (iv) File annually with the commissioner a copy of its
63 annual statement filed with the insurance department of its
64 state of domicile and a copy of its most recent audited
65 financial statement; and

66 (v) Demonstrate to the satisfaction of the commissioner
67 that it has adequate financial capacity to meet its reinsurance
68 obligations and is otherwise qualified to assume reinsurance
69 from domestic insurers. An assuming insurer is considered
70 to meet this requirement as of the time of its application if
71 it maintains a surplus as regards policyholders in an amount
72 not less than \$20 million and its accreditation has not been
73 denied by the commissioner within 90 days after submission
74 of its application.

75 (C)(i) Credit shall be allowed when the reinsurance is
76 ceded to an assuming insurer that is domiciled in, or in the
77 case of a United States branch of an alien assuming insurer
78 is entered through, a state that employs standards regarding
79 credit for reinsurance substantially similar to those
80 applicable under this statute and the assuming insurer or
81 United States branch of an alien assuming insurer:

82 (I) Maintains a surplus as regards policyholders in an
83 amount not less than \$20 million; and

84 (II) Submits to the authority of this state to examine its
85 books and records.

86 (ii) The requirement of §33-4-15a(b)(2)(C)(i)(I) of this
87 code does not apply to reinsurance ceded and assumed
88 pursuant to pooling arrangements among insurers in the
89 same holding company system.

90 (D)(i) Credit shall be allowed when the reinsurance is
91 ceded to an assuming insurer that maintains a trust fund in

92 a qualified United States financial institution, as defined in
93 §33-4-15a(d)(2) of this code, for the payment of the valid
94 claims of its United States ceding insurers, their assigns and
95 successors in interest. To enable the commissioner to
96 determine the sufficiency of the trust fund, the assuming
97 insurer shall report annually to the commissioner
98 information substantially the same as that required to be
99 reported on the National Association of Insurance
100 Commissioners' Annual Statement form by licensed
101 insurers. The assuming insurer shall submit to examination
102 of its books and records by the commissioner and bear the
103 expense of examination.

104 (ii)(I) Credit for reinsurance may not be granted under
105 this paragraph unless the form of the trust and any
106 amendments to the trust have been approved by the
107 commissioner of the state where the trust is domiciled or the
108 commissioner of another state who, pursuant to the terms of
109 the trust instrument, has accepted principal regulatory
110 oversight of the trust.

111 (II) The form of the trust and any trust amendments also
112 shall be filed with the commissioner of every state in which
113 the ceding insurer beneficiaries of the trust are domiciled.
114 The trust instrument shall provide that contested claims
115 shall be valid and enforceable upon the final order of any
116 court of competent jurisdiction in the United States. The
117 trust shall vest legal title to its assets in its trustees for the
118 benefit of the assuming insurer's United States ceding
119 insurers, their assigns, and successors in interest. The trust
120 and the assuming insurer are subject to examination as
121 determined by the commissioner.

122 (III) The trust shall remain in effect for as long as the
123 assuming insurer has outstanding obligations due under the
124 reinsurance agreements subject to the trust. No later than
125 February 28 of each year the trustee of the trust shall report
126 to the commissioner in writing the balance of the trust and
127 listing the trust's investments at the preceding year-end and
128 shall certify the date of termination of the trust, if so

129 planned, or certify that the trust will not expire prior to the
130 following December 31.

131 (iii) The following requirements apply to the following
132 categories of assuming insurer:

133 (I) The trust fund for a single assuming insurer shall
134 consist of funds in trust in an amount not less than the
135 assuming insurer's liabilities attributable to reinsurance
136 ceded by United States ceding insurers, and, in addition, the
137 assuming insurer shall maintain a trusteed surplus of not less
138 than \$20 million, except as provided in §33-4-
139 15a(b)(2)(D)(iii)(II) of this code.

140 (II) At any time after the assuming insurer has
141 permanently discontinued underwriting new business
142 secured by the trust for at least three full years, the
143 commissioner with principal regulatory oversight of the
144 trust may authorize a reduction in the required trusteed
145 surplus, but only after a finding, based on an assessment of
146 the risk, that the new required surplus level is adequate for
147 the protection of United States ceding insurers,
148 policyholders, and claimants in light of reasonably
149 foreseeable adverse loss development. The risk assessment
150 may involve an actuarial review, including an independent
151 analysis of reserves and cash flows, and shall consider all
152 material risk factors, including when applicable the lines of
153 business involved, the stability of the incurred loss
154 estimates, and the effect of the surplus requirements on the
155 assuming insurer's liquidity or solvency. The minimum
156 required trusteed surplus may not be reduced to an amount
157 less than 30 percent of the assuming insurer's liabilities
158 attributable to reinsurance ceded by United States ceding
159 insurers covered by the trust.

160 (III)(a) When there is a group, including incorporated
161 and individual unincorporated underwriters for reinsurance
162 ceded under reinsurance agreements with an inception,
163 amendment, or renewal date on or after January 1, 1993, the
164 trust shall consist of a trusteed account in an amount not less

165 than the respective underwriters' several liabilities
166 attributable to business ceded by United States domiciled
167 ceding insurers to any underwriter of the group.

168 (b) When there is a group, including incorporated and
169 individual unincorporated underwriters for reinsurance
170 ceded under reinsurance agreements with an inception date
171 on or before December 31, 1992, and not amended or
172 renewed after that date, notwithstanding the other
173 provisions of this section, the trust shall consist of a trusteed
174 account in an amount not less than the respective
175 underwriters' several insurance and reinsurance liabilities
176 attributable to business written in the United States.

177 (c) In addition to the trusts described in §33-4-
178 15a(b)(2)(D)(iii)(III)(a) and §33-4-15a(b)(2)(D)(iii)(III)(b)
179 of this code, the group shall maintain in trust a trusteed
180 surplus of which \$100 million shall be held jointly for the
181 benefit of the United States domiciled ceding insurers of any
182 member of the group for all years of account.

183 (d) The incorporated members of the group may not be
184 engaged in any business other than underwriting as a
185 member of the group and are subject to the same level of
186 regulation and solvency control by the group's domiciliary
187 regulator as are the unincorporated members.

188 (e) Within 90 days after its financial statements are due
189 to be filed with the group's domiciliary regulator, the group
190 shall provide to the commissioner an annual certification by
191 the group's domiciliary regulator of the solvency of each
192 underwriter member; or if a certification is unavailable,
193 financial statements, prepared by independent public
194 accountants, of each underwriter member of the group.

195 (IV) When there is a group of incorporated underwriters
196 under common administration, the group shall:

197 (a) Have continuously transacted an insurance business
198 outside the United States for at least three years immediately
199 prior to making application for accreditation;

200 (b) Maintain aggregate policyholders' surplus of at least
201 \$10 billion;

202 (c) Maintain a trust fund in an amount not less than the
203 group's several liabilities attributable to business ceded by
204 United States domiciled ceding insurers to any member of
205 the group pursuant to reinsurance contracts issued in the
206 name of the group;

207 (d) In addition, maintain a joint trusted surplus of
208 which \$100 million shall be held jointly for the benefit of
209 United States domiciled ceding insurers of any member of
210 the group as additional security for these liabilities; and

211 (e) Within 90 days after its financial statements are due
212 to be filed with the group's domiciliary regulator, make
213 available to the commissioner an annual certification of
214 each underwriter member's solvency by the member's
215 domiciliary regulator and financial statements of each
216 underwriter member of the group prepared by its
217 independent public accountant.

218 (E) Credit shall be allowed when the reinsurance is
219 ceded to an assuming insurer that has been certified by the
220 commissioner as a reinsurer in this state and secures its
221 obligations in accordance with the requirements of this
222 paragraph.

223 (i) In order to be eligible for certification, the assuming
224 insurer shall meet the following requirements:

225 (I) The assuming insurer shall be domiciled and licensed
226 to transact insurance or reinsurance in a qualified
227 jurisdiction, as determined by the commissioner pursuant to
228 §33-4-15a(b)(2)(E)(iii) of this code;

229 (II) The assuming insurer shall maintain minimum
230 capital and surplus, or its equivalent, in an amount to be
231 determined by the commissioner pursuant to a rule proposed
232 pursuant to §33-4-15a(e) of this code;

233 (III) The assuming insurer shall maintain financial
234 strength ratings from two or more rating agencies deemed
235 acceptable by the commissioner pursuant to a rule proposed
236 pursuant to §33-4-15a(e) of this code;

237 (IV) The assuming insurer shall agree to submit to the
238 jurisdiction of this state, appoint the commissioner as its
239 agent for service of process in this state, and agree to
240 provide security for 100 percent of the assuming insurer's
241 liabilities attributable to reinsurance ceded by United States
242 ceding insurers if it resists enforcement of a final United
243 States judgment;

244 (V) The assuming insurer shall agree to meet applicable
245 information filing requirements as determined by the
246 commissioner, both with respect to an initial application for
247 certification and on an ongoing basis; and

248 (VI) The assuming insurer shall satisfy any other
249 requirements for certification deemed relevant by the
250 commissioner.

251 (ii) An association including incorporated and
252 individual unincorporated underwriters may be a certified
253 reinsurer. In order to be eligible for certification, in addition
254 to satisfying requirements of §33-4-15a(b)(2)(E)(i) of this
255 code:

256 (I) The association shall satisfy its minimum capital and
257 surplus requirements through the capital and surplus
258 equivalents (net of liabilities) of the association and its
259 members, which shall include a joint central fund that may
260 be applied to any unsatisfied obligation of the association or
261 any of its members, in an amount determined by the
262 commissioner to provide adequate protection;

263 (II) The incorporated members of the association may
264 not be engaged in any business other than underwriting as a
265 member of the association and shall be subject to the same
266 level of regulation and solvency control by the association's
267 domiciliary regulator as are the unincorporated members;
268 and

269 (III) Within 90 days after its financial statements are due
270 to be filed with the association's domiciliary regulator, the
271 association shall provide to the commissioner an annual
272 certification by the association's domiciliary regulator of
273 the solvency of each underwriter member; or if a
274 certification is unavailable, financial statements, prepared
275 by independent public accountants, of each underwriter
276 member of the association.

277 (iii) The commissioner shall create and publish a list of
278 qualified jurisdictions, under which an assuming insurer
279 licensed and domiciled in such jurisdiction is eligible to be
280 considered for certification by the commissioner as a
281 certified reinsurer.

282 (I) In order to determine whether the domiciliary
283 jurisdiction of a non-United States assuming insurer is
284 eligible to be recognized as a qualified jurisdiction, the
285 commissioner shall evaluate the appropriateness and
286 effectiveness of the reinsurance supervisory system of the
287 jurisdiction, both initially and on an ongoing basis, and
288 consider the rights, benefits, and the extent of reciprocal
289 recognition afforded by the non-United States jurisdiction
290 to reinsurers licensed and domiciled in the United States. A
291 qualified jurisdiction shall agree to share information and
292 cooperate with the commissioner with respect to all certified
293 reinsurers domiciled within that jurisdiction. A jurisdiction
294 may not be recognized as a qualified jurisdiction if the
295 commissioner has determined that the jurisdiction does not
296 adequately and promptly enforce final United States
297 judgments and arbitration awards. Additional factors may
298 be considered in the discretion of the commissioner.

299 (II) A list of qualified jurisdictions shall be published
300 through the National Association of Insurance
301 Commissioners' Committee Process. The commissioner
302 shall consider this list in determining qualified jurisdictions.
303 If the commissioner approves a jurisdiction as qualified that
304 does not appear on the list of qualified jurisdictions, the
305 commissioner shall provide thoroughly documented
306 justification in accordance with criteria to be developed by
307 rules proposed pursuant to §33-4-15a(e) of this code.

308 (III) United States jurisdictions that meet the
309 requirement for accreditation under the National
310 Association of Insurance Commissioners' financial
311 standards and accreditation program shall be recognized as
312 qualified jurisdictions.

313 (IV) If a certified reinsurer's domiciliary jurisdiction
314 ceases to be a qualified jurisdiction, the commissioner may
315 suspend the reinsurer's certification indefinitely, in lieu of
316 revocation.

317 (iv) The commissioner shall assign a rating to each
318 certified reinsurer, giving due consideration to the financial
319 strength ratings that have been assigned by rating agencies
320 considered acceptable to the commissioner as developed by
321 rules proposed pursuant to §33-4-15a(e) of this code. The
322 commissioner shall publish a list of all certified reinsurers
323 and their ratings.

324 (v) A certified reinsurer shall secure obligations
325 assumed from United States ceding insurers under this
326 paragraph at a level consistent with its rating, as specified
327 in rules proposed pursuant to §33-4-15a(e) of this code.

328 (I) In order for a domestic ceding insurer to qualify for
329 full financial statement credit for reinsurance ceded to a
330 certified reinsurer, the certified reinsurer shall maintain
331 security in a form acceptable to the commissioner and
332 consistent with the provisions of §33-4-15a(c) of this code,
333 or in a multibeneficiary trust in accordance with §33-4-

334 15a(b)(2)(D) of this code, except as otherwise provided in
335 this paragraph.

336 (II) If a certified reinsurer maintains a trust to fully
337 secure its obligations subject to §33-4-15a(b)(2)(D) of this
338 code, and chooses to secure its obligations incurred as a
339 certified reinsurer in the form of a multibeneficiary trust, the
340 certified reinsurer shall maintain separate trust accounts for
341 its obligations incurred under reinsurance agreements
342 issued or renewed as a certified reinsurer with reduced
343 security as permitted by this paragraph or comparable laws
344 of other United States jurisdictions and for its obligations
345 subject to §33-4-15a(b)(2)(D) of this code. It shall be a
346 condition to the grant of certification under this paragraph
347 that the certified reinsurer shall have bound itself, by the
348 language of the trust and agreement with the commissioner
349 with principal regulatory oversight of each such trust
350 account, to fund, upon termination of any such trust
351 account, out of the remaining surplus of such trust any
352 deficiency of any other such trust account.

353 (III) The minimum trustee surplus requirements
354 provided in §33-4-15a(b)(2)(D) of this code are not
355 applicable with respect to a multibeneficiary trust
356 maintained by a certified reinsurer for the purpose of
357 securing obligations incurred under this paragraph, except
358 that such trust shall maintain a minimum trustee surplus of
359 \$10 million.

360 (IV) With respect to obligations incurred by a certified
361 reinsurer under this paragraph, if the security is insufficient,
362 the commissioner shall reduce the allowable credit by an
363 amount proportionate to the deficiency, and has the
364 discretion to impose further reductions in allowable credit
365 upon finding that there is a material risk that the certified
366 reinsurer's obligations may not be paid in full when due.

367 (V) For purposes of this paragraph, a certified reinsurer
368 whose certification has been terminated for any reason shall
369 be treated as a certified reinsurer required to secure 100

370 percent of its obligations. If the commissioner continues to
371 assign a higher rating as permitted by other provisions of
372 this section, this requirement does not apply to a certified
373 reinsurer in inactive status or to a reinsurer whose
374 certification has been suspended. As used in this paragraph,
375 the term “terminated” refers to revocation, suspension,
376 voluntary surrender, and inactive status.

377 (vi) If an applicant for certification has been certified as
378 a reinsurer in a National Association of Insurance
379 Commissioners’ accredited jurisdiction, the commissioner
380 may defer to that jurisdiction’s certification, and may defer
381 to the rating assigned by that jurisdiction, and such
382 assuming insurer shall be considered to be a certified
383 reinsurer in this state.

384 (vii) A certified reinsurer that ceases to assume new
385 business in this state may request to maintain its
386 certification in inactive status in order to continue to qualify
387 for a reduction in security for its in-force business. An
388 inactive certified reinsurer shall continue to comply with all
389 applicable requirements of this paragraph, and the
390 commissioner shall assign a rating that takes into account,
391 if relevant, the reasons why the reinsurer is not assuming
392 new business.

393 (F)(i) Credit shall be allowed when the reinsurance is
394 ceded to an assuming insurer meeting each of the conditions
395 set forth in this paragraph.

396 (I) The assuming insurer shall have its head office or be
397 domiciled in, as applicable, and be licensed in a reciprocal
398 jurisdiction. A “reciprocal jurisdiction” is a jurisdiction that
399 meets one of the following:

400 (a) A non-United States jurisdiction that is subject to an
401 in-force covered agreement with the United States, each
402 within its legal authority, or, where there is a covered
403 agreement between the United States and European Union,
404 is a member state of the European Union. For purposes of

405 this paragraph, a “covered agreement” is an agreement
406 entered into pursuant to Dodd-Frank Wall Street Reform
407 and Consumer Protection Act, 31 U.S.C. §§313 and 314,
408 that is currently in effect or in a period of provisional
409 application and addresses the elimination, under specified
410 conditions, of collateral requirements as a condition for
411 entering into any reinsurance agreement with a ceding
412 insurer domiciled in this state or for allowing the ceding
413 insurer to recognize credit for reinsurance;

414 (b) A United States jurisdiction that meets the
415 requirements for accreditation under the National
416 Association of Insurance Commissioners’ financial
417 standards and accreditation program; or

418 (c) A qualified jurisdiction, as determined by the
419 commissioner pursuant to §33-4-15a(b)(2)(E)(iii) of this
420 code, which is not otherwise described in §33-4-
421 15a(b)(2)(F)(i)(I)(a) or §33-4-15a(b)(2)(F)(i)(I)(b) of this
422 code and which meets certain additional requirements,
423 consistent with the terms and conditions of in-force covered
424 agreements, as specified in rules proposed pursuant to §33-
425 4-15a(e) of this code.

426 (II) The assuming insurer shall have and maintain, on an
427 ongoing basis, minimum capital and surplus, or its
428 equivalent, calculated according to the methodology of its
429 domiciliary jurisdiction, in an amount to be set forth in rules
430 proposed pursuant to §33-4-15a(e) of this code. If the
431 assuming insurer is an association, including incorporated
432 and individual unincorporated underwriters, it must have
433 and maintain, on an ongoing basis, minimum capital and
434 surplus equivalents (net of liabilities), calculated according
435 to the methodology applicable in its domiciliary
436 jurisdiction, and a central fund containing a balance in
437 amounts to be set forth in rules proposed pursuant to §33-4-
438 15a(e) of this code.

439 (III) The assuming insurer shall have and maintain, on
440 an ongoing basis, a minimum solvency or capital ratio, as

441 applicable, which will be set forth in rules proposed
442 pursuant to §33-4-15a(e) of this code. If the assuming
443 insurer is an association, including incorporated and
444 individual unincorporated underwriters, it must have and
445 maintain, on an ongoing basis, a minimum solvency or
446 capital ratio in the reciprocal jurisdiction where the
447 assuming insurer has its head office or is domiciled, as
448 applicable, and is also licensed.

449 (IV) The assuming insurer shall agree and provide
450 adequate assurance to the commissioner, in a form specified
451 by the commissioner and as set forth in rules proposed
452 pursuant to §33-4-15a(e) of this code, as follows:

453 (a) The assuming insurer shall provide prompt written
454 notice and explanation to the commissioner if it falls below
455 the minimum requirements set forth in §33-4-
456 15a(b)(2)(F)(i)(II) or §33-4-15a(b)(2)(F)(i)(III) of this code,
457 or if any regulatory action is taken against it for serious
458 noncompliance with applicable law;

459 (b) The assuming insurer shall consent in writing to the
460 jurisdiction of the courts of this state and to the appointment
461 of the commissioner as agent for service of process. The
462 commissioner may require that consent for service of
463 process be provided to the commissioner and included in
464 each reinsurance agreement. Nothing in this provision may
465 limit, or in any way alter, the capacity of parties to a
466 reinsurance agreement to agree to alternative dispute
467 resolution mechanisms, except to the extent such
468 agreements are unenforceable under applicable insolvency
469 or delinquency laws;

470 (c) The assuming insurer shall consent in writing to pay
471 all final judgments, wherever enforcement is sought,
472 obtained by a ceding insurer or its legal successor, that have
473 been declared enforceable in the jurisdiction where the
474 judgment was obtained;

475 (d) Each reinsurance agreement shall include a
476 provision requiring the assuming insurer to provide security
477 in an amount equal to 100 percent of the assuming insurer's
478 liabilities attributable to reinsurance ceded pursuant to that
479 agreement if the assuming insurer resists enforcement of a
480 final judgment that is enforceable under the law of the
481 jurisdiction in which it was obtained or a properly
482 enforceable arbitration award, whether obtained by the
483 ceding insurer or by its legal successor on behalf of its
484 resolution estate; and

485 (e) The assuming insurer shall confirm that it is not
486 presently participating in any solvent scheme of
487 arrangement which involves this state's ceding insurers, and
488 agree to notify the ceding insurer and the commissioner and
489 to provide security in an amount equal to 100 percent of the
490 assuming insurer's liabilities to the ceding insurer, should
491 the assuming insurer enter into such a solvent scheme of
492 arrangement. The security shall be in a form consistent with
493 the provisions of §33-4-15a(b)(2)(E) and §33-4-15a(c) of
494 this code and as specified by the commissioner in rules
495 proposed pursuant to §33-4-15a(e) of this code.

496 (V) The assuming insurer or its legal successor shall
497 provide, if requested by the commissioner, on behalf of
498 itself and any legal predecessors, certain documentation to
499 the commissioner, as specified by the commissioner in rules
500 proposed pursuant to §33-4-15a(e) of this code.

501 (VI) The assuming insurer shall maintain a practice of
502 prompt payment of claims under reinsurance agreements,
503 pursuant to criteria set forth by the commissioner in rules
504 proposed pursuant to §33-4-15a(e) of this code.

505 (VII) The assuming insurer's supervisory authority shall
506 confirm to the commissioner on an annual basis, as of the
507 preceding December 31 or at the annual date otherwise
508 statutorily reported to the reciprocal jurisdiction, that the
509 assuming insurer complies with the requirements set forth

510 in §33-4-15a(b)(2)(F)(i)(II) and §33-4-15a(b)(2)(F)(i)(III)
511 of this code.

512 (VIII) Nothing in this subparagraph precludes an
513 assuming insurer from providing the commissioner with
514 information on a voluntary basis.

515 (ii) In addition to the list of reciprocal jurisdictions
516 published through the National Association of Insurance
517 Commissioners' committee process, the commissioner shall
518 timely create and publish a list of reciprocal jurisdictions.

519 (I) The commissioner's list shall include any reciprocal
520 jurisdiction as defined under §33-4-15a(b)(2)(F)(i)(I)(a)
521 and §33-4-15a(b)(2)(F)(i)(I)(b) of this code and shall
522 consider any other reciprocal jurisdiction included on the
523 National Association of Insurance Commissioners' list. The
524 commissioner may approve a jurisdiction that does not
525 appear on the National Association of Insurance
526 Commissioners' list of reciprocal jurisdictions in
527 accordance with criteria to be developed by the
528 commissioner in rules proposed pursuant to §33-4-15a(e) of
529 this code.

530 (II) The commissioner may remove a jurisdiction from
531 the list of reciprocal jurisdictions upon a determination that
532 the jurisdiction no longer meets the requirements of a
533 reciprocal jurisdiction, in accordance with a process set
534 forth by the commissioner in rules proposed pursuant to
535 §33-4-15a(e) of this code, except that the commissioner
536 may not remove from the list a reciprocal jurisdiction as
537 defined under §33-4-15a(b)(2)(F)(i)(I)(a) and §33-4-
538 15a(b)(2)(F)(i)(I)(b) of this code. Upon removal of a
539 reciprocal jurisdiction from the list, credit for reinsurance
540 ceded to an assuming insurer which has its home office or
541 is domiciled in that jurisdiction shall be allowed, if
542 otherwise allowed pursuant to this section.

543 (iii) The commissioner shall timely create and publish a
544 list of assuming insurers that have satisfied the conditions

545 set forth in this paragraph and to which cessions shall be
546 granted credit in accordance with this paragraph. The
547 commissioner may add an assuming insurer to the list if a
548 National Association of Insurance Commissioners
549 accredited jurisdiction has added the assuming insurer to a
550 list of such assuming insurers or if, upon initial eligibility,
551 the assuming insurer submits the information to the
552 commissioner as required under §33-4-15a(b)(2)(F)(i)(IV)
553 of this code and complies with any additional requirements
554 that the commissioner may impose by rules proposed
555 pursuant to §33-4-15a(e) of this code, except to the extent
556 that they conflict with an applicable covered agreement.

557 (iv) If the commissioner determines that an assuming
558 insurer no longer meets one or more of the requirements
559 under this paragraph, the commissioner may revoke or
560 suspend the eligibility of the assuming insurer for
561 recognition under this paragraph in accordance with
562 procedures set forth by the commissioner in rules proposed
563 pursuant to §33-4-15a(e) of this code.

564 (I) While an assuming insurer's eligibility is suspended,
565 no reinsurance agreement issued, amended, or renewed after
566 the effective date of the suspension qualifies for credit
567 except to the extent that the assuming insurer's obligations
568 under the contract are secured in accordance with §33-4-
569 15a(c) of this code.

570 (II) If an assuming insurer's eligibility is revoked, no
571 credit for reinsurance may be granted after the effective date
572 of the revocation with respect to any reinsurance
573 agreements entered into by the assuming insurer, including
574 reinsurance agreements entered into prior to the date of
575 revocation, except to the extent that the assuming insurer's
576 obligations under the contract are secured in a form
577 acceptable to the commissioner and consistent with the
578 provisions of §33-4-15a(c) of this code.

579 (v) If subject to a legal process of rehabilitation,
580 liquidation, or conservation, as applicable, the ceding

581 insurer, or its representative, may seek and, if determined
582 appropriate by the court in which the proceedings are
583 pending, may obtain an order requiring that the assuming
584 insurer post security for all outstanding ceded liabilities.

585 (vi) Nothing in this paragraph may limit or in any way
586 alter the capacity of parties to a reinsurance agreement to
587 agree on requirements for security or other terms in that
588 reinsurance agreement, except as expressly prohibited by
589 this section or other applicable law or regulation.

590 (vii) Credit may be taken under this paragraph only for
591 reinsurance agreements entered into, amended, or renewed
592 on or after the effective date of the statute adding this
593 paragraph, and only with respect to losses incurred and
594 reserves reported on or after the later of:

595 (I) The date on which the assuming insurer has met all
596 eligibility requirements pursuant to §33-4-15a(b)(2)(F)(i) of
597 this code; and

598 (II) The effective date of the new reinsurance
599 agreement, amendment, or renewal.

600 (a) This subparagraph does not alter or impair a ceding
601 insurer's right to take credit for reinsurance, to the extent
602 that credit is not available under this paragraph, as long as
603 the reinsurance qualifies for credit under any other
604 applicable provision of this section.

605 (b) Nothing in this paragraph may authorize an
606 assuming insurer to withdraw or reduce the security
607 provided under any reinsurance agreement except as
608 permitted by the terms of the agreement.

609 (c) Nothing in this paragraph may limit, or in any way
610 alter, the capacity of parties to any reinsurance agreement to
611 renegotiate the agreement.

612 (G) Credit shall be allowed when the reinsurance is
613 ceded to an assuming insurer not meeting the requirements

614 of §33-4-15a(b)(2)(A), §33-4-15a(b)(2)(B), §33-4-
615 15a(b)(2)(C), §33-4-15a(b)(2)(D), §33-4-15a(b)(2)(E), or
616 §33-4-15a(b)(2)(F) of this code, but only as to the insurance
617 of risks located in jurisdictions where the reinsurance is
618 required by applicable law or regulation of that jurisdiction.

619 (H)(i) If the assuming insurer is not licensed, accredited,
620 or certified to transact insurance or reinsurance in this state,
621 the credit permitted by §33-4-15a(b)(2)(C) and §33-4-
622 15a(b)(2)(D) of this code may not be allowed unless the
623 assuming insurer agrees in the reinsurance agreements:

624 (I) If there is a failure of the assuming insurer to perform
625 its obligations under the terms of the reinsurance agreement,
626 the assuming insurer, at the request of the ceding insurer,
627 shall submit to the jurisdiction of any court of competent
628 jurisdiction in any state of the United States, will comply
629 with all requirements necessary to give the court
630 jurisdiction, and will abide by the final decision of the court
631 or of any appellate court upon an appeal; and

632 (II) To designate the Secretary of State as its true and
633 lawful attorney upon whom may be served any lawful
634 process in any action, suit, or proceeding instituted by or on
635 behalf of the ceding insurer.

636 (ii) This paragraph is not intended to conflict with or
637 override the obligation of the parties to a reinsurance
638 agreement to arbitrate their disputes, if this obligation is
639 created in the agreement.

640 (I) If the assuming insurer does not meet the
641 requirements of §33-4-15a(b)(2)(A), §33-4-15a(b)(2)(B),
642 §33-4-15a(b)(2)(C), or §33-4-15a(b)(2)(F) of this code, the
643 credit permitted by §33-4-15a(b)(2)(D) or §33-4-
644 15a(b)(2)(E) of this code may not be allowed unless the
645 assuming insurer agrees in the trust agreements to the
646 following conditions:

647 (i) Notwithstanding any other provisions in the trust
648 instrument, if the trust fund is inadequate because it contains
649 an amount less than the amount required by §33-4-
650 15a(b)(2)(D)(iii) of this code, or if the grantor of the trust
651 has been declared insolvent or placed into receivership,
652 rehabilitation, liquidation, or similar proceedings under the
653 laws of its state or country of domicile, the trustee shall
654 comply with an order of the commissioner with regulatory
655 oversight over the trust or with an order of a court of
656 competent jurisdiction directing the trustee to transfer to the
657 commissioner with regulatory oversight all of the assets of
658 the trust fund.

659 (ii) The assets shall be distributed by and claims shall be
660 filed with and valued by the commissioner with regulatory
661 oversight in accordance with the laws of the state in which
662 the trust is domiciled that are applicable to the liquidation
663 of domestic insurance companies.

664 (iii) If the commissioner with regulatory oversight
665 determines that the assets of the trust fund or any part
666 thereof are not necessary to satisfy the claims of the United
667 States ceding insurers of the grantor of the trust, the assets,
668 or part thereof shall be returned by the commissioner with
669 regulatory oversight to the trustee for distribution in
670 accordance with the trust agreement.

671 (iv) The grantor shall waive any right otherwise
672 available to it under United States law that is inconsistent
673 with this provision.

674 (J) If an accredited or certified reinsurer ceases to meet
675 the requirements for accreditation or certification, the
676 commissioner may suspend or revoke the reinsurer's
677 accreditation or certification.

678 (i) The commissioner shall give the reinsurer notice and
679 opportunity for hearing. The suspension or revocation may
680 not take effect until after the commissioner's order on
681 hearing, unless:

682 (I) The reinsurer waives its right to hearing;

683 (II) The commissioner's order is based on regulatory
684 action by the reinsurer's domiciliary jurisdiction or the
685 voluntary surrender or termination of the reinsurer's
686 eligibility to transact insurance or reinsurance business in its
687 domiciliary jurisdiction or in the primary certifying state of
688 the reinsurer under §33-4-15a(b)(2)(E)(vi) of this code; or

689 (III) The commissioner finds that an emergency requires
690 immediate action and a court of competent jurisdiction has
691 not stayed the commissioner's action.

692 (ii) While a reinsurer's accreditation or certification is
693 suspended, no reinsurance contract issued or renewed after
694 the effective date of the suspension qualifies for credit
695 except to the extent that the reinsurer's obligations under the
696 contract are secured in accordance with §33-4-15a(c) of this
697 code. If a reinsurer's accreditation or certification is
698 revoked, no credit for reinsurance may be granted after the
699 effective date of the revocation except to the extent that the
700 reinsurer's obligations under the contract are secured in
701 accordance with §33-4-15a(b)(2)(E)(v) or §33-4-15a(c) of
702 this code.

703 (K) Concentration Risk.

704 (i) A ceding insurer shall take steps to manage its
705 reinsurance recoverables proportionate to its own book of
706 business. A domestic ceding insurer shall notify the
707 commissioner within 30 days after reinsurance recoverables
708 from any single assuming insurer, or group of affiliated
709 assuming insurers, exceeds 50 percent of the domestic
710 ceding insurer's last reported surplus to policyholders, or
711 after it is determined that reinsurance recoverables from any
712 single assuming insurer, or group of affiliated assuming
713 insurers, is likely to exceed this limit. The notification shall
714 demonstrate that the exposure is safely managed by the
715 domestic ceding insurer.

716 (ii) A ceding insurer shall take steps to diversify its
717 reinsurance program. A domestic ceding insurer shall notify
718 the commissioner within 30 days after ceding to any single
719 assuming insurer, or group of affiliated assuming insurers,
720 more than 20 percent of the ceding insurer's gross written
721 premium in the prior calendar year, or after it has
722 determined that the reinsurance ceded to any single
723 assuming insurer, or group of affiliated assuming insurers,
724 is likely to exceed this limit. The notification shall
725 demonstrate that the exposure is safely managed by the
726 domestic ceding insurer.

727 (c) (1) An asset or a reduction from liability for the
728 reinsurance ceded by a domestic insurer to an assuming
729 insurer not meeting the requirements of §33-4-15a(b) of this
730 code shall be allowed in an amount not exceeding the
731 liabilities carried by the ceding insurer: *Provided*, That the
732 commissioner may adopt by rule pursuant to §33-4-
733 15a(e)(2) of this code specific additional requirements
734 relating to or setting forth:

735 (A) The valuation of assets or reserve credits;

736 (B) The amount and forms of security supporting
737 reinsurance arrangements described in §33-4-15a(e)(2) of
738 this code; and/or

739 (C) The circumstances pursuant to which credit will be
740 reduced or eliminated.

741 (2) The reduction shall be in the amount of funds held
742 by or on behalf of the ceding insurer, including funds held
743 in trust for the ceding insurer, under a reinsurance contract
744 with the assuming insurer as security for the payment of
745 obligations thereunder, if the security is held in the United
746 States subject to withdrawal solely by, and under the
747 exclusive control of, the ceding insurer; or, in the case of a
748 trust, held in a qualified United States financial institution,
749 as defined in §33-4-15a(d)(2) of this code. This security
750 may be in the form of:

751 (A) Cash;

752 (B) Securities listed by the Securities Valuation Office
753 of the National Association of Insurance Commissioners,
754 including those deemed exempt from filing as defined by
755 the Purposes and Procedures Manual of the Securities
756 Valuation Office, and qualifying as admitted assets;

757 (C)(i) Clean, irrevocable, unconditional letters of credit,
758 issued or confirmed by a qualified United States financial
759 institution, as defined in §33-4-15a(d)(1) of this code,
760 effective no later than December 31 of the year for which
761 the filing is being made, and in the possession of, or in trust
762 for, the ceding insurer on or before the filing date of its
763 annual statement;

764 (ii) Letters of credit meeting applicable standards of
765 issuer acceptability as of the dates of their issuance (or
766 confirmation) shall, notwithstanding the issuing (or
767 confirming) institution's subsequent failure to meet
768 applicable standards of issuer acceptability, continue to be
769 acceptable as security until their expiration, extension,
770 renewal, modification, or amendment, whichever first
771 occurs; or

772 (D) Any other form of security acceptable to the
773 commissioner.

774 (d)(1) For purposes of §33-4-15a(c)(2)(C) of this code,
775 a "qualified United States financial institution" means an
776 institution that:

777 (A) Is organized or, in the case of a United States office
778 of a foreign banking organization, licensed, under the laws
779 of the United States or any state thereof;

780 (B) Is regulated, supervised, and examined by United
781 States federal or state authorities having regulatory
782 authority over banks and trust companies; and

783 (C) Has been determined by either the commissioner or
784 the Securities Valuation Office of the National Association
785 of Insurance Commissioners to meet such standards of
786 financial condition and standing as are considered necessary
787 and appropriate to regulate the quality of financial
788 institutions whose letters of credit will be acceptable to the
789 commissioner.

790 (2) A “qualified United States financial institution”
791 means, for purposes of those provisions of this section
792 specifying those institutions that are eligible to act as a
793 fiduciary of a trust, an institution that:

794 (A) Is organized, or, in the case of a United States
795 branch or agency office of a foreign banking organization,
796 licensed, under the laws of the United States or any state
797 thereof and has been granted authority to operate with
798 fiduciary powers; and

799 (B) Is regulated, supervised, and examined by federal or
800 state authorities having regulatory authority over banks and
801 trust companies.

802 (e)(1) The commissioner may, to implement the
803 provisions of this section, propose rules for legislative
804 approval in accordance with the provisions of §29A-3-1 *et*
805 *seq.* of this code.

806 (2) The commissioner may propose rules for legislative
807 approval in accordance with the provisions of §29A-3-1 *et*
808 *seq.* of this code applicable to reinsurance arrangements as
809 described in §33-4-15a(e)(2)(A) of this code.

810 (A) A rule adopted pursuant to §33-4-15a(e)(2) of this
811 code may apply only to reinsurance relating to:

812 (i) Life insurance policies with guaranteed nonlevel
813 gross premiums or guaranteed nonlevel benefits;

814 (ii) Universal life insurance policies with provisions
815 resulting in the ability of a policyholder to keep a policy in
816 force over a secondary guarantee period;

817 (iii) Variable annuities with guaranteed death or living
818 benefits;

819 (iv) Long-term care insurance policies; or

820 (v) Such other life and health insurance and annuity
821 products as to which the National Association of Insurance
822 Commissioners adopts model regulatory requirements with
823 respect to credit for reinsurance.

824 (B) A rule adopted pursuant to §33-4-15a(e)(2)(A)(i) or
825 §33-4-15a(e)(2)(A)(ii) of this code, may apply to any treaty
826 containing:

827 (i) Policies issued on or after January 1, 2015; and/or

828 (ii) Policies issued prior to January 1, 2015, if risk
829 pertaining to such pre-2015 policies is ceded in connection
830 with the treaty, in whole or in part, on or after January 1,
831 2015.

832 (C) A rule adopted pursuant to §33-4-15a(e)(2) of this
833 code may require the ceding insurer, in calculating the
834 amounts or forms of security required to be held under rules
835 proposed under this authority, to use the Valuation Manual
836 adopted by the National Association of Insurance
837 Commissioners under Section 11B(1) of the National
838 Association of Insurance Commissioners' Standard
839 Valuation Law, including all amendments adopted by the
840 National Association of Insurance Commissioners and in
841 effect on the date as of which the calculation is made, to the
842 extent applicable.

843 (D) A rule adopted pursuant to this §33-4-15a(e)(2) of
844 this code shall not apply to cessions to an assuming insurer
845 that:

846 (i) Meets the conditions set forth in Section 2F of the
847 National Association of Insurance Commissioners' Credit
848 for Reinsurance Model Law in this state or, if this state has
849 not adopted provisions substantially equivalent to Section
850 2F of the National Association of Insurance
851 Commissioners' Credit for Reinsurance Model Law, the
852 assuming insurer is operating in accordance with provisions
853 substantially equivalent to Section 2F of the National
854 Association of Insurance Commissioners' Credit for
855 Reinsurance Model Law in a minimum of five other states;
856 or

857 (ii) Is certified in this state or, if this state has not
858 adopted provisions substantially equivalent to Section 2E of
859 the National Association of Insurance Commissioners'
860 Credit for Reinsurance Model Law, certified in a minimum
861 of five (5) other states; or

862 (iii) Maintains at least \$250 million in capital and
863 surplus when determined in accordance with the National
864 Association of Insurance Commissioners' Accounting
865 Practices and Procedures Manual, including all amendments
866 thereto adopted by the National Association of Insurance
867 Commissioners, excluding the impact of any permitted or
868 prescribed practices; and is

869 (I) Licensed in at least 26 states; or

870 (II) Licensed in at least 10 states, and licensed or
871 accredited in a total of at least 35 states.

872 (E) The authority to adopt rules pursuant to §33-4-
873 15a(e)(2) of this code does not limit the commissioner's
874 general authority to adopt rules pursuant to §33-4-15a(e)(1)
875 of this code.

876 (f) This section shall become effective on January 1,
877 2019, and shall apply to all cessions under reinsurance
878 agreements that have an inception, anniversary, or renewal
879 date on or after January 1, 2019. The amendments to this

880 section enacted during the regular session of the Legislature
881 in the year 2020 shall apply to all sessions under reinsurance
882 agreements that have an inception, anniversary, or renewal
883 date on or after January 1, 2021.

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CHAPTER 194

**(H. B. 4149 - By Delegates Westfall, Queen, Barrett,
Waxman, Hott, Williams, D. Jeffries, Kessinger,
Porterfield and Espinosa)**

[Passed February 27, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 7, 2020.]

AN ACT to amend and reenact §33-4-2 of the Code of West Virginia, 1931, as amended, relating to insurance; clarifying when insurance code chapter provisions are not applicable; adding definitions; and clarifying “service contract” and “warranty” definitions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-2. Application of chapter to particular types of insurers.

1 (a) No provision of this chapter shall apply to:

2 (1) Hospital service corporations and medical service
3 corporations except as stated in §33-24-1 *et seq.* of this
4 code;

5 (2) Fraternal benefit societies except as stated in §33-
6 23-1 *et seq.* of this code;

7 (3) Farmers’ mutual fire insurance companies except as
8 stated in §33-22-1 *et seq.* of this code;

9 (4) Warranties;

10 (5) Service contracts;

11 (6) Maintenance agreements.

12 (b) For the purposes of this article:

13 (1) “Holder” means a resident of this state who either
14 purchases a service agreement or is legally in possession of
15 a service contract and is entitled to enforce the rights of the
16 original purchaser of the service contract.

17 (2) “Incidental costs” means expenses specified in a
18 vehicle protection product warranty that are incurred by the
19 warranty holder due to the failure of a vehicle protection
20 product to perform as provided in the contract. Incidental
21 costs may be reimbursed in either a fixed amount specified
22 in the vehicle protection product warranty or by use of a
23 formula itemizing specific incidental costs incurred by the
24 warranty holder.

25 (3) “Maintenance agreement” means a contract for a
26 limited period that provides only for scheduled
27 maintenance.

28 (4) “Provider” means a person who is obligated to a
29 holder pursuant to the terms of a service contract to repair,
30 replace, or perform maintenance on or to indemnify the
31 holder for the costs of repairing, replacing, or performing
32 maintenance on goods.

33 (5) “Road hazard” means a hazard that is encountered
34 while driving a motor vehicle, which may include potholes,
35 rocks, wood debris, metal parts, glass, plastic, curbs, or
36 composite scraps.

37 (6) “Service contract” means an agreement entered into
38 for a separately stated consideration and for a specified term
39 under which a provider agrees to repair, replace, or maintain
40 a product or provide indemnification for the repair,

41 replacement, or maintenance of a product for operational or
42 structural failure caused by a defect in materials or
43 workmanship or by normal wear. A service contract may
44 additionally provide for incidental payment or indemnity
45 under limited circumstances, including towing, rental, and
46 emergency road service or for the repair or replacement of
47 a product for damage resulting from power surges or
48 accidental damage incurred in handling the product.
49 “Service contract” includes a contract or agreement that
50 provides for one or more of the following:

51 (A) The repair or replacement of tires or wheels on a
52 motor vehicle damaged as a result of coming into contact
53 with road hazards;

54 (B) The removal of dents, dings, or creases on a motor
55 vehicle that can be repaired using the process of paintless
56 dent removal without affecting the existing paint finish and
57 without replacing vehicle body panels, sanding, bonding, or
58 painting;

59 (C) The repair of chips or cracks in, or the replacement
60 of, motor vehicle windshields as a result of damage caused
61 by road hazards;

62 (D) The replacement of a motor vehicle key or key-fob
63 in the event that the key or key-fob becomes inoperable or
64 is lost or stolen;

65 (E) The repair of damage to the interior components of
66 a motor vehicle caused by wear and tear;

67 (F) The cosmetic repair of minor damage such as scuffs,
68 scratches, scrapes, or rash on exterior surfaces of a motor
69 vehicle; or

70 (G) In conjunction with a motor vehicle leased for use,
71 the repair, replacement, or maintenance of property, or
72 indemnification for repair, replacement, or maintenance,
73 due to excess wear and use, damage for items such as tires,
74 paint cracks or chips, interior stains, rips or scratches,

75 exterior dents or scratches, windshield cracks or chips,
76 missing interior or exterior parts, or excess mileage that
77 result in a lease-end charge, or any other charge for damage
78 that is deemed as excess wear and use by a lessor under a
79 motor vehicle lease, provided any such payment does not
80 exceed the purchase price of the vehicle.

81 (7) “Vehicle protection product” means a protective
82 chemical, substance, device, or system that: (A) is installed
83 on or applied to a motor vehicle; (B) is designed to prevent
84 loss or damage to a motor vehicle from a specific cause; and
85 (C) includes a vehicle protection product warranty.
86 “Vehicle protection product” does not include fuel
87 additives, oil additives, or other chemical products applied
88 to the engine, transmission, or fuel system.

89 (8) “Vehicle protection product warranty” means a
90 warranty that provides that if the vehicle protection product
91 fails to prevent loss or damage to a motor vehicle from a
92 specific cause, the warrantor will pay to or on behalf of the
93 warranty holder specified incidental costs as a result of the
94 failure of the vehicle protection product to perform pursuant
95 to the terms of the vehicle protection product warranty.

96 (9) “Warranty” means in relation to a product or service
97 an undertaking that guarantees indemnity for defective
98 parts, mechanical or electrical breakdown, labor costs, or
99 other remedial measures, such as repair or replacement of
100 the product or repetition of services, and that is made solely
101 by the manufacturer, importer, or seller of the product or
102 services made without payment of additional consideration,
103 not negotiated or separated from the sale of the product or
104 service and incidental to the sale of the product or service.
105 “Warranty” includes a vehicle protection product warranty.

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CHAPTER 195

**(Com. Sub. for H. B. 4198 - By Delegates Pyles,
Pushkin, Lavender-Bowe and S. Brown)**

[Passed March 7, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-28; to amend said code by adding thereto a new section, designated †§33-15-4w; to amend said code by adding thereto a new section, designated †§33-16-3hh; to amend said code by adding thereto a new section, designated †§33-24-7w; to amend said code by adding thereto a new section, designated †§33-25-8t; to amend said code by adding thereto a new section, designated †§33-25A-8w; and to amend said code by adding thereto a new section, designated †§33-58-1, all relating to permitting a person to obtain a 12-month supply of contraceptive drugs; incorporating these provisions into the West Virginia Public Employees Insurance Act; and incorporating these provisions into the sections of insurance code.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE, AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

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

§5-16-28. Incorporation of the coverage for 12-month refill for contraceptive drugs.

1 The provision requiring coverage for 12-month refill for
2 contraceptive drugs codified at §33-53-1 of this code is
3 made applicable to the provisions of this article.

CHAPTER 33. INSURANCE.**ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.****†§33-15-4w. Incorporation of the coverage for 12-month refill for contraceptive drugs.**

1 The provision requiring coverage for 12-month refill for
2 contraceptive drugs codified at §33-53-1 of this code is
3 made applicable to the provisions of this article.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**†§33-16-3hh. Incorporation of the coverage for 12-month refill for contraceptive drugs.**

1 The provision requiring coverage for 12-month refill for
2 contraceptive drugs codified at §33-53-1 of this code is
3 made applicable to the provisions of this article.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS, AND HEALTH SERVICE CORPORATIONS.**†§33-24-7w. Incorporation of the coverage for 12-month refill for contraceptive drugs.**

1 The provision requiring coverage for 12-month refill for
2 contraceptive drugs codified at §33-53-1 of this code is
3 made applicable to the provisions of this article.

ARTICLE 25. HEALTH CARE CORPORATIONS.

†§33-25-8t. Incorporation of the coverage for 12-month refill for contraceptive drugs.

1 The provision requiring coverage for 12-month refill for
2 contraceptive drugs codified at §33-53-1 of this code is
3 made applicable to the provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

†§33-25A-8w. Incorporation of the coverage for 12-month refill for contraceptive drugs.

1 The provision requiring coverage for 12-month refill for
2 contraceptive drugs codified at §33-53-1 of this code is
3 made applicable to the provisions of this article.

†ARTICLE 58. REQUIRED COVERAGE FOR HEALTH INSURANCE.

†§33-58-1. Coverage and dispensing birth control.

1 (a) Notwithstanding a prohibition or limitation
2 contained within the provisions of §33-1-1 *et seq.* and §5-
3 16-1 of this code an insurer subject to §5-16-1 *et seq.*, §33-
4 15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et*
5 *seq.*, and §33-25A-1 of this code which amends, renews, or
6 delivers a health policy on or after January 1, 2021, that
7 provides coverage for contraceptive drugs, shall provide
8 coverage for a 12-month refill of contraceptive drugs
9 obtained at one time by the insured after the insured has
10 completed the initial supply of the drugs, unless the insured
11 requests a smaller supply or the prescribing provider
12 instructs that the insured must receive a smaller supply. A
13 health benefit plan that provides coverage shall allow the
14 insured to receive the contraceptive drugs on-site at the
15 provider's office, if available, and dispensing practices must
16 follow all clinical guidelines for appropriate prescribing and
17 dispensing to ensure the health of the patient while
18 maximizing access to effective contraceptive drugs.

† Redesignated

19 (b) A health benefit plan that provides coverage for
20 hormonal contraceptives, in the absence of clinical
21 contraindications, may not impose utilization controls or
22 other forms of medical management limiting the supply of
23 contraceptive drugs that may be dispensed or furnished by
24 a provider or pharmacy, or at a location licensed or
25 otherwise authorized to dispense drugs or supplies, to an
26 amount that is less than a 12-month supply.

27 (c) This section does not exclude coverage for
28 contraceptive drugs as prescribed by a provider for reasons
29 other than contraceptive purposes, such as decreasing the
30 risk of ovarian cancer or eliminating symptoms of
31 menopause, or for contraception that is necessary to
32 preserve the life or health of an enrollee.

33 (d) Nothing in this section requires a health benefit plan
34 to cover contraceptive drugs provided by a provider,
35 pharmacy, or at a location authorized to dispense drugs or
36 supplies, that does not participate in the health benefit plan's
37 provider or pharmacy network, as applicable, except as may
38 be otherwise authorized or required by state law or by the
39 plan's policies governing out-of-network coverage.

40 (e) For purposes of this section, the term "contraceptive
41 drugs" means all drugs approved by the United States Food
42 and Drug Administration that are used to prevent
43 pregnancy, including, but not limited to, hormonal drugs
44 administered orally, transdermally, and intravaginally.

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CHAPTER 196

(H. B. 4359 - By Delegates Westfall and Porterfield)
[By Request of the West Virginia Insurance Commission]

[Passed February 27, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 7, 2020.]

AN ACT to amend and reenact §33-6-34 of the Code of West Virginia, 1931, as amended, relating to modifying the filing fees for insurers; permitting multiple insurers to make a single filing with a fee collected from each insurer; defining “filing”; and deleting language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-34. Fee for form, rate, and rule filing.

1 (a) As used in this section, “filing” means any form
2 filing made pursuant to §33-6-8 of this code or any rule or
3 rate filing made pursuant to this chapter.

4 (b) A fee of \$100 shall be submitted with each filing for
5 each insurer, irrespective of the number of forms, rules, or rates
6 included within or affected by the filing. If a filing is made on
7 behalf of more than one insurer, other than a filing made by a
8 rating organization licensed by the commissioner, the
9 applicable fee shall be \$100 multiplied by the number of
10 insurers on whose behalf the filing is made. Fees submitted
11 pursuant to this section may not be refunded, and a
12 resubmission of a filing previously disapproved by the
13 commissioner shall be considered a new filing for the purposes
14 of the filing fee. Any request by the commissioner for
15 additional information pertaining to a form filing shall not be
16 considered a new filing for purposes of the filing fee. All fees
17 collected pursuant to this section shall be used for the operation
18 of the offices of the Insurance Commissioner.

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CHAPTER 197

**(Com. Sub. for H. B. 4361 - By Delegates Westfall,
Azinger, Nelson, Hott, D. Jeffries and Espinosa)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §33-41-4a, and §33-41-11a; and to amend and reenact §33-41-2, §33-41-5, §33-41-8, §33-41-11, and §33-41-12 of said code, all relating to insurance law violations; defining “fraudulent insurance act”; allowing Insurance Commissioner to accept proceeds from court ordered forfeiture proceedings; creating special revenue fund; providing for legislative appropriation of fund; requiring person engaged in the business of insurance to report to the Insurance Commissioner suspected insurance law violations; permitting insurance fraud unit to administer oaths or affirmations, execute search and arrest warrants, make arrests upon probable cause without a warrant, and participate in the prosecution of workers’ compensation fraud; making the commission of a fraudulent insurance act a violation of law; mandating that a person convicted of a felony involving dishonesty, breach of trust, or a law reasonably related to the business of insurance is disqualified from participating in the business of insurance; requiring insurance companies to have antifraud initiatives; allowing the Insurance Commissioner to promulgate rules; and providing for criminal penalties and restitution for insurance law violations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.

§33-41-2. Definitions.

1 As used in this article:

2 (a) “Benefits” mean money payments, goods, services,
3 or other thing of value paid in response to a claim filed with
4 an insurer based upon a policy of insurance.

5 (b) “Business of insurance” means the writing of
6 insurance, including the writing of workers’ compensation
7 insurance under the provisions of §23-1-1 *et seq.* of this
8 code, self-insurance by an employer or employer group for
9 workers’ compensation risk including the risk of
10 catastrophic injuries under the provisions of §23-1-1 *et seq.*
11 of this code, or the reinsuring of risks by an insurer,
12 including acts necessary or incidental to writing insurance
13 or reinsuring risks and the activities of persons who act as
14 or are officers, directors, agents, or employees of insurers,
15 or who are other persons authorized to act on their behalf.

16 (c) “Claim” means an application or request for
17 payment or benefits provided under the terms of a policy of
18 insurance.

19 (d) “Commissioner” means the Insurance
20 Commissioner of West Virginia or his or her designee.

21 (e) “Fraudulent insurance act” means an act or omission
22 committed by a person who knowingly and with intent to
23 defraud misrepresents or conceals any material information
24 concerning one or more of the following:

25 (1) Presenting, causing to be presented, or preparing
26 with knowledge or belief that it will be presented to or by
27 an insurer, a reinsurer, broker, or its agent, false information
28 as part of, in support of, or concerning a fact material to one
29 or more of the following:

30 (A) An application for the issuance or renewal of an
31 insurance policy or reinsurance contract;

32 (B) The rating of an insurance policy or reinsurance
33 contract;

34 (C) A claim for payment or benefit pursuant to an
35 insurance policy or reinsurance contract;

36 (D) Premiums paid on an insurance policy or
37 reinsurance contract;

38 (E) Payments made in accordance with the terms of an
39 insurance policy or reinsurance contract;

40 (F) A document filed with the commissioner or the chief
41 insurance regulatory official of another jurisdiction;

42 (G) The financial condition of an insurer or reinsurer;

43 (H) The formation, acquisition, merger,
44 reconsolidation, dissolution, or withdrawal from one or
45 more lines of insurance or reinsurance in all or part of this
46 state by an insurer or reinsurer;

47 (I) The issuance of written evidence of insurance; or

48 (J) The reinstatement of an insurance policy.

49 (2) Solicitation or acceptance of new or renewal
50 insurance risks on behalf of an insurer, reinsurer, or other
51 person engaged in the business of insurance by a person who
52 knows or should know that the insurer or other person
53 responsible for the risk is insolvent at the time of the
54 transaction;

55 (3) Removal, concealment, alteration, or destruction of
56 the assets or records of an insurer, reinsurer, or other person
57 engaged in the business of insurance;

58 (4) Willful embezzlement, abstracting, purloining, or
59 conversion of moneys, funds, premiums, credits, or other
60 property of an insurer, reinsurer, or person engaged in the
61 business of insurance;

62 (5) Transaction of the business of insurance in violation
63 of laws requiring a license, certificate of authority, or other

64 legal authority for the transaction of the business of
65 insurance; or

66 (6) Attempt to commit, aiding, or abetting in the
67 commission of, or conspiracy to commit the acts or
68 omissions specified in this subdivision.

69 (f) “Health care provider” means a person, partnership,
70 corporation, facility, or institution licensed by, or certified
71 in, this state or another state, to provide health care or
72 professional health care services, including, but not limited
73 to, a physician, osteopathic physician, hospital, dentist,
74 registered or licensed practical nurse, optometrist,
75 pharmacist, podiatrist, chiropractor, physical therapist, or
76 psychologist.

77 (g) “Insurance” means a contract or arrangement in
78 which a person undertakes to:

79 (1) Pay or indemnify another person as to loss from
80 certain contingencies called “risks”, including through
81 reinsurance;

82 (2) Pay or grant a specified amount or determinable
83 benefit to another person in connection with ascertainable
84 risk contingencies;

85 (3) Pay an annuity to another person;

86 (4) Act as surety; or

87 (5) Self-insurance for workers’ compensation risk,
88 including the risk of catastrophic injuries pursuant to the
89 provisions of §23-1-1 *et seq.* of this code.

90 (h) “Insurer” means a person entering into arrangements
91 or contracts of insurance or reinsurance. Insurer includes,
92 but is not limited to, any domestic or foreign stock company,
93 mutual company, mutual protective association, farmers’
94 mutual fire companies, fraternal benefit society, reciprocal
95 or interinsurance exchange, nonprofit medical care

96 corporation, nonprofit health care corporation, nonprofit
97 hospital service association, nonprofit dental care
98 corporation, health maintenance organization, captive
99 insurance company, risk retention group, or other insurer,
100 regardless of the type of coverage written, including the
101 writing of workers' compensation insurance or self
102 insurance under the provisions of this code, benefits
103 provided, or guarantees made by each. A person is an
104 insurer regardless of whether the person is acting in
105 violation of laws requiring a certificate of authority or
106 regardless of whether the person denies being an insurer.

107 (i) "Person" means an individual, a corporation, a
108 limited liability company, a partnership, an association, a
109 joint stock company, a trust, trustees, an unincorporated
110 organization, or any similar business entity, or any
111 combination of the foregoing. "Person" also includes
112 hospital service corporations, medical service corporations,
113 and dental service corporations as defined in §33-24-1 *et*
114 *seq.* of this code, health care corporations as defined in, §33-
115 25-1 *et seq.* of this code, or a health maintenance
116 organization organized pursuant to §33-25A-1 *et seq.* of this
117 code.

118 (j) "Policy" means an individual or group policy, group
119 certificate, contract or arrangement of insurance or
120 reinsurance, coverage by a self-insured employer or
121 employer group for its workers' compensation risk
122 including its risk of catastrophic injuries or reinsurance,
123 affecting the rights of a resident of this state or bearing a
124 reasonable relation to this state, regardless of whether
125 delivered or issued for delivery in this state.

126 (k) "Reinsurance" means a contract, binder of coverage
127 (including placement slip) or arrangement under which an
128 insurer procures insurance for itself in another insurer as to
129 all or part of an insurance risk of the originating insurer.

130 (l) "Statement" means any written or oral representation
131 made to any person, insurer or authorized agency. A

132 statement includes, but is not limited to, any oral report or
133 representation; any insurance application, policy, notice or
134 statement; any proof of loss, bill of lading, receipt for
135 payment, invoice, account, estimate of property damages, or
136 other evidence of loss, injury or expense; any bill for
137 services, diagnosis, prescription, hospital or doctor record,
138 X-ray, test result or other evidence of treatment, services or
139 expense; and any application, report, actuarial study, rate
140 request or other document submitted or required to be
141 submitted to any authorized agency. A statement also
142 includes any written or oral representation recorded by
143 electronic or other media.

144 (m) "Unit" means the insurance fraud unit established
145 pursuant to the provisions of this article acting collectively
146 or by its duly authorized representatives.

**§33-41-4a. Acceptance of forfeiture proceeds by
commissioner; creation of special revenue fund; court
awards of investigation costs.**

1 (a) The commissioner may accept proceeds of court
2 ordered forfeiture proceedings involving the prosecution of
3 fraudulent insurance acts.

4 (b) Forfeiture proceeds shall be deposited into the
5 special revenue account established in subsection (c) of this
6 section, and the commissioner may make expenditures from
7 the fund in order to effectuate the purposes of this article.

8 (c) The Insurance Fraud Prevention Fund is hereby
9 created. The fund shall be administered by the
10 commissioner and shall consist of all moneys made
11 available from court ordered forfeiture proceedings
12 involving the prosecution of fraudulent insurance acts,
13 including all interest or other return earned from investment
14 of the fund which may be invested in the manner permitted
15 by §12-6C-9 of this code. Expenditures from the fund shall
16 be for the purposes set forth in this article and are not
17 authorized from collections but are to be made only in

18 accordance with appropriation by the Legislature and in
19 accordance with the provisions of §12-3-1, *et seq.* of this
20 code and upon the fulfillment of the provisions set forth in
21 §11B-2-1, *et seq.* of this code: *Provided*, That for the fiscal
22 year ending June 30, 2021, expenditures are authorized
23 from collections rather than pursuant to an explicit
24 appropriation by the Legislature. Any balance, including
25 accrued interest and other returns, remaining in the fund at
26 the end of each fiscal year shall not revert to the General
27 Revenue Fund but shall remain in the fund and be expended
28 as provided by this section.

§33-41-5. Mandatory reporting of insurance fraud or criminal offenses otherwise related to the business of insurance.

1 (a) A person engaged in the business of insurance
2 having knowledge or a reasonable belief that a fraudulent
3 insurance act or another crime related to the business of
4 insurance is being, will be, or has been committed shall
5 provide to the commissioner the information required by,
6 and in a manner prescribed by, the commissioner.

7 (b) Any other person having knowledge or a reasonable
8 belief that a fraudulent insurance act or another crime
9 related to the business of insurance is being, will be, or has
10 been committed may provide to the commissioner the
11 information requested by, and in a manner prescribed by,
12 the commissioner.

13 (c) The commissioner may prescribe a reporting form to
14 facilitate reporting of possible fraudulent insurance acts or
15 other offenses related to the business of insurance for use by
16 persons other than those persons referred to in subsection
17 (a) of this section.

18 (d) Notwithstanding any other provision of this code, a
19 person engaged in the business of insurance shall furnish
20 and disclose any information, including documents,
21 materials, or other information in its possession concerning
22 a fraudulent insurance act or a suspected fraudulent

23 insurance act to the commissioner. Disclosures provided
24 pursuant to this section are subject to the confidentiality
25 provisions set forth in §33-41-7 of this code.

**§33-41-8. Creation of Insurance Fraud Unit; purpose; duties;
personnel qualifications.**

1 (a) There is established the West Virginia Insurance
2 Fraud Unit within the offices of the commissioner. The
3 commissioner may employ full-time supervisory, legal, and
4 investigative personnel for the unit who shall be qualified
5 by training and experience in the areas of detection,
6 investigation, or prosecution of fraud within and against the
7 insurance industry to perform the duties of their positions.
8 The director of the unit is a full-time position and shall be
9 appointed by the commissioner and serve at his or her will
10 and pleasure. The commissioner shall provide office space,
11 equipment, and supplies, and shall employ and train
12 personnel, including legal counsel, investigators, auditors
13 and clerical staff necessary for the unit to carry out its duties
14 and responsibilities under this article as the commissioner
15 determines is necessary.

16 (b) It is the duty of the unit to:

17 (1) Initiate inquiries and conduct investigations when
18 the unit has cause to believe violations of any of the
19 following provisions of this code relating to the business of
20 insurance have been or are being committed: §33-1-1 *et seq.*
21 and §23-1-1 *et seq.* of this code; §61-3-1 *et seq.* of this code;
22 and §61-4-5 of this code. Notwithstanding any provision of
23 this code to the contrary, the unit may, with the agreement
24 of the Director of the Public Employees Insurance Agency,
25 conduct investigations related to possible fraud under §5-
26 16-1 *et seq.* of this code;

27 (2) Review reports or complaints of alleged fraud
28 related to the business of insurance activities from federal,
29 state, and local law-enforcement and regulatory agencies,
30 persons engaged in the business of insurance and the general

31 public to determine whether the reports require further
32 investigation;

33 (3) Conduct independent examinations of alleged
34 fraudulent activity related to the business of insurance and
35 undertake independent studies to determine the extent of
36 fraudulent insurance acts; and

37 (4) Perform any other duties related to the purposes of
38 this article assigned to it by the commissioner.

39 (c) The unit may:

40 (1) Inspect, copy, or collect records and evidence;

41 (2) Serve subpoenas issued by grand juries and trial
42 courts in criminal matters;

43 (3) Administer oaths and affirmations;

44 (4) Share records and evidence with federal, state, or
45 local law-enforcement or regulatory agencies, and enter into
46 interagency agreements. For purposes of carrying out
47 investigations under this article, the unit shall be considered
48 a criminal justice agency under all federal and state laws and
49 regulations and as such shall have access to any information
50 that is available to other criminal justice agencies
51 concerning violations of the insurance laws of West
52 Virginia or related criminal laws;

53 (5) Make criminal referrals to the county prosecutors;

54 (6) Execute search warrants and arrest warrants for
55 criminal violations of the insurance laws of West Virginia
56 or related criminal laws: *Provided*, That those persons
57 designated by the commissioner to do so meet the
58 requirements of and are certified as law-enforcement
59 officers under §30-29-5 of this code and the certification is
60 currently active;

61 (7) Arrest upon probable cause, without a warrant a
62 person found in the act of violating or attempting to violate
63 an insurance law of West Virginia or related criminal law:
64 *Provided*, That those persons designated by the
65 commissioner to do so meet the requirements of and are
66 certified as law-enforcement officers under §30-29-5 of this
67 code and the certification is currently active;

68 (8) Conduct investigations outside this state. If the
69 information the unit seeks to obtain is located outside this
70 state, the person from whom the information is sought may
71 make the information available to the unit to examine at the
72 place where the information is located. The unit may
73 designate representatives, including officials of the state in
74 which the matter is located, to inspect the information on
75 behalf of the unit, and may respond to similar requests from
76 officials of other states;

77 (9) Initiate investigations and participate in the
78 development of, and, if necessary, the prosecution of, any
79 health care provider, including a provider of rehabilitation
80 services, suspected of fraudulent activity related to the
81 business of insurance; and

82 (10) Initiate investigations and participate in the
83 development of, and, if necessary, the investigation, control,
84 and prosecution of, any workers' compensation fraud, as
85 previously assigned to the workers' compensation fraud and
86 abuse unit created pursuant to §23-1-1b of this code.

87 (d) Specific personnel of the unit designated by the
88 commissioner may operate vehicles owned or leased for the
89 state displaying Class A registration plates.

90 (e) Notwithstanding any provision of this code to the
91 contrary, specific personnel of the unit designated by the
92 commissioner may carry firearms in the course of their
93 official duties after meeting specialized qualifications
94 established by the Governor's Committee on Crime,
95 Delinquency, and Correction, which shall include the

96 successful completion of handgun training provided to law-
97 enforcement officers by the West Virginia State Police:
98 *Provided*, That nothing in this subsection shall be construed
99 to include any person designated by the commissioner as a
100 law-enforcement officer as that term is defined by the
101 provisions of §30-29-1 of this code; and

102 (f) The unit is not subject to the provisions of §6-9A-1
103 *et seq.* of this code and the investigations conducted by the
104 unit and the materials placed in the files of the unit as a
105 result of any such investigation are exempt from public
106 disclosure under the provisions of §29B-1-1 *et seq.* of this
107 code.

§33-41-11. Fraudulent insurance acts; interference and participation of convicted felons prohibited.

1 (a) A person shall not commit a fraudulent insurance act
2 as defined in §33-41-2 of this code.

3 (b) A person shall not knowingly or intentionally
4 interfere with the enforcement of the provisions of this
5 article or investigations of suspected or actual violations of
6 this article.

7 (c) A person convicted of a felony involving dishonesty
8 or breach of trust, or a felony violation law reasonably
9 related to the business of insurance, shall not participate in
10 the business of insurance.

11 (d) A person in the business of insurance shall not
12 knowingly or intentionally permit a person convicted of a
13 felony involving dishonesty or breach of trust, or of a felony
14 reasonably related to the business of insurance, to
15 participate in the business of insurance.

§33-41-11a. Insurer antifraud initiatives.

1 (a) Insurers shall have antifraud initiatives reasonably
2 calculated to detect, prosecute, and prevent fraudulent
3 insurance acts.

4 (b) Antifraud initiatives may include:

5 (1) Fraud investigators, who may be insurer employees
6 or independent contractors; or

7 (2) An antifraud plan submitted to the commissioner.
8 Antifraud plans submitted to the commissioner are
9 privileged and confidential, are exempt from public
10 disclosure under the provisions of §29B-1-1 *et seq.* of this
11 code, and are not subject to discovery or subpoena in a civil
12 or criminal action.

13 (c) The commissioner may propose legislative rules for
14 promulgation in accordance with §29A-3-1 *et seq.* of this
15 code to set forth requirements or standards for the
16 submission of insurer antifraud plans.

**§33-41-12. Civil and criminal penalties; injunctive relief;
employment disqualification; restitution.**

1 (a) A person or entity engaged in the business of
2 insurance or a person or entity making a claim against an
3 insurer who violates any provision of this article may be
4 subject to the following:

5 (1) Where applicable, suspension or revocation of
6 license or certificate of authority or a civil penalty of up to
7 \$10,000 per violation, or where applicable, both.
8 Suspension or revocation of license or certificate of
9 authority or imposition of civil penalties may be pursuant to
10 an order of the commissioner issued pursuant to the
11 provisions of §33-2-13 of this code. The commissioner's
12 order may require a person found to be in violation of this
13 article to make reasonable restitution to persons aggrieved
14 by violations of this article. The commissioner may assess a
15 person sanctioned pursuant to the provisions of this section
16 the cost of investigation;

17 (2) Notwithstanding any other provision of law, a civil
18 penalty imposed pursuant to the provisions of this section is
19 mandatory and not subject to suspension;

20 (3) A person convicted of a felony violation law
21 reasonably related to the business of insurance shall be
22 disqualified from engaging in the business of insurance; and

23 (4) The commissioner may apply for a temporary or
24 permanent injunction in any appropriate circuit court of this
25 state seeking to enjoin and restrain a person from violating
26 or continuing to violate the provisions of this article or rule
27 promulgated under this article, notwithstanding the
28 existence of other remedies at law. The circuit court shall
29 have jurisdiction of the proceeding and have the power to
30 make and enter an order or judgment awarding temporary
31 or permanent injunctive relief restraining any person from
32 violating or continuing to violate any provision of this
33 article or rule promulgated under the article as in its
34 judgment is proper.

35 (b) Any person who commits a violation of the
36 provisions of §33-41-11 of this code where the benefit
37 sought is \$1,000 or more in value is guilty of a felony and,
38 upon conviction thereof, shall be imprisoned in a
39 correctional facility for not less than one nor more than 10
40 years, fined not more than \$10,000, or both fined and
41 imprisoned, or in the discretion of the court, confined in jail
42 for not more than one year and fined not more than \$10,000,
43 or both fined and confined.

44 (c) Any person who commits a violation of the
45 provisions of §33-41-11 of this code where the benefit
46 sought is less than \$1,000 in value is guilty of a
47 misdemeanor and, upon conviction thereof, shall be
48 confined in jail for not more than one year, or fined not more
49 than \$2,500, or both fined and confined.

50 (d) Any person convicted of a violation of §33-41-11 of
51 this code is subject to the restitution provisions of §61-11A-
52 1 of this code.

53 (e) A court may award to the unit or other law-
54 enforcement agency investigating a violation of §33-41-11

55 of this code or other criminal offense related to the business
56 of insurance its cost of investigation.

57 (f) In addition to the provisions of this section, the
58 offenses enumerated in §61-3-24e through §61-3-24h,
59 inclusive, of this code are applicable to matters concerning
60 workers' compensation insurance.

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CHAPTER 198

**(H. B. 4466 - By Delegates Hott, Westfall, Nelson,
Williams, Howell, Porterfield and Espinosa)**

[Passed March 4, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-53-1, §33-53-2, §33-53-3, §33-53-4, §33-53-5, §33-53-6 and §33-53-7, all relating to certificates of insurance for property or casualty insurance; specifying short title; defining terms; establishing form requirements; providing limitations for certificates of service; setting forth limitations on use; addressing notice requirements; setting forth applicability and internal effective date; and providing for enforcement by Commissioner of Insurance, for penalties, and for rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 53. CERTIFICATES OF INSURANCE.

§33-53-1. Short title.

1 This article shall be known as the “Certificates of
2 Insurance Act”.

§33-53-2. Definitions.

1 For purposes of this article:

2 “Certificate of insurance” means a document or
3 instrument, regardless of how titled or described, that is
4 prepared or issued by an insurer or insurance producer as
5 evidence or confirmation of the existence of property or
6 casualty insurance coverage. The term does not include a
7 statement of declaration, policy of insurance, insurance
8 binder, policy endorsement, or automobile insurance
9 identification or information card.

10 “Insurance producer” means a person required to be
11 licensed under the laws of this state to sell, solicit, or
12 negotiate property or casualty insurance.

13 “Insurer” means any organization that issues property or
14 casualty insurance.

15 “Person” means any individual, partnership,
16 corporation, association, or other legal entity, including any
17 government or governmental subdivision or agency.

§33-53-3. Certificate forms.

1 (a) The Commissioner of Insurance shall prohibit the
2 use of a certificate of insurance form if the form:

3 (1) Is unfair, misleading, or deceptive, or violates public
4 policy; or

5 (2) Violates any law, including any rule promulgated by
6 the commissioner.

7 (b) A certificate of insurance is not a policy of insurance
8 and does not affirmatively or negatively amend, extend, or
9 alter the coverage afforded by the policy to which the
10 certificate of insurance makes reference. A certificate of
11 insurance does not confer to any person new or additional
12 rights beyond what the referenced policy of insurance
13 expressly provides.

§33-53-4. Limitations on use.

1 (a) A person may not:

2 (1) Prepare, issue, or request or require the issuance of
3 a certificate of insurance that contains any false or
4 misleading information concerning the policy of insurance
5 to which the certificate of insurance refers; or

6 (2) Prepare, issue, or request or require the issuance of
7 a certificate of insurance that purports to affirmatively or
8 negatively alter, amend, or extend the coverage provided by
9 the policy of insurance to which the certificate of insurance
10 refers.

11 (b) A certificate of insurance may not warrant that the
12 policy of insurance referenced in the certificate comply with
13 the insurance or indemnification requirements of a contract
14 and the inclusion of a contract number or description within
15 a certificate of insurance may not be interpreted as doing
16 such.

§33-53-5. Notice requirements.

1 A person is entitled to notice of cancellation,
2 nonrenewal, or any material change, and to any similar
3 notice concerning a policy of insurance only if the person
4 has such notice rights under the terms of the policy of
5 insurance or any endorsement to the policy. The terms and
6 conditions of the notice are governed by the policy of
7 insurance or endorsement and may not be altered by a
8 certificate of insurance.

§33-53-6. Applicability.

1 (a) The provisions of this article apply to all certificates
2 of insurance issued in connection with a property or casualty
3 insurance policy issued or renewed on or after July 1, 2020,
4 and in connection with property, operations, or risks located
5 in this state, regardless of where the policyholder, insurer,

6 insurance producer, or person requesting or requiring the
7 issuance of a certificate of insurance is located.

8 (b) A certificate of insurance or any other document or
9 correspondence prepared, issued, requested, or required in
10 violation of this article is void.

§33-53-7. Enforcement, penalties and rulemaking.

1 (a) The Commissioner of Insurance shall examine and
2 investigate the activities of any person that the
3 commissioner reasonably believes has been or is engaged in
4 an act or practice prohibited by this article.

5 (b) The commissioner may enforce the provisions of
6 this article by any means permissible in this chapter,
7 including by issuing orders to cease and desist. Any person
8 who violates a provision of this article may, after notice and
9 hearing pursuant to §33-2-13 of this code, be fined by the
10 commissioner a sum not to exceed \$1,000 per violation.

11 (c) The commissioner may propose rules for legislative
12 approval in accordance with the provisions of §29A-3-1 *et*
13 *seq.* of this code, necessary or reasonable to carry out the
14 provisions of this article.



CHAPTER 199

**(H. B. 4477 - By Delegates Westfall, Nelson, Criss,
Queen, Householder, Espinosa and Porterfield)**

[Passed February 28, 2020; in effect from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §33-27A-1, §33-
27A-2, §33-27A-3, §33-27A-4, §33-27A-5, §33-27A-6, §33-

27A-7, §33-27A-8, §33-27A-9, §33-27A-10, §33-27A-11, §33-27A-12, §33-27A-13, and §33-27A-14, all relating to creating the enactment and operation of the West Virginia mutual to mutual insurance holding company act; providing a short title; defining certain terms; establishing a procedure for reorganization of a mutual insurance company into a stock company; providing voting rights of mutual policy holders regarding reorganization and associated notice of public hearings; requiring review of reorganization plan by the Insurance Commissioner, and establishing procedures therefor; establishing procedures for amendment of articles of incorporation of mutual holding companies; requiring continued corporate existence of reorganized mutual insurance companies; stating responsible party for payment of costs and expenses of reorganization; establishing procedures for reorganization of a mutual insurance company; related to membership in a mutual insurance company; establishing the applicability of other laws to the reorganization and resultant companies; prescribing that the mutual insurance company be treated as an insurer; providing the time in which a reorganization may be challenged; and authorizing the Insurance Commissioner to implement necessary rules.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 27A. WEST VIRGINIA MUTUAL TO MUTUAL
INSURANCE HOLDING COMPANY ACT.**

§33-27A-1. Short Title.

1 This article may be cited as the “West Virginia Mutual
2 to Mutual Insurance Holding Company Act.”

§33-27A-2. Definitions.

1 As used in this article:

2 “Intermediate holding company” means a stock
3 corporation that owns all of the shares of voting stock of one
4 or more recognized stock companies after a reorganization
5 pursuant to this article. “Intermediate holding company”

6 also means a stock company that is the parent or subsidiary
7 of another intermediate holding company.

8 “Mutual insurance company” means a domestic or
9 foreign mutual Insurance company. “Mutual insurance
10 holding company” means a domestic mutual insurance
11 holding company incorporated pursuant to a reorganization
12 plan adopted pursuant to this article, which company is the
13 parent company of a reorganized stock company or of an
14 intermediate holding company.

15 “Policyholder” means the person, group of persons,
16 association, corporation, partnership, member or other
17 entity named as the insured under a mutual policy of
18 insurance.

19 “Reorganization plan” means a reorganization plan
20 adopted by a mutual insurance company’s board of directors
21 in accordance with the provisions of this article.

22 “Reorganized stock company” means the domestic or
23 foreign stock insurance company resulting from a domestic
24 or foreign mutual insurance company’s reorganization
25 under this article.

26 “Voting Stock” means securities of any class or any
27 ownership interests having voting power for the election of
28 directors, trustees, or management of a person, other than
29 securities having voting power only as a result of the
30 occurrence of a contingency.

**§33-27A-3. Conversion of mutual insurance company into
stock company that is majority owned subsidiary of
mutual insurance holding company.**

1 (a) A mutual insurance company, by itself or together
2 with one or more mutual insurance companies acting
3 pursuant to a joint reorganization plan, may reorganize in
4 accordance with the requirements of this article,
5 notwithstanding other provisions of this chapter or the
6 provisions of §23-2C-3 of this code.

7 (b)(1) Such a reorganization plan may only be
8 adopted by the affirmative vote of not less than two-thirds
9 of the mutual insurance company's board of directors.

10 (2) At any time prior to the mailing of the notice to
11 policyholders required pursuant to §33-27A-4 of this code,
12 a mutual insurance company's board of directors may
13 amend the reorganization plan by affirmative vote of not
14 less than two-thirds of the board of directors. At any time
15 before a reorganization plan has received approval of the
16 Insurance Commissioner, a mutual insurance company's
17 board of directors may withdraw the reorganization plan by
18 the affirmative vote of not less than two-thirds of the board
19 of directors.

20 (c) A reorganization plan shall provide for the
21 incorporation of a mutual insurance holding company, and
22 shall provide for the continuation of the corporate existence
23 of the mutual insurance company as a stock insurance
24 company.

25 (d) A reorganization plan shall provide that all of the
26 initial shares of voting stock of a reorganized stock
27 company shall be issued to its parent mutual insurance
28 holding company or to an intermediate holding company.
29 Nothing in this article shall be construed as limiting or
30 restricting the authority of a reorganized stock company or
31 of an intermediate holding company to issue securities other
32 than voting stock.

33 (e) A reorganization plan shall provide that the
34 membership interests of the policyholders of a mutual
35 insurance company shall become membership interests in
36 the mutual insurance holding company, and that
37 concurrently the policyholder's membership interests in the
38 mutual insurance company shall be extinguished.

39 (f) A reorganization plan shall provide that the
40 policyholders of the reorganized stock company shall
41 become members of the mutual insurance holding company

42 in accordance with the articles of the incorporation and of
43 the mutual holding company.

44 (g) A reorganization plan shall provide that the mutual
45 insurance holding company shall at all times own a majority
46 of the voting stock of the reorganized stock company.
47 Alternatively, a reorganization plan shall provide that the
48 mutual insurance holding company shall at all times own
49 a majority of the voting stock of an intermediate holding
50 company, which intermediate holding companies shall at all
51 times own all of the voting stock of the reorganized stock
52 company. The shares of voting stock required to be owned
53 by the mutual insurance holding company, and by the
54 intermediate holding company, if any, shall not be pledged,
55 hypothecated, or in any way incumbered with regard to any
56 obligation, guarantee or commitment undertaken by or on
57 behalf of the mutual insurance holding company, or the
58 intermediate holding company, if any.

59 (h) The board of directors of a mutual insurance
60 company shall file all of the following with the Insurance
61 Commissioner within 90 days after adopting a
62 reorganization plan:

63 (1) The reorganization plan;

64 (2) The forms of notices to be provided to policyholders;

65 (3) The form of proxy, if any, to be solicited from
66 policyholders;

67 (4) The proposed articles of incorporation for the mutual
68 insurance holding company and the reorganized stock
69 company, and, if applicable, for an intermediate holding
70 company. The articles of incorporation shall be signed by
71 the chairperson of the board, the president or vice-president,
72 and by the secretary or an assistant secretary of the mutual
73 insurance company.

74 (5) Such other documents or information as may be
75 required by the Insurance Commissioner.

76 (i) Nothing in this article shall limit or restrict an
77 intermediate holding company's authority to form or
78 acquire the control of other corporations, whether domestic
79 or foreign, profit or nonprofit.

§33-27A-4. Voting rights of mutual policyholders regarding reorganization; notice of public hearing.

1 (a) A reorganization plan adopted by a mutual insurance
2 company's board of directors shall be voted upon by the
3 mutual insurance company's policyholders at a
4 policyholders meeting. A policyholder is entitled to cast
5 only one vote, in person or by proxy, on the reorganization
6 plan regardless of the number of policies or contracts that
7 the policyholder may own or hold. Only proxies specifically
8 related to the reorganization plan shall be used in
9 determining whether the reorganization plan is approved.

10 (b) All policyholders shall be given notice of the
11 policyholders meeting to vote upon the reorganization plan
12 at least 30 days prior to the date fixed for the policyholder's
13 meeting. Notice of the time and place of such meeting shall
14 be sent by mail to each policyholder at the policyholder's
15 post office address as it appears on the books and records of
16 the company. The notice shall include a summary of the
17 reorganization plan adopted by the board of directors,
18 including an analysis of the material financial aspects and
19 potential for dissolution of the policyholder's interests in the
20 mutual insurance company under the reorganization plan, a
21 uniform ballot for voting on the question of the
22 reorganization plan, and a statement informing the
23 policyholders that the Insurance Commissioner may fix a
24 time and place for a public hearing on the reorganization
25 plan, to be held within 30 days after the Insurance
26 Commissioner's receipt of written notice from the of the
27 policyholders approval of the reorganization plan.

28 (c) A reorganization plan shall be approved upon
29 receiving the affirmative vote of at least a majority of the
30 votes cast by policyholders.

31 (d) If a reorganization plan is approved at the
32 policyholder's meeting:

33 (1) The board of directors of the mutual insurance
34 company shall provide the Insurance Commissioner with
35 written notice of that approval within 10 days after the
36 policyholder's meeting.

37 (2) The Insurance Commissioner may within 10 days
38 after receiving notice from the board of directors, provide
39 written notice to the mutual insurance company of the
40 commissioner's intent to conduct one or more public
41 hearings on the reorganization plan. At a minimum, the
42 Insurance Commissioner's notice to the mutual insurance
43 company shall include a time and a place for the first public
44 hearing which shall be held within 30 days after the
45 commissioner's receipt from the board of directors.

46 (3) Within 10 days after the mutual insurance
47 company's receipt of a notice from the Insurance
48 Commissioner of his or her intent to conduct one or more
49 public hearings on the reorganization plan, if such notice is
50 provided, the mutual insurance company shall provide
51 notice of the time and place of such hearing by causing this
52 information to be published once each week for two
53 consecutive weeks in a newspaper with statewide
54 circulation and in the county of the state in which the mutual
55 insurance company has its principle office.

56 (e) The proposed articles of incorporation for the mutual
57 insurance holding company and a reorganized stock
58 company and if applicable, for the intermediate holding
59 company, as filed with the Insurance Commissioner, shall
60 also be voted on by the mutual insurance company's
61 policyholders at the policyholder meeting held pursuant to
62 this section. The articles of incorporation shall be adopted
63 upon receiving the affirmative vote of at least a majority of
64 those casts by policyholders.

65 (f) At all public hearings conducted by the Insurance
66 Commissioner pursuant to this article, the commissioner
67 may summon and compel attendance and testimony of
68 witnesses and the production of books and papers. The
69 Insurance Commissioner shall hear the testimony of the
70 person that is claiming to be adversely affected by the
71 reorganization plan, and of others wishing to comment on
72 the reorganization plan. Such persons may present a
73 position and offer comments concerning the reorganization
74 plan, including a position and comments concerning
75 whether the reorganization plan is fair and equitable to the
76 mutual insurance company policyholders and whether it
77 complies with the provisions of this article.

78 (g) A mutual insurance company's failure to provide a
79 member or members with notice required by this section
80 shall not impair the validity of any action taken under this
81 article, if the mutual insurance company has complied
82 substantially and in good faith with all those requirements.
83 The determination as to such compliance shall be made by
84 the Insurance Commissioner.

§33-27A-5. Review of plan by Insurance Commissioner; filing requirements.

1 (a) A mutual insurance company shall not proceed with
2 a reorganization plan approved by the mutual insurance
3 company's policyholders until the reorganization plan has
4 been reviewed by and has received the approval of the
5 Insurance Commissioner and the articles of incorporation
6 for the mutual insurance holding company and reorganized
7 stock company, if any, for an intermediate holding
8 company, have also been examined and approved by the
9 Insurance Commissioner.

10 (b) The Insurance Commissioner shall approve a
11 reorganization plan if upon review, he or she finds all of the
12 following:

13 (1) The adoption, approval and contents of the
14 reorganization plan comply with the provisions of this
15 article,

16 (2) The mutual insurance company has properly filed all
17 documents, forms, and other information required by this
18 article;

19 (3) The reorganization plan is fair and equitable to the
20 mutual insurance company's policyholders.

21 (c) The Insurance Commissioner may retain qualified
22 experts, at the mutual insurance company's expense, to
23 assist in reviewing the reorganization plan.

24 (d) The Insurance Commissioner shall approve or reject
25 the reorganization plan not later than 60 days after the latter
26 of the approval of the reorganization plan by the mutual
27 insurance company's policyholders or the completion of
28 public hearings held in accordance with this article. The
29 Insurance Commissioner may extend this time period by an
30 additional 60 days by providing written agreement to the
31 mutual insurance company.

32 (e) Upon deciding to approve or reject a reorganization
33 plan, the Insurance Commissioner shall notify the mutual
34 insurance company of the decision by regular mail. If the
35 Insurance Commissioner rejects a reorganization plan, the
36 commissioner's notice shall detail the reasons for the
37 rejection.

38 (f) A mutual insurance company shall file the following
39 documents with the Insurance Commissioner within 30 days
40 after receiving notice from the commissioner of his or her
41 approval of a reorganization plan:

42 (1) The minutes of the policyholders meeting at which
43 the reorganization plan was approved;

44 (2) The articles of incorporation for the mutual
45 insurance holding company and the reorganized stock

46 company, and if applicable, for an intermediate holding
47 company, as adopted by the mutual insurance company's
48 policyholders under this article.

49 (g) Upon obtaining the approval of the Insurance
50 Commissioner, the mutual insurance company's board of
51 directors shall file the following with the Secretary of State:

52 (1) A Certificate of Reorganization, signed by the
53 chairperson of the board, the president or a vice-president,
54 and a secretary or an assistant secretary of the mutual
55 insurance company. The articles of incorporation for the
56 mutual insurance holding company and the reorganized
57 stock company, and, if applicable, for an intermediate
58 holding company as adopted by the mutual insurance
59 company's policyholders pursuant to this article, shall
60 accompany the Certificate of Reorganization.

61 (2) A statement signed by the chairperson of the board,
62 the president or a vice-president, and the secretary and an
63 assistant secretary, of the mutual insurance company, of the
64 manner of the adoption of the articles of the incorporation
65 for the mutual insurance holding company and the
66 reorganized stock company, and, if factual, for an
67 intermediate holding company;

68 (3) Copies of the approval obtained from the Insurance
69 Commissioner under this article.

70 (4) Reorganization plan shall be effective upon the
71 filing of all of the documents and statements required above
72 or at such later date as the Certificate of Reorganization may
73 provide.

74 (5) After a reorganization plan takes effect, the
75 Insurance Commissioner shall have jurisdiction over the
76 mutual insurance holding company, and if applicable, over
77 an intermediate holding company, in order to ensure that the
78 interests of the mutual insurance company's policyholders
79 are protected.

§33-27A-6. Amending articles of incorporation of mutual holding company.

1 Proposed amendments to the articles of incorporation of
2 a mutual insurance holding company may be adopted at any
3 members' meeting. The board of directors of a mutual
4 insurance holding company shall provide notice of any
5 members meeting conducting a vote on the adoption of the
6 amendment to the articles of incorporation by publication in
7 a newspaper of general circulation, published in the county
8 where the company's principle place of business is located,
9 at least 30 days prior to the members meeting. Where the
10 amendment is not inconsistent with the Constitution and
11 laws of the State of West Virginia and of the United States,
12 the amendment may be adopted by the affirmative vote of
13 at least three-fifths of the members present and voting at the
14 meeting.

§33-27A-7. Corporate existence of mutual company continue in recognized stock company.

1 (a) Upon a reorganization plan taking effect in
2 accordance with this article, the corporate existence of the
3 mutual insurance company shall continue in the reorganized
4 stock company. On the effective date of the reorganization,
5 all of the assets, rights, franchises and interests of the mutual
6 insurance company in and to every species of property
7 whether real, personal, or mixed and in any accompanying
8 causes of action shall be vested in the reorganized stock
9 company without any deed or transfer, and a reorganized
10 stock company shall assume all of the obligations and
11 liabilities of the mutual insurance company.

12 (b) Unless otherwise specified in a reorganization plan,
13 those persons who are the directors and officers of a mutual
14 insurance company on the effective date of the
15 reorganization shall serve as the directors and officers of the
16 reorganized stock company until new directors and officers
17 are elected pursuant to the recognized stock company's
18 articles of incorporation.

§33-27A-8. Payment of costs and expenses of reorganization.

1 All costs and expenses for the process of a
2 reorganization under this article shall be paid for or
3 reimbursed by the mutual insurance company, the
4 reorganized stock company, or an intermediate holding
5 company.

§33-27A-9. Reorganization of mutual company.

1 (a) A mutual insurance company may reorganize by
2 merging its policyholders members' interests into a
3 domestic or foreign mutual insurance holding company and
4 continuing the corporate existence of the mutual insurance
5 company as a reorganized stock company. A mutual
6 company reorganizing under this article shall comply with
7 all applicable laws of this state and of foreign jurisdictions,
8 to affect the reorganization.

9 (b) A domestic or foreign mutual insurance holding
10 company may reorganize by merging or consolidating its
11 membership interests into another domestic or foreign
12 mutual insurance holding company. A domestic or foreign
13 mutual insurance holding company reorganizing under this
14 subdivision shall comply with all applicable provisions of
15 this article and all applicable laws of foreign jurisdictions,
16 to affect the reorganization.

§33-27A-10. Membership interest in mutual company.

1 A membership interest in a mutual insurance holding
2 company is not a security under the laws of this state. No
3 member of a mutual insurance holding company may
4 transfer membership in the mutual insurance holding
5 company or any right arising from membership.

§33-27A-11. Applicability of other laws.

1 (a) The provisions of §33-5-24 of this code shall apply
2 to a mutual insurance holding company as if the mutual
3 insurance holding company were a domestic mutual

4 insurance company. The members of the mutual insurance
5 holding company are deemed to be members of a domestic
6 mutual insurance company for all purposes of all such
7 sections.

8 (b) For a period of five years following the effective
9 date of a reorganization under this article, no person shall
10 acquire control of a reorganized stock company without
11 compliance with the provisions of §33-27-1 *et seq.* of this
12 code. For purposes of this subdivision, “control” has the
13 same meaning as set out in §33-27-2 of this code, except
14 that control is presumed to exist if any person, directly or
15 indirectly, owns, controls, holds with the power to vote, or
16 holds proxies representing 5 percent or more of the voting
17 securities of any other person.

18 (c) An intermediate holding company or if there is no
19 such company, a reorganized stock company shall not issue
20 shares of stock, in addition to the shares issued pursuant to
21 the reorganization plan under which the company was
22 formed, without the prior approval of the mutual insurance
23 holding company as its majority shareholder. The prior
24 approval of the mutual insurance holding company must be
25 evidenced by a resolution of the board of directors of the
26 mutual insurance holding company delivered to the board
27 of directors in the intermediate holding company or the
28 reorganized stock company prior to the issuance of the
29 additional shares.

30 (d) A mutual insurance holding company, and an
31 intermediate holding company, if any, are deemed to be
32 insurers subject to the provisions of this chapter.

§33-27A-12. Holding company treated as insurer.

1 (a) A mutual insurance holding company, and, if
2 applicable, its intermediate holding company, are deemed to
3 be insurers subject to the provisions of §33-10-1 *et seq.* of
4 this code. A mutual insurance holding company and the
5 intermediate holding company accordingly are deemed to

6 be parties to any proceeding under such article involving an
7 insurance company of the subsidiary of the mutual
8 insurance holding company or of the intermediate holding
9 company as a result of a reorganization under this article.

10 (b) In any proceeding under §33-10-1 *et seq.* of this code
11 involving a reorganized stock company, the assets of the
12 mutual insurance holding company, and if applicable, its
13 intermediate holding company, are deemed to be assets of
14 the reorganization stock company for purposes of satisfying
15 claims of the policyholders of the reorganized stock
16 company.

17 (c) A mutual insurance holding company, and, if
18 applicable, its intermediate holding company, shall not be
19 dissolved or liquidated without compliance with the
20 provisions of §33-10-1 *et seq.* of this code. Such companies
21 are deemed to be domestic insurance companies for
22 purposes of a dissolution or liquidation.

§33-27A-13. Actions challenging reorganization.

1 Any action challenging the validity of, or arising out of,
2 actions taken or proposed to be taken in connection with a
3 reorganization under this article shall be commenced no
4 later than 30 days after the effective date of the
5 reorganization.

§33-27A-14. Powers of Insurance Commissioner.

1 The West Virginia Insurance Commissioner may adopt
2 rules as he or she deems necessary to carry out the purposes
3 of this article.

●

CHAPTER 200

**(H. B. 4496 - By Delegates Shott, Criss, Graves,
Steele, Howell, D. Kelly, Miller, N. Brown, Maynard,
Mandt and Fast)
[By Request of the Department of Military Affairs and
Public Safety]**

[Passed February 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 17, 2020.]

AN ACT to amend and reenact §29-12-5a of the Code of West Virginia, 1931, as amended, relating to removing the specific mandate of the Board of Risk and Insurance Management to purchase liability insurance for the Division of Corrections and Rehabilitation and its employees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. STATE INSURANCE.

§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, and public charter schools electing to obtain coverage; written notice of coverage to insureds.

1 (a) In accordance with the provisions of this article, the
2 State Board of Risk and Insurance Management shall
3 provide appropriate professional or other liability insurance
4 for all county boards of education, teachers, supervisory and
5 administrative staff members, service personnel, county
6 superintendents of schools, and school board members:
7 *Provided*, That the Board of Risk and Insurance
8 Management is not required to provide insurance for every
9 property, activity, or responsibility of county boards of
10 education, teachers, supervisory, and administrative staff
11 members, service personnel, county superintendents of
12 schools, and school board members.

13 (b) Insurance provided by the Board of Risk and
14 Insurance Management pursuant to the provisions of
15 subsection (a) of this section shall cover claims, demands,
16 actions, suits, or judgments by reason of alleged negligence
17 or other acts resulting in bodily injury or property damage
18 to any person within or without any school building if, at the
19 time of the alleged injury, the teacher, supervisor,
20 administrator, service personnel employee, county
21 superintendent, or school board member was acting in the
22 discharge of his or her duties, within the scope of his or her
23 office, position or employment, under the direction of the
24 county board of education, or in an official capacity as a
25 county superintendent or as a school board member.

26 (c) Insurance coverage provided by the Board of Risk
27 and Insurance Management pursuant to subsection (a) of
28 this section shall be in an amount to be determined by the
29 State Board of Risk and Insurance Management, but in no
30 event less than \$1,250,000 for each occurrence. In addition,
31 each county board of education shall purchase, through the
32 Board of Risk and Insurance Management, excess coverage
33 of at least \$5 million for each occurrence. The cost of this
34 excess coverage will be paid by the respective county
35 boards of education. Any insurance purchased under this
36 section shall be obtained from a company licensed to do
37 business in this state.

38 (d) The insurance policy provided by the Board of Risk
39 and Insurance Management pursuant to subsection (a) of
40 this section shall include comprehensive coverage, personal
41 injury coverage, malpractice coverage, corporal punishment
42 coverage, legal liability coverage, as well as a provision for
43 the payment of the cost of attorney's fees in connection with
44 any claim, demand, action, suit, or judgment arising from
45 such alleged negligence or other act resulting in bodily
46 injury under the conditions specified in this section.

47 (e) The county superintendent and other school
48 personnel shall be defended by the county board or an
49 insurer in the case of suit, unless the act or omission shall

50 not have been within the course or scope of employment or
51 official responsibility or was motivated by malicious or
52 criminal intent.

53 (f) At least annually, beginning with the 2019-2020
54 school year, county boards shall provide written notice of
55 insurance coverage to each of its insureds, including
56 teachers, supervisors, administrators, service personnel
57 employees, county superintendent, and school board
58 members. The notice shall identify the coverages, monetary
59 limits of insurance, and duty to defend for each occurrence
60 as provided to insureds by the Board of Risk and Insurance
61 Management under this section. The written notice may be
62 sent via email, or via first-class mail to the insured's last
63 mailing address known to the county board. The written
64 notice shall also include contact information for the Board
65 of Risk and Insurance Management.

66 (g) The provisions of this section apply to public charter
67 schools that have been authorized pursuant to §18-5G-1 *et*
68 *seq.* of this code and have included in their charter contract
69 entered into pursuant to §18-5G-7 of this code a
70 determination to obtain insurance coverage from the Board
71 of Risk and Insurance Management pursuant to this section.
72 If a public charter school elects to obtain coverage pursuant
73 to this section:

74 (1) Any provision in this section applicable to a county
75 board also applies to a charter school governing board;

76 (2) Any provision in this section applicable to a school
77 board member also applies to a member of a charter school
78 governing board; and

79 (3) Any provision of this section applicable to teachers,
80 supervisory and administrative staff members, and service
81 personnel employed by a county board also applies to
82 teachers, supervisory or administrative staff members, and
83 service personnel employed by a public charter school.

84 (h) The amendments to this section during the 2019 First
85 Extraordinary Session of the Legislature shall be effective
86 for fiscal years beginning on or after July 1, 2019:
87 *Provided*, That the amendment to subsection (c) of this
88 section during the 2019 First Extraordinary Session of the
89 Legislature shall be effective for fiscal years beginning on
90 or after July 1, 2020.



CHAPTER 201

**(H. B. 4502 - By Delegates Westfall, Porterfield,
Espinosa and Bates)
[By Request of the West Virginia Insurance Commission]**

[Passed March 6, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §33-12B-4a and §33-12B-11a of the Code of West Virginia, 1931, as amended; to amend and reenact §33-12B-1, §33-12B-3, §33-12B-4, §33-12B-5, §33-12B-6, §33-12B-7, §33-12B-8, §33-12B-9, §33-12B-10, §33-12B-11, and §33-12B-12 of said code; and to amend said code by adding thereto three new sections, designated §33-12B-2, §33-12B-13, and §33-12B-15, all relating to insurance adjusters; defining terms; providing licensure requirements for company, independent, and public adjusters; providing exceptions to adjuster license requirements; permitting temporary licensure; providing for qualifications for a resident adjuster license; authorizing the Insurance Commissioner to conduct criminal history checks for prospective adjusters; requiring fingerprinting; authorizing imposition of fees and civil penalties; specifying jurisdiction and agent for service of process; authorizing change in license expiration date without fee refund or increase; providing for adjuster lines of authority; providing for probation, suspension, revocation, refusal, or termination of adjuster

license; requiring adjusters to complete continuing education; requiring Board of Insurance Agent Education to develop program of continuing education for adjusters; authorizing rulemaking; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12B. ADJUSTERS.

§33-12B-1. Definitions.

1 (a) “Automated claims adjudication system” means a
2 preprogrammed computer system designed for the
3 collection, data entry, calculation, and final resolution of
4 portable electronics insurance claims which:

5 (1) May only be used by a licensed adjuster, licensed
6 producer, or supervised individuals operating pursuant to
7 §33-12B-3(a)(14) of this code;

8 (2) Must comply with all claims payments requirements
9 of the insurance code; and

10 (3) Must be certified as compliant with this section by a
11 licensed adjuster that is an officer of the entity which
12 employs the individuals operating pursuant to §33-12B-
13 3(a)(14) of this code.

14 (b) “Business entity” means a corporation, association,
15 partnership, limited liability company, limited liability
16 partnership, or other legal entity.

17 (c) “Company adjuster” means an adjuster who is a staff
18 employee of an insurance company, who is paid by the
19 insurance company, and who investigates, negotiates, or
20 settles claims.

21 (d) “Home state” means the District of Columbia or any
22 state, commonwealth, or territory of the United States in
23 which an adjuster maintains his or her principal place of
24 residence or business and in which he or she is licensed to
25 act as a resident adjuster. If a person’s principal place of

26 residence or business does not license adjusters for the type
27 of adjuster license sought in this state, he or she shall
28 designate as his or her home state any state in which he or
29 she has such a license.

30 (e) “Independent adjuster” means a person who:

31 (1) Is an individual, a business entity, an independent
32 contractor, or an employee of a contractor, who contracts
33 for compensation with insurers or self-insurers;

34 (2) Is one whom the insurer’s or self-insurer’s tax
35 treatment of the individual is consistent with that of an
36 independent contractor, rather than as an employee, as
37 defined in the Internal Revenue Code, United States Code,
38 Title 26, Subtitle C; and

39 (3) Investigates, negotiates, or settles property, casualty,
40 or workers’ compensation claims for insurers or self-
41 insurers.

42 (f) “Individual” means a natural person.

43 (g) “Insurance emergency” means a temporary
44 situation, as declared by the commissioner pursuant to §33-
45 2-10a of this code, when the number of licensed adjusters in
46 this state is inadequate to meet the demands of the public.

47 (h) “Person” means an individual or business entity.

48 (i) “Public adjuster” means any person who, for
49 compensation or any other thing of value on behalf of the
50 insured:

51 (1) Acts or aids, solely in relation to first-party claims
52 arising under insurance contracts that insure the real or
53 personal property of the insured, on behalf of an insured in
54 negotiating for, or effecting the settlement of, a claim for
55 loss or damage covered by an insurance contract;

56 (2) Advertises for employment as a public adjuster of
57 insurance claims or solicits business or represents himself
58 or herself to the public as a public adjuster of first-party
59 insurance claims for losses or damages arising out of
60 policies of insurance that insure real or personal property;
61 or

62 (3) Directly or indirectly solicits business, investigates
63 or adjusts losses, or advises an insured about first-party
64 claims for losses or damages arising out of policies of
65 insurance that insure real or personal property for another
66 person engaged in the business of adjusting losses or
67 damages covered by an insurance policy on behalf of an
68 insured.

§33-12B-2. License required.

1 (a) No person may act or hold himself, herself, or itself
2 out as a company adjuster, an independent adjuster, or a
3 public adjuster in this state unless the person is licensed in
4 accordance with this article or is exempt from licensure
5 under this article.

6 (b) The license shall contain the licensee's name,
7 address, personal identification number, the date of
8 issuance, expiration date, and any other information the
9 commissioner deems necessary.

10 (c) A person licensed as a public adjuster shall not
11 misrepresent to a claimant that he, she, or it is an adjuster
12 representing an insurer in any capacity, including acting as
13 an employee of the insurer or acting as an independent
14 adjuster unless so appointed by an insurer in writing to act
15 on the insurer's behalf for that specific claim or purpose. A
16 licensed public adjuster is prohibited from charging that
17 specific claimant a fee when appointed by the insurer and
18 the appointment is accepted by the public adjuster.

19 (d) The commissioner shall license an individual as a
20 company adjuster, independent adjuster, or public adjuster.
21 An individual may be licensed concurrently under separate

22 licenses but shall not act as an adjuster representing the
23 interests of the insured and the insurer with respect to the
24 same claim.

§33-12B-3. Exemptions from license requirement.

1 (a) Notwithstanding any other provisions of this article,
2 a company adjuster license or independent adjuster license
3 shall not be required of the following:

4 (1) Attorneys-at-law admitted to practice in this state,
5 when acting in their professional capacity as an attorney;

6 (2) A person employed only for the purpose of obtaining
7 facts surrounding a claim or furnishing technical assistance
8 to a licensed company or independent adjuster;

9 (3) An individual who is employed to investigate
10 suspected fraudulent insurance claims but who does not
11 adjust losses, investigate or determine coverage, or
12 determine claim payments;

13 (4) A person who solely performs executive,
14 administrative, managerial, or clerical duties, or any
15 combination thereof, and who does not investigate,
16 negotiate, or settle insurance claims with policyholders,
17 claimants, or their legal representative;

18 (5) A licensed health care provider or its employee who
19 is not responsible for determining compensability;

20 (6) A managed care organization or any of its employees
21 or an employee of any organization providing managed care
22 services, so long as the managed care organization or
23 employee referenced herein is not determining
24 compensability;

25 (7) A person who settles reinsurance or subrogation
26 claims between insurers;

27 (8) An officer, director, or manager of an authorized
28 insurer, surplus lines insurer, a risk retention group, or an
29 attorney-in-fact of a reciprocal insurer;

30 (9) A manager of the United States branch of an alien
31 insurer;

32 (10) A person who investigates, negotiates, or settles
33 life, accident and health, annuity, or disability insurance
34 claims;

35 (11) An individual employee, under a self-insured
36 arrangement, who adjusts claims on behalf of his or her
37 employer;

38 (12) A licensed individual producer, attorney-in-fact of
39 a reciprocal insurer, or managing general agent of the
40 insurer to whom claim authority has been granted by the
41 insurer;

42 (13) A business entity licensed under the authority of
43 §33-46-1 *et seq.* of this code;

44 (14) Individuals who collect claim information from, or
45 furnish claim information to, insureds or claimants, and who
46 conduct data entry, including entering data into an
47 automated claims adjudication system are exempt from
48 licensure under this article: *Provided*, That the individuals
49 are under the supervision of a licensed adjuster or licensed
50 producer: *Provided, however*, That no more than 25 persons
51 are under the supervision of one licensed adjuster or
52 licensed producer; or

53 (15) Company adjusters employed by an insurer outside
54 of this state who adjust claims solely by telephone, fax,
55 United States mail, and electronic mail, and who do not
56 physically enter this state in the course of adjusting such
57 claims: *Provided*, That such adjusters shall be subject to the
58 jurisdiction of, and regulation by, the commissioner in
59 regard to their adjustment of West Virginia claims:
60 *Provided, however*, That the commissioner may require

61 such adjusters to complete continuing education, not to
62 exceed requirements pursuant to §33-12B-13(d) of this
63 code, to address any deficiencies with respect to their claims
64 handling practices.

65 (b) Notwithstanding any other provisions of this article,
66 a public adjuster license shall not be required of the
67 following:

68 (1) Attorneys-at-law admitted to practice in this state,
69 when acting in their professional capacity as an attorney;

70 (2) A person who negotiates or settles claims arising
71 under a life or health insurance policy or an annuity
72 contract;

73 (3) A person employed only for the purpose of obtaining
74 facts surrounding a loss or furnishing technical assistance to
75 a licensed public adjuster;

76 (4) A licensed health care provider, or employee of a
77 licensed health care provider, who prepares or files a health
78 claim form on behalf of a patient; or

79 (5) A person who settles subrogation claims between
80 insurers.

§33-12B-4. Temporary licensure for emergency company or independent adjusters.

1 (a) In the event of a declared insurance emergency, an
2 insurer shall notify the commissioner with an application for
3 temporary emergency licensure for each individual who will
4 act as an emergency company adjuster or emergency
5 independent adjuster on behalf of the insurer.

6 (b) A person who is otherwise qualified to adjust claims,
7 but not already licensed in this state when the insurance
8 emergency has been declared, may act as an emergency
9 company or independent adjuster and adjust claims if,
10 within five days of the declared insurance emergency, the

11 insurer notifies the commissioner by providing the
12 following information in a format proposed by the
13 commissioner:

14 (1) Name and address of the individual;

15 (2) National Producer Number of the individual if the
16 individual has a National Producer Number;

17 (3) Name of the insurer which the company or
18 independent adjuster will represent;

19 (4) Effective date of the contract between the insurer
20 and independent adjuster, if applicable;

21 (5) Insurance emergency or loss control number;

22 (6) Insurance emergency event name; and

23 (7) Any other information the commissioner deems
24 necessary.

25 (c) An emergency company or independent adjuster's
26 license shall remain in force for a period not to exceed 90
27 days, unless extended for an additional period by the
28 commissioner.

29 (d) The fee for emergency company or independent
30 adjuster application for licensure shall be in an amount
31 specified in §33-12B-8 of this code. The fee shall be due
32 and payable at the time of application for licensure.

§33-12B-4a. Exemptions from license.

1 [Repealed]

§33-12B-5. Qualifications for resident adjuster's license; examination; exemptions.

1 (a) An individual applying for a resident adjuster license
2 shall make application to the commissioner and declare
3 under penalty of suspension, revocation, or refusal of the

4 license that the statements made in the application are true,
5 correct, and complete to the best of the individual's
6 knowledge and belief. Before approving the application, the
7 commissioner shall find that the individual:

8 (1) Is 18 years of age or more;

9 (2) Is a resident of West Virginia, or eligible to
10 designate West Virginia as his or her home state;

11 (3) Is trustworthy, competent, reliable, and of good
12 reputation, evidence of which may be determined by the
13 commissioner;

14 (4) Has a business or mailing address in this state for
15 acceptance of service of process or, if residing outside of
16 this state, acknowledges that by adjusting claims in this state
17 he or she is subject to this state's jurisdiction, pursuant to
18 §56-3-33 of this code, and automatically appoints the West
19 Virginia Secretary of State as his or her agent for service of
20 process;

21 (5) Has not committed any act that is a ground for
22 probation, suspension, revocation, or refusal of an adjuster's
23 license as set forth in §33-12B-11 of this code;

24 (6) Has successfully passed the written examination for
25 the line or lines of authority for which the person has
26 applied; and

27 (7) Has paid the fees applicable to licensure.

28 (b)(1) A resident individual applying for an adjuster
29 license shall pass a written examination unless exempt
30 pursuant to §33-12B-5(b)(5) or §33-12B-5(b)(6) of this
31 code. The examination shall test the knowledge of the
32 individual concerning the line or lines of authority for which
33 application is made, if applicable, the duties and
34 responsibilities of an adjuster, and the insurance laws and
35 rules of this state. However, to qualify for an adjuster license
36 with the crop line of authority, the commissioner may

37 accept, in lieu of such an examination, certification that the
38 individual has passed a proficiency examination approved
39 by the United States Department of Agriculture Risk
40 Management Agency.

41 (2) Each examinee shall pay a nonrefundable \$25
42 examination fee for each examination to the commissioner,
43 which fees shall be used for the purposes set forth in §33-3-
44 13 of this code. The commissioner may, at his or her
45 discretion, designate an independent testing service to
46 prepare and administer such examination subject to
47 direction and approval by the commissioner, and
48 examination fees charged by such service shall be paid by
49 the applicant.

50 (3) An individual who fails to appear for the
51 examination as scheduled, or fails to pass the examination,
52 shall reapply for an examination and remit all required fees
53 and forms before being rescheduled for another
54 examination.

55 (4) An individual who initially fails to pass an
56 examination required by this section is limited to seven
57 additional attempts to pass the examination.

58 (5) An individual who applies for an adjuster license in
59 this state, who was previously licensed for the same lines of
60 authority in another jurisdiction, shall not be required to
61 complete any prelicensing examination. This exemption is
62 only available if the individual is currently licensed in that
63 jurisdiction, or if the application is received within 90 days
64 of the cancellation of the applicant's previous license, and
65 if the prior jurisdiction issues a certification that, at the time
66 of cancellation, the applicant was in good standing in that
67 jurisdiction or the jurisdiction's adjuster database records,
68 maintained by the National Association of Insurance
69 Commissioners, its affiliates or subsidiaries, indicate that
70 the adjuster is or was licensed in good standing for the line
71 of authority requested. The certification must be of a license

72 with the same line of authority for which the individual has
73 applied.

74 (6) An individual licensed as an adjuster in another
75 jurisdiction who moves to this state shall make application
76 within 90 days of establishing legal residence to become a
77 resident licensee pursuant to this section: *Provided*, That no
78 pre-licensing examination shall be required of that
79 individual to obtain any line of authority previously held in
80 the prior jurisdiction, except where the commissioner
81 determines otherwise by rule.

82 (7) Examinations may be developed and conducted
83 under rules proposed by the commissioner.

84 (8) Examinations required by this subsection are
85 applicable for individual adjusters first licensed on or after
86 July 1, 2021, or for individual adjusters who add a line of
87 authority to an existing adjuster license on or after July 1,
88 2021.

89 (c) A business entity applying for a resident independent
90 or public adjuster license shall make application to the
91 commissioner on forms proposed by the commissioner and
92 shall declare under penalty of suspension, revocation, or
93 refusal of the license that the statements made in the
94 application are true, correct, and complete to the best of the
95 business entity's knowledge and belief. Before approving
96 the application, the commissioner shall find that the
97 business entity:

98 (1) Is eligible to designate West Virginia as its home
99 state;

100 (2) Has a business or mailing address in this state for
101 acceptance of service of process;

102 (3) Has designated a licensed independent or public
103 adjuster responsible for the business entity's compliance
104 with the insurance laws and rules of this state; and

105 (4) Has not committed an act that is a ground for
106 probation, suspension, revocation, or refusal of an
107 independent or public adjuster's license as set forth in §33-
108 12B-11 of this code.

109 (d) The requirements of this section do not apply to
110 temporary licenses issued to emergency company adjusters
111 or emergency independent adjusters.

**§33-12B-6. Authorization for criminal history record check;
fees.**

1 (a) In furtherance of the national goal of promoting
2 uniformity and reciprocity among the states,
3 commonwealths, territories, and the District of Columbia
4 with regard to adjuster licensing, this section sets forth the
5 requirements to obtain access to the Federal Bureau of
6 Investigation Criminal Justice Information Services
7 Division criminal history record information and to secure
8 information or reports from the Federal Bureau of
9 Investigation Criminal Justice Information Services
10 Division. The scope of this section is to set forth the
11 applicability of the criminal history record check to
12 applicants for a home state insurance adjuster license.

13 (b) As used in this section, the following terms have the
14 meanings ascribed in this subsection, unless a different
15 meaning is clearly required by the context:

16 (1) "Applicant" means a natural person applying for:

17 (A) An initial home state license as an insurance
18 adjuster;

19 (B) An additional line of authority under an existing
20 home state insurance adjuster license where a criminal
21 history record check has not been obtained; or

22 (C) A resident insurance adjuster license under change
23 of home state provisions.

24 “Applicant” does not mean a person applying for
25 renewal or continuation of a home state insurance adjuster
26 license or a nonresident insurance adjuster license.

27 (2) “Fingerprint” means an impression of the lines on
28 the finger taken for the purpose of identification. The
29 impression may be obtained electronically or in ink
30 converted to an electronic format.

31 (c) In order to make a determination of adjuster license
32 eligibility, the commissioner is authorized to require
33 fingerprints of applicants and to submit the fingerprints and
34 the fee required to perform a criminal history record check
35 to the West Virginia State Police and to the Federal Bureau
36 of Investigation.

37 (d) The commissioner shall require a criminal history
38 record check on each applicant in accordance with this
39 section. The commissioner shall require each applicant to
40 submit a full set of fingerprints, including a scanned file
41 from a hard copy fingerprint, in order for the commissioner
42 to obtain and receive national criminal history records from
43 the Federal Bureau of Investigation’s Criminal Justice
44 Information Services Division.

45 (e) The commissioner shall collect a fee from each
46 applicant in an amount sufficient to cover:

47 (1) The cost of the collection and transmittal of
48 fingerprints by persons, including local law enforcement
49 agencies that are approved by the commissioner to capture
50 fingerprints, to the West Virginia State Police and the
51 Federal Bureau of Investigation; and

52 (2) The cost of any amounts charged by the West
53 Virginia State Police and the Federal Bureau of
54 Investigation to perform the criminal history record checks.

55 (f) The commissioner may contract for the collection
56 and transmission of fingerprints authorized under this
57 section and may order that the fee for collecting and

58 transmitting fingerprints be payable directly by the
59 applicant to the contractor.

60 (g) The commissioner is authorized to receive criminal
61 history record information directly from the Federal Bureau
62 of Investigation, in lieu of via transmission of the
63 information from the Federal Bureau of Investigation to the
64 West Virginia State Police.

65 (h) The commissioner shall treat and maintain an
66 applicant's fingerprints and any criminal history record
67 information obtained under this section as confidential and
68 shall apply security measures consistent with the Federal
69 Bureau of Investigation's Criminal Justice Information
70 Services Division standards for the electronic storage of
71 fingerprints and necessary identifying information. The
72 commissioner shall limit the use of records solely to the
73 purposes authorized in this section. The fingerprints and the
74 criminal history record information in the custody of the
75 commissioner are not subject to subpoena, other than one
76 issued in a criminal action or investigation, are confidential
77 by law and privileged, and are not subject to discovery or
78 admissible in evidence in any private civil action.

§33-12B-7. Lines of authority.

1 (a) An independent adjuster or a company adjuster may
2 qualify for a license in one or more of the following lines of
3 authority:

4 (1) Property and casualty;

5 (2) Workers' compensation; or

6 (3) Crop.

7 (b) A public adjuster may only qualify for a license
8 designating a property and casualty line of authority.

§33-12B-8. License fees.

1 (a) The annual fee for an individual adjuster license
2 shall be \$25.

3 (b) The annual fee for a business entity adjuster license
4 shall be \$200.

5 (c) The fee for a temporary emergency adjuster license
6 shall be \$25.

7 (d) All fees collected pursuant to this section shall be
8 used for the purposes set forth in §33-3-13 of this code.

§33-12B-9. Licensing of nonresident adjusters.

1 (a) A nonresident applicant for an adjuster license who
2 holds a similar license in his or her home state may be
3 licensed as a nonresident adjuster in this state if the
4 applicant's home state has established, by law or regulation,
5 like requirements for the licensing of a resident of this state
6 as a nonresident adjuster.

7 (b) As a condition of continuing a nonresident adjuster
8 license, the licensee must maintain a license in his or her
9 home state. The commissioner may verify the adjuster's
10 licensing status through the producer database maintained
11 by the National Association of Insurance Commissioners,
12 its affiliates, or subsidiaries.

13 (c) If a nonresident adjuster desires to become a resident
14 adjuster, he or she must apply to become one within 90 days
15 of establishing legal residency in this state.

16 (d) If a nonresident adjuster has his or her license
17 suspended, terminated, or revoked by his or her home state,
18 the adjuster must immediately notify the commissioner of
19 that action and, with respect to license terminations or
20 revocations, surrender the license to the commissioner.

21 (e) A resident of Canada may be licensed as a
22 nonresident adjuster under this section if that person has
23 obtained a resident or home state adjuster license in another
24 United States jurisdiction.

§33-12B-10. Expiration of license; renewal.

1 (a) The commissioner may, in his or her discretion, fix
2 the dates of expiration of respective licenses for all adjusters
3 in any manner as is considered by him or her to be advisable
4 for an efficient distribution of the workload of his or her
5 office. If the expiration date so fixed would upon first
6 occurrence shorten the period for which a license fee has
7 theretofore been paid, no refund of the unearned fee shall be
8 made. If the expiration date so fixed would upon first
9 occurrence lengthen the period for which license fee had
10 theretofore been paid, the commissioner shall charge no
11 additional fee for the lengthened period. If another date is
12 not so fixed by the commissioner, each license shall, unless
13 continued as herein above provided, expire at midnight on
14 May 31 next following the date of issuance, and the
15 commissioner shall renew annually the license of all such
16 licensees who qualify, and make application therefor, and
17 have paid the fees set forth in this article.

18 (b) An adjuster whose license expires may, if
19 application is made within one year of the expiration date,
20 be reissued a license upon payment of twice the renewal fee.

21 (c) The commissioner may waive any renewal
22 requirement for any adjuster who is unable to comply due
23 to military service, long-term medical disability, or other
24 extenuating circumstance.

25 (d) As a condition of the renewal of an adjuster license
26 with the designation of a crop insurance line of authority,
27 the commissioner may require that the licensee demonstrate
28 that he or she has maintained certification of proficiency
29 issued or approved by the United States Department of
30 Agriculture Risk Management Agency.

§33-12B-11. Denial, revocation, suspension, probation, or refusal to renew license; penalties; violations.

1 (a) The commissioner may examine and investigate the
2 business affairs and conduct of persons applying for or

3 holding an adjuster license to determine whether such
4 person is trustworthy and competent or has been or is
5 engaged in any violation of the insurance laws or rules of
6 this state or in any unfair or deceptive acts or practices in
7 any state.

8 (b) If the commissioner denies an initial or renewal
9 application for a license, he or she shall notify the applicant
10 or licensee in writing of the reason for such action. The
11 applicant or licensee may, within 10 days of receipt of such
12 notice, make written demand for a hearing before the
13 commissioner to determine the reasonableness of the action,
14 and such hearing shall be held in accordance with the
15 provisions of §33-2-13 of this code.

16 (c) Whenever, after notice and hearing, the
17 commissioner is satisfied that any adjuster has violated any
18 provision of this chapter or of rules promulgated or
19 proposed hereunder, or is incompetent or untrustworthy, he
20 or she shall place the adjuster on probation or refuse to issue,
21 revoke, suspend, or, if renewal of license is pending, refuse
22 to renew the license of such adjuster. In addition to placing
23 a licensee on probation or revoking, suspending, or refusing
24 to renew or issue his or her license, the commissioner may
25 in his or her discretion order such licensee to pay to the State
26 of West Virginia an administrative penalty in a sum not to
27 exceed \$1,000 for each violation. Upon the failure of a
28 licensee to pay within 30 days a civil penalty imposed by
29 the commissioner, his or her license shall be revoked or
30 suspended by the commissioner.

31 (d) Each of the following shall constitute a violation
32 under this article:

33 (1) Providing incorrect, misleading, incomplete, or
34 materially untrue information in the license application;

35 (2) Violating any insurance statute, rule, subpoena, or
36 order of the commissioner or of another state's insurance
37 commissioner;

38 (3) Obtaining or attempting to obtain a license through
39 misrepresentation or fraud;

40 (4) Improperly withholding, misappropriating, or
41 converting any monies or properties received in the course
42 of doing insurance business;

43 (5) Intentionally misrepresenting the terms of an actual
44 or proposed insurance contract or application for insurance;

45 (6) Having been convicted of or pleaded nolo
46 contendere to any felony;

47 (7) Having been convicted of or pleaded nolo
48 contendere to a misdemeanor in connection with his or her
49 activities relating to the business of insurance;

50 (8) Having admitted or been found to have committed
51 any insurance unfair trade practice or fraud;

52 (9) Having an insurance license or its equivalent
53 suspended, revoked, or refused in any other state, province,
54 district, or territory;

55 (10) Forging any document or signature relating to an
56 insurance transaction or fraudulently procuring a forged
57 signature to any document related to an insurance
58 transaction;

59 (11) Cheating, including improperly using notes or any
60 other reference material, in the course of taking an
61 examination for an insurance license;

62 (12) Using fraudulent, coercive, or dishonest practices,
63 or demonstrating incompetence, untrustworthiness, or
64 financial irresponsibility, in the conduct of insurance
65 business in this state or elsewhere;

66 (13) Failing to comply with an administrative or court
67 order imposing a child support obligation; or

68 (14) Failing to pay state income tax or comply with any
69 administrative or court order directing payment of state
70 income tax which remains unpaid.

71 (e) Orders issued pursuant to this section are subject to
72 the judicial review provisions of §33-2-14 of this code.

§33-12B-11a. Emergency adjusters and insurance emergencies; definitions; authorization of temporary emergency adjusters; applications; limitations and authority.

1 [Repealed]

§33-12B-12. Rules.

1 The commissioner may propose rules for legislative
2 approval in accordance with the provisions of §29A-3-1 *et*
3 *seq.* of this code to implement the provisions of this article.

§33-12B-13. Continuing education.

1 (a) The purpose of this section is to provide continuing
2 education requirements for individual adjusters under
3 guidelines established by the commissioner's office in
4 conjunction with the Board of Insurance Agent Education
5 as provided in §33-12-7 of this code.

6 (b) This section applies to company adjusters,
7 independent adjusters, and public adjusters licensed
8 pursuant to §33-12B-2 of this code.

9 (c) This section shall not apply to:

10 (1) Licensees not licensed for one full year prior to the
11 end of the applicable continuing education biennium; or

12 (2) Licensees holding nonresident adjuster licenses who
13 have met substantially similar continuing education
14 requirements of their designated home state and whose
15 home state gives credit to residents of this state on the same
16 basis.

17 (d)(1) The Board of Insurance Agent Education as
18 established by §33-12-7 of this code shall develop a
19 program of continuing education for adjusters and submit
20 the proposal for the approval of the commissioner on or
21 before December 31 of each year. No program may be
22 approved by the commissioner that includes a requirement
23 that any individual adjuster complete more than 24 hours of
24 continuing insurance education biennially.

25 (2) The biennium mandatory continuing education
26 provisions of this section become effective on the reporting
27 period beginning July 1, 2021.

28 (3) The commissioner and the Board of Insurance Agent
29 Education, under standards established by the board, may
30 approve any course or program of instruction developed or
31 sponsored by an authorized insurer, accredited college or
32 university, adjusters' association, insurance trade
33 association, or independent program of instruction that
34 presents the criteria and the number of hours that the board
35 and commissioner determine appropriate for the purpose of
36 this section.

37 (e) An individual who holds an adjuster license and who
38 is not exempt shall satisfactorily complete a minimum of 24
39 hours of continuing education courses, of which three hours
40 must be in ethics, reported to the commissioner on a biennial
41 basis in conjunction with their license renewal cycle.

42 (f) Every individual adjuster subject to the continuing
43 education requirements shall furnish, at intervals and on
44 forms as may be proposed by the commissioner, written
45 certification listing the courses, programs, or seminars of
46 instruction successfully completed by the adjuster. The
47 certification shall be executed by, or on behalf of, the
48 organization sponsoring the courses, programs, or seminars
49 of instruction.

50 (g) Subject to the approval of the commissioner, the
51 active annual membership by an adjuster in an organization

52 or association recognized and approved by the
53 commissioner as a state, regional, or national professional
54 insurance organization or association may be approved by
55 the commissioner for up to two hours of continuing
56 insurance education: *Provided*, That not more than two
57 hours of continuing education may be awarded to an
58 adjuster for membership in a professional insurance
59 organization during a biennial reporting period.

60 (h) Adjusters who exceed the minimum continuing
61 education requirement for the biennial reporting period may
62 carry over a maximum of six credit hours only into the next
63 reporting period.

64 (i) Any individual adjuster failing to meet the
65 requirements mandated in this section and who has not been
66 granted an extension of time with respect to the
67 requirements, or who has submitted to the commissioner a
68 false or fraudulent certificate of compliance, shall have his
69 or her license automatically suspended and no further
70 license may be issued to the person until the person
71 demonstrates to the satisfaction of the commissioner that he
72 or she has complied with all of the requirements mandated
73 by this section and all other applicable laws or rules.

74 (j) The commissioner shall notify the individual adjuster
75 of his or her suspension pursuant to subsection (i) of this
76 section by certified mail, return receipt requested, to the last
77 address on file with the commissioner pursuant to §33-12B-
78 2(b) of this code. Any individual insurance adjuster who has
79 had a suspension order entered against him or her pursuant
80 to this section may, within 30 calendar days of receipt of the
81 order, file with the commissioner a request for a hearing for
82 reconsideration of the matter.

83 (k) Any individual adjuster who does not satisfactorily
84 demonstrate compliance with this section and all other laws
85 applicable thereto as of the last day of the biennium
86 following his or her suspension shall have his or her license

87 automatically terminated and is subject to the licensing and
88 examination requirements of §33-12B-5 of this code.

89 (l) The commissioner is authorized to hire personnel and
90 make reasonable expenditures considered necessary for
91 purposes of establishing and maintaining a system of
92 continuing education for adjusters. The commissioner shall
93 charge a fee of \$25 to continuing education providers for
94 each continuing education course submitted for approval
95 which shall be used to maintain the continuing education
96 system. The commissioner may, at his or her discretion,
97 designate an outside administrator to provide all of or part
98 of the administrative duties of the continuing education
99 system subject to direction and approval by the
100 commissioner. The fees charged by the outside
101 administrator shall be paid by the continuing education
102 providers. In addition to fees charged by the outside
103 administrator, the outside administrator shall collect and
104 remit to the commissioner the \$25 course submission fee.

§33-12B-15. Effective date for 2020 amendments.

1 The effective date of the amendments made to this
2 article during the 2020 regular legislative session is July 1,
3 2021.

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CHAPTER 202

**(Com. Sub. for H. B. 4543 - By Delegates Hill, Pack,
Fleischauer, Bates, Jennings, Summers, Atkinson, C.
Thompson, Angelucci, Rohrbach and Nelson)**

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §33-15C-1 of the Code of West Virginia, 1931, as amended; to repeal §33-16-16 of said code; to amend said code by adding thereto a new section, designated §5-16-7g; and to amend said code by adding thereto a new article, designated †§33-59-1, all relating generally to required health insurance coverage for diabetics; providing cost sharing in prescription insulin drugs; providing related findings; providing definitions; requiring insurance coverage for prescription insulin drugs; establishing cost sharing for a prescription insulin drug; establishing cost sharing for designated equipment and supplies related to the treatment and management of diabetes; requiring insurance coverage for diabetes education and medical visits; limiting some insurance coverage; providing for coverage pursuant to the West Virginia Public Employees Insurance Act; and providing that education related to diabetes may be provided by health care providers.

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.**

† Redesignated

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES
INSURANCE ACT.****§5-16-7g. Coverage for prescription insulin drugs.**

1 (a) A policy, plan, or contract that is issued or renewed
2 on or after July 1, 2020, shall provide coverage for
3 prescription insulin drugs pursuant to this section.

4 (b) For the purposes of this subdivision, “prescription
5 insulin drug” means a prescription drug that contains insulin
6 and is used to treat diabetes, and includes at least one type
7 of insulin in all of the following categories:

8 (1) Rapid-acting;

9 (2) Short-acting;

10 (3) Intermediate-acting;

11 (4) Long-acting;

12 (5) Pre-mixed insulin products;

13 (6) Pre-mixed insulin/GLP-1 RA products; and

14 (7) Concentrated human regular insulin.

15 (c) Cost sharing for a 30-day supply of a covered
16 prescription insulin drug shall not exceed \$100 for a 30-day
17 supply of a covered prescription insulin, regardless of the
18 quantity or type of prescription insulin used to fill the
19 covered person’s prescription needs.

20 (d) Nothing in this section prevents the agency from
21 reducing a covered person’s cost sharing by an amount
22 greater than the amount specified in this subsection.

23 (e) No contract between the agency or its pharmacy
24 benefits manager and a pharmacy or its contracting agent
25 shall contain a provision (i) authorizing the agency’s
26 pharmacy benefits manager or the pharmacy to charge, (ii)

27 requiring the pharmacy to collect, or (iii) requiring a
28 covered person to make a cost-sharing payment for a
29 covered prescription insulin drug in an amount that exceeds
30 the amount of the cost-sharing payment for the covered
31 prescription insulin drug established by the agency as
32 provided in subsection (c) of this section.

33 (f) The agency shall provide coverage for the following
34 equipment and supplies for the treatment or management of
35 diabetes for both insulin-dependent and noninsulin-
36 dependent persons with diabetes and those with gestational
37 diabetes: Blood glucose monitors, monitor supplies, insulin,
38 injection aids, syringes, insulin infusion devices,
39 pharmacological agents for controlling blood sugar, and
40 orthotics.

41 (g) The agency shall provide coverage for diabetes self-
42 management education to ensure that persons with diabetes
43 are educated as to the proper self-management and
44 treatment of their diabetes, including information on proper
45 diets. Coverage for self-management education and
46 education relating to diet shall be provided by a health care
47 practitioner who has been appropriately trained as provided
48 in §33-53-1(k) of this code.

49 (h) The education may be provided by a health care
50 practitioner as part of an office visit for diabetes diagnosis
51 or treatment, or by a licensed pharmacist for instructing and
52 monitoring a patient regarding the proper use of covered
53 equipment, supplies, and medications, or by a certified
54 diabetes educator or registered dietitian.

55 (i) A pharmacy benefits manager, a health plan, or any
56 other third party that reimburses a pharmacy for drugs or
57 services shall not reimburse a pharmacy at a lower rate and
58 shall not assess any fee, charge-back, or adjustment upon a
59 pharmacy on the basis that a covered person's costs sharing
60 is being impacted.

CHAPTER 33. INSURANCE.**ARTICLE 15C. DIABETES INSURANCE.****§33-15C-1. Insurance for diabetics.**

1 [Repealed.]

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS
INSURANCE.****§33-16-16. Insurance for diabetics.**

1 [Repealed.]

**†ARTICLE 59. REQUIRED COVERAGE FOR HEALTH
INSURANCE.****†§33-59-1. Cost sharing in prescription insulin drugs.**

1 (a) *Findings.* –

2 (1) It is estimated that over 240,000 West Virginians are
3 diagnosed and living with type 1 or type 2 diabetes and
4 another 65,000 are undiagnosed;

5 (2) Every West Virginian with type 1 diabetes and many
6 with type 2 diabetes rely on daily doses of insulin to survive;

7 (3) The annual medical cost related to diabetes in West
8 Virginia is estimated at \$2.5 billion annually;

9 (4) Persons diagnosed with diabetes will incur medical
10 costs approximately 2.3 times higher than persons without
11 diabetes;

12 (5) The cost of insulin has increased astronomically,
13 especially the cost of insurance copayments, which can
14 exceed \$600 per month. Similar increases in the cost of
15 diabetic equipment and supplies, and insurance premiums
16 have resulted in out-of-pocket costs for many West Virginia
17 diabetics in excess of \$1,000 per month;

18 (6) National reports indicate as many as one in four type
19 1 diabetics underuse, or ration, insulin due to these
20 increased costs. Rationing insulin has resulted in nerve
21 damage, diabetic comas, amputation, kidney damage, and
22 even death; and

23 (7) It is important to enact policies to reduce the costs
24 for West Virginians with diabetes to obtain life-saving and
25 life-sustaining insulin.

26 (b) As used in this section:

27 (1) “Cost-sharing payment” means the total amount a
28 covered person is required to pay at the point of sale in order
29 to receive a prescription drug that is covered under the
30 covered person’s health plan.

31 (2) “Covered person” means a policyholder, subscriber,
32 participant, or other individual covered by a health plan.

33 (3) “Health plan” means any health benefit plan, as
34 defined in §33-16-1a(h) of this code, that provides coverage
35 for a prescription insulin drug.

36 (4) “Pharmacy benefits manager” means an entity that
37 engages in the administration or management of
38 prescription drug benefits provided by an insurer for the
39 benefit of its covered persons.

40 (5) “Prescription insulin drug” means a prescription
41 drug that contains insulin and is used to treat diabetes.

42 (c) Each health plan shall cover at least one type of
43 insulin in all the following categories:

44 (1) Rapid-acting;

45 (2) Short-acting;

46 (3) Intermediate-acting;

47 (4) Long-acting;

48 (5) Pre-mixed insulin products;

49 (6) Pre-mixed insulin/GLP-1 RA products; and

50 (7) Concentrated human regular insulin.

51 (d) Notwithstanding the provisions of §33-1-1 *et seq.* of
52 this code, an insurer subject to §33-15-1 *et seq.*, §33-16-1 *et*
53 *seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et*
54 *seq.* of this code which issues or renews a health insurance
55 policy on or after July 1, 2020, shall provide coverage for
56 prescription insulin drugs pursuant to this section.

57 (e) Cost sharing for a 30-day supply of a covered
58 prescription insulin drug shall not exceed \$100 for a 30-day
59 supply of a covered prescription insulin, regardless of the
60 quantity or type of prescription insulin used to fill the
61 covered person's prescription needs.

62 (f) Nothing in this section prevents an insurer from
63 reducing a covered person's cost sharing to an amount less
64 than the amount specified in subsection (e) of this section.

65 (g) No contract between an insurer subject to §33-15-1
66 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*,
67 and §33-25A-1 of this code or its pharmacy benefits
68 manager and a pharmacy or its contracting agent shall
69 contain a provision: (i) Authorizing the insurer's pharmacy
70 benefits manager or the pharmacy to charge; (ii) requiring
71 the pharmacy to collect; or (iii) requiring a covered person
72 to make a cost-sharing payment for a covered prescription
73 insulin drug in an amount that exceeds the amount of the
74 cost-sharing payment for the covered prescription insulin
75 drug established by the insurer pursuant to subsection (e) of
76 this code.

77 (h) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et*
78 *seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 of
79 this code shall provide coverage for the following
80 equipment and supplies for the treatment and/or
81 management of diabetes for both insulin-dependent and

82 noninsulin-dependent persons with diabetes and those with
83 gestational diabetes: Blood glucose monitors, monitor
84 supplies, insulin, injection aids, syringes, insulin infusion
85 devices, pharmacological agents for controlling blood
86 sugar, and orthotics.

87 (i) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et*
88 *seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 of
89 this code shall include coverage for diabetes self-
90 management education to ensure that persons with diabetes
91 are educated as to the proper self-management and
92 treatment of their diabetes, including information on proper
93 diets.

94 (j) All health care plans must offer an appeals process
95 for persons who are not able to take one or more of the
96 offered prescription insulin drugs noted in subsection (c) of
97 this code. The appeals process shall be provided to covered
98 persons in writing and afford covered persons and their
99 health care providers a meaningful opportunity to
100 participate with covered persons health care providers.

101 (k) Diabetes self-management education shall be
102 provided by a health care practitioner who has been
103 appropriately trained. The Secretary of the Department of
104 Health and Human Resources shall promulgate legislative
105 rules to implement training requirements and procedures
106 necessary to fulfill provisions of this subsection: *Provided,*
107 That any rules promulgated by the secretary shall be done
108 after consultation with the Coalition for Diabetes
109 Management, as established in §16-5Z-1 *et seq.* of this code.

110 (l) A pharmacy benefits manager, a health plan, or any
111 other third party that reimburses a pharmacy for drugs or
112 services shall not reimburse a pharmacy at a lower rate and
113 shall not assess any fee, charge-back, or adjustment upon a
114 pharmacy on the basis that a covered person's costs sharing
115 is being impacted.

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CHAPTER 203

(Com. Sub. for S. B. 547 - By Senators Trump and Plymale)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §21-3E-16 of the Code of West Virginia, 1931, as amended; and to amend and reenact §21A-6-3 of said code, all relating to unemployment compensation; revising provisions relating to employer testing, notice, termination, and forfeiture of unemployment compensation benefits; and providing that violation of an employer's drug-free workplace program, or violation of an employer's alcohol-free workplace program, can still be grounds for a finding of gross misconduct.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

ARTICLE 3E. THE WEST VIRGINIA SAFER WORKPLACE ACT.

§21-3E-16. Employer testing; notice; termination; forfeiture.

1 If an employer implements a drug-free workplace
2 program in accordance with this article, which includes
3 notice, education, and procedural requirements for testing
4 for drugs and alcohol pursuant to this law, the employer may
5 require the employee to submit to a test for the presence of
6 drugs or alcohol. If an employee is terminated because
7 alcohol or a drug is found to be present in the employee's
8 system at a level proscribed by the employer's policy, the
9 employee, if injured at the time of the intoxication, forfeits

10 indemnity benefits under the Workers' Compensation
11 Laws. However, the employer's drug-free workplace
12 program must notify all employees that it is a condition of
13 employment for an employee to refrain from reporting to
14 work or working with the presence of drugs or alcohol in his
15 or her body and that policy must also state that if an injured
16 employee refuses to submit to a test for drugs or alcohol that
17 employee forfeits eligibility for indemnity benefits under
18 the Workers' Compensation Laws. Employers who do not
19 notify their employees of this condition of employment
20 waive their right to assert that eligibility for benefits is
21 entirely forfeited.

22 Nothing in this section may be construed or determined
23 to affect §23-4-2(a) of this code and the provisions of said
24 section shall be the sole manner in which intoxication may
25 be proven to establish such intoxication as the proximate
26 cause of an injury for purposes of said chapter.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the
2 commissioner, an individual is disqualified for benefits:

3 (1) For the week in which he or she left his or her most
4 recent work voluntarily without good cause involving fault
5 on the part of the employer and until the individual returns
6 to covered employment and has been employed in covered
7 employment at least 30 working days.

8 For the purpose of this subdivision, an individual has
9 not left his or her most recent work voluntarily without good
10 cause involving fault on the part of the employer if the
11 individual leaves his or her most recent work with an
12 employer and if he or she in fact, within a 14-day calendar
13 period, does return to employment with the last preceding
14 employer with whom he or she was previously employed

15 within the past year prior to his or her return to work, and
16 which last preceding employer, after having previously
17 employed the individual for 30 working days or more, laid
18 off the individual because of lack of work, which layoff
19 occasioned the payment of benefits under this chapter or
20 could have occasioned the payment of benefits under this
21 chapter had the individual applied for benefits. It is the
22 intent of this paragraph to cause no disqualification for
23 benefits for an individual who complies with the foregoing
24 set of requirements and conditions. Further, for the purpose
25 of this subdivision, an individual has not left his or her most
26 recent work voluntarily without good cause involving fault
27 on the part of the employer, if the individual was compelled
28 to leave his or her work for his or her own health-related
29 reasons and notifies the employer prior to leaving the job or
30 within two business days after leaving the job or as soon as
31 practicable and presents written certification from a licensed
32 physician within 30 days of leaving the job that his or her
33 work aggravated, worsened, or will worsen the individual's
34 health problem.

35 (2) For the week in which he or she was discharged from
36 his or her most recent work for misconduct and the six
37 weeks immediately following that week; or for the week in
38 which he or she was discharged from his or her last 30-day
39 employing unit for misconduct and the six weeks
40 immediately following that week. The disqualification
41 carries a reduction in the maximum benefit amount equal to
42 six times the individual's weekly benefit. However, if the
43 claimant returns to work in covered employment for 30 days
44 during his or her benefit year, whether or not the days are
45 consecutive, the maximum benefit amount is increased by
46 the amount of the decrease imposed under the
47 disqualification; except that:

48 If he or she were discharged from his or her most recent
49 work for one of the following reasons, or if he or she were
50 discharged from his or her last 30 days employing unit for
51 one of the following reasons: Gross misconduct consisting

52 of willful destruction of his or her employer's property;
53 assault upon the person of his or her employer or any
54 employee of his or her employer; if the assault is committed
55 at the individual's place of employment or in the course of
56 employment; reporting to work in an intoxicated condition,
57 or being intoxicated while at work; reporting to work under
58 the influence of any controlled substance, as defined in
59 chapter 60A of this code without a valid prescription, or
60 being under the influence of any controlled substance, as
61 defined in said chapter without a valid prescription, while at
62 work; adulterating or otherwise manipulating a sample or
63 specimen in order to thwart a drug or alcohol test lawfully
64 required of an employee; refusal to submit to random testing
65 for alcohol or illegal controlled substances for employees in
66 safety-sensitive positions as defined in §21-1D-2 of this
67 code; violation of an employer's drug-free workplace
68 program; violation of an employer's alcohol-free workplace
69 program; arson, theft, larceny, fraud, or embezzlement in
70 connection with his or her work; or any other gross
71 misconduct, he or she is disqualified for benefits until he or
72 she has thereafter worked for at least 30 days in covered
73 employment: *Provided*, That for the purpose of this
74 subdivision, the words "any other gross misconduct"
75 includes, but is not limited to, any act or acts of misconduct
76 where the individual has received prior written warning that
77 termination of employment may result from the act or acts.

78 (3) For the week in which he or she failed without good
79 cause to apply for available, suitable work, accept suitable
80 work when offered, or return to his or her customary self-
81 employment when directed to do so by the commissioner,
82 and for the four weeks which immediately follow for such
83 additional period as any offer of suitable work shall
84 continue open for his or her acceptance. The disqualification
85 carries a reduction in the maximum benefit amount equal to
86 four times the individual's weekly benefit amount.

87 (4) For any week or portion thereof in which he or she
88 did not work as a result of:

89 (a) A strike or other bona fide labor dispute which
90 caused him or her to leave or lose his or her employment.

91 (b) A lockout is not a strike or a bona fide labor dispute
92 and no individual may be denied benefits by reason of a
93 lockout. However, the operation of a facility by nonstriking
94 employees of the company, contractors, or other personnel
95 is not a reason to grant employees of the company on strike
96 unemployment compensation benefit payments. If the
97 operation of a facility is with workers hired to permanently
98 replace the employees on strike, the employees would be
99 eligible for benefits.

100 (c) For the purpose of this subsection, an individual
101 shall be determined to leave or lose his or her employment
102 by reason of a lockout where the individual employee has
103 established that: (i) The individual presented himself or
104 herself physically for work at the workplace on the first day
105 of such lockout or on the first day he or she is able to present
106 himself at the workplace or herself; and (ii) the employer
107 denied the individual the opportunity to perform work.

108 (d) For purposes of this subsection, an individual is
109 determined to be permanently replaced where the individual
110 employee establishes that: (i) He or she is currently
111 employed by an employer who is the subject of a strike or
112 other bona fide labor dispute; and (ii) the position of the
113 employee has been occupied by another employee who has
114 been notified they are permanently replacing the employee
115 who previously occupied the position. Employees or
116 contractors who are hired to perform striking employees'
117 work on a temporary basis, such as the duration of a strike
118 or other bona fide labor dispute, or a shorter period of time,
119 may not be determined to have permanently replaced a
120 striking employee.

121 (5) For a week with respect to which he or she is
122 receiving or has received:

123 (a) Wages in lieu of notice;

124 (b) Compensation for temporary total disability under
125 the workers' compensation law of any state or under a
126 similar law of the United States; or

127 (c) Unemployment compensation benefits under the
128 laws of the United States or any other state.

129 (6) For the week in which an individual has voluntarily
130 quit employment to marry or to perform any marital,
131 parental, or family duty, or to attend to his or her personal
132 business or affairs and until the individual returns to covered
133 employment and has been employed in covered
134 employment at least 30 working days: *Provided*, That an
135 individual who has voluntarily quit employment to
136 accompany a spouse serving in active military service who
137 has been reassigned from one military assignment to
138 another is not disqualified for benefits pursuant to this
139 subdivision: *Provided, however*, That the account of the
140 employer of an individual who leaves the employment to
141 accompany a spouse reassigned from one military
142 assignment to another may not be charged.

143 (7) Benefits may not be paid to any individual on the
144 basis of any services, substantially all of which consist of
145 participating in sports or athletic events or training or
146 preparing to so participate, for any week which commences
147 during the period between two successive sport seasons (or
148 similar periods) if the individual performed the services in
149 the first of the seasons (or similar periods) and there is a
150 reasonable assurance that the individual will perform the
151 services in the later of the seasons (or similar periods).

152 (8) (a) Benefits may not be paid on the basis of services
153 performed by an alien unless the alien is an individual who
154 was lawfully admitted for permanent residence at the time
155 the services were performed, was lawfully present for
156 purposes of performing the services or was permanently
157 residing in the United States under color of law at the time
158 the services were performed (including an alien who is
159 lawfully present in the United States as a result of the

160 application of the provisions of Section 203(a)(7) or Section
161 212(d)(5) of the Immigration and Nationality Act):
162 *Provided*, That any modifications to the provisions of
163 Section 3304(a)(14) of the federal Unemployment Tax Act
164 as provided by Public Law 94-566 which specify other
165 conditions or other effective date than stated in this
166 subdivision for the denial of benefits based on services
167 performed by aliens and which modifications are required
168 to be implemented under state law as a condition for full tax
169 credit against the tax imposed by the federal Unemployment
170 Tax Act are applicable under the provisions of this section.

171 (b) Any data or information required of individuals
172 applying for benefits to determine whether benefits are not
173 payable to them because of their alien status shall be
174 uniformly required from all applicants for benefits.

175 (c) In the case of an individual whose application for
176 benefits would otherwise be approved, no determination
177 that benefits to the individual are not payable because of his
178 or her alien status may be made except upon a
179 preponderance of the evidence.

180 (9) For each week in which an individual is unemployed
181 because, having voluntarily left employment to attend a
182 school, college, university, or other educational institution,
183 he or she is attending that school, college, university, or
184 other educational institution, or is awaiting entrance thereto
185 or is awaiting the starting of a new term or session thereof,
186 and until the individual returns to covered employment.

187 (10) For each week in which he or she is unemployed
188 because of his or her request, or that of his or her duly
189 authorized agent, for a vacation period at a specified time
190 that would leave the employer no other alternative but to
191 suspend operations.

192 (11) In the case of an individual who accepts an early
193 retirement incentive package, unless he or she: (i)
194 Establishes a well-grounded fear of imminent layoff

195 supported by definitive objective facts involving fault on the
196 part of the employer; and (ii) establishes that he or she
197 would suffer a substantial loss by not accepting the early
198 retirement incentive package.

199 (12) For each week with respect to which he or she is
200 receiving or has received benefits under Title II of the Social
201 Security Act or similar payments under any Act of
202 Congress, or remuneration in the form of an annuity,
203 pension, or other retirement pay from a base period
204 employer or chargeable employer or from any trust or fund
205 contributed to by a base period employer or chargeable
206 employer or any combination of the above, the weekly
207 benefit amount payable to the individual for that week shall
208 be reduced (but not below zero) by the prorated weekly
209 amount of those benefits, payments, or remuneration:
210 *Provided*, That if the amount of benefits is not a multiple of
211 \$1, it shall be computed to the next lowest multiple of \$1:
212 *Provided, however*, That there is no disqualification if in the
213 individual's base period there are no wages which were paid
214 by the base period employer or chargeable employer paying
215 the remuneration, or by a fund into which the employer has
216 paid during the base period: *Provided further*, That
217 notwithstanding any other provision of this subdivision to
218 the contrary, the weekly benefit amount payable to the
219 individual for that week may not be reduced by any
220 retirement benefits he or she is receiving or has received
221 under Title II of the Social Security Act or similar payments
222 under any Act of Congress. A claimant may be required to
223 certify as to whether or not he or she is receiving or has been
224 receiving remuneration in the form of an annuity, pension,
225 or other retirement pay from a base period employer or
226 chargeable employer or from a trust fund contributed to by
227 a base period employer or chargeable employer.

228 (13) For each week in which and for 52 weeks
229 thereafter, beginning with the date of the decision, if the
230 commissioner finds the individual who within 24 calendar
231 months immediately preceding the decision, has made a

232 false statement or representation knowing it to be false or
233 knowingly fails to disclose a material fact, to obtain or
234 increase any benefit or payment under this article: *Provided*,
235 That disqualification under this subdivision does not
236 preclude prosecution under §21A-10-7 of this code.

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CHAPTER 204

**(Com. Sub. for H. B. 2646 - By Delegates
Higginbotham, Foster, Wilson, Sypolt, Hardy, Butler,
Atkinson and Cadle)**

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §21-5-4a, relating to providing a safe harbor for employers to correct underpayment or nonpayment of wages and fringe benefits due to separated employees prior to the filing of a lawsuit; prohibiting an employee from seeking liquidated damages or attorney's fees when bringing an action for the underpayment or nonpayment of wages and fringe benefits due upon the employee's separation of employment without first making a written demand to the employer; requiring the employer to inform the employee in writing of who the authorized representative is and where to send a written demand; exempting employee from compliance where employer fails to provide written notice; providing a time limit during which the employer must correct the nonpayment or underpayment; permitting an employee to file a written demand with the employer on behalf of a class; and allowing the class action to proceed if only the named employee is paid; and defining the term "written demand".

Be it enacted by the Legislature of West Virginia:

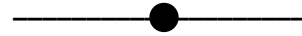
ARTICLE 5. WAGE PAYMENT AND COLLECTION.**§21-5-4a. Safe Harbor.**

1 (a) An employee, in bringing an action for the
2 underpayment or nonpayment of wages and fringe benefits
3 due upon the employee's separation of employment as
4 contemplated by §21-5-4 of this code, is not entitled to seek
5 liquidated damages or attorney's fees from an employer
6 without first making a written demand, as defined in
7 subsection (c) of this section, to the employer seeking the
8 payment of any alleged underpayment or nonpayment as set
9 forth in this section: *Provided*, That upon separation or with
10 the issuance of the final paycheck, the employer shall notify
11 the employee in writing who the employer's authorized
12 representative is and where to send a written demand by
13 both e-mail and regular mail: *Provided* however, that if the
14 employer fails to provide the required written notice, the
15 employee is not required to comply with the provisions of
16 this section. Upon receiving a written demand, the employer
17 has seven calendar days from receipt to correct the alleged
18 underpayment or nonpayment of the wages and fringe
19 benefits due. If, after seven days, the employer has not
20 corrected the alleged underpayment or nonpayment, or paid
21 all undisputed amounts due to the employee, the employee
22 may seek liquidated damages and attorney's fees. Nothing
23 in this section prohibits the employee from presenting a
24 claim under this article without making a written demand to
25 the employer.

26 (b) In a class action lawsuit brought under this article
27 for the underpayment or nonpayment of wages and fringe
28 benefits due upon the employees' separation of
29 employment, the employee, prior to the filing of the class
30 action, shall submit a written demand stating it is a demand
31 for all other employees similarly situated for the
32 underpayment or nonpayment of their wages and fringe
33 benefits: *Provided*, That if only the underpayment or
34 nonpayment of wages and fringe benefits of the named
35 employee is corrected, a class action may proceed for the

36 underpayment or nonpayment of wages and fringe benefits
37 still owed to the other members of the class.

38 (c) For purposes of this section, a “written demand”
39 means any writing, including e-mail, from or on behalf of
40 an employee stating that the employer has not paid all of the
41 wages or fringe benefits which the employee is owed.



CHAPTER 205

(Com. Sub. for S. B. 323 - By Senator Maynard)

[Passed January 30, 2020; in effect from passage.]
[Approved by the Governor on February 10, 2020.]

AN ACT to amend and reenact §64-2-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing certain agencies of the Department of Administration to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee; authorizing the Department of Administration to promulgate a legislative rule relating to rules for the general administration of records management and preservation; authorizing the Department of Administration to promulgate a legislative rule relating to retention and disposal scheduling; authorizing the Department of Administration to promulgate a legislative rule relating to management of records maintained by the records center; authorizing the Department of Administration to promulgate a legislative rule relating to exemptions from management services provided by the fleet management division; authorizing the Department of Administration to promulgate a legislative rule relating to financial services reporting; and authorizing Public Defender Services to promulgate a

legislative rule relating to payment of fees and reimbursement of expenses of court-appointed attorneys.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of Administration.

1 (a) The legislative rule filed in the State Register on July
2 26, 2019, authorized under the authority of §5A-8-8 of this
3 code, relating to the Department of Administration (rules for
4 the general administration of records management and
5 preservation, 148 CSR 12), is authorized.

6 (b) The legislative rule filed in the State Register on July
7 26, 2019, authorized under the authority of §5A-8-8 of this
8 code, relating to the Department of Administration
9 (retention and disposal scheduling, 148 CSR 13), is
10 authorized.

11 (c) The legislative rule filed in the State Register on July
12 26, 2019, authorized under the authority of §5A-8-8 of this
13 code, relating to the Department of Administration
14 (management of records maintained by the records center,
15 148 CSR 14), is authorized.

16 (d) The legislative rule filed in the State Register on July
17 8, 2019, authorized under the authority of §5A-12-9 of this
18 code, relating to the Department of Administration
19 (exemptions from management services provided by the
20 fleet management division, 148 CSR 23), is authorized.

21 (e) The legislative rule filed in the State Register on July
22 26, 2019, authorized under the authority of §5A-2B-2 of this
23 code, modified by the Department of Administration to
24 meet the objections of the Legislative Rule-Making Review
25 Committee and refiled in the State Register on October 29,

26 2019, relating to the Department of Administration
27 (financial services reporting, 148 CSR 24), is authorized.

§64-2-2. Public Defender Services.

1 The legislative rule filed in the State Register on July
2 22, 2019, authorized under the authority of §29-21-5 of this
3 code, modified by the Public Defender Services to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on January 2,
6 2020, relating to the Public Defender Services (payment of
7 fees and reimbursement of expenses of court-appointed
8 attorneys, 89 CSR 01), is authorized.

CHAPTER 206

(Com. Sub. for S. B. 339 - By Senator Maynard)

[Passed March 5, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §64-5-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing certain agencies of the Department of Health and Human Resources to promulgate legislative rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee, and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fees for permits; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to vital statistics; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services; authorizing the Department of

Health and Human Resources to promulgate a legislative rule relating to primary care support program; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to primary care seed money grants; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medical cannabis program—general provisions; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medical cannabis program—grower/processors; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medical cannabis program—laboratories; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medical cannabis program—dispensaries; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medical cannabis program—safe harbor letter; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the collection and exchange of data related to overdoses; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults in West Virginia; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to qualifications for a provisional license to practice as a social worker within the Department of Health and Human Resources; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to pilot program for drug screening of applicants for cash assistance; and authorizing the Health Care Authority to promulgate a legislative rule relating to critical access hospitals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Department of Health and Human Resources.

1 (a) The legislative rule filed in the State Register on July
2 16, 2019, authorized under the authority of §16-1-4 of this
3 code, modified by the Department of Health and Human
4 Resources to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register
6 on November 4, 2019, relating to the Department of Health
7 and Human Resources (public water systems, 64 CSR 03),
8 is authorized.

9 (b) The legislative rule filed in the State Register on July
10 16, 2019, authorized under the authority of §16-1-11(d) of
11 this code, modified by the Department of Health and Human
12 Resources to meet the objections of the Legislative Rule-
13 Making Review Committee and refiled in the State Register
14 on December 19, 2019, relating to the Department of Health
15 and Human Resources (fees for permits, 64 CSR 30), is
16 authorized.

17 (c) The legislative rule filed in the State Register on July
18 16, 2019, authorized under the authority of §16-5-3 of this
19 code, modified by the Department of Health and Human
20 Resources to meet the objections of the Legislative Rule-
21 Making Review Committee and refiled in the State Register
22 on November 4, 2019, relating to the Department of Health
23 and Human Resources (vital statistics, 64 CSR 32), is
24 authorized.

25 (d) The legislative rule filed in the State Register on July
26 16, 2019, authorized under the authority of §16-4C-23 of
27 this code, modified by the Department of Health and Human
28 Resources to meet the objections of the Legislative Rule-
29 Making Review Committee and refiled in the State Register
30 on November 4, 2019, relating to the Department of Health
31 and Human Resources (emergency medical services, 64
32 CSR 48), is authorized.

33 (e) The legislative rule filed in the State Register on July
34 25, 2019, authorized under the authority of §16-2H-2(d) of
35 this code, modified by the Department of Health and Human
36 Resources to meet the objections of the Legislative Rule-

37 Making Review Committee and refiled in the State Register
38 on December 19, 2019, relating to the Department of Health
39 and Human Resources (primary care support program, 64
40 CSR 70), is authorized, with the following amendment:

41 On page 4, by striking subsection 4.2.

42 (f) The legislative rule filed in the State Register on July
43 26, 2019, authorized under the authority of §16-2H-2(d) of
44 this code, relating to the Department of Health and Human
45 Resources (primary care seed money grants, 64 CSR 71), is
46 authorized.

47 (g) The legislative rule filed in the State Register on July
48 25, 2019, authorized under the authority of §16A-3-1(b) of
49 this code, modified by the Department of Health and Human
50 Resources to meet the objections of the Legislative Rule-
51 Making Review Committee and refiled in the State Register
52 on October 4, 2019, relating to the Department of Health
53 and Human Resources (medical cannabis program—
54 general provisions, 64 CSR 109), is authorized, with the
55 following amendment:

56 On page 5, by striking subsection 2.36 and inserting a
57 new subsection 2.36 to read as follows: 2.36 “Medical
58 cannabis” means cannabis that is grown and sold pursuant
59 to the provisions for certified medical use as set forth in the
60 Act and in a form set forth in the provisions of §64-110-10.

61 (h) The legislative rule filed in the State Register on July
62 25, 2019, authorized under the authority of §16A-3-1(b) of
63 this code, modified by the Department of Health and Human
64 Resources to meet the objections of the Legislative Rule-
65 Making Review Committee and refiled in the State Register
66 on October 4, 2019, relating to the Department of Health
67 and Human Resources (medical cannabis program—
68 grower/processors, 64 CSR 110), is authorized, with the
69 following amendments:

70 On page 4, by striking subsection 2.29 and inserting a
71 new subsection 2.29 to read as follows: 2.29 “Medical
72 cannabis” means cannabis that is grown and sold pursuant
73 to the provisions for certified medical use as set forth in the
74 Act and in a form set forth in the provisions of §64-110-10.;

75 On page 12, subdivision 8.1.d., after the words
76 “minimum of”, by deleting the words “four years” and
77 inserting in lieu thereof the words “two years”; and

78 On page 13, subparagraph 8.2.f.2., after the words
79 “recording for”, by deleting the words “four years” and
80 inserting in lieu thereof the words “two years”.

81 And,

82 On page 15, by striking section §64-110-10 and
83 inserting in lieu thereof a new §64-110-10 to read as
84 follows:

85 “§64-110-10. Forms of medical cannabis.

86 10.1. A grower/processor may only process medical
87 cannabis for dispensing to a patient or caregiver in the
88 following forms:

89 10.1.a. Pill;

90 10.1.b. Oil;

91 10.1.c. Topical forms, including gel, creams, and
92 ointments;

93 10.1.d. A form medically appropriate for administration
94 by vaporization or nebulization;

95 10.1.e. Liquid;

96 10.1.f. Dermal patch; or

97 10.1.g. Dry leaf or plant form.

98 10.2. A grower/processor may not manufacture,
99 produce, or assemble any medical cannabis product,
100 instrument, or device without prior written approval of the
101 bureau.

102 (i) The legislative rule filed in the State Register on July
103 25, 2019, authorized under the authority of §16A-3-1(b) of
104 this code, modified by the Department of Health and Human
105 Resources to meet the objections of the Legislative Rule-
106 Making Review Committee and refiled in the State Register
107 on October 4, 2019, relating to the Department of Health
108 and Human Resources (medical cannabis program—
109 laboratories, 64 CSR 111), is authorized, with the following
110 amendment:

111 On page 3, by striking subsection 2.15 and inserting a
112 new subsection 2.15 to read as follows: 2.15 “Medical
113 cannabis” means cannabis that is grown and sold pursuant
114 to the provisions for certified medical use as set forth in the
115 Act and in a form set forth in the provisions of §64-110-10.

116 (j) The legislative rule filed in the State Register on July
117 25, 2019, authorized under the authority of §16A-3-1(b) of
118 this code, modified by the Department of Health and Human
119 Resources to meet the objections of the Legislative Rule-
120 Making Review Committee and refiled in the State Register
121 on October 4, 2019, relating to the Department of Health
122 and Human Resources (medical cannabis program—
123 dispensaries, 64 CSR 112), is authorized, with the following
124 amendments:

125 On page 3, by striking subsection 2.19 and inserting a
126 new subsection 2.19 to read as follows: 2.19 “Medical
127 cannabis” means cannabis that is grown and sold pursuant
128 to the provisions for certified medical use as set forth in the
129 Act and in a form set forth in the provisions of §64-110-10.;

130 and

131 On page 12, subdivision 11.1.d., after the words
132 “minimum of”, by deleting the words “four years” and
133 inserting in lieu thereof the words “two years”.

134 (k) The legislative rule filed in the State Register on July
135 24, 2019, authorized under the authority of §16A-3-1(b) of
136 this code, modified by the Department of Health and Human
137 Resources to meet the objections of the Legislative Rule-
138 Making Review Committee and refiled in the State Register
139 on December 19, 2019, relating to the Department of Health
140 and Human Resources (medical cannabis program—safe
141 harbor letter, 64 CSR 113), is authorized, with the following
142 amendment:

143 On page 1, by striking subsection 2.7 and inserting a
144 new subsection 2.7 to read as follows: 2.7 “Medical
145 cannabis” means cannabis that is grown and sold pursuant
146 to the provisions for certified medical use as set forth in the
147 Act and in a form set forth in the provisions of §64-110-10.

148 (l) The legislative rule filed in the State Register on July
149 22, 2019, authorized under the authority of §16-5T-5 of this
150 code, modified by the Department of Health and Human
151 Resources to meet the objections of the Legislative Rule-
152 Making Review Committee and refiled in the State Register
153 on November 21, 2019, relating to the Department of Health
154 and Human Resources (collection and exchange of data
155 related to overdoses, 69 CSR 14), is authorized.

156 (m) The legislative rule filed in the State Register on
157 July 26, 2019, authorized under the authority of §49-2-121
158 of this code, modified by the Department of Health and
159 Human Resources to meet the objections of the Legislative
160 Rule-Making Review Committee and refiled in the State
161 Register on January 7, 2020, relating to the Department of
162 Health and Human Resources (minimum licensing
163 requirements for residential child care and treatment
164 facilities for children and transitioning adults in West
165 Virginia, 78 CSR 03), is authorized.

166 (n) The legislative rule filed in the State Register on July
167 24, 2019, authorized under the authority of §30-30-16(c)(2)
168 of this code, modified by the Department of Health and
169 Human Resources to meet the objections of the Legislative
170 Rule-Making Review Committee and refiled in the State
171 Register on November 25, 2019, relating to the Department
172 of Health and Human Resources (qualifications for a
173 provisional license to practice as a social worker within the
174 Department of Health and Human Resources, 78 CSR 24),
175 is authorized.

176 (o) The legislative rule filed in the State Register on
177 September 4, 2019, authorized under the authority of §9-3-
178 6 of this code, relating to the Department of Health and
179 Human Resources (pilot program for drug screening of
180 applicants for cash assistance, 78 CSR 26), is authorized.

§64-5-2. Health Care Authority.

1 The legislative rule filed in the State Register on July
2 16, 2019, authorized under the authority of §16-5B-14(d) of
3 this code, modified by the Health Care Authority to meet
4 the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on November
6 22, 2019, relating to the Health Care Authority (critical
7 access hospitals, 65 CSR 09), is authorized.

CHAPTER 207

(Com. Sub. for S. B. 357 - By Senator Maynard)

[Passed February 5, 2020; in effect from passage.]
[Approved by the Governor on February 14, 2020.]

AN ACT to amend and reenact §64-7-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to

authorizing certain agencies of the Department of Revenue to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee; authorizing the Insurance Commissioner to promulgate a legislative rule relating to Medicare supplement insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to credit for reinsurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to pharmacy auditing entities and pharmacy benefit managers; authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the State Tax Department to promulgate a legislative rule relating to payment of taxes by electronic funds transfer; authorizing the State Tax Department to promulgate a legislative rule relating to consumers sales and service tax and use tax—drugs, durable medical goods, mobility-enhancing equipment, and prosthetic devices per se exemption, motor vehicles per se exemption; and authorizing the State Tax Department to promulgate a legislative rule relating to exchange of information pursuant to written agreement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Insurance Commissioner.

1 (a) The legislative rule filed in the State Register on July
2 26, 2019, authorized under the authority of §33-2-10 of this
3 code, relating to the Insurance Commissioner (Medicare
4 supplement insurance, 114 CSR 24), is authorized.

5 (b) The legislative rule filed in the State Register on
6 March 26, 2019, authorized under the authority of §33-4-
7 15a(e)(1) of this code, modified by the Insurance
8 Commissioner to meet the objections of the Legislative
9 Rule-Making Review Committee and refiled in the State

10 Register on October 29, 2019, relating to the Insurance
11 Commissioner (credit for reinsurance, 114 CSR 40), is
12 authorized.

13 (c) The legislative rule filed in the State Register on
14 December 6, 2019, authorized under the authority of §33-
15 51-10 of this code, relating to the Insurance Commissioner
16 (pharmacy auditing entities and pharmacy benefit
17 managers, 114 CSR 99), is authorized.

§64-7-2. Racing Commission.

1 The legislative rule filed in the State Register on July
2 18, 2019, authorized under the authority of §19-23-6 of this
3 code, modified by the Racing Commission to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on December
6 20, 2019, relating to the Racing Commission (thoroughbred
7 racing, 178 CSR 01), is authorized.

§64-7-3. State Tax Department.

1 (a) The legislative rule filed in the State Register on July
2 15, 2019, authorized under the authority of §11-10-5t of this
3 code, relating to the State Tax Department (payment of
4 taxes by electronic funds transfer, 110 CSR 10F), is
5 authorized.

6 (b) The legislative rule filed in the State Register on July
7 16, 2019, authorized under the authority of §11-10-5 of this
8 code, modified by the State Tax Department to meet the
9 objections of the Legislative Rule-Making Review
10 Committee and refiled in the State Register on November 5,
11 2019, relating to the State Tax Department (consumers sales
12 and service tax and use tax—drugs, durable medical goods,
13 mobility-enhancing equipment, and prosthetic devices per
14 se exemption, motor vehicles per se exemption, 110 CSR
15 15C), is authorized.

16 (c) The legislative rule filed in the State Register on July
17 15, 2019, authorized under the authority of §11-10-5 of this

18 code, modified by the State Tax Department to meet the
19 objections of the Legislative Rule-Making Review
20 Committee and refiled in the State Register on November 5,
21 2019, relating to the State Tax Department (exchange of
22 information pursuant to written agreement, 110 CSR 50C),
23 is authorized.



CHAPTER 208

(Com. Sub. for S. B. 364 - By Senator Maynard)

[Passed February 12, 2020; in effect from passage.]
[Approved by the Governor on February 24, 2020.]

AN ACT to amend and reenact §64-8-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing certain agencies of the Department of Transportation to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Division of Highways to promulgate a legislative rule relating to use of state road rights-of-way and adjacent areas; authorizing the Division of Highways to promulgate a legislative rule relating to transportation of hazardous wastes upon the roads and highways; authorizing the Division of Highways to promulgate a legislative rule relating to small wireless facilities on Division of Highways rights-of-way; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to a safety and treatment program; and authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to State Vehicle Title, Registration, and Relicensing Project of 2018.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF
TRANSPORTATION TO PROMULGATE LEGISLATIVE
RULES.**

§64-8-1. Division of Highways.

1 (a) The legislative rule filed in the State Register on July
2 29, 2019, authorized under the authority of §17-2A-8(24) of
3 this code, modified by the Division of Highways to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on January 8,
6 2020, relating to the Division of Highways (use of state road
7 rights-of-way and adjacent areas, 157 CSR 06), is
8 authorized with the following amendments:

9 On page 11, by striking out subsection 3.8 and inserting
10 in lieu thereof a new subsection 3.8 to read as follows:

11 3.8. Utility Installations. All publicly and privately
12 owned utilities, including but not limited to, electric,
13 communication, gas, oil, petroleum products, chemical,
14 water, steam, sewage, drainage, and similar facilities that
15 are to be accommodated, adjusted or relocated within state
16 highway right-of-way, shall be in accordance with the
17 Division's interpretive rule promulgated under section 10 of
18 this rule.

19 On page 11, by striking out paragraph 3.8.d.3. and
20 inserting in lieu thereof a new paragraph 3.8.d.3. to read as
21 follows:

22 3.8.d.3. "Notice requesting removal or relocation and
23 utility liability. In accordance with the interpretive rule
24 promulgated under section 10 of this rule, the Division shall
25 provide notice to affected utilities when relocations of
26 existing facilities are required for highway projects. If the
27 utility fails to comply with the notice as provided in W.Va.
28 Code §17-4-17b(d), the utility is liable for all costs, fees,
29 penalties, or other charges incurred by the Division as a
30 result of the utility's failure to timely relocate, unless a
31 written extension is granted by the Division".;

32 On page 12, by striking out all of subdivision 3.8.e.

33 And,

34 On page 36, by adding a new section 10. to read as
35 follows:

§157-6-10. Promulgation of interpretive rule and legislative rule on fees.

1 10.1. The Division shall promulgate an interpretive rule
2 in accordance with W. Va. Code §29A-3-1 *et seq.* setting
3 forth the requirements for accommodating utilities on
4 highway right-of-way and the adjustment and relocation of
5 utility facilities on highway projects. The interpretive rule
6 may not contain any type of fee.

7 10.2. The Division shall promulgate any fees levied on
8 a utility or telecommunications provider by legislative rule
9 in accordance with W. Va. Code §29A-3-1 *et seq.*

10 (b) The legislative rule filed in the State Register on July
11 26, 2019, authorized under the authority of §22-18-7(a) of
12 this code, relating to the Division of Highways
13 (transportation of hazardous wastes upon the roads and
14 highways, 157 CSR 07), is authorized.

15 (c) The legislative rule filed in the State Register on July
16 29, 2019, authorized under the authority of §31H-2-3 of this
17 code, modified by the Division of Highways to meet the
18 objections of the Legislative Rule-Making Review
19 Committee and refiled in the State Register on January 8,
20 2020, relating to the Division of Highways (small wireless
21 facilities on Division of Highways rights-of-way, 157 CSR
22 13), is authorized with the following amendments:

23 On page 2, by striking out subsection 2.7 and
24 renumbering the remaining subsections;

25 On page 5, subsection 4.4, after the words: “the
26 application.”, by inserting the following: “When

27 determining the time in which an application must be acted
28 upon, if the final day to act falls on a federal or state holiday,
29 the date to act upon the application shall be the next
30 weekday that is not a federal or state holiday.”;

31 On page 5, subsection 4.5. by striking out the word
32 “business”;

33 On page 5, subdivision 4.5.1. by striking out the word
34 “business”;

35 On page 5, subdivision 4.5.2. by striking out the words
36 “business days”;

37 And,

38 On page 8, subsection 5.1. by striking out the word
39 “business”.

§64-8-2. Division of Motor Vehicles.

1 (a) The legislative rule filed in the State Register on
2 August 19, 2019, authorized under the authority of §17C-
3 5A-3 of this code, modified by the Division of Motor
4 Vehicles to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register
6 on November 6, 2019, relating to the Division of Motor
7 Vehicles (safety and treatment program, 91 CSR 15), is
8 authorized.

9 (b) The legislative rule filed in the State Register on July
10 29, 2019, authorized under the authority of §17A-3-25 of
11 this code, relating to the Division of Motor Vehicles (State
12 Vehicle Title, Registration, and Relicensing Project of
13 2018, 91 CSR 24), is authorized.

