

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



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

Volume II
Chapters 209 - 351
Chapters 1 - 47
Chapters 1 - 3

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

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Robert Altmann
Bill Status/Engrossing and Enrolling Clerk

Lynn Lewis

Anne Landgrebe

Lori Skull

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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, CGP Foods, Inc.	83rd - 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, Terri Funk (R)	52nd	Kingwood	Assessor	83rd - 84th
Thompson, Cody H. (D)	43rd	Elkins	Educator	84th
Thompson, Robert (D)	19th	Wayne	Teacher	83rd - 84th
Tomblin, Tim (D)	24th	Logan	Self-Employed	84th
Toney, Christopher Wayne (R)	31st	Beckley	School Bus Operator	84th
Walker, Danielle (D)	51st	Morgantown	Direct Care Worker	84th
Waxman, Terry (R)	48th	Bridgeport	Homemaker	82nd; 84th
Westfall, Steve (R)	12th	Ripley	Insurance Agent	81st - 84th
Williams, John (D)	51st	Morgantown	Insurance Sales	83rd - 84th
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.



CHAPTER 209

(Com. Sub. for S. B. 449 - By Senator Maynard)

[Passed February 12, 2020; in effect from passage.]

[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §64-10-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating to authorizing certain agencies of the Department of Commerce to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee; authorizing the Department of Commerce to promulgate a legislative rule relating to small business innovation research and small business technology transfer matching funds program; authorizing the Division of Labor to promulgate a legislative rule relating to supervision of plumbing work; authorizing the Division of Labor to promulgate a legislative rule relating to regulation of heating, ventilating, and cooling work; authorizing the Division of Forestry to promulgate a legislative rule relating to sediment control during commercial timber-harvesting operations—licensing; authorizing the Division of Forestry to promulgate a legislative rule relating to sediment control during commercial timber-harvesting operations—logger certification; authorizing the Office of Miners’ Health, Safety, and Training to promulgate a legislative rule relating to substance abuse screening, standards, and procedures; authorizing the Office of Miners’ Health, Safety, and Training to promulgate a legislative rule relating to rules governing the certification, recertification, and training of EMT-miners and the certification of EMT-M instructors; authorizing the Division of Natural Resources to promulgate a legislative rule relating to commercial whitewater outfitters; authorizing the Division of Natural Resources to promulgate a legislative rule

relating to transporting and selling wildlife pelts and parts; authorizing the Division of Natural Resources to promulgate a legislative rule relating to boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special boating rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special requirements concerning boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to public use of campgrounds in West Virginia State Parks and State Forests and campsites in State Rail Trails under the Division of Natural Resources; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special projects and grants for the West Virginia State Parks, State Forests, and State Rail Trails under the Division of Natural Resources; authorizing the Division of Natural Resources to promulgate a legislative rule relating to defining terms used in all hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special fishing rule; authorizing the Division of Natural Resources to promulgate a legislative rule relating to catching and selling bait fish; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to falconry.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 10. AUTHORIZATION FOR DEPARTMENT OF
COMMERCE TO PROMULGATE LEGISLATIVE
RULES.**

§64-10-1. Department of Commerce.

1 The legislative rule filed in the State Register on July
2 18, 2019, authorized under the authority of §5B-8-2 of this
3 code, modified by the Department of Commerce to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on December 5,
6 2019, relating to the Department of Commerce (small

7 business innovation research and small business technology
8 transfer matching funds program, 145 CSR 15), is
9 authorized.

§64-10-2. Division of Labor.

1 (a) The legislative rule filed in the State Register on July
2 17, 2019, authorized under the authority of §21-14-4 of this
3 code, relating to the Division of Labor (supervision of
4 plumbing work, 42 CSR 32), is authorized.

5 (b) The legislative rule filed in the State Register on July
6 17, 2019, authorized under the authority of §21-16-5 of this
7 code, relating to the Division of Labor (regulation of
8 heating, ventilating, and cooling work, 42 CSR 34), is
9 authorized.

§64-10-3. Division of Forestry.

1 (a) The legislative rule filed in the State Register on July
2 26, 2019, authorized under the authority of §19-1B-4 of this
3 code, relating to the Division of Forestry (sediment control
4 during commercial timber-harvesting operations—
5 licensing, 22 CSR 02), is authorized.

6 (b) The legislative rule filed in the State Register on July
7 26, 2019, authorized under the authority of §19-1B-7 of this
8 code, relating to the Division of Forestry (sediment control
9 during commercial timber-harvesting operations—logger
10 certification, 22 CSR 03), is authorized.

§64-10-4. Office of Miners' Health, Safety, and Training.

1 (a) The legislative rule filed in the State Register on July
2 25, 2019, authorized under the authority of §22A-1-6 of this
3 code, relating to the Office of Miners' Health, Safety, and
4 Training (substance abuse screening, standards, and
5 procedures, 56 CSR 19), is authorized.

6 (b) The legislative rule filed in the State Register on July
7 25, 2019, authorized under the authority of §22A-10-3 of

8 this code, relating to the Office of Miners' Health, Safety,
9 and Training (rules governing the certification,
10 recertification, and training of EMT-miners and the
11 certification of EMT-M instructors, 56 CSR 22), is
12 authorized.

§64-10-5. Division of Natural Resources.

1 (a) The legislative rule filed in the State Register on July
2 23, 2019, authorized under the authority of §20-2-23a of this
3 code, relating to the Division of Natural Resources
4 (commercial whitewater outfitters, 58 CSR 12), is
5 authorized.

6 (b) The legislative rule filed in the State Register on July
7 23, 2019, authorized under the authority of §20-2-11 of this
8 code, relating to the Division of Natural Resources
9 (transporting and selling wildlife pelts and parts, 58 CSR
10 16), is authorized.

11 (c) The legislative rule filed in the State Register on July
12 23, 2019, authorized under the authority of §20-7-13 of this
13 code, relating to the Division of Natural Resources (boating
14 rule, 58 CSR 25), is authorized.

15 (d) The legislative rule filed in the State Register on July
16 23, 2019, authorized under the authority of §20-7-22 of this
17 code, modified by the Division of Natural Resources to
18 meet the objections of the Legislative Rule-Making Review
19 Committee and refiled in the State Register on December
20 30, 2019, relating to the Division of Natural Resources
21 (special boating rule, 58 CSR 26), is authorized.

22 (e) The legislative rule filed in the State Register on July
23 23, 2019, authorized under the authority of §20-7-22 of this
24 code, relating to the Division of Natural Resources (special
25 requirements concerning boating, 58 CSR 28), is
26 authorized.

27 (f) The legislative rule filed in the State Register on July
28 23, 2019, authorized under the authority of §20-5-2 of this

29 code, modified by the Division of Natural Resources to
30 meet the objections of the Legislative Rule-Making Review
31 Committee and refiled in the State Register on December
32 30, 2019, relating to the Division of Natural Resources
33 (public use of campgrounds in West Virginia State Parks
34 and State Forests and campsites in State Rail Trails under
35 the Division of Natural Resources, 58 CSR 32), is
36 authorized.

37 (g) The legislative rule filed in the State Register on July
38 23, 2019, authorized under the authority of §20-1A-7 and
39 §20-5-2 of this code, modified by the Division of Natural
40 Resources to meet the objections of the Legislative Rule-
41 Making Review Committee and refiled in the State Register
42 on December 30, 2019, relating to the Division of Natural
43 Resources (special projects and grants for West Virginia
44 State Parks, State Forests, and State Rail Trails under the
45 Division of Natural Resources, 58 CSR 34), is authorized.

46 (h) The legislative rule filed in the State Register on July
47 24, 2019, authorized under the authority of §20-1-7(31) of
48 this code, relating to the Division of Natural Resources
49 (defining the terms used in all hunting and trapping, 58 CSR
50 46), is authorized.

51 (i) The legislative rule filed in the State Register on July
52 23, 2019, authorized under the authority of §20-1-7(31) of
53 this code, relating to the Division of Natural Resources
54 (prohibitions when hunting and trapping, 58 CSR 47), is
55 authorized.

56 (j) The legislative rule filed in the State Register on July
57 23, 2019, authorized under the authority of §20-1-7(31) of
58 this code, modified by the Division of Natural Resources to
59 meet the objections of the Legislative Rule-Making Review
60 Committee and refiled in the State Register on December
61 30, 2019, relating to the Division of Natural Resources
62 (special fishing rule, 58 CSR 61), is authorized.

63 (k) The legislative rule filed in the State Register on July
64 23, 2019, authorized under the authority of §20-1-7(31) of
65 this code, relating to the Division of Natural Resources
66 (catching and selling bait fish, 58 CSR 62), is authorized.

67 (l) The legislative rule filed in the State Register on July
68 24, 2019, authorized under the authority of §20-1-7(31) of
69 this code, relating to the Division of Natural Resources
70 (falconry, 58 CSR 65), is authorized.

CHAPTER 210

**(S. B. 652 - By Senators Rucker, Cline, Roberts and
Plymale)**

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18-9D-21 of the Code of West Virginia, 1931, as amended, relating to authorizing the School Building Authority to promulgate legislative rules; and authorizing School Building Authority rule relating to School Build Authority contracts and agreements, post-project evaluation, and suspension of right to bid.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-21. Authorizing rules of School Building Authority.

1 (a) The legislative rule filed in the State Register on
2 September 27, 2007, relating to the School Building
3 Authority (School Building Authority requirements for
4 Comprehensive Educational Facility Plan rule), is repealed
5 and enrolled as a procedural rule.

6 (b) The legislative rule filed in the State Register on
7 June 26, 2018, relating to the School Building Authority
8 (funding School Building Authority projects rule), is
9 authorized.

10 (c) The legislative rule filed in the State Register on
11 June 26, 2018, relating to the School Building Authority
12 (School Building Authority school planning and design
13 criteria rule), is authorized.

14 (d) The legislative rule filed in the State Register on
15 June 26, 2018, relating to the School Building Authority
16 (School Building Authority project administration and
17 review rule), is authorized.

18 (e) The legislative rule filed in the State Register on
19 June 26, 2018, relating to the School Building Authority
20 (School Building Authority contract and agreements rule),
21 is authorized.

22 (f) The legislative rule filed in the State Register on June
23 26, 2018, relating to the School Building Authority (School
24 Building Authority reporting procedures rule), is repealed.

25 (g) The legislative rule filed in the State Register on
26 June 26, 2018, relating to the School Building Authority
27 (School Access Safety Act rule), is authorized.

28 (h) The legislative rule filed in the State Register on
29 December 16, 2019, relating to the School Building
30 Authority (School Building Authority Contracts and
31 Agreements; Post-Project Evaluation; Suspension of Right
32 to Bid rule), is authorized.



CHAPTER 211

(Com. Sub. for H. B. 4217 - By Delegate Foster)

[Passed March 3, 2020; in effect ninety days from passage.]

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

AN ACT to amend and reenact §64-3-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Environmental Protection 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 Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from hazardous waste treatment, storage, and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of ozone season nitrogen oxides emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to West Virginia surface mining reclamation rule; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to groundwater protection rules for coal mining operations; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management system; authorizing the Department of Environmental

Protection to promulgate a legislative rule relating to voluntary remediation and redevelopment rule; and authorizing the Oil and Gas Conservation Commission to promulgate a legislative rule relating to rules of the commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.

1 (a) The legislative rule filed in the State Register on July
2 19, 2019, authorized under the authority of §22-5-4 of this
3 code, relating to the Department of Environmental
4 Protection (ambient air quality standards, 45 CSR 08), is
5 authorized.

6 (b) The legislative rule filed in the State Register on July
7 19, 2019, authorized under the authority of §22-5-4 of this
8 code, relating to the Department of Environmental
9 Protection (standards of performance for new stationary
10 sources, 45 CSR 16), is authorized.

11 (c) The legislative rule filed in the State Register on July
12 19, 2019, authorized under the authority of §22-5-4 of this
13 code, modified by the Department of Environmental
14 Protection to meet the objections of the Legislative Rule-
15 Making Review Committee and refiled in the State Register
16 on October 2, 2019, relating to the Department of
17 Environmental Protection (control of air pollution from
18 hazardous waste treatment, storage and disposal facilities,
19 45 CSR 25), is authorized.

20 (d) The legislative rule filed in the State Register on July
21 19, 2019, authorized under the authority of §22-5-4 of this
22 code, relating to the Department of Environmental
23 Protection (emission standards for hazardous air pollutants,
24 45 CSR 34), is authorized.

25 (e) The legislative rule filed in the State Register on July
26 19, 2019, authorized under the authority of §22-5-4 of this
27 code, relating to the Department of Environmental
28 Protection (control of ozone season nitrogen oxides
29 emissions, 45 CSR 40), is authorized.

30 (f) The legislative rule filed in the State Register on July
31 25, 2019, authorized under the authority of §22-3-4 of this
32 code, relating to the Department of Environmental
33 Protection (West Virginia surface mining reclamation rule,
34 38 CSR 02), is authorized with the amendments set forth
35 below:

36 On page 183, subdivision 16.2.c.2, by striking out
37 subdivision 16.2.c.2 in its entirety and inserting in lieu
38 thereof an amended subdivision 16.2.c.2 to read as follows:

39 “16.2.c.2. At the owner’s election, either correct
40 material damage resulting from subsidence caused to any
41 structures or facilities by compensating the owner in the
42 amount of the cost to repair the damage, but not to exceed
43 one hundred and twenty percent of the pre-mining value of
44 the structure or facility, or compensate the owner of such
45 structures or facilities in the full amount of the diminution
46 in value resulting from the subsidence. Repair of damage
47 includes rehabilitation, restoration, or replacement of
48 damaged structures or facilities. Compensation may also be
49 accomplished by the purchase prior to mining of a non-
50 cancelable premium-prepaid insurance policy. The
51 requirements of this paragraph only apply to subsidence
52 related damage caused by underground mining activities
53 conducted after October 24, 1992: *Provided*, That 16.2.c.2
54 does not create additional property rights nor may it be
55 construed as vesting in the secretary the jurisdiction to
56 adjudicate property rights disputes.”

57 And,

58 On page 120, subdivision 11.3.a.3, by striking out
59 subdivision 11.3.a.3 and inserting in lieu thereof an
60 amended subdivision 11.3.a.3 to read as follows:

61 “11.3.a.3. Any company that executes surety bonds in
62 the State after July 1, 2001, must: (i) be recognized by the
63 treasurer to the state as holding a current certificate of
64 authority from the United States Department of the Treasury
65 as an acceptable surety on federal bonds by being included
66 on the Treasury Department’s listing of approved sureties
67 (Department Circular 570); or (ii) submit proof to the
68 secretary that it holds a valid license issued by the West
69 Virginia Insurance Commissioner, and agree to submit to
70 the secretary on at least a quarterly basis a certificate of
71 good standing from the West Virginia Insurance
72 Commissioner and such other evidence from the insurance
73 regulator of its domiciliary state, if other than West
74 Virginia, demonstrating that it is also in good standing in
75 that state: *Provided*, That those companies electing to
76 execute bonds under the provisions of (i) above in this
77 subdivision must diligently pursue application for listing,
78 submit evidence on a semi-annual basis demonstrating that
79 they are pursuing such listing, and within four (4) years,
80 obtain a certificate of authority from the United States
81 Department of the Treasury as an acceptable surety on
82 federal bonds.”

83 (g) The legislative rule filed in the State Register on July
84 25, 2019, authorized under the authority of §22-12-5 of this
85 code, relating to the Department of Environmental
86 Protection (groundwater protection rules for coal mining
87 operations, 38 CSR 02F), is authorized.

88 (h) The legislative rule filed in the State Register on July
89 25, 2019, authorized under the authority of §22-18-6 of this
90 code, relating to the Department of Environmental
91 Protection (hazardous waste management system, 33 CSR
92 20), is authorized.

93 (i) The legislative rule filed in the State Register on July
94 25, 2019, authorized under the authority of §22-22-3 of this
95 code, relating to the Department of Environmental
96 Protection (voluntary remediation and redevelopment rule,
97 60 CSR 03), is authorized.

§64-3-2. Oil and Gas Conservation Commission.

1 The legislative rule filed in the State Register on July
2 25, 2019, authorized under the authority of §22C-9-4 of this
3 code, modified by the Oil and Gas Conservation
4 Commission to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register
6 on January 3, 2020, relating to the Oil and Gas Conservation
7 Commission (rules of the commission, 39 CSR 01), is
8 authorized.



CHAPTER 212

(Com. Sub. for H. B. 4252 - By Delegate Foster)

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §64-9-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing certain miscellaneous agencies and boards to promulgate legislative rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee, and as amended by the Legislature; authorizing the Board of Accountancy to promulgate a legislative rule relating to board rules and rules of professional conduct; authorizing the Board of Acupuncture to promulgate a legislative rule relating to fees for the Board of Acupuncture; authorizing the Board of Acupuncture to promulgate a legislative rule relating to auricular detoxification therapy certificate; authorizing the

Board of Acupuncture to promulgate a legislative rule relating to application for waiver of initial licensing fees for certain individuals; authorizing the Board of Acupuncture to promulgate a legislative rule relating to consideration of prior criminal convictions in initial licensure determinations; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to Fresh Food Act; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to auctioneers; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to poultry rules for hatcheries, growers, and contractors pertaining to poultry disease control and eradication; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to grade "A" pasteurized milk; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to West Virginia manufacture-grade milk; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to employment reference and inquiries and background checks; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to West Virginia Spay-Neuter Assistance Program; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to industrial hemp; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to hemp products; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to captive cervid farming; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to farmers markets; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to West Virginia exempted dairy farms and milk and milk products processing rules; authorizing the Board of Architects to promulgate a legislative rule relating to registration of architects; authorizing the Board of Architects to promulgate a legislative rule relating to fees for registration of architects; authorizing the Board of Chiropractic Examiners to promulgate a legislative rule relating to application for waiver of initial licensing fees for

certain individuals; authorizing the Board of Chiropractic Examiners to promulgate a legislative rule relating to consideration of prior criminal convictions in initial licensure determinations; authorizing the Board of Examiners in Counseling to promulgate a legislative rule relating to application for waiver of initial licensing fees for certain individuals; authorizing the Board of Dentistry to promulgate a legislative rule relating to rule for the West Virginia Board of Dental Examiners; authorizing the Board of Dentistry to promulgate a legislative rule relating to dental advertising; authorizing the Board of Dietitians to promulgate a legislative rule relating to licensure and renewal requirements; authorizing the Board of Dietitians to promulgate a legislative rule relating to application for waiver of initial licensing fees for certain individuals; authorizing the Election Commission to promulgate a legislative rule relating to corporate and membership organization political activity; authorizing the Election Commission to promulgate a legislative rule relating to regulation of campaign finance; authorizing the Board of Funeral Service Examiners to promulgate a legislative rule relating to application for waiver of initial licensing fees for certain individuals; authorizing the Board of Funeral Service Examiners to promulgate a legislative rule relating to consideration of prior criminal convictions in initial licensure determinations; authorizing the Board of Hearing Aid Dealers to promulgate a legislative rule relating to application for waiver of initial licensing fees for certain individuals; authorizing the Board of Hearing Aid Dealers to promulgate a legislative rule relating to consideration of prior criminal convictions in initial licensure determinations; authorizing the Board of Landscape Architects to promulgate a legislative rule relating to consideration of prior criminal convictions in initial licensure determinations; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to application for waiver of initial licensing fees for certain individuals; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to consideration of prior criminal convictions in initial licensure determinations; authorizing the Medical Imaging and

Radiation Therapy Technology Board of Examiners to promulgate a legislative rule relating to West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners; authorizing the Board of Medicine to promulgate a legislative rule relating to licensure, disciplinary and complaint procedures, continuing education, physician assistants; authorizing the Board of Medicine to promulgate a legislative rule relating to waiver of initial licensing fees for certain initial licensure applicants; authorizing the Nursing Home Administrators Licensing Board to promulgate a legislative rule relating to nursing home administrators; authorizing the Board of Occupational Therapy to promulgate a legislative rule relating to fees for services rendered by the Board; authorizing the Board of Occupational Therapy to promulgate a legislative rule relating to request for waiver of initial licensing fees for certain individuals; authorizing the Board of Occupational Therapy to promulgate a legislative rule relating to consideration of prior criminal convictions in initial licensure determinations; authorizing the Board of Optometry to promulgate a legislative rule relating to rules for the West Virginia Board of Optometry; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to osteopathic physician assistants; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to waiver of initial licensing fees for certain initial licensure applicants; authorizing the Board of Pharmacy to promulgate a legislative rule relating to licensure and practice of pharmacy; authorizing the Board of Pharmacy to promulgate a legislative rule relating to record keeping and automated data processing systems; authorizing the Board of Pharmacy to promulgate a legislative rule relating to Board of Pharmacy rules for registration of pharmacy technicians; authorizing the Board of Pharmacy to promulgate a legislative rule relating to Board of Pharmacy rules for immunizations administered by pharmacists and pharmacy interns; authorizing the Board of Pharmacy to promulgate a legislative rule relating to Board of Pharmacy rules for centralized prescription processing; authorizing the Board of Pharmacy to promulgate a legislative rule relating to regulations governing

pharmacy permits; authorizing the Board of Pharmacy to promulgate a legislative rule relating to regulations governing pharmacists; authorizing the Board of Pharmacy to promulgate a legislative rule relating to application for waiver of initial licensing fees for certain individuals; authorizing the Board of Physical Therapy to promulgate a legislative rule relating to general provisions for physical therapist and physical therapist assistants; authorizing the Board of Physical Therapy to promulgate a legislative rule relating to fees for physical therapist and physical therapist assistant; authorizing the Board of Physical Therapy to promulgate a legislative rule relating to general provisions for athletic trainers; authorizing the Board of Physical Therapy to promulgate a legislative rule relating to fees for athletic trainers; authorizing the Board of Physical Therapy to promulgate a legislative rule relating to application for waiver of initial licensing fees for certain individuals; authorizing the Board of Registration for Professional Engineers to promulgate a legislative rule relating to examination, licensure and practice of professional engineers; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to examination and licensing of professional surveyors in West Virginia; authorizing the Board of Psychologists to promulgate a legislative rule relating to consideration of prior criminal convictions in initial licensure determinations and application for waiver of initial licensing fees for certain individuals; authorizing the Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to requirements for licensure and certification; authorizing the Real Estate Commission to promulgate a legislative rule relating to application for waiver of initial licensing fees for certain individuals; authorizing the Real Estate Commission to promulgate a legislative rule relating to consideration of prior criminal convictions in initial license eligibility determination; authorizing the Board of Registered Professional Nurses to promulgate a legislative rule relating to requirements for registration and licensure and conduct constituting professional misconduct; authorizing the Board

of Registered Professional Nurses to promulgate a legislative rule relating to request for waiver of initial licensing fees for certain individuals; authorizing the Board of Respiratory Care to promulgate a legislative rule relating to establishment of fees; authorizing the Board of Respiratory Care to promulgate a legislative rule relating to student temporary permit; authorizing the Board of Respiratory Care to promulgate a legislative rule relating to consideration of prior criminal convictions in initial licensure determinations; authorizing the Board of Sanitarians to promulgate a legislative rule relating to waiver of initial application fees and criteria for initial licensure; authorizing the Board of Social Work to promulgate a legislative rule relating to qualifications for the profession of social work; authorizing the Board of Social Work to promulgate a legislative rule relating to fee schedule; authorizing the Board of Speech-Language Pathology and Audiology to promulgate a legislative rule relating to licensure of speech-pathology and audiology; authorizing the Board of Speech-Language Pathology and Audiology to promulgate a legislative rule relating to disciplinary and complaint procedures for speech-language pathology and audiology; authorizing the State Auditor to promulgate a legislative rule relating to local government purchasing card program; authorizing the State Conservation Committee to promulgate a legislative rule relating to State Conservation Committee Grant Program; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to organization and operation and licensing of veterinarians; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to registration of veterinary technicians; and authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to schedule of fees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Board of Accountancy.

1 The legislative rule filed in the State Register on
2 September 27, 2019, authorized under the authority of §30-
3 9-5 of this code, modified by the Board of Accountancy to
4 meet the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on November 8,
6 2019, relating to the Board of Accountancy (board rules and
7 rules of professional conduct, 1 CSR 01), is authorized.

§64-9-2. Board of Acupuncture.

1 (a) The legislative rule filed in the State Register on July
2 22, 2019, authorized under the authority of §30-36-7 of this
3 code, modified by the Board of Acupuncture to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on October 10,
6 2019, relating to the Board of Acupuncture (fees for the
7 Board of Acupuncture, 32 CSR 04), is authorized.

8 (b) The legislative rule filed in the State Register on July
9 22, 2019, authorized under the authority of §30-36-7 of this
10 code, modified by the Board of Acupuncture to meet the
11 objections of the Legislative Rule-Making Review
12 Committee and refiled in the State Register on October 17,
13 2019, relating to the Board of Acupuncture (auricular
14 detoxification therapy certificate, 32 CSR 14), is authorized.

15 (c) The legislative rule filed in the State Register on July
16 22, 2019, authorized under the authority of §30-1-23 of this
17 code, modified by the Board of Acupuncture to meet the
18 objections of the Legislative Rule-Making Review
19 Committee and refiled in the State Register on October 10,
20 2019, relating to the Board of Acupuncture (application for
21 waiver of initial licensing fees for certain individuals, 32
22 CSR 15), is authorized.

23 (d) The legislative rule filed in the State Register on
24 September 24, 2019, authorized under the authority of §30-
25 1-24 of this code, modified by the Board of Acupuncture to
26 meet the objections of the Legislative Rule-Making Review

27 Committee and refiled in the State Register on November
28 14, 2019, relating to the Board of Acupuncture
29 (consideration of prior criminal convictions in initial
30 licensure determinations, 32 CSR 16), is authorized.

§64-9-3. Commissioner of Agriculture.

1 (a) The legislative rule filed in the State Register on July
2 22, 2019, authorized under the authority of §19-9-2 of this
3 code, relating to the Commissioner of Agriculture (animal
4 disease control, 61 CSR 01), is authorized.

5 (b) The legislative rule filed in the State Register on July
6 26, 2019, authorized under the authority of §19-37-3 of this
7 code, relating to the Commissioner of Agriculture (Fresh
8 Food Act, 61 CSR 10), is authorized.

9 (c) The legislative rule filed in the State Register on July
10 26, 2019, authorized under the authority of §19-2C-3a of
11 this code, modified by the Commissioner of Agriculture to
12 meet the objections of the Legislative Rule-Making Review
13 Committee and refiled in the State Register on October 1,
14 2019, relating to the Commissioner of Agriculture
15 (auctioneers, 61 CSR 11B), is authorized.

16 (d) The legislative rule filed in the State Register on July
17 11, 2019, authorized under the authority of §19-9-2 of this
18 code, relating to the Commissioner of Agriculture (poultry
19 rules for hatcheries, growers, and contractors pertaining to
20 poultry disease control and eradication, 61 CSR 13A), is
21 authorized.

22 (e) The legislative rule filed in the State Register on
23 January 7, 2020, authorized under the authority of §19-11E-
24 8 of this code, relating to the Commissioner of Agriculture
25 (grade “A” pasteurized milk, 61 CSR 15), is authorized.

26 (f) The legislative rule filed in the State Register on
27 January 6, 2020, authorized under the authority of §19-11E-
28 8 of this code, relating to the Commissioner of Agriculture

29 (West Virginia manufacture-grade milk, 61 CSR 19), is
30 authorized.

31 (g) The legislative rule filed in the State Register on July
32 26, 2019, authorized under the authority of §19-1-3b of this
33 code, modified by the Commissioner of Agriculture to meet
34 the objections of the Legislative Rule-Making Review
35 Committee and refiled in the State Register on October 1,
36 2019, relating to the Commissioner of Agriculture
37 (employment reference and inquiries and background
38 checks, 61 CSR 20), is authorized.

39 (h) The legislative rule filed in the State Register on July
40 26, 2019, authorized under the authority of §19-20C-3 of
41 this code, relating to the Commissioner of Agriculture
42 (West Virginia Spay-Neuter Assistance Program, 61 CSR
43 24), is authorized with the following amendments:

44 On page two, subsection 3.10, after the word “rule” by
45 inserting the following words “to perform spay neuter
46 services for eligible owners and caretakers”;

47 On page two, after subdivision 3.10.b., by inserting a
48 new subsection, designated 3.11, to read as follows:

49 “3.11. “Low-income restricted program” means a spay
50 neuter program that provides spay neuter services to owners
51 or caretakers currently receiving assistance from at least one
52 of the state and federal public assistance programs:

53 3.11.a. The Supplemental Nutrition Assistance Program
54 (SNAP);

55 3.11.b. Medicaid;

56 3.11.c. Supplemental Security Income (SSI);

57 3.11.d. The West Virginia Low Income Energy
58 Assistance Program (LIEAP);

59 3.11.e. Social Security Disability;

60 3.11.f. Temporary Assistance for Needy Families
61 (TANF);

62 3.11.g. Aid to Families with Dependent Children
63 (AFCD);

64 3.11.h. Children's Health Insurance Program (CHIP); or

65 3.11.i. Low Income Veterans Assistance under 38 USC
66 2044.”; and re-numbering the remaining subsections;

67 On page four, subsection 6.1, after the word “delivery.”
68 by adding the following sentence: “The Advisory
69 Committee shall give preference to applicants that intend to
70 operate a low-income restricted program.”

71 On page four, subsection 6.2, after the word
72 “application.” by adding the following sentence: “The
73 Commission shall give preference to applicants that intend
74 to operate a low-income restricted program.”

75 And,

76 On page five, by striking out all of §61-24-7 and
77 renumbering the remaining section.

78 (i) The legislative rule filed in the State Register on July
79 26, 2019, authorized under the authority of §19-12E-7 of
80 this code, modified by the Commissioner of Agriculture to
81 meet the objections of the Legislative Rule-Making Review
82 Committee and refiled in the State Register on January 6,
83 2020, relating to the Commissioner of Agriculture
84 (industrial hemp, 61 CSR 29), is authorized with the
85 following amendment:

86 On page six, section 5.6. by striking everything after the
87 words “the commissioner may” and inserting in lieu thereof
88 the following:

89 “upon request, and if permitted by the United States
90 Department of Agriculture, permit a licensee to submit a

91 Corrective Action Plan and request a second sampling and
92 test of the crop following implementation of the Corrective
93 Action Plan.”

94 (j) The legislative rule filed in the State Register on July
95 26, 2019, authorized under the authority of §19-12E-7 of
96 this code, modified by the Commissioner of Agriculture to
97 meet the objections of the Legislative Rule-Making Review
98 Committee and refiled in the State Register on January 6,
99 2020, relating to the Commissioner of Agriculture (hemp
100 products, 61 CSR 30), is authorized with the following
101 amendments:

102 On page four, section four, subdivision 4.6.a, after the
103 words “changes in”, by adding the words “the chemical
104 composition or formula of”;

105 On page five, section four, subdivision 4.6.c, after the
106 words “changes to”, by adding the words “health-related”;

107 On page five, section four after subdivision 4.6.c, by
108 renumbering the remaining subsections;

109 On page five, section four, subsection 4.7, after the word
110 “retailer”, by adding the words “or distributor”;

111 On page five, section five, after subdivision 5.7, by
112 inserting a new subdivision, designated subdivision 5.8 to
113 read as follows:

114 5.8. A distributor of hemp products that does not itself
115 engage in retail sales is not required to register under this
116 section.

117 On page six, section seven, subsection 7.2, after the
118 words “produced for”, by adding the word “topical”;

119 On page six, section seven, subsection 7.2, by striking
120 the words “Cosmetic Product” and inserting in lieu thereof
121 the words “Cosmetic Products”;

122 On page six, section seven, subsection 7.3, by striking
123 the word “medical” and inserting in lieu thereof the words
124 “disease or drug”;

125 On page six, section seven, by striking subsection 7.7
126 and renumbering the remaining subsections;

127 (k) The legislative rule filed in the State Register on July
128 22, 2019, authorized under the authority of §19-2H-12 of
129 this code, relating to the Commissioner of Agriculture
130 (captive cervid farming, 61 CSR 34), is authorized with the
131 following amendment:

132 On page 9, section 11, by striking out all of section
133 11.15 and inserting in lieu thereof the following:

134 “11.15. The owner shall have a West Virginia licensed
135 and accredited veterinarian or designee perform an annual
136 visual examination of each animal and take an inventory to
137 reconcile inventory records submitted with the license
138 application or renewal. When the veterinarian performs the
139 annual visual examination of each animal and takes an
140 inventory, the West Virginia licensed and accredited
141 veterinarian shall submit the veterinarian report to the
142 Department within sixty (60) days of receipt and the
143 inventory within thirty (30) days of completion.”

144 (l) The legislative rule filed in the State Register on July
145 26, 2019, authorized under the authority of §19-35-4 of this
146 code, modified by the Commissioner of Agriculture to meet
147 the objections of the Legislative Rule-Making Review
148 Committee and refiled in the State Register on October 2,
149 2019, relating to the Commissioner of Agriculture (farmers
150 markets, 61 CSR 38), is authorized with the following
151 amendment:

152 On page 7, section 7, subsection 7.4, after the word
153 “products”, by inserting the words “excluding whole uncut
154 produce and”.

155 (m) The legislative rule filed in the State Register on
156 January 6, 2020, authorized under the authority of §19-11E-
157 8 of this code, relating to the Commissioner of Agriculture
158 (West Virginia exempted dairy farms and milk and milk
159 products processing rules, 61 CSR 40), is authorized.

§64-9-4. Board of Architects.

1 (a) The legislative rule filed in the State Register on
2 September 24, 2019, authorized under the authority of §30-
3 12-1 of this code, modified by the Board of Architects to
4 meet the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on November
6 18, 2019, relating to the Board of Architects (registration of
7 architects, 2 CSR 01), is authorized.

8 (b) The legislative rule filed in the State Register on July
9 16, 2019, authorized under the authority of §30-12-3 of this
10 code, modified by the Board of Architects to meet the
11 objections of the Legislative Rule-Making Review
12 Committee and refiled in the State Register on November
13 18, 2019, relating to the Board of Architects (fees for
14 registration of architects, 2 CSR 03), is authorized.

§64-9-5. Board of Chiropractic Examiners.

1 (a) The legislative rule filed in the State Register on July
2 10, 2019, authorized under the authority of §30-1-23 of this
3 code, modified by the Board of Chiropractic Examiners to
4 meet the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on October 4,
6 2019, relating to the Board of Chiropractic Examiners
7 (application for waiver of initial licensing fees for certain
8 individuals, 4 CSR 07), is authorized.

9 (b) The legislative rule filed in the State Register on
10 September 10, 2019, authorized under the authority of §30-
11 1-24 of this code, modified by the Board of Chiropractic
12 Examiners to meet the objections of the Legislative Rule-
13 Making Review Committee and refiled in the State Register
14 on November 18, 2019, relating to the Board of Chiropractic

15 Examiners (consideration of prior criminal convictions in
16 initial licensure determinations, 4 CSR 08), is authorized.

§64-9-6. Board of Examiners in Counseling.

1 The legislative rule filed in the State Register on July
2 26, 2019, authorized under the authority of §30-1-23 of this
3 code, modified by the Board of Examiners in Counseling to
4 meet the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on October 9,
6 2019, relating to the Board of Examiners in Counseling
7 (application for waiver of initial licensing fees for certain
8 individuals, 27 CSR 13), is authorized.

§64-9-7. West Virginia Board of Dentistry.

1 (a) The legislative rule filed in the State Register on
2 September 20, 2019, authorized under the authority of §30-
3 4-6 of this code, relating to the West Virginia Board of
4 Dentistry (rule for the West Virginia Board of Dental
5 Examiners, 5 CSR 01), is authorized.

6 (b) The legislative rule filed in the State Register on July
7 19, 2019, authorized under the authority of §30-4-6 of this
8 code, modified by the West Virginia Board of Dentistry to
9 meet the objections of the Legislative Rule-Making Review
10 Committee and refiled in the State Register on November
11 18, 2019, relating to the West Virginia Board of Dentistry
12 (dental advertising, 5 CSR 08), is authorized.

§64-9-8. Board of Licensed Dietitians.

1 (a) The legislative rule filed in the State Register on
2 August 30, 2019, authorized under the authority of §30-35-4
3 of this code, modified by the Board of Licensed Dietitians to
4 meet the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on October 1,
6 2019, relating to the Board of Licensed Dietitians (licensure
7 and renewal requirements, 31 CSR 01), is authorized.

8 (b) The legislative rule filed in the State Register on July
9 25, 2019, authorized under the authority of §30-1-23 of this
10 code, modified by the Board of Licensed Dietitians to meet
11 the objections of the Legislative Rule-Making Review
12 Committee and refiled in the State Register on October 2,
13 2019, relating to the Board of Licensed Dietitians
14 (application for waiver of initial licensing fees for certain
15 individuals, 31 CSR 06), is authorized.

§64-9-9. Election Commission.

1 (a) The legislative rule filed in the State Register on July
2 26, 2019, authorized under the authority of §3-8-8 of this
3 code, modified by the Election Commission to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on December 2,
6 2019, relating to the Election Commission (corporate and
7 membership organization political activity, 146 CSR 01), is
8 authorized.

9 (b) The legislative rule filed in the State Register on July
10 26, 2019, authorized under the authority of §3-1A-5 of this
11 code, modified by the Election Commission to meet the
12 objections of the Legislative Rule-Making Review
13 Committee and refiled in the State Register on December 2,
14 2019, relating to the Election Commission (regulation of
15 campaign finance, 146 CSR 03), is authorized.

§64-9-10. Board of Funeral Service Examiners.

1 (a) The legislative rule filed in the State Register on July
2 23, 2019, authorized under the authority of §30-1-23 of this
3 code, modified by the Board of Funeral Service Examiners
4 to meet the objections of the Legislative Rule-Making
5 Review Committee and refiled in the State Register on
6 October 10, 2019, relating to the Board of Funeral Service
7 Examiners (application for waiver of initial licensing fees
8 for certain individuals, 6 CSR 05), is authorized.

9 (b) The legislative rule filed in the State Register on
10 September 27, 2019, authorized under the authority of §30-

11 1-24 of this code, modified by the Board of Funeral Service
12 Examiners to meet the objections of the Legislative Rule-
13 Making Review Committee and refiled in the State Register
14 on November 7, 2019, relating to the Board of Funeral
15 Service Examiners (consideration of prior criminal
16 convictions in initial licensure determinations, 6 CSR 06),
17 is authorized.

§64-9-11. Board of Hearing Aid Dealers.

1 (a) The legislative rule filed in the State Register on July
2 25, 2019, authorized under the authority of §30-1-23 of this
3 code, modified by the Board of Hearing Aid Dealers to meet
4 the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on October 21,
6 2019, relating to the Board of Hearing Aid Dealers
7 (application for waiver of initial licensing fees for certain
8 individuals, 8 CSR 04), is authorized.

9 (b) The legislative rule filed in the State Register on
10 September 27, 2019, authorized under the authority of §30-
11 1-24 of this code, modified by the Board of Hearing Aid
12 Dealers to meet the objections of the Legislative Rule-
13 Making Review Committee and refiled in the State Register
14 on November 7, 2019, relating to the Board of Hearing Aid
15 Dealers (consideration of prior criminal convictions in
16 initial licensure determinations, 8 CSR 05), is authorized.

§64-9-12. Board of Landscape Architects.

1 The legislative rule filed in the State Register on
2 September 27, 2019, authorized under the authority of §30-
3 1-24 of this code, modified by the Board of Landscape
4 Architects to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register
6 on November 21, 2019, relating to the Board of Landscape
7 Architects (consideration of prior criminal convictions in
8 initial licensure determinations, 9 CSR 05), is authorized.

§64-9-13. Massage Therapy Licensure Board.

1 (a) The legislative rule filed in the State Register on July
2 22, 2019, authorized under the authority of §30-1-23 of this
3 code, modified by the Massage Therapy Licensure Board to
4 meet the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on October 10,
6 2019, relating to the Massage Therapy Licensure Board
7 (application for waiver of initial licensing fees for certain
8 individuals, 194 CSR 05), is authorized.

9 (b) The legislative rule filed in the State Register on
10 September 24, 2019, authorized under the authority of §30-
11 1-24 of this code, modified by the Massage Therapy
12 Licensure Board to meet the objections of the Legislative
13 Rule-Making Review Committee and refiled in the State
14 Register on November 7, 2019, relating to the Massage
15 Therapy Licensure Board (consideration of prior criminal
16 convictions in initial licensure determinations, 194 CSR
17 06), is authorized.

§64-9-14. Medical Imaging and Radiation Therapy Technology Board of Examiners.

1 The legislative rule filed in the State Register on
2 September 27, 2019, authorized under the authority of §30-
3 23-7 of this code, modified by the Medical Imaging and
4 Radiation Therapy Technology Board of Examiners to meet
5 the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on October 31,
7 2019, relating to the Medical Imaging and Radiation
8 Therapy Technology Board of Examiners (West Virginia
9 Medical Imaging and Radiation Therapy Technology Board
10 of Examiners, 18 CSR 01), is authorized.

§64-9-15. Board of Medicine.

1 (a) The legislative rule filed in the State Register on July
2 25, 2019, authorized under the authority of §30-3E-3 of this
3 code, modified by the Board of Medicine to meet the
4 objections of the Legislative Rule-Making Review

5 Committee and refiled in the State Register on October 8,
6 2019, relating to the Board of Medicine (licensure,
7 disciplinary and complaint procedures, continuing
8 education, physician assistants, 11 CSR 01B), is authorized.

9 (b) The legislative rule filed in the State Register on July
10 25, 2019, authorized under the authority of §30-1-23 of this
11 code, modified by the Board of Medicine to meet the
12 objections of the Legislative Rule-Making Review
13 Committee and refiled in the State Register on October 8,
14 2019, relating to the Board of Medicine (waiver of initial
15 licensing fees for certain initial licensure applicants, 11 CSR
16 13), is authorized.

§64-9-16. Nursing Home Administrators Licensing Board.

1 The legislative rule filed in the State Register on
2 November 26, 2019, authorized under the authority of §30-
3 25-6 of this code, modified by the Nursing Home
4 Administrators Licensing Board to meet the objections of
5 the Legislative Rule-Making Review Committee and refiled
6 in the State Register on December 27, 2019, relating to the
7 Nursing Home Administrators Licensing Board (nursing
8 home administrators, 21 CSR 01), is authorized.

§64-9-17. Board of Occupational Therapy.

1 (a) The legislative rule filed in the State Register on July
2 3, 2019, authorized under the authority of §30-28-7 of this
3 code, relating to the Board of Occupational Therapy (fees
4 for services rendered by the Board, 13 CSR 03), is
5 authorized.

6 (b) The legislative rule filed in the State Register on July
7 3, 2019, authorized under the authority of §30-1-23 of this
8 code, modified by the Board of Occupational Therapy to
9 meet the objections of the Legislative Rule-Making Review
10 Committee and refiled in the State Register on September
11 30, 2019, relating to the Board of Occupational Therapy
12 (request for waiver of initial licensing fees for certain
13 individuals, 13 CSR 07), is authorized.

14 (c) The legislative rule filed in the State Register on
15 December 2, 2019, authorized under the authority of §30-1-
16 24 of this code, relating to the Board of Occupational
17 Therapy (consideration of prior criminal convictions in
18 initial licensure determinations, 13 CSR 08), is authorized.

§64-9-18. Board of Optometry.

1 The legislative rule filed in the State Register on
2 October 1, 2019, authorized under the authority of §30-8-6
3 of this code, modified by the Board of Optometry to meet
4 the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on November
6 26, 2019, relating to the Board of Optometry (rules for the
7 West Virginia Board of Optometry, 14 CSR 01), is
8 authorized.

§64-9-19. Board of Osteopathic Medicine.

1 (a) The legislative rule filed in the State Register on July
2 31, 2019, authorized under the authority of §30-3E-3 of this
3 code, modified by the Board of Osteopathic Medicine to
4 meet the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on November
6 14, 2019, relating to the Board of Osteopathic Medicine
7 (osteopathic physician assistants, 24 CSR 02), is authorized.

8 (b) The legislative rule filed in the State Register on July
9 30, 2019, authorized under the authority of §30-1-23 of this
10 code, modified by the Board of Osteopathic Medicine to
11 meet the objections of the Legislative Rule-Making Review
12 Committee and refiled in the State Register on November
13 14, 2019, relating to the Board of Osteopathic Medicine
14 (waiver of initial licensing fees for certain initial licensure
15 applicants, 24 CSR 08), is authorized.

§64-9-20. Board of Pharmacy.

1 (a) The legislative rule filed in the State Register on July
2 26, 2019, authorized under the authority of §30-5-7 of this
3 code, modified by the Board of Pharmacy to meet the

4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on December 2,
6 2019, relating to the Board of Pharmacy (licensure and
7 practice of pharmacy, 15 CSR 01), is authorized.

8 (b) The legislative rule filed in the State Register on July
9 26, 2019, authorized under the authority of §30-5-7 of this
10 code, modified by the Board of Pharmacy to meet the
11 objections of the Legislative Rule-Making Review
12 Committee and refiled in the State Register on October 10,
13 2019, relating to the Board of Pharmacy (record keeping
14 and automated data processing systems, 15 CSR 04), is
15 authorized.

16 (c) The legislative rule filed in the State Register on July
17 26, 2019, authorized under the authority of §30-5-7 of this
18 code, modified by the Board of Pharmacy to meet the
19 objections of the Legislative Rule-Making Review
20 Committee and refiled in the State Register on October 11,
21 2019, relating to the Board of Pharmacy (Board of
22 Pharmacy rules for registration of pharmacy technicians, 15
23 CSR 07), is authorized with the following amendments:

24 On page 5, section 4, by striking subdivision 4.3.c and
25 inserting the following:

26 “4.3.c. has not been convicted of a crime bearing a
27 rational nexus to the practice duties of a pharmacy
28 technician. For other convictions not bearing a rational
29 nexus to the practice of pharmacy, the Board shall permit
30 the applicant to apply for initial licensure if:”

31 And

32 On page 10, section 6, by striking subsection 6.7 and 6.8
33 and inserting the following:

34 “6.7. has not been convicted of a crime bearing a
35 rational nexus to the practice duties of a pharmacy

36 technician. For other convictions not bearing a rational
37 nexus to the practice of pharmacy, the Board shall permit
38 the applicant to apply for initial licensure if:

39 6.7.a. a period of five years has elapsed from the date of
40 conviction or the date of release from incarceration,
41 whichever is later;

42 6.7.b. the individual has not been convicted of any other
43 crime during the period of time following the disqualifying
44 offense; and

45 6.7.c. the conviction was not for an offense of a violent
46 or sexual nature: *Provided*, That a conviction for an offense
47 of a violent or sexual nature may subject an individual to a
48 longer period of disqualification from licensure, to be
49 determined by the individual board.”

50 And,

51 By renumbering the remaining subsections.

52 (d) The legislative rule filed in the State Register on July
53 26, 2019, authorized under the authority of §30-5-7 of this
54 code, relating to the Board of Pharmacy (Board of
55 Pharmacy rules for immunizations administered by
56 pharmacists and pharmacy interns, 15 CSR 12), is
57 authorized.

58 (e) The legislative rule filed in the State Register on July
59 26, 2019, authorized under the authority of §30-5-7 of this
60 code, modified by the Board of Pharmacy to meet the
61 objections of the Legislative Rule-Making Review
62 Committee and refiled in the State Register on October 10,
63 2019, relating to the Board of Pharmacy (Board of
64 Pharmacy rules for centralized prescription processing, 15
65 CSR 14), is authorized.

66 (f) The legislative rule filed in the State Register on July
67 26, 2019, authorized under the authority of §30-5-7 of this
68 code, modified by the Board of Pharmacy to meet the

69 objections of the Legislative Rule-Making Review
70 Committee and refiled in the State Register on October 11,
71 2019, relating to the Board of Pharmacy (regulations
72 governing pharmacy permits, 15 CSR 15), is authorized.

73 (g) The legislative rule filed in the State Register on
74 October 10, 2019, authorized under the authority of §30-5-
75 7 of this code, modified by the Board of Pharmacy to meet
76 the objections of the Legislative Rule-Making Review
77 Committee and refiled in the State Register on December 2,
78 2019, relating to the Board of Pharmacy (regulations
79 governing pharmacists, 15 CSR 16), is authorized.

80 (h) The legislative rule filed in the State Register on July
81 26, 2019, authorized under the authority of §30-1-23 of this
82 code, modified by the Board of Pharmacy to meet the
83 objections of the Legislative Rule-Making Review
84 Committee and refiled in the State Register on October 11,
85 2019, relating to the Board of Pharmacy (application for
86 waiver of initial licensing fees for certain individuals, 15
87 CSR 18), is authorized.

§64-9-21. Board of Physical Therapy.

1 (a) The legislative rule filed in the State Register on
2 September 30, 2019, authorized under the authority of §30-
3 20-6 of this code, modified by the Board of Physical
4 Therapy to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register
6 on November 27, 2019, relating to the Board of Physical
7 Therapy (general provisions for physical therapist and
8 physical therapist assistants, 16 CSR 01), is authorized.

9 (b) The legislative rule filed in the State Register on
10 September 30, 2019, authorized under the authority of §30-
11 20-6 of this code, modified by the Board of Physical
12 Therapy to meet the objections of the Legislative Rule-
13 Making Review Committee and refiled in the State Register
14 on November 27, 2019, relating to the Board of Physical

15 Therapy (fees for physical therapist and physical therapist
16 assistant, 16 CSR 04), is authorized.

17 (c) The legislative rule filed in the State Register on
18 September 23, 2019, authorized under the authority of §30-
19 20A-2 of this code, modified by the Board of Physical
20 Therapy to meet the objections of the Legislative Rule-
21 Making Review Committee and refiled in the State Register
22 on November 27, 2019, relating to the Board of Physical
23 Therapy (general provisions for athletic trainers, 16 CSR
24 05), is authorized.

25 (d) The legislative rule filed in the State Register on
26 September 23, 2019, authorized under the authority of §30-
27 20A-2 of this code, modified by the Board of Physical
28 Therapy to meet the objections of the Legislative Rule-
29 Making Review Committee and refiled in the State Register
30 on November 27, 2019, relating to the Board of Physical
31 Therapy (fees for athletic trainers, 16 CSR 06), is
32 authorized.

33 (e) The legislative rule filed in the State Register on July
34 18, 2019, authorized under the authority of §30-1-23 of this
35 code, modified by the Board of Physical Therapy to meet
36 the objections of the Legislative Rule-Making Review
37 Committee and refiled in the State Register on November
38 27, 2019, relating to the Board of Physical Therapy
39 (application for waiver of initial licensing fees for certain
40 individuals, 16 CSR 09), is authorized.

§64-9-22. Board of Registration for Professional Engineers.

1 The legislative rule filed in the State Register on
2 September 20, 2019, authorized under the authority of §30-
3 13-9 of this code, modified by the Board of Registration for
4 Professional Engineers to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on November 18, 2019, relating to the
7 Board of Registration for Professional Engineers

8 (examination, licensure and practice of professional
9 engineers, 7 CSR 01), is authorized.

§64-9-23. Board of Professional Surveyors.

1 The legislative rule filed in the State Register on
2 September 17, 2019, authorized under the authority of §30-
3 13A-6 of this code, modified by the Board of Professional
4 Surveyors to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register
6 on December 19, 2019, relating to the Board of Professional
7 Surveyors (examination and licensing of professional
8 surveyors in West Virginia, 23 CSR 01), is authorized.

§64-9-24. Board of Psychologists.

1 The legislative rule filed in the State Register on
2 October 11, 2019, authorized under the authority of §30-1-
3 23 and §30-1-24 of this code, modified by the Board of
4 Psychologists to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on January 8, 2020, relating to the Board of
7 Psychologists (consideration of prior criminal convictions
8 in initial licensure determinations and application for waiver
9 of initial licensing fees for certain individuals, 17 CSR 07),
10 is authorized.

§64-9-25. Real Estate Appraiser Licensing and Certification Board.

1 The legislative rule filed in the State Register on
2 September 9, 2019, authorized under the authority of §30-
3 38-9 of this code, modified by the Real Estate Appraiser
4 Licensing and Certification Board to meet the objections of
5 the Legislative Rule-Making Review Committee and refiled
6 in the State Register on December 6, 2019, relating to the
7 Real Estate Appraiser Licensing and Certification Board
8 (requirements for licensure and certification, 190 CSR 02),
9 is authorized.

§64-9-26. Real Estate Commission.

1 (a) The legislative rule filed in the State Register on July
2 2, 2019, authorized under the authority of §30-1-23 of this
3 code, modified by the Real Estate Commission to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on October 7,
6 2019, relating to the Real Estate Commission (application
7 for waiver of initial licensing fees for certain individuals,
8 174 CSR 06), is authorized.

9 (b) The legislative rule filed in the State Register on
10 September 27, 2019, authorized under the authority of §30-
11 1-24 of this code, modified by the Real Estate Commission
12 to meet the objections of the Legislative Rule-Making
13 Review Committee and refiled in the State Register on
14 December 3, 2019, relating to the Real Estate Commission
15 (consideration of prior criminal convictions in initial license
16 eligibility determination, 174 CSR 07), is authorized.

§64-9-27. Board of Examiners for Registered Professional Nurses.

1 (a) The legislative rule filed in the State Register on
2 October 11, 2019, authorized under the authority of §30-7-
3 4 of this code, relating to the Board of Examiners for
4 Registered Professional Nurses (requirements for
5 registration and licensure and conduct constituting
6 professional misconduct, 19 CSR 03), is authorized.

7 (b) The legislative rule filed in the State Register on
8 August 22, 2019, authorized under the authority of §30-1-
9 23 of this code, modified by the Board of Examiners for
10 Registered Professional Nurses to meet the objections of the
11 Legislative Rule-Making Review Committee and refiled in
12 the State Register on October 7, 2019, relating to the Board
13 of Examiners for Registered Professional Nurses (request
14 for waiver of initial licensing fees for certain individuals, 19
15 CSR 15), is authorized.

§64-9-28. West Virginia Board of Respiratory Care.

1 (a) The legislative rule filed in the State Register on
2 June 27, 2019, authorized under the authority of §30-34-6a
3 of this code, modified by the West Virginia Board of
4 Respiratory Care to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on October 1, 2019, relating to the West Virginia
7 Board of Respiratory Care (establishment of fees, 30 CSR
8 02), is authorized.

9 (b) The legislative rule filed in the State Register on
10 June 27, 2019, authorized under the authority of §30-34-6a
11 of this code, modified by the West Virginia Board of
12 Respiratory Care to meet the objections of the Legislative
13 Rule-Making Review Committee and refiled in the State
14 Register on October 2, 2019, relating to the West Virginia
15 Board of Respiratory Care (student temporary permit, 30
16 CSR 09), is authorized.

17 (c) The legislative rule filed in the State Register on
18 December 10, 2019, authorized under the authority of §30-
19 1-24 of this code, relating to the Board of Respiratory Care
20 (consideration of prior criminal convictions in initial
21 licensure determinations, 30 CSR 10), is authorized.

§64-9-29. Board of Sanitarians.

1 The legislative rule filed in the State Register on
2 November 1, 2019, authorized under the authority of §30-
3 17-6 of this code, modified by the Board of Sanitarians to
4 meet the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on January 7,
6 2020, relating to the Board of Sanitarians (waiver of initial
7 application fees and criteria for initial licensure, 20 CSR
8 05), is authorized.

§64-9-30. Board of Social Work.

1 (a) The legislative rule filed in the State Register on
2 September 27, 2019, authorized under the authority of §30-

3 30-6 of this code, modified by the Board of Social Work to
4 meet the objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on November 1,
6 2019, relating to the Board of Social Work (qualifications
7 for the profession of social work, 25 CSR 01), is authorized.

8 (b) The legislative rule filed in the State Register on July
9 10, 2019, authorized under the authority of §30-30-6 of this
10 code, modified by the Board of Social Work to meet the
11 objections of the Legislative Rule-Making Review
12 Committee and refiled in the State Register on October 10,
13 2019, relating to the Board of Social Work (fee schedule, 25
14 CSR 03), is authorized.

**§64-9-31. Board of Speech-Language Pathology and
Audiology.**

1 (a) The legislative rule filed in the State Register on
2 June 28, 2019, authorized under the authority of §30-32-7
3 of this code, modified by the Board of Speech-Language
4 Pathology and Audiology to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on November 4, 2019, relating to the
7 Board of Speech-Language Pathology and Audiology
8 (licensure of speech-pathology and audiology, 29 CSR 01),
9 is authorized with the following amendments:

10 On page seven, subdivision 10.8.1.a., following the
11 word “for”, by inserting the words, “active duty”.

12 And,

13 On page seven, subdivision 10.8.2.a., following the
14 word “for”, by inserting the words, “active duty”.

15 (b) The legislative rule filed in the State Register on
16 September 17, 2019, authorized under the authority of §30-
17 32-7 of this code, modified by the Board of Speech-
18 Language Pathology and Audiology to meet the objections
19 of the Legislative Rule-Making Review Committee and
20 refiled in the State Register on November 5, 2019, relating

21 to the Board of Speech-Language Pathology and Audiology
22 (disciplinary and complaint procedures for speech-language
23 pathology and audiology, 29 CSR 04), is authorized.

§64-9-32. State Auditor.

1 The legislative rule filed in the State Register on July 8,
2 2019, authorized under the authority of §6-9-2a of this code,
3 relating to the State Auditor (local government purchasing
4 card program, 155 CSR 06), is authorized.

§64-9-33. State Conservation Committee.

1 The legislative rule filed in the State Register on July
2 10, 2019, authorized under the authority of §19-21A-
3 4(g)(11) of this code, relating to the State Conservation
4 Committee (State Conservation Committee Grant Program,
5 63 CSR 03), is authorized.

§64-9-34. Board of Veterinary Medicine.

1 (a) The legislative rule filed in the State Register on
2 September 9, 2019, authorized under the authority of §30-
3 10-6 of this code, modified by the Board of Veterinary
4 Medicine to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register
6 on January 2, 2020, relating to the Board of Veterinary
7 Medicine (organization and operation and licensing of
8 veterinarians, 26 CSR 01), is authorized.

9 (b) The legislative rule filed in the State Register on
10 September 9, 2019, authorized under the authority of §30-
11 10-6 of this code, modified by the Board of Veterinary
12 Medicine to meet the objections of the Legislative Rule-
13 Making Review Committee and refiled in the State Register
14 on January 2, 2020, relating to the Board of Veterinary
15 Medicine (registration of veterinary technicians, 26 CSR
16 03), is authorized.

17 (c) The legislative rule filed in the State Register on
18 September 9, 2019, authorized under the authority of §30-

19 10-6 of this code, modified by the Board of Veterinary
20 Medicine to meet the objections of the Legislative Rule-
21 Making Review Committee and refiled in the State Register
22 on January 2, 2020, relating to the Board of Veterinary
23 Medicine (schedule of fees, 26 CSR 06), is authorized with
24 the amendments set forth below:

25 On page 2, Section 3.6, by striking out “\$100.00” and
26 inserting in lieu thereof “\$10.00”;

27 On page 2, Section 3.7, by striking out “\$80.00” and
28 inserting in lieu thereof “\$5.00”;

29 On page 2, Section 3.8, by striking out “\$25.00” and
30 inserting in lieu thereof “\$2.00”;

31 And,

32 On page 2, Section 3.9, by striking out “\$80.00” and
33 inserting in lieu thereof “\$6.00”.



CHAPTER 213

(Com. Sub. for H. B. 4275 - By Delegate Foster)

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §64-6-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing agencies of the Department of Military Affairs and Public Safety to promulgate legislative rules; authorizing the rules as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature, authorizing the Fire Commission to promulgate a legislative rule relating to State Fire Code; and authorizing the Fire Commission to promulgate a legislative rule relating to State Building Code.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF
MILITARY AFFAIRS AND PUBLIC SAFETY TO
PROMULGATE LEGISLATIVE RULES.**

§64-6-1. Fire Commission.

1 (a) The legislative rule filed in the State Register on July
2 25, 2019, authorized under the authority of §29-3-5 of this
3 code, modified by the Fire Commission to meet the
4 objections of the Legislative Rule-Making Review
5 Committee and refiled in the State Register on January 6,
6 2020, relating to the Fire Commission (State Fire Code, 87
7 CSR 01), is authorized.

8 (b) The legislative rule filed in the State Register on July
9 25, 2019, authorized under the authority of §29-3-5b of this
10 code, modified by the Fire Commission to meet the
11 objections of the Legislative Rule-Making Review
12 Committee and refiled in the State Register on January 6,
13 2020, relating to the Fire Commission (State Building Code,
14 87 CSR 04), is authorized with the following amendments:

15 On page four, by striking out all of paragraph 4.1.k.1
16 and inserting in lieu thereof the following:

17 “4.1.k.1. For renovations in one- and two- family homes
18 where no new square footage is involved arc-fault circuit
19 interrupter (AFCI) protection shall not be required, except
20 for in bedrooms. For renovations in one- and two- family
21 homes where square footage is added but no electrical
22 service is installed, arc-fault circuit interrupter (AFCI)
23 protection shall not be required.”

●

CHAPTER 214

(H. B. 4480 - By Delegates Ellington and Higginbotham)

[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-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing and repealing legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding the Higher Education Accountability System and the Underwood-Smith Teaching Scholars Program and Teacher Education Loan Repayment Program; repealing the Higher Education Policy Commission's rule regarding the Accountability System; and authorizing a legislative rule for the Council for Community and Technical College Education regarding the West Virginia Invests Grant Program.

Be it enacted by the Legislature of West Virginia:

§18B-17-2. Authorizing rules of Higher Education Policy Commission.

1 (a) The legislative rule filed in the State Register on
2 October 15, 2004, relating to the Higher Education Policy
3 Commission (Underwood-Smith Teacher Scholarship
4 Program rule), is authorized.

5 (b) The legislative rule filed in the State Register on
6 October 15, 2004, relating to the Higher Education Policy
7 Commission (West Virginia Engineering, Science, and
8 Technology Scholarship Program rule), is authorized.

9 (c) The legislative rule filed in the State Register on
10 October 15, 2004, relating to the Higher Education Policy
11 Commission (Medical Education Fee and Medical Student
12 Loan Program rule), is authorized.

13 (d) The legislative rule filed in the State Register on
14 October 27, 2005, relating to the Higher Education Policy
15 Commission (authorization of degree-granting institutions),
16 is authorized.

17 (e) The legislative rule filed in the State Register on
18 August 23, 2006, relating to the Higher Education Policy
19 Commission (West Virginia Higher Education Grant
20 Program), is authorized.

21 (f) The legislative rule filed in the State Register on
22 January 4, 2008, relating to the Higher Education Policy
23 Commission (Providing Real Opportunities for Maximizing
24 In-state Student Excellence - PROMISE), is authorized.

25 (g) The legislative rule filed in the State Register on
26 August 25, 2008, relating to the Higher Education Policy
27 Commission (Research Trust Program), is authorized.

28 (h) The legislative rule filed in the State Register on
29 January 8, 2009, relating to the Higher Education Policy
30 Commission (Guidelines for Governing Boards in
31 Employing and Evaluating Presidents), is authorized.

32 (i) The legislative rule filed in the State Register on
33 September 10, 2008, relating to the Higher Education Policy
34 Commission (Medical Student Loan Program), is
35 authorized, with the following amendment:

36 On page two, subsection 5.1, following the words
37 “financial aid office” by inserting a new subdivision 5.1.3
38 to read as follows: “United States citizenship or legal
39 immigrant status while actively pursuing United States
40 citizenship.”

41 (j) The legislative rule filed in the State Register on
42 December 1, 2008, relating to the Higher Education Policy
43 Commission (West Virginia Higher Education Grant
44 Program), is authorized.

45 (k) The legislative rule filed in the State Register on
46 January 26, 2009, relating to the Higher Education Policy
47 Commission (Accountability System), is authorized.

48 (l) The legislative rule filed in the State Register on May
49 20, 2009, relating to the Higher Education Policy
50 Commission (Energy and Water Savings Revolving Loan
51 Fund Program), is authorized.

52 (m) The legislative rule filed in the State Register on
53 January 27, 2010, relating to the Higher Education Policy
54 Commission (Providing Real Opportunities for Maximizing
55 In-state Student Excellence - PROMISE), is authorized.

56 (n) The legislative rule filed in the State Register on
57 December 8, 2010, relating to the Higher Education Policy
58 Commission (authorization of degree-granting institutions),
59 is authorized, with the following amendment:

60 On page 28, subsection 9.1.b, following the words
61 “Good cause shall consist of” by inserting the words “any
62 one or more of the following”.

63 (o) The legislative rule filed in the State Register on
64 December 12, 2011, relating to the Higher Education Policy
65 Commission (Tuition and Fee Policy), is authorized.

66 (p) The legislative rule filed in the State Register on
67 August 10, 2012, relating to the Higher Education Policy
68 Commission (authorization of degree-granting institutions),
69 is authorized.

70 (q) The legislative rule filed in the State Register on
71 August 10, 2012, relating to the Higher Education Policy
72 Commission (annual reauthorization of degree-granting
73 institutions), is authorized.

74 (r) The legislative rule filed in the State Register on
75 March 20, 2013, relating to the Higher Education Policy
76 Commission (Human Resources Administration), is
77 authorized.

78 (s) The legislative rule filed in the State Register on
79 January 24, 2014, relating to the Higher Education Policy
80 Commission (Capital Project Management), is authorized.

81 (t) The legislative rule filed in the State Register on
82 April 4, 2014, relating to the Higher Education Policy
83 Commission (Underwood-Smith Teacher Scholarship
84 Program), is authorized.

85 (u) The legislative rule filed in the State Register on
86 August 4, 2014, relating to the Higher Education Policy
87 Commission (Nursing Scholarship Program), is authorized.

88 (v) The legislative rule filed in the State Register on
89 October 28, 2015, relating to the Higher Education Policy
90 Commission (Underwood-Smith Teacher Scholarship
91 Program), is authorized.

92 (w) The legislative rule filed in the State Register on
93 October 28, 2015, relating to the Higher Education Policy
94 Commission (Nursing Scholarship Program), is authorized.

95 (x) The legislative rule filed in the State Register on
96 December 20, 2016, relating to the Higher Education Policy
97 Commission (West Virginia Higher Education Grant
98 Program), is authorized.

99 (y) The legislative rule filed in the State Register on
100 December 20, 2016, relating to the Higher Education Policy
101 Commission (Providing Real Opportunities for Maximizing
102 In-state Student Excellence - PROMISE), is authorized.

103 (z) The legislative rule filed in the State Register on
104 December 20, 2016, relating to the Higher Education Policy
105 Commission (Research Trust Fund Program), is authorized.

106 (aa) The legislative rule filed in the State Register on
107 December 20, 2016, relating to the Higher Education Policy
108 Commission (annual reauthorization of degree-granting
109 institutions), is authorized.

110 (bb) The legislative rule filed in the State Register on
111 January 16, 2018, relating to the Higher Education Policy
112 Commission (Tuition and Fee Policy), is authorized.

113 (cc) The legislative rule filed in the State Register on
114 January 16, 2018, relating to the Higher Education Policy
115 Commission (Human Resources Administration), is
116 authorized.

117 (dd) The legislative rule filed in the State Register on
118 January 22, 2018, relating to the Higher Education Policy
119 Commission (Capital Project Management), is authorized,
120 with the following amendments:

121 On page one, subsection 2.1, by striking out all of
122 subdivision 2.1.d. and inserting in lieu thereof a new
123 subdivision 2.1.d., to read as follows: “Efficient use of
124 existing classroom and other space by institutions, while
125 maintaining an appropriate deference to the value
126 judgments of the institutional governing boards.”;

127 On page seven, subsection 4.2, by striking out all of
128 subdivision 4.2.d.5. and inserting in lieu thereof a new
129 subdivision 4.2.d.5., to read as follows: “Funding will be
130 prioritized for each institution in accordance with
131 institutional plans confirmed by the Commission or
132 approved by the Council.”;

133 On page seven, subsection 4.2, by striking out all of
134 subdivision 4.2.d.6. and inserting in lieu thereof a new
135 subdivision 4.2.d.6., to read as follows: “Facility utilization
136 rates will be an important factor in prioritizing capital
137 projects across the systems.”;

138 On page seven, subsection 4.2, by striking out all of
139 subdivision 4.2.d.7. and inserting in lieu thereof a new

140 subdivision 4.2.d.7., to read as follows: “Institutions with
141 overall net asset values and capacity utilization rates that
142 exceed or equal thresholds set annually by the Commission
143 and Council are the presumptive priority for new
144 facilities. If these projects do not replace an existing
145 facility, they would be included in the Program
146 Improvement category.”; and

147 On pages 10-11, section 5, by striking out all of
148 subdivision 5.6. and inserting in lieu thereof a new
149 subdivision 5.6., to read as follows: “A governing board
150 may not implement a campus development plan or plan
151 update that has not been confirmed by the Commission or
152 approved by the Council, as appropriate. The purchase of
153 any property for the construction of a facility that is not
154 included in the campus development plan creates an update
155 to the campus development plan that must be confirmed by
156 the Commission or approved by the Council, as appropriate,
157 prior to its purchase. In the case of institutions governed by
158 the Council, this provision applies equally to property
159 acquired by any means, whether by purchase or otherwise.”.

160 (ee) The legislative rule filed in the State Register on
161 January 22, 2019, relating to the Higher Education Policy
162 Commission (Acceptance of Advanced Placement Credit),
163 is repealed.

164 (ff) The legislative rule filed in the State Register on
165 January 22, 2019, relating to the Higher Education Policy
166 Commission (Human Resources Administration), is
167 repealed.

168 (gg) The legislative rule filed in the State Register on
169 August 28, 2018, relating to the Higher Education Policy
170 Commission (Guidelines for Governing Boards in
171 Employing and Evaluating Presidents), is authorized.

172 (hh) The legislative rule filed in the State Register on
173 August 7, 2018, relating to the Higher Education Policy
174 Commission (Providing Real Opportunities for Maximizing

175 In-state Student Excellence (PROMISE) Scholarship
176 Program), is authorized, with the following amendments:

177 On page one, subsection 2.1, by striking out all of
178 subdivision 2.1.a. and inserting in lieu thereof a new
179 subdivision 2.1.a., to read as follows: "Must complete high
180 school graduation requirements at a West Virginia public,
181 private or home school unless he or she qualified as a
182 military dependent under Section 5 of this rule, or has
183 commuted to an out-of-state school pursuant to Section 6 of
184 this rule; and";

185 On page one, subsection 2.1, by striking out all of
186 subdivision 2.1.b. and inserting in lieu thereof a new
187 subdivision 2.1.b., to read as follows: "Must complete at
188 least one half of the credits required for high school
189 graduation through attendance at a public, private or home
190 school in this state, unless he or she qualified as a military
191 dependent under Section 5 of this rule, or has commuted to
192 an out-of-state school pursuant to Section 6 of this rule;
193 and";

194 On page one, subdivision 2.1.c., by striking out the
195 words "Section 5" and inserting in lieu thereof the words
196 "Section 4";

197 On page one, subsection 2.1, by striking out all of
198 subdivision 2.1.d. and inserting in lieu thereof a new
199 subdivision 2.1.d., to read as follows: "Must have attained
200 a cumulative grade point average of at least 3.0 on a 4.0
201 scale, based on county board grading policies, in both core
202 courses and overall coursework required for graduation by
203 the State Board of Education, while enrolled in a public or
204 private high school. If home-schooled pursuant to the
205 exemption allowed by W.Va. Code §18-8-1 as documented
206 by the county school board system, the applicant must have
207 completed in both the 11th and 12th grades the required core
208 and elective coursework necessary to prepare students for
209 success in postsecondary education at the associate and
210 baccalaureate levels by attaining a cumulative grade point

211 average of at least 3.0 on a 4.0 grading scale in both core
212 courses and overall coursework as determined by the
213 Commission; and”;

214 On page one, subsection 2.1, subdivision 2.1.f.,
215 preceding the words “have resided in West Virginia”, by
216 striking out the word “Must” and inserting in lieu thereof
217 the words “The applicant and his or her parent or legal
218 guardian must”;

219 On page one, subdivision 2.1.f., by striking out the
220 words “Section 5” and inserting in lieu thereof the words
221 “Section 4”;

222 On page one, subdivision 2.1.f., by striking out the
223 words “Section 6” and inserting in lieu thereof the words
224 “Section 5”;

225 On page two, subsection 2.4., by striking out the words
226 “Section 10.7 or 10.8” and inserting in lieu thereof the
227 words “Section 9.7 or 9.8”;

228 On page two, subsection 2.5, by striking out the words
229 “Section 8” and inserting in lieu thereof the words “Section
230 7”;

231 On page two, subsection 2.5, by striking out the words
232 “Section 10” and inserting in lieu thereof the words “Section
233 9”;

234 On page two, by striking out all of section 3 and
235 renumbering the remaining sections accordingly;

236 On page three, subsection 4.4, by striking out the words
237 “Section 14” and inserting in lieu thereof the words “Section
238 13”;

239 On page five-six, subsection 10.6, by striking out the
240 words “Section 10.3” and inserting in lieu thereof the words
241 “Section 9.3”;

242 On page six, subsection 10.6, by striking out the words
243 “Section 10.2” and inserting in lieu thereof the words
244 “Section 9.2”;

245 On page six, subsection 10.9.c., by striking out the
246 words “Section 5” and inserting in lieu thereof the words
247 “Section 4”; and

248 On page eight, subsection 15.1.b., by striking out the
249 words “Section 11.1” and inserting in lieu thereof the words
250 “Section 10.1”.

251 (ii) The legislative rule filed in the State Register on
252 September 30, 2019, relating to the Higher Education Policy
253 Commission (Higher Education Accountability System) is
254 authorized.

255 (jj) The legislative rule filed in the State Register on
256 November 5, 2019, relating to the Higher Education Policy
257 Commission (Underwood-Smith Teaching Scholars
258 Program and Teacher Education Loan Repayment Program)
259 is authorized.

260 (kk) The legislative rule filed in the State Register on
261 October 4, 2019, relating to the Higher Education Policy
262 Commission (Accountability System) is repealed.

**§18B-17-3. Authorizing rules of the Council for Community
and Technical College Education.**

1 (a) The legislative rule filed in the State Register on
2 September 29, 2004, relating to the West Virginia Council
3 for Community and Technical College Education
4 (Performance Indicators) is authorized.

5 (b) The legislative rule filed in the State Register on
6 October 13, 2005, relating to the West Virginia Council for
7 Community and Technical College Education
8 (Authorization of Degree-Granting Institutions), is
9 authorized.

10 (c) The legislative rule filed in the State Register on
11 October 30, 2006, relating to the West Virginia Council for
12 Community and Technical College Education (Workforce
13 Development Initiative Program), is authorized.

14 (d) The legislative rule filed in the State Register on
15 December 4, 2008, relating to the West Virginia Council for
16 Community and Technical College Education (Employing
17 and Evaluating Presidents), is authorized.

18 (e) The legislative rule filed in the State Register on
19 December 23, 2008, relating to the West Virginia Council
20 for Community and Technical College Education
21 (Performance Indicators), is authorized.

22 (f) The legislative rule filed in the State Register on
23 February 5, 2009, relating to the West Virginia Council for
24 Community and Technical College Education (Finance), is
25 authorized.

26 (g) The legislative rule filed in the State Register on
27 February 5, 2009, relating to the West Virginia Council for
28 Community and Technical College Education
29 (Accountability System), is authorized.

30 (h) The legislative rule filed in the State Register on
31 June 15, 2011, relating to the West Virginia Council for
32 Community and Technical College Education (Workforce
33 Development Initiative Program), is authorized.

34 (i) The legislative rule filed in the State Register on
35 October 26, 2011, relating to the West Virginia Council for
36 Community and Technical College Education (Tuition and
37 Fees), is authorized.

38 (j) The legislative rule filed in the State Register on
39 October 17, 2012, relating to the West Virginia Council for
40 Community and Technical College Education
41 (Authorization of Degree-Granting Institutions), is
42 authorized.

43 (k) The legislative rule filed in the State Register on
44 October 17, 2012, relating to the West Virginia Council for
45 Community and Technical College Education (Annual
46 Reauthorization of Degree-Granting Institutions), is
47 authorized.

48 (l) The legislative rule filed in the State Register on
49 March 21, 2013, relating to the West Virginia Council for
50 Community and Technical College Education (Human
51 Resources Administration), is authorized.

52 (m) The legislative rule filed in the State Register on
53 August 21, 2012, relating to the West Virginia Council for
54 Community and Technical College Education (West
55 Virginia EDGE Program), is authorized.

56 (n) The legislative rule filed in the State Register on
57 January 28, 2014, relating to the West Virginia Council for
58 Community and Technical College Education (Capital
59 Project Management), is authorized.

60 (o) The legislative rule filed in the State Register on
61 January 18, 2017, relating to the West Virginia Council for
62 Community and Technical College Education (annual
63 reauthorization of degree-granting institutions), is
64 authorized.

65 (p) The legislative rule filed in the State Register on
66 January 18, 2017, relating to the West Virginia Council for
67 Community and Technical College Education (Business,
68 Occupational, and Trade Schools), is authorized.

69 (q) The legislative rule filed in the State Register on
70 January 26, 2018, relating to the West Virginia Council for
71 Community and Technical College Education (Human
72 Resources Administration), is authorized.

73 (r) The legislative rule filed in the State Register on
74 January 26, 2018, relating to the West Virginia Council for
75 Community and Technical College Education (Capital

76 Project Management), is authorized, with the following
77 amendments:

78 On page one, subsection 2.1, by striking out all of
79 subdivision 2.1.d. and inserting in lieu thereof a new
80 subdivision 2.1.d., to read as follows: "Efficient use of
81 existing classroom and other space by institutions, while
82 maintaining an appropriate deference to the value
83 judgments of the institutional governing boards.";

84 On page seven, subsection 4.2, by striking out all of
85 subdivision 4.2.d.5. and inserting in lieu thereof a new
86 subdivision 4.2.d.5., to read as follows: "Funding will be
87 prioritized for each institution in accordance with
88 institutional plans confirmed by the Commission or
89 approved by the Council.";

90 On page seven, subsection 4.2, by striking out all of
91 subdivision 4.2.d.6. and inserting in lieu thereof a new
92 subdivision 4.2.d.6., to read as follows: "Facility utilization
93 rates will be an important factor in prioritizing capital
94 projects across the systems.";

95 On page seven, subsection 4.2, by striking out all of
96 subdivision 4.2.d.7. and inserting in lieu thereof a new
97 subdivision 4.2.d.7., to read as follows: "Institutions with
98 overall net asset values and capacity utilization rates that
99 exceed or equal thresholds set annually by the Commission
100 and Council are the presumptive priority for new
101 facilities. If these projects do not replace an existing
102 facility, they would be included in the Program
103 Improvement category."; and

104 On pages 10-11, section 5, by striking out all of
105 subdivision 5.6. and inserting in lieu thereof a new
106 subdivision 5.6., to read as follows: "A governing board
107 may not implement a campus development plan or plan
108 update that has not been confirmed by the Commission or
109 approved by the Council, as appropriate. The purchase of
110 any property for the construction of a facility that is not

111 included in the campus development plan creates an update
112 to the campus development plan that must be confirmed by
113 the Commission or approved by the Council, as appropriate,
114 prior to its purchase. In the case of institutions governed by
115 the Council, this provision applies equally to property
116 acquired by any means, whether by purchase or otherwise.”

117 (s) The legislative rule filed in the State Register on July
118 2, 2018, relating to the West Virginia Council for
119 Community and Technical College Education (Tuition and
120 Fees), is authorized.

121 (t) The legislative rule filed in the State Register on
122 September 26, 2018, relating to the West Virginia Council
123 for Community and Technical College Education
124 (Acceptance of Advanced Placement Credit), is repealed.

125 (u) The legislative rule filed in the State Register on
126 November 20, 2018, relating to the West Virginia Council
127 for Community and Technical College Education (Initial
128 Authorization of Degree-Granting Institutions), is
129 authorized.

130 (v) The legislative rule filed in the State Register on
131 November 20, 2018, relating to the West Virginia Council
132 for Community and Technical College Education
133 (Workforce Development: Learn and Earn, Technical
134 Program Development, and West Virginia Advance Rapid
135 Response Grants), is authorized.

136 (w) The legislative rule filed in the State Register on
137 January 25, 2019, relating to the West Virginia Council for
138 Community and Technical College Education (Human
139 Resources Administration), is repealed.

140 (x) The legislative rule filed in the State Register on
141 June 3, 2019, relating to the West Virginia Council for
142 Community and Technical College Education (West
143 Virginia Invests Grant Program) is authorized.

●

CHAPTER 215

(S. B. 180 - By Senators Blair, Cline and Rucker)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §17B-7-5 and §17B-7-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §17B-7-11, all relating to the Second Chance Driver's License Program; providing that a court's accounting of amounts due for crime victim restitution be separately identified; providing that any moneys for restitution that are not submitted in the accounting by the court may not be waived by the participant's completion of the program; providing that amounts of court costs collected under the Second Chance Driver's License Program attributable to crime victim restitution are not subject to the five percent offset for use by the Director of the Division of Justice and Community Services in the administration of the program; and providing a sunset provision.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. SECOND CHANCE DRIVER'S LICENSE PROGRAM.

§17B-7-5. Program acceptance; development of consolidated repayment schedule; no other court fee payments required.

- 1 (a) A person wishing to participate in the Second
- 2 Chance Driver's License Program shall complete an
- 3 application form prepared by the director.

4 (b) Upon receipt of a person's application, the director
5 shall coordinate with the courts and the commissioner to
6 verify the total amount of the applicant's unpaid court costs
7 in the state of West Virginia at the time of the application.

8 (c) All courts shall provide a full accounting of all
9 unpaid court costs assignable to the applicant within 30 days
10 of the request of the director. The accounting shall
11 separately identify the portion of the court costs that
12 constitute a fine, forfeiture, penalty, or the amount due as
13 restitution to a crime victim or costs to be credited to the
14 Crime Victims Compensation Fund pursuant to §62-5-10 of
15 this code remaining unpaid by the applicant for each order
16 of the court for which unpaid balances remain.

17 (d) Any unpaid court costs not reported to the director
18 by a court as provided by subsection (c) of this section may
19 not be collected separately by the court during the time in
20 which the applicant is a participant in the program.

21 (e) If a participant completes the program, any unpaid
22 court costs, except for unpaid fines, and unpaid amounts due
23 as restitution to a crime victim or costs to be credited to the
24 Crime Victims Compensation Fund pursuant to §62-5-10 of
25 this code, not submitted to the director pursuant to
26 subsection (c) of this section shall be considered waived
27 unless the unpaid court costs were part of an order entered
28 after the date upon which the director requested information
29 for a participant. The driver's license suspension or
30 revocation with respect to any unpaid fine not reported by a
31 court shall be released upon completion of the program by
32 the participant.

33 (f) Within 30 days after receipt of information
34 concerning unpaid court costs, the director shall determine
35 if the applicant is eligible to participate in the program.
36 Upon determination, the director shall promptly notify the
37 applicant of his or her acceptance into the program.

38 (g) Upon acceptance of the applicant as a participant in
39 the program, the director shall develop a consolidated
40 repayment schedule for the participant, which will require
41 the participant to remit payments on a monthly basis to the
42 director according to guidelines established by the director
43 in legislative rules, subject to the following conditions:

44 (1) The monthly payment shall be determined based on
45 the participant's monthly income and expenditures, but may
46 not be less than \$50 per month; and

47 (2) The consolidated repayment schedule shall require
48 full payment of the unpaid court costs within one year.

49 (h) The consolidated repayment schedule may be
50 amended to reflect changes in a participant's circumstances.

51 (i) The director may permit a hardship waiver of the
52 requirements of subsection (g) of this section, upon a
53 determination that the applicant's circumstances may have
54 changed, and that the objectives of this article are best
55 accomplished if the consolidated repayment schedule
56 requires a lesser monthly payment or a longer period of time
57 to remit the unpaid court costs: *Provided*, That the director
58 may not waive the total amount of unpaid court costs
59 submitted by the courts according to subsection (a) of this
60 section.

61 (j) Upon acceptance into the program, a participant in
62 good standing with the program is under no obligation to
63 make separate or additional payments of unpaid court costs
64 directly to a court if those unpaid court costs are included in
65 the consolidated repayment schedule.

§17B-7-9. Deposit of funds into account; disbursement of funds from account.

1 (a) The director shall deposit all money received from
2 participants pursuant to a consolidated repayment schedule
3 into the Second Chance Driver's License Program Account.
4 The director shall prorate, separate, and identify the portion

5 of each payment that constitutes payment of a fine,
6 forfeiture, penalty, or an amount due as restitution to a crime
7 victim or costs to be credited to the Crime Victims
8 Compensation Fund pursuant to §62-5-10 of this code in
9 accordance with the information provided to the director
10 pursuant to §17B-7-5(c) of this code.

11 (b) After deposit of a participant's monthly payment
12 into this account, the director shall make disbursements
13 from this account as follows:

14 (1) Portions of payments identified as payment of a fine,
15 forfeiture, penalty, or an amount due as restitution to a crime
16 victim or costs to be credited to the Crime Victims
17 Compensation Fund pursuant to §62-5-10 of this code shall
18 be disbursed to the courts identified in the repayment
19 schedule or as applicable to the Crime Victims
20 Compensation Fund pursuant to §62-5-10 of this code;

21 (2) The director shall disburse 95 percent of the portions
22 of the payments remaining after payment as required in
23 subdivision (1) of this subsection to the courts identified in
24 the participant's consolidated repayment schedule. Courts
25 shall accept and document these payments of 95 percent of
26 the total unpaid court costs, not including court costs
27 received pursuant to subdivision (1) of this subsection, as
28 payment in full of the amount owed by the participant to the
29 court for this portion of court costs owed; and

30 (3) The portion of the payments remaining in the
31 account after payment of the court costs in subdivisions (1)
32 and (2) of this subsection may be appropriated by the
33 Legislature to be expended for costs incurred by the director
34 in the administration of this article.

35 (c) Courts that receive disbursements pursuant to
36 subsection (b) of this section are responsible for making
37 statutory disbursements of amounts received in satisfaction
38 of unpaid court costs according to the requirements of the
39 code.

§17B-7-11. Sunset provision.

1 The Second Chance Driver's License Program
2 established under §17B-7-1, *et seq.*, of this code shall cease
3 to have effect on June 30, 2022, unless reauthorized by the
4 West Virginia Legislature.

CHAPTER 216

**(Com. Sub. for S. B. 686 - By Senators Blair and
Jeffries)**

[Passed February 29, 2020; in effect ninety days from passage.]

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

AN ACT to amend and reenact §24A-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §24A-2-5 of said code; and to amend and reenact §24A-3-2 and §24A-3-3 of said code, all relating to authorizing use of an emergency substitute motor carrier when certificate of necessity and convenience or contract carrier permit is suspended; defining terms; allowing emergency substitute carrier to operate as common carrier without certificate of necessity and convenience; authorizing Public Service Commission to suspend common carrier certificate of necessity and convenience and allow emergency service carrier to provide temporary replacement service; establishing procedure for seeking reinstatement of certificated service; prohibiting emergency service carrier from operating as a contract carrier except as authorized by Public Service Commission; allowing Public Service Commission to suspend contract carrier permit and authorize emergency substitute carrier to provide temporary replacement service; and establishing procedure for permit grantee to seek reinstatement of permit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PURPOSES, DEFINITIONS, AND EXEMPTIONS.

§24A-1-2. Definitions.

1 As used in this chapter:

2 “Commission” means the Public Service Commission
3 of West Virginia;

4 “Common carrier by motor vehicle” means any person
5 who undertakes, whether directly or by lease or any other
6 arrangement, to transport passengers or property, or any
7 class or classes of property, for the general public over the
8 highways of this state by motor vehicles for hire, whether
9 over regular or irregular routes, including such motor
10 vehicle operations of carriers by rail, water, or air, and of
11 express or forwarding agencies, and leased or rented motor
12 vehicles, with or without drivers;

13 “Contract carrier by motor vehicle” means any person
14 not included within the definition of “common carrier by
15 motor vehicle”, who under special and individual contracts
16 or agreements, and whether directly or by lease or any other
17 arrangement, transports passengers or property over the
18 highways in this state by motor vehicles for hire;

19 “Driveaway operation” means an operation in which
20 any vehicle or vehicles, operated singly or in lawful
21 combinations, new or used, not owned by the transporting
22 motor carrier, constitute the commodity being transported;

23 “Emergency substitute carrier” means a common carrier
24 by motor vehicle or a contract carrier by motor vehicle that
25 is authorized by the Public Service Commission to provide
26 service on a temporary basis outside of its certificated
27 territory or its contract because of commission suspension
28 of a motor carrier certificate of convenience and necessity,
29 or contract carrier by motor vehicle permit;

30 “Exempt carrier” means any person operating a motor
31 vehicle exempt from the provisions of §24A-1-3 of this
32 code;

33 “I.C.C.” means the Interstate Commerce Commission;

34 “Motor carrier” includes both a common carrier by
35 motor vehicle and a contract carrier by motor vehicle;

36 “Motor vehicle” means, and includes, any automobile,
37 truck, tractor, truck-tractor, trailer, semitrailer, motorbus,
38 taxicab, any self-propelling motor-driven motor vehicle, or
39 any combination thereof used upon any public highway in
40 this state for the purpose of transporting persons or property;

41 “NARUC” means the National Association of
42 Regulatory Utility Commissioners;

43 “Operations within the borders of this state” means
44 interstate or foreign operations to, from, within, or
45 traversing this state;

46 “Person” means and includes any individual, firm,
47 copartnership, corporation, company, association, or joint-
48 stock association, and includes any trustee, receiver,
49 assignee, or personal representative thereof;

50 “Planting and harvesting season” means January 1
51 through December 31 of each calendar year only as it relates
52 to the administration of rules promulgated pursuant to
53 §24A-5-5(j) of this code;

54 “Private commercial carrier” means and includes any
55 person who undertakes, whether directly or by lease or other
56 arrangement, to transport property, including hazardous
57 materials as defined in rules and regulations promulgated by
58 the commission, for himself or herself over the public
59 highways of this state, in interstate or intrastate commerce,
60 for any commercial purpose, by motor vehicle with a gross
61 vehicle weight rating of 10,001 pounds or more, by motor
62 vehicle designed to transport more than 15 passengers,

63 including the driver; or by any motor vehicle used to
64 transport hazardous materials in a quantity requiring
65 placarding under federal hazardous material regulations as
66 adopted by the commission;

67 “Power unit” means any vehicle which contains within
68 itself the engine, motor, or other source of power by which
69 said vehicle is propelled; and

70 “Public highway” means any public street, alley, road
71 or highway, or thoroughfare of any kind in this state used
72 by the public.

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-5. Certificate of convenience and necessity.

1 (a) *Required; application; hearing; granting.* — It shall
2 be unlawful for any common carrier by motor vehicle to
3 operate within this state without first having obtained from
4 the commission a certificate of convenience and necessity
5 unless the common carrier is an emergency substitute
6 carrier. Upon the filing of an application for such certificate,
7 the commission shall set a time and place for a hearing on
8 the application: *Provided*, That the commission may, after
9 giving proper notice and if no protest is received, waive
10 formal hearing on the application. Notice shall be by
11 publication which shall state that a formal hearing may be
12 waived in the absence of a protest to such application. The
13 notice shall be published as a Class I legal advertisement in
14 compliance with the provisions of §59-3-1 *et seq.* of this
15 code and the publication area for such publication shall be
16 the proposed area of operation. The notice shall be
17 published at least 10 days prior to the date of the hearing.
18 After the hearing or waiver by the commission of the
19 hearing, if the commission finds from the evidence that the
20 public convenience and necessity require the proposed
21 service or any part thereof, it shall issue the certificate as
22 prayed for, or issue it for the partial exercise only of the

23 privilege sought, and may attach to the exercise of the right
24 granted by such certificate such terms and conditions as in
25 its judgment the public convenience and necessity may
26 require, and if the commission shall be of the opinion that
27 the service rendered by any common carrier holding a
28 certificate of convenience and necessity over any route or
29 routes in this state is in any respect inadequate or
30 insufficient to meet the public needs, such certificate holder
31 shall be given reasonable time and opportunity to remedy
32 such inadequacy or insufficiency before any certificate shall
33 be granted to an applicant proposing to operate over such
34 route or routes as a common carrier. Before granting a
35 certificate to a common carrier by motor vehicle, the
36 commission shall take into consideration existing
37 transportation facilities in the territory for which a
38 certificate is sought, and in case it finds from the evidence
39 that the service furnished by existing transportation
40 facilities is reasonably efficient and adequate, the
41 commission shall not grant such certificate.

42 (b) *Rules and regulations; taking evidence at hearings;*
43 *burden of proof.* — The commission shall prescribe such
44 rules and regulations as it may deem proper for the
45 enforcement of the provisions of this section, and in
46 establishing that public convenience and necessity do exist,
47 the burden of proof shall be upon the applicant. The
48 commission may designate any of its employees to take
49 evidence at the hearing of any application for a certificate
50 and submit findings of fact as a part of a report or reports to
51 be made to the commission.

52 (c) *Certificate not franchise, etc.; assignment or*
53 *transfer.* — No certificate issued in accordance with the
54 terms of this chapter shall be construed to be either a
55 franchise or irrevocable, or to confer any proprietary or
56 property rights in the use of the public highways. No
57 certificate issued under this chapter shall be assigned or
58 otherwise transferred without the approval of the
59 commission. Upon the death of a person holding a
60 certificate, his or her personal representative or

61 representatives may operate under such certificate while the
62 same remains in force and effect and, with the consent of
63 the commission, may transfer such certificate.

64 (d) *Suspension, revocation or amendment.* — The
65 commission may at any time, for good cause, suspend a
66 common carrier certificate of convenience and necessity,
67 and upon suspension, authorize an emergency substitute
68 carrier to provide temporary replacement service until
69 further order of the commission: *Provided*, That an
70 emergency substitute carrier may continue to operate during
71 the pendency of its application for a certificate of
72 convenience and necessity filed pursuant to §24A-2-5(a) of
73 this code. Upon not less than 15 days' notice to the grantee
74 of any certificate and an opportunity to be heard, the
75 commission may revoke or amend any certificate.

76 (e) *Reinstitution of certificated service.* — No sooner
77 than 30 days after a suspension of authority, a common
78 carrier may petition the commission to end the suspension
79 and terminate the authority of an emergency substitute
80 carrier. Upon notice to the emergency substitute carrier and
81 an opportunity to be heard, the commission shall issue its
82 order granting or denying the petition.

83 (f) The commission shall have the authority, after
84 hearing, to ratify, approve, and affirm those orders issued
85 pursuant to this section. For the purposes of this subsection,
86 the commission may give notice by a Class I legal
87 advertisement of such hearing in any newspaper or
88 newspapers of general circulation in this state, and such
89 other newspapers as the commission may designate.

ARTICLE 3. CONTRACT CARRIERS BY MOTOR VEHICLES.

§24A-3-2. Provisions of chapter to govern.

1 No contract carrier by motor vehicle or emergency
2 substitute carrier shall operate any motor vehicle for the
3 transportation of either persons or property for hire on any

4 public highway in this state except in accordance with the
5 provisions of this chapter.

§24A-3-3. Permit.

1 (a) *Required; application; hearing; granting.* — It shall
2 be unlawful for any contract carrier by motor vehicle to
3 operate within this state without first having obtained from
4 the commission a permit unless the contract carrier is an
5 emergency substitute carrier. Upon the filing of an
6 application for such permit, the commission shall fix a time
7 and place for hearing thereon: *Provided*, That the
8 commission may, after giving notice as hereinafter provided
9 and if no protest is received, waive formal hearing on such
10 application. Said notice shall be by publication which shall
11 state that formal hearing may be waived in the absence of
12 protest to such application. Such notice shall be published
13 as a Class I legal advertisement in compliance with the
14 provisions of §59-3-1 *et seq.* of this code and the publication
15 area for such publication shall be the area of operation. Such
16 notice shall be published at least 10 days prior to the date of
17 hearing, but not more than 30 days after the filing of the
18 completed application. After hearing or waiver of hearing
19 as aforesaid, as the case may be, the commission shall grant
20 or deny the permit prayed for or grant it for the partial
21 exercise only of the privilege sought, and may attach to the
22 exercise of the privilege granted by such permit such terms
23 and conditions as in its judgment are proper and will carry
24 out the purposes of this chapter. No permit shall be granted
25 unless the applicant has established to the satisfaction of the
26 commission that the privilege sought will not endanger the
27 safety of the public or unduly interfere with the use of the
28 highways or impair unduly the condition or unduly increase
29 the maintenance cost of such highways, directly or
30 indirectly, or impair the efficient public service of any
31 authorized common carrier or common carriers adequately
32 serving the same territory.

33 (b) *Rules and regulations; evidence at hearing.* — The
34 commission shall prescribe such rules and regulations as it

35 may deem proper for the enforcement of the provisions of
36 this section and may designate any of its employees to take
37 evidence at the hearing on any application for a permit and
38 submit findings of fact as a part of report or reports to be
39 made to the commission.

40 (c) *Permit not franchise, etc.; assignment or transfer.* —
41 No permit issued in accordance with the terms of this
42 chapter shall be construed to be either a franchise or
43 irrevocable or to confer any proprietary or property rights in
44 the use of the public highways. No permit issued under this
45 chapter shall be assigned or otherwise transferred without
46 the approval of the commission. Upon the death of a person
47 holding a permit, his or her personal representative or
48 representatives may operate under such permit while the
49 same remains in force and effect and, with the consent of
50 the commission, may transfer such permit.

51 (d) *Suspension, revocation or amendment.* — The
52 commission may, at any time, for good cause, suspend a
53 motor carrier permit and upon suspension authorize an
54 emergency substitute carrier to provide temporary
55 replacement service until further order of the commission:
56 *Provided,* That an emergency substitute carrier may
57 continue to operate during the pendency of its application
58 for a permit filed pursuant to §24A-3-3(a) of this code.
59 Upon not less than 15 days' notice to the grantee of any
60 permit and an opportunity to be heard, the commission may
61 revoke or amend any permit.

62 (e) *Reinstitution of permit.* — No sooner than 30 days
63 after a suspension of authority, a grantee of a permit may
64 petition the commission to end the suspension and terminate
65 the authority of an emergency substitute carrier. Upon
66 notice to the emergency substitute carrier and an
67 opportunity to be heard, the commission shall issue its order
68 granting or denying the petition.

69 (f) *Notice of cessation or abandonment.* — Every
70 contract carrier by motor vehicle who shall cease operation

71 or abandon his or her rights under a permit issued shall
72 notify the commission within 30 days of such cessation or
73 abandonment.

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CHAPTER 217

**(Com. Sub. for S. B. 690 - 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 the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17A-13-1, relating to the operation of street-legal special purpose vehicles; permitting the operation of street-legal special purpose vehicles on highways; providing for registration of street-legal special purpose vehicles; establishing licensing and equipment requirements for street-legal special purpose vehicles; defining terms; requiring rulemaking; clarifying that low-speed vehicles are not special purpose vehicles or street-legal special purpose vehicles; and allowing low speed vehicles to cross state routes at traffic lights when the state route does not have a posted speed limit greater than 40 miles per hour.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. STREET-LEGAL SPECIAL PURPOSE VEHICLES.

§17A-13-1. Street-legal special purpose vehicles; operation on highways; registration procedures; licensing requirements; equipment requirements.

1 (a) Except as required in subsection (c) of this section,
2 an individual may operate a “street-legal special purpose
3 vehicle” on a street or highway.

4 (b) For the purposes of this section:

5 (1) “Special purpose vehicle” includes all-terrain
6 vehicles, utility terrain vehicles, mini-trucks, pneumatic-
7 tired military vehicles, and full-size special purpose-built
8 vehicles, including those self-constructed or built by the
9 original equipment manufacturer and those that have been
10 modified.

11 (2) “Street-legal special purpose vehicle” is a special
12 purpose vehicle that meets the requirements of this section.

13 (c) An individual may not operate a special purpose
14 vehicle as a street-legal special purpose vehicle on a
15 highway if:

16 (1) The highway is a controlled-access system,
17 including, but not limited to, interstate systems; or

18 (2) The county, municipality, or the Division of Natural
19 Resources where the highway is located prohibits special
20 purpose vehicles.

21 (d) Street-legal special purpose vehicles are prohibited
22 from traveling a distance greater than 20 miles on a highway
23 displaying centerline pavement markings.

24 (e) All street-legal special purpose vehicles are subject
25 to the certificate of title provisions of §17A-1-1 *et seq.* of
26 this code.

27 (f) Nothing in this section authorizes the operation of a
28 street-legal special purpose vehicle in an area that is not
29 open to motor vehicle use.

30 (g) A street-legal special purpose vehicle may be
31 registered in the same manner as provided for motorcycles
32 pursuant to this chapter.

33 (h) Upon registration of any street-legal special purpose
34 vehicle pursuant to this section, the Division of Motor
35 Vehicles shall issue a registration plate that is of the same
36 size as Class G special registration plates for motorcycles.

37 (i) Except as otherwise provided in this section, a street-
38 legal special purpose vehicle shall comply with the Division
39 of Motor Vehicles' licensing, fee, and other requirements
40 pursuant to this chapter.

41 (j) The owner of a special purpose vehicle being
42 operated as a street-legal special purpose vehicle shall
43 ensure the vehicle is equipped with:

44 (1) One or more headlamps;

45 (2) One or more tail lamps;

46 (3) One or more brake lamps;

47 (4) A tail lamp or other lamp constructed and placed to
48 illuminate the registration plate with a white light;

49 (5) One or more red reflectors on the rear;

50 (6) Amber electric turn system, one on each side of the
51 front;

52 (7) Amber or red electric turn signals;

53 (8) A braking system, other than a parking brake;

54 (9) A horn or other warning device;

55 (10) A muffler and, if required by an applicable federal
56 statute or rule, an emission control system;

57 (11) Rearview mirrors on the right and left side of the
58 driver;

59 (12) A windshield, unless the operator wears eye
60 protection while operating the vehicle;

61 (13) A speedometer, illuminated for nighttime
62 operation;

63 (14) For vehicles designed by the manufacturer for
64 carrying one or more passengers, a seat designed for
65 passengers; and

66 (15) Tires that have at least 2/32 inches or greater tire
67 tread.

68 (16) When owners of a street-legal special purpose
69 vehicle have ensured that such vehicles are equipped as
70 required by this subsection, and those owners obtain a valid
71 registration card and certificate of insurance for such
72 vehicles, those vehicles are eligible to apply for a
73 motorcycle trailer sticker.

74 (k) Mini-trucks may not be operated as street-legal
75 special purpose vehicles on highways that have been
76 constructed pursuant to a federal highways program.

77 (l) Low-speed vehicles as defined in §17A-1-1 of the
78 code are not considered special purpose vehicles or street-
79 legal special purpose vehicles under this section. However,
80 low-speed vehicles may cross state routes at traffic lights
81 when the state route does not have a posted speed limit
82 greater than 40 miles per hour.

83 (m) The Division of Motor Vehicles shall propose rules
84 for legislative approval in accordance with §29A-3-1 *et seq.*
85 of this code to implement this section.

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CHAPTER 218

(Com. Sub. for H. B. 2338 - By Delegates Howell and Porterfield)

[Passed February 28, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §17A-10-3a of the Code of West Virginia, 1931, as amended, relating to allowing the owner of an antique military vehicle to display alternate registration insignia that is compatible with the vehicle's original markings in lieu of a registration plate; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3a. Special registration and use of antique motor vehicles and motorcycles; definitions; use of classic motor vehicles and classic motorcycles; customized antique plates; exemption for display of registration plate.

1 (a) The annual registration fee for any antique motor
2 vehicle or motorcycle as defined in this section is \$2. As
3 used in this section:

4 “Antique motor vehicle” means any motor vehicle
5 which is more than 25 years old and is owned solely as a
6 collector's item.

7 “Antique military vehicle” means an antique motor
8 vehicle, regardless of the vehicle's size or weight, that was
9 manufactured for use in any country's military forces, and
10 that is maintained to represent its military design and
11 markings accurately, including a trailer meeting the same

12 requirements, but not including a vehicle or trailer currently
13 in service.

14 “Antique motorcycle” means any motorcycle which is
15 more than 25 years old and is owned solely as a collector’s
16 item.

17 “Classic motor vehicle” means a motor vehicle which is
18 more than 25 years old and is registered pursuant to §17A-
19 10-3 of this code and is used for general transportation.

20 “Classic motorcycle” means a motorcycle which is
21 more than 25 years old and is registered pursuant to §17A-
22 10-3 of this code and is used for general transportation.

23 (b) Except as otherwise provided in this section, antique
24 motor vehicles or motorcycles may not be used for general
25 transportation but may only be used for:

26 (1) Participation in club activities, exhibits, tours,
27 parades, and similar events;

28 (2) The purpose of testing their operation, obtaining
29 repairs or maintenance, and transportation to and from
30 events as described in §17A-10-3a(b)(1) of this code; and

31 (3) Recreational purposes over weekends, beginning on
32 Friday at 12:00 p. m., and ending on the following Monday
33 at 12:00 p. m., and on holidays: *Provided*, That a classic
34 motor vehicle or a classic motorcycle as defined in this
35 section may be registered under the applicable class at the
36 applicable registration fee set forth in §17A-10-3 of this
37 code and may be used for general transportation.

38 (c) A West Virginia motor vehicle or motorcycle
39 displaying license plates of the same year of issue as the
40 model year of the antique motor vehicle or motorcycle, as
41 authorized in this section, may be used for general
42 transportation purposes if the following conditions are met:

43 (1) The license plate's physical condition has been
44 inspected and approved by the Division of Motor Vehicles;

45 (2) The license plate is registered to the specific motor
46 vehicle or motorcycle by the Division of Motor Vehicles;

47 (3) The owner of the motor vehicle or motorcycle
48 annually registers the motor vehicle or motorcycle and pays
49 an annual registration fee for the motor vehicle or
50 motorcycle equal to that charged to obtain regular state
51 license plates;

52 (4) The motor vehicle or motorcycle passes an annual
53 safety inspection; and

54 (5) The motor vehicle or motorcycle displays a sticker
55 attached to the license plate, issued by the division,
56 indicating that the motor vehicle or motorcycle may be used
57 for general transportation.

58 (d) If more than one request is made for license plates
59 having the same number, the division shall accept only the
60 first application.

61 (e) The commissioner may propose rules for legislative
62 approval in accordance with the provisions of §29A-3-1 *et*
63 *seq.* of this code as may be necessary or convenient for the
64 carrying out of the provisions of this section.

65 (f) Upon appropriate application, together with a special
66 annual fee of \$40, which is in addition to all other fees
67 required by this chapter, there shall be issued to the owner
68 of an antique motor vehicle a special registration plate for
69 an antique motor vehicle titled in the name of the qualified
70 applicant, bearing a combination of letters or numbers
71 requested by that applicant, subject to the approval by the
72 commissioner, and with the maximum number of letters or
73 numbers to be determined by the commissioner.

74 (g) Upon proper application pursuant to §17A-10-3a(f)
75 of this code, the commissioner shall approve an alternative

76 registration insignia for an antique military vehicle that is
77 compatible with the vehicle's original markings, including,
78 but not limited to, the display of the vehicle's unique
79 military identification number not to exceed eight characters
80 on the bumper of the vehicle: *Provided*, That nothing in this
81 section exempts the operator of an antique military vehicle
82 from the requirements set forth in §17A-3-13 of this code.
83 Pursuant to this subsection, an antique military vehicle is
84 exempt from the requirement to display a registration plate
85 if the exemption is necessary to maintain the vehicle's
86 accurate military marking.

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CHAPTER 219

**(Com. Sub. for H. B. 4026 - By Delegates D. Jeffries,
Summers, Foster, Hansen, Bartlett, J. Jeffries,
Campbell and Porterfield)**

[Passed February 20, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 4, 2020.]

AN ACT to amend and reenact §24A-1-3 of the Code of West Virginia, 1931, as amended, relating to exempting businesses relating to transporting scrap tires, waste tires, or other used tires to storage, disposal, or recycling locations from certain statutory Public Service Commission provisions; and exempting motor vehicles operated under a contract with the West Virginia Department of Environmental Protection exclusively for cleanup and transportation of waste tires generated from state authorized waste tire remediation or cleanup projects from those statutory Public Service Commission provisions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

1 The provisions of this chapter, except where specifically
2 otherwise provided, do not apply to:

3 (1) Motor vehicles operated exclusively in the
4 transportation of United States mail or in the transportation
5 of newspapers: *Provided*, That the vehicles and their
6 operators are subject to the safety rules promulgated by the
7 commission;

8 (2) Motor vehicles owned and operated by the United
9 States of America, the State of West Virginia or any county,
10 municipality or county board of education, urban mass
11 transportation authority established and maintained
12 pursuant to §8-27-1 *et seq.* of this code or by any of their
13 departments, and any motor vehicles operated under a
14 contract with a county board of education exclusively for
15 the transportation of children to and from school or other
16 legitimate transportation for the schools as the commission
17 may specifically authorize;

18 (3) Motor vehicles used exclusively in the
19 transportation of agricultural or horticultural products,
20 livestock, poultry and dairy products from the farm or
21 orchard on which they are raised or produced to markets,
22 processing plants, packing houses, canneries, railway
23 shipping points and cold storage plants, and in the
24 transportation of agricultural or horticultural supplies to
25 farms or orchards where they are to be used: *Provided*, That
26 the vehicles that are exempted by this subdivision and are
27 also operated by common carriers by motor vehicle or
28 contract carriers by motor vehicle, and their operators are
29 subject to the safety and insurance rules promulgated by the
30 commission;

31 (4) Motor vehicles used exclusively in the
32 transportation of human or animal excreta;

33 (5) Motor vehicles used exclusively in ambulance
34 service or duly chartered rescue squad service;

35 (6) Motor vehicles used exclusively for volunteer fire
36 department service;

37 (7) Motor vehicles used exclusively in the
38 transportation of coal from mining operations to loading
39 facilities for further shipment by rail or water carriers:
40 *Provided*, That the vehicles and their operators are subject
41 to the safety rules promulgated by the commission and the
42 vehicles that are exempted by this subdivision and are also
43 operated by common carriers by motor vehicle or contract
44 carriers by motor vehicle, and their operators are subject to
45 the insurance rules promulgated by the commission;

46 (8) Motor vehicles used by petroleum commission
47 agents and oil distributors solely for the transportation of
48 petroleum products and related automotive products when
49 the transportation is incidental to the business of selling the
50 products: *Provided*, That the vehicles and their operators are
51 subject to the safety rules promulgated by the commission
52 and the vehicles that are exempted by this subdivision and
53 are also operated by common carriers by motor vehicle or
54 contract carriers by motor vehicle, and their operators are
55 subject to the insurance rules promulgated by the
56 commission;

57 (9) Motor vehicles owned, leased by or leased to any
58 person and used exclusively for the transportation of
59 processed source-separated recycled materials generated by
60 commercial, institutional and industrial customers,
61 transported free of charge or by a nonprofit recycling
62 cooperative association in accordance with §19-4-1(d)(1) of
63 this code from the customers to a facility for further
64 processing: *Provided*, That the vehicles and their operators
65 shall be subject to the safety rules promulgated by the
66 commission and the vehicles that are exempted by this
67 subdivision and are also operated by common carriers by
68 motor vehicle or contract carriers by motor vehicle, and
69 their operators are subject to the insurance rules
70 promulgated by the commission;

71 (10) Motor vehicles specifically preempted from state
72 economic regulation of intrastate motor carrier operations
73 by the provisions of 49 U. S. C. §14501 as amended by Title
74 I, Section 103 of the federal Interstate Commerce
75 Commission Termination Act of 1995: *Provided*, That the
76 vehicles and their operators are subject to the safety
77 regulations promulgated by the commission and the
78 vehicles that are exempted by this subdivision and are also
79 operated by common carriers by motor vehicle or contract
80 carriers by motor vehicle, and their operators are subject to
81 the insurance rules promulgated by the commission;

82 (11) Motor vehicles designated by the West Virginia
83 Bureau of Senior Services for use and operation by local
84 county aging programs: *Provided*, That the vehicles and
85 their operators are subject to the safety rules promulgated
86 by the commission;

87 (12) Motor vehicles designated by the West Virginia
88 Division of Public Transit operated by organizations that
89 receive federal grants from the Federal Transit
90 Administration: *Provided*, That the vehicles and their
91 operators are subject to the safety and insurance rules
92 promulgated by the commission;

93 (13) Motor vehicles used exclusively in the
94 nonemergency medical transportation of Medicaid
95 members including those under contract with any broker
96 authorized by the Bureau for Medical Services: *Provided*,
97 That these vehicles and their operators shall be subject to
98 the safety rules promulgated by the commission;

99 (14) Common carriers or contract carriers engaged in
100 the business of transporting household goods and motor
101 vehicles used exclusively in the transportation of household
102 goods;

103 (15) Common carriers or contract carriers engaged in
104 the business of transporting scrap tires, waste tires, or other
105 used tires to storage, disposal, or recycling locations; or

106 (16) Motor vehicles operated under a contract with the
107 West Virginia Department of Environmental Protection
108 exclusively for the cleanup and transportation of waste tires
109 generated from state authorized waste tire remediation or
110 cleanup projects: *Provided*, That the vehicles that are
111 exempted by this subdivision, and their operators, are
112 subject to the safety and insurance rules promulgated by the
113 commission.

CHAPTER 220

(H. B. 4450 - By Delegate Butler)
[By Request of the Division of Motor Vehicles]

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

AN ACT to amend and reenact §17B-2-5 of the Code of West Virginia, 1931, as amended, relating to instruction permits issued by the Division of Motor Vehicles; and changing the expiration date of instruction permits issued to persons who have reached the age of 18 years from 90 days to six months.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-5. Qualifications, issuance and fee for instruction permits.

1 (a) Any person who is at least 15 years of age may apply
2 to the division for an instruction permit. However, any
3 person who has not attained the age of 18 shall comply with
4 the provisions of §17B-2-3a of this code. The division may,
5 in its discretion, after the applicant has successfully passed
6 all parts of the examination other than the road skills test,
7 issue to the applicant an instruction permit which entitles

8 the applicant while having the permit in his or her
9 immediate possession to drive a motor vehicle upon the
10 public highways when accompanied by a licensed driver of
11 at least 21 years of age, a driver's education or driving
12 school instructor that is acting in an official capacity as an
13 instructor, who is alert and unimpaired or a certified
14 division license examiner acting in an official capacity as an
15 examiner, who is occupying a seat beside the driver.

16 (1) Any instruction permit issued to a person under the
17 age of 18 years shall be issued in accordance with the
18 provisions of §17B-2-3a of this code.

19 (2) Any permit issued to a person who has reached the
20 age of 18 years is valid for a period of six months. The fee
21 for the instruction permit is \$7.50 for one attempt. The
22 Division of Motor Vehicles may adjust this fee every five
23 years on September 1, based on the U. S. Department of
24 Labor, Bureau of Labor Statistics most current Consumer
25 Price Index: *Provided*, That an increase in such fee may not
26 exceed 10 percent of the total fee amount in a single year.

27 (b) Any person 16 years of age or older may apply to the
28 division for a motorcycle instruction permit. Any person
29 under the age of 18 must have first completed the
30 requirements for a level two intermediate driver's license or
31 a Class E driver's license before being eligible for a
32 motorcycle instruction permit.

33 The division may, in its discretion, after the applicant
34 has successfully passed all parts of the motorcycle
35 examination other than the driving test, and presented
36 documentation of compliance with the provisions of §18-8-
37 11 of this code, if applicable, issue to the applicant an
38 instruction permit which entitles the applicant while having
39 the permit in his or her immediate possession to drive a
40 motorcycle upon the public streets or highways for a period
41 of six months, during the daylight hours between sunrise
42 and sunset only. A holder of a motorcycle instruction permit

43 may not operate a motorcycle while carrying any passenger
44 on the vehicle.

45 A motorcycle instruction permit is not renewable, but a
46 qualified applicant may apply for a new permit. The fee for
47 a motorcycle instruction permit is \$5, which shall be paid
48 into a special fund in the State Treasury known as the Motor
49 Vehicle Fees Fund.

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CHAPTER 221

**(Com. Sub. for H. B. 4464 - By Delegates Butler and
Porterfield)
[By Request of the Division of Motor Vehicles]**

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

AN ACT to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended, relating to graduated driver's licenses; prohibiting holders of level three licenses from using a wireless communication device while operating a motor vehicle and specifying exception; making a violation of level three license terms and conditions subject to criminal penalty provision; and extending validity of level one instruction driver's permits for active members of the military.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION, AND RENEWAL.

§17B-2-3a. Graduated driver's license.

1 (a) A person under the age of 18 may not operate a
2 motor vehicle unless he or she has obtained a graduated
3 driver's license in accordance with the three-level graduated

4 driver's license system described in the following
5 provisions.

6 (b) Any person under the age of 21, regardless of class
7 or level of licensure, who operates a motor vehicle with any
8 measurable alcohol in his or her system is subject to §17C-
9 5-2 and §17C-5A-2 of this code. Any person under the age
10 of 18, regardless of class or licensure level, is subject to the
11 mandatory school attendance and satisfactory academic
12 progress provisions of §18-8-11 of this code.

13 (c) *Level one instruction permit.* — An applicant who is
14 15 years or older meeting all other requirements prescribed
15 in this code may be issued a level one instruction permit.

16 (1) *Eligibility.* — The division may not issue a level one
17 instruction permit unless the applicant:

18 (A) Presents a completed application, as prescribed by
19 §17B-2-6 of this code, which is accompanied by a writing,
20 duly acknowledged, consenting to the issuance of the
21 graduated driver's license, and executed by a parent or
22 guardian entitled to custody of the applicant;

23 (B) Presents a certified copy of a birth certificate issued
24 by a state or other governmental entity responsible for vital
25 records unexpired, or a valid passport issued by the United
26 States government evidencing that the applicant meets the
27 minimum age requirement and is of verifiable identity;

28 (C) Passes the vision and written knowledge
29 examination and completes the driving under the influence
30 awareness program, as prescribed in §17B-2-7 of this code;

31 (D) Presents a driver's eligibility certificate or otherwise
32 shows compliance with §18-8-11 of this code; and

33 (E) Pays a fee of \$7.50, which permits the applicant one
34 attempt at the written knowledge test. The Division of
35 Motor Vehicles may adjust this fee every five years on
36 September 1, based on the U. S. Department of Labor,

37 Bureau of Labor Statistics most current Consumer Price
38 Index: *Provided*, That an increase in the fee may not exceed
39 10 percent of the total fee amount in a single year.

40 (2) *Terms and conditions of instruction permit.* — A
41 level one instruction permit issued under this section is valid
42 until 30 days after the date the applicant attains the age of
43 18 and is not renewable: *Provided*, That for an applicant
44 who is an active member of any branch of the United States
45 military, a level one instruction permit issued under the
46 provisions of this section is valid until 180 days after the
47 date the applicant attains the age of 18. However, any permit
48 holder who allows his or her permit to expire prior to
49 successfully passing the road skills portion of the driver
50 examination, and who has not committed any offense which
51 requires the suspension, revocation, or cancellation of the
52 instruction permit, may reapply for a new instruction permit
53 under §17B-2-6 of this code. The division shall immediately
54 revoke the permit upon receipt of a second conviction for a
55 moving violation of traffic regulations and laws of the road
56 or violation of the terms and conditions of a level one
57 instruction permit, which convictions have become final
58 unless a greater penalty is required by this section or any
59 other provision of this code. Any person whose instruction
60 permit has been revoked is disqualified from retesting for a
61 period of 90 days. However, after the expiration of 90 days,
62 the person may retest if otherwise eligible. A holder of a
63 level one instruction permit who is under the age of 18 years
64 may not use a wireless communication device while
65 operating a motor vehicle, unless the use of the wireless
66 communication device is for contacting a 9-1-1 system. In
67 addition to all other provisions of this code for which a
68 driver's license may be restricted, suspended, revoked, or
69 canceled, the holder of a level one instruction permit may
70 only operate a motor vehicle under the following
71 conditions:

72 (A) The permit holder is under the direct supervision of
73 a licensed driver, 21 years of age or older, or a driver's

74 education or driving school instructor who is acting in an
75 official capacity as an instructor, who is fully alert and
76 unimpaired, and the only other occupant of the front seat.
77 The vehicle may be operated with no more than two
78 additional passengers, unless the passengers are family
79 members;

80 (B) The permit holder is operating the vehicle between
81 the hours of 5:00 a.m. and 10:00 p.m.;

82 (C) All occupants use safety belts in accordance with
83 §17C-15-49 of this code;

84 (D) The permit holder is operating the vehicle without
85 any measurable blood alcohol content, in accordance with
86 §17C-5-2(h) of this code; and

87 (E) The permit holder maintains current school
88 enrollment and is making satisfactory academic progress or
89 otherwise shows compliance with §18-8-11 of this code.

90 (d) *Level two intermediate driver's license.* — An
91 applicant 16 years of age or older, meeting all other
92 requirements of this code, may be issued a level two
93 intermediate driver's license.

94 (1) *Eligibility.* — The division may not issue a level two
95 intermediate driver's license unless the applicant:

96 (A) Presents a completed application as prescribed in
97 §17B-2-6 of this code;

98 (B) Has held the level one instruction permit conviction-
99 free for the 180 days immediately preceding the date of
100 application for a level two intermediate license;

101 (C) Has completed either a driver's education course
102 approved by the State Department of Education or 50 hours
103 of behind-the-wheel driving experience, including a
104 minimum of 10 hours of night time driving, certified by a
105 parent or legal guardian or other responsible adult over the

106 age of 21 as indicated on the form prescribed by the
107 division: *Provided*, That nothing in this paragraph may be
108 construed to require any school or any county board of
109 education to provide any particular number of driver's
110 education courses or to provide driver's education training
111 to any student;

112 (D) Presents a driver's eligibility certificate or otherwise
113 shows compliance with §18-8-11 of this code;

114 (E) Passes the road skills examination as prescribed by
115 §17B-2-7 of this code; and

116 (F) Pays a fee of \$7.50 for one attempt. The Division of
117 Motor Vehicles may adjust this fee every five years on
118 September 1, based on the U. S. Department of Labor,
119 Bureau of Labor Statistics most current Consumer Price
120 Index: *Provided*, That an increase in the fee may not exceed
121 10 percent of the total fee amount in a single year.

122 (2) *Terms and conditions of a level two intermediate*
123 *driver's license.* — A level two intermediate driver's license
124 issued under the provisions of this section expires 30 days
125 after the applicant attains the age of 18, or until the licensee
126 qualifies for a level three full Class E license, whichever
127 comes first. A holder of a level two intermediate driver's
128 license who is under the age of 18 years shall not use a
129 wireless communication device while operating a motor
130 vehicle, unless the use of the wireless communication
131 device is for contacting a 9-1-1 system. In addition to all
132 other provisions of this code for which a driver's license
133 may be restricted, suspended, revoked, or canceled, the
134 holder of a level two intermediate driver's license may only
135 operate a motor vehicle under the following conditions:

136 (A) The licensee operates a vehicle unsupervised
137 between the hours of 5:00 a.m. and 10:00 p.m.;

138 (B) The licensee operates a vehicle only under the direct
139 supervision of a licensed driver, age 21 years or older,

140 between the hours of 10:00 p.m. and 5:00 a.m. except when
141 the licensee is going to or returning from:

142 (i) Lawful employment;

143 (ii) A school-sanctioned activity;

144 (iii) A religious event; or

145 (iv) An emergency situation that requires the licensee to
146 operate a motor vehicle to prevent bodily injury or death of
147 another;

148 (C) All occupants of the vehicle use safety belts in
149 accordance with §17C-15-49 of this code;

150 (D) For the first six months after issuance of a level two
151 intermediate driver's license, the licensee may not operate a
152 motor vehicle carrying any passengers less than 20 years
153 old, unless these passengers are family members of the
154 licensee; for the second six months after issuance of a level
155 two intermediate driver's license, the licensee may not
156 operate a motor vehicle carrying more than one passenger
157 less than 20 years old, unless these passengers are family
158 members of the licensee;

159 (E) The licensee operates a vehicle without any
160 measurable blood alcohol content in accordance with §17C-
161 5-2(h) of this code;

162 (F) The licensee maintains current school enrollment
163 and is making satisfactory academic progress or otherwise
164 shows compliance with §18-8-11 of this code;

165 (G) Upon the first conviction for a moving traffic
166 violation or a violation of §17B-2-3a(d)(2) of this code of
167 the terms and conditions of a level two intermediate driver's
168 license, the licensee shall enroll in an approved driver
169 improvement program unless a greater penalty is required
170 by this section or by any other provision of this code; and

171 At the discretion of the commissioner, completion of an
172 approved driver improvement program may be used to
173 negate the effect of a minor traffic violation as defined by
174 the commissioner against the one year conviction-free
175 driving criteria for early eligibility for a level three driver's
176 license and may also negate the effect of one minor traffic
177 violation for purposes of avoiding a second conviction
178 under §17B-2-3a(d)(2)(H) of this code; and

179 (H) Upon the second conviction for a moving traffic
180 violation or a violation of the terms and conditions of the
181 level two intermediate driver's license, the Division of
182 Motor Vehicles shall revoke or suspend the licensee's
183 privilege to operate a motor vehicle for the applicable
184 statutory period or until the licensee's 18th birthday,
185 whichever is longer, unless a greater penalty is required by
186 this section or any other provision of this code. Any person
187 whose driver's license has been revoked as a level two
188 intermediate driver, upon reaching the age of 18 years and
189 if otherwise eligible, may reapply for an instruction permit,
190 then a driver's license in accordance with §17B-2-5, §17B-
191 2-6 and §17B-2-7 of this code.

192 (e) *Level three, full Class E license.* — The level three
193 license is valid until 30 days after the date the licensee
194 attains his or her 21st birthday. A holder of a level three
195 driver's license who is under the age of 18 years shall not
196 use a wireless communication device while operating a
197 motor vehicle, unless the use of the wireless communication
198 device is for contacting a 9-1-1 system. Unless otherwise
199 provided in this section or any other section of this code, the
200 holder of a level three full Class E license is subject to the
201 same terms and conditions as the holder of a regular Class
202 E driver's license.

203 A level two intermediate licensee whose privilege to
204 operate a motor vehicle has not been suspended, revoked, or
205 otherwise canceled and who meets all other requirements of
206 the code may be issued a level three full Class E license

207 without further examination or road skills testing if the
208 licensee:

209 (1) Has reached the age of 17 years; and

210 (A) Presents a completed application as prescribed by
211 §17B-2-6 of this code;

212 (B) Has held the level two intermediate license
213 conviction free for the 12-month period immediately
214 preceding the date of the application;

215 (C) Has completed any driver improvement program
216 required under §17B-2-3a(d)(2)(G) of this code; and

217 (D) Pays a fee of \$2.50 for each year the license is valid.
218 An additional fee of 50 cents shall be collected to be
219 deposited in the Combined Voter Registration and Driver's
220 Licensing Fund established in §3-2-12 of this code;

221 (E) Presents a driver's eligibility certificate or otherwise
222 shows compliance with §18-8-11 of this code; or

223 (2) Reaches the age of 18 years; and

224 (A) Presents a completed application as prescribed by
225 §17B-2-6 of this code; and

226 (B) Pays a fee of \$5 for each year the license is valid.
227 The Division of Motor Vehicles may adjust this fee every
228 five years on September 1, based on the U. S. Department
229 of Labor, Bureau of Labor Statistics most current Consumer
230 Price Index: *Provided*, That an increase in the fee may not
231 exceed 10 percent of the total fee amount in a single year.
232 An additional fee of 50 cents shall be collected to be
233 deposited in the Combined Voter Registration and Driver's
234 Licensing Fund established in §3-2-12 of this code.

235 (f) A person violating the provisions of the terms and
236 conditions of a level one instruction permit, level two
237 intermediate driver's license, or level three license is guilty

238 of a misdemeanor and, upon conviction thereof, shall for the
239 first offense be fined \$25; for a second offense be fined \$50;
240 and for a third or subsequent offense be fined \$75.

CHAPTER 222

**(Com. Sub. for H. B. 4474 - By Delegates Westfall,
Hott, D. Jeffries 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 §17A-6F-1, §17A-6F-2, §17A-6F-3, §17A-6F-4, §17A-6F-5, §17A-6F-6, §17A-6F-7, §17A-6F-8, §17A-6F-9, §17A-6F-10, §17A-6F-11, §17A-6F-12, §17A-6F-13, §17A-6F-14, and §17A-6F-15, all relating to peer-to-peer car sharing programs; defining the scope of this article; defining terms; imposing insurance requirements; requiring notification of implications of a lien on the shared vehicle; providing for certain exclusions from motor vehicle insurance policies; requiring peer-to-peer car sharing programs to maintain certain records; exempting the peer-to-peer car sharing program and the shared vehicle owner from vicarious liability; authorizing a motor vehicle insurer of the shared vehicle to seek contribution against the motor vehicle insurer of the peer-to-peer car sharing program in certain circumstances; requiring peer-to-peer car sharing programs to obtain an insurable interest in a shared vehicle during the car sharing period; requiring driver's license verification and data retention; requiring the peer-to-peer car sharing program to have responsibility for the equipment put in or on the vehicle to facilitate the car sharing transaction; establishing registration, notification, and benchmarks for safety for automobiles used in peer-to-peer car sharing

programs; establishing the authority to regulate peer-to-peer car sharing programs at airports; and providing for the collection of taxes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6F. PEER-TO-PEER CAR SHARING PROGRAMS.

§17A-6F-1. Scope.

1 This article is intended to govern the intersection of
2 peer-to-peer car services, the state-regulated business of
3 insurance, state and local taxation of the business
4 transaction, and the airport and airport authorities authority
5 to regulate peer-to-peer car services provided to airport
6 customers. This article does not void, abrogate, restrict, or
7 affect any requirements of §17A-6D-1 *et seq.* of this code
8 relating to daily passenger rental car business or §17A-6A-
9 1 *et seq.* of this code relating to motor vehicle dealers,
10 distributors, wholesalers, and manufacturers.

§17A-6F-2. Definitions.

1 As used in this article:

2 “Peer-to-peer car sharing” means the authorized use of
3 a vehicle by an individual other than the vehicle’s owner
4 through a peer-to-peer car sharing program. “Peer-to-peer
5 car sharing” is not a “daily passenger rental car business” as
6 licensed by the provisions of §17A-6D-1 *et seq.* of this code.

7 “Peer-to-peer car sharing program” means a business
8 platform that connects vehicle owners with drivers to enable
9 the sharing of vehicles for financial consideration. “Peer-to-
10 peer car sharing program” does not mean a service provider
11 who is solely providing hardware or software as a service to
12 a person or entity that is not effectuating payment of
13 financial consideration for use of a shared vehicle. For
14 purposes of this section, “hardware” does not mean a motor
15 vehicle as defined by the provisions of §17A-1-1(b). “Peer-

16 to-peer car sharing program” does not mean a “daily
17 passenger rental car business” as licensed by the provisions
18 of §17A-6D-1 *et seq.* of this code. “Peer-to-peer car sharing
19 program” does not include a program provided to a
20 business’s own employees.

21 “Car sharing program agreement” means the terms and
22 conditions applicable to a shared vehicle owner and a shared
23 vehicle driver that govern the use of a shared vehicle
24 through a peer-to-peer car sharing program.

25 “Shared vehicle” means a vehicle that is available for
26 sharing through a peer-to-peer car sharing program. “Shared
27 vehicle” does not mean a rental car or a rental vehicle as
28 used in a “daily passenger rental car business” licensed by
29 the provisions of §17A-6D-1 *et seq.* of this code.

30 “Shared vehicle driver” means an individual who has
31 been authorized to drive the shared vehicle by the shared
32 vehicle owner under a car sharing program agreement.

33 “Shared vehicle owner” means the registered owner, or
34 a person or entity designated by the registered owner, of a
35 vehicle made available for sharing to shared vehicle drivers
36 through a peer-to-peer car sharing program.

37 “Car sharing delivery period” means the period of time
38 during which a shared vehicle is being delivered to the
39 location of the car sharing start time, if applicable, as
40 documented by the governing car sharing program
41 agreement.

42 “Car sharing period” means the period of time that
43 commences with the car sharing delivery period or, if there
44 is no car sharing delivery period, that commences with the
45 car sharing start time, and in either case ends at the car
46 sharing termination time.

47 “Car sharing start time” means the time when the shared
48 vehicle becomes subject to the control of the shared vehicle
49 driver at or after the time the reservation of a shared vehicle

50 is scheduled to begin as documented in the records of a peer-
51 to-peer car sharing program.

52 “Car sharing termination time” means the earliest of the
53 following events:

54 The expiration of the agreed upon period of time
55 established for the use of a shared vehicle according to the
56 terms of the car sharing program agreement if the shared
57 vehicle is delivered to the location agreed upon in the car
58 sharing program agreement;

59 When the shared vehicle is returned to a location as
60 alternatively agreed upon by the shared vehicle owner and
61 shared vehicle driver as communicated through a peer-to-
62 peer car sharing program; or

63 When the shared vehicle owner or the shared vehicle
64 owner’s authorized designee, takes possession and control
65 of the shared vehicle.

§17A-6F-3. Insurance coverage during car sharing period.

1 (a) A peer-to-peer car sharing program shall assume
2 liability, except as provided in subsection (b) of this section,
3 of a shared vehicle owner for bodily injury or property
4 damage to third parties and uninsured and underinsured
5 motorist and personal injury protection losses during the car
6 sharing period in an amount stated in the peer-to-peer car
7 sharing program agreement which amounts may not be less
8 than \$750,000.

9 (b) Notwithstanding the definition of “car sharing
10 termination time” as defined in this article, the assumption
11 of liability under subsection (a) of this section does not
12 apply to any shared vehicle owner when:

13 (1) A shared vehicle owner makes an intentional or
14 fraudulent material misrepresentation or omission to the
15 peer-to-peer car sharing program before the car sharing
16 period in which the loss occurred, or

17 (2) Acting in concert with a shared vehicle driver who
18 fails to return the shared vehicle pursuant to the terms of the
19 car sharing program agreement.

20 (c) Notwithstanding the definition of “car sharing
21 termination time” as defined in this article, the assumption
22 of liability under subsection (a) of this section would apply
23 to bodily injury, property damage, uninsured and
24 underinsured motorist, or personal injury protection losses
25 by damaged third parties in the same manner required by
26 §17D-4-2 and §33-6-31 of this code.

27 (d) A peer-to-peer car sharing program shall ensure that,
28 during each car sharing period, the shared vehicle owner and
29 the shared vehicle driver are insured under a motor vehicle
30 liability insurance policy that provides insurance coverage
31 which amounts may not be less than the amounts set forth
32 in subsection (a), and:

33 (1) Recognizes that the shared vehicle insured under the
34 policy is made available and used through a peer-to-peer car
35 sharing program; or

36 (2) Does not exclude use of a shared vehicle by a shared
37 vehicle driver.

38 (e) The insurance described under subsection (d) of this
39 section may be satisfied by motor vehicle liability insurance
40 maintained by:

41 (1) A shared vehicle owner;

42 (2) A shared vehicle driver;

43 (3) A peer-to-peer car sharing program; or

44 (4) A combination of a shared vehicle owner, a shared
45 vehicle driver, and a peer-to-peer car sharing program.

46 (f) The insurance described in subsection (d) of this
47 section shall be the primary insurance during each car
48 sharing period.

49 (g) The peer-to-peer car sharing program shall assume
50 primary liability for a claim when it is, in whole or in part,
51 providing the insurance required under subsections (d) and
52 (e) of this section and:

53 (1) A dispute exists as to who was in control of the
54 shared motor vehicle at the time of the loss; and

55 (2) The peer-to-peer car sharing program does not have
56 available, did not retain, or fails to provide the information
57 required by this article.

58 (3) A peer-to-peer car sharing program may seek
59 indemnity from a shared vehicle owner if the shared vehicle
60 owner is determined to have been the operator of the shared
61 vehicle at the time of the loss.

62 (h) If insurance maintained by a shared vehicle owner
63 or shared vehicle driver in accordance with subsection (e)
64 of this section has lapsed or does not provide the required
65 coverage, insurance maintained by a peer-to-peer car
66 sharing program shall provide the coverage required by
67 subsection (d) of this section beginning with the first dollar
68 of a claim and have the duty to defend such claim except
69 under circumstances as set forth in this section.

70 (i) Coverage under an automobile insurance policy
71 maintained by the peer-to-peer car sharing program shall
72 not be dependent on another automobile insurer first
73 denying a claim nor shall another automobile insurance
74 policy be required to first deny a claim.

75 (j) Nothing in this article may be interpreted as either
76 limiting or restricting:

77 (1) The liability of the peer-to-peer car sharing program
78 for any act or omission of the peer-to-peer car sharing

79 program itself that results in injury to any person as a result
80 of the use of a shared vehicle through a peer-to-peer car
81 sharing program; or

82 (2) The ability of the peer-to-peer car sharing program
83 to, by contract, seek indemnification from the shared
84 vehicle owner or the shared vehicle driver for economic loss
85 sustained by the peer-to-peer car sharing program resulting
86 from a breach of the terms and conditions of the car sharing
87 program agreement.

88 (k) If a dispute arises as to whether the car sharing
89 termination time has transpired, or if a car return calls into
90 question whether the car sharing termination time has
91 transpired, or if a car return calls into question whether the
92 car sharing termination time has occurred, the peer-to-peer
93 car sharing program shall extend primary coverage for the
94 loss. If during the investigation of the claim it becomes
95 apparent that one of the parties to the car sharing program
96 agreement was negligent, engaged in misrepresentation, or
97 is otherwise responsible for the loss, the car sharing
98 program may seek recovery from one or both parties
99 directly through subrogation.

§17A-6F-4. Notification of implications of lien.

1 At the time when a vehicle owner registers as a shared
2 vehicle owner on a peer-to-peer car sharing program, and
3 prior to the time when the shared vehicle owner makes a
4 shared vehicle available for car sharing on the peer-to-peer
5 car sharing program, the peer-to-peer car sharing program
6 shall notify the shared vehicle owner that, if the shared
7 vehicle has a lien against it, the use of the shared vehicle
8 through a peer-to-peer car sharing program, including use
9 without physical damage coverage, may violate the terms of
10 the contract with the lienholder.

§17A-6F-5. Exclusions for personal vehicle liability insurance policy.

1 (a) A motor vehicle insurer that writes motor vehicle
2 liability insurance in this state may exclude any and all

3 coverage and the duty to defend or indemnify for any claim
4 afforded under a shared vehicle owner's motor vehicle
5 liability insurance policy, including, but not limited to:

6 (1) Liability coverage for bodily injury and property
7 damage;

8 (2) Personal injury protection coverage;

9 (3) Uninsured and underinsured motorist coverage;

10 (4) Medical payments coverage;

11 (5) Comprehensive physical damage coverage; and

12 (6) Collision physical damage coverage.

13 (b) Nothing in this article shall be construed as
14 invalidating or limiting an exclusion contained in a motor
15 vehicle liability insurance policy, including any insurance
16 policy in use or approved for use that excludes coverage for
17 motor vehicles made available for rent, sharing, or hire, or
18 for any business use.

19 (c) Nothing in this article may be interpreted as either
20 limiting or restricting an insurer's ability to exclude
21 insurance coverage from any insurance policy or an
22 insurer's ability to underwrite any insurance policy pursuant
23 to § 33-6A-1 *et seq.* of this code.

§17A-6F-6. Recordkeeping; use of vehicle in car sharing.

1 (a) A peer-to-peer car sharing program shall collect and
2 verify records pertaining to the use of a vehicle, including,
3 but not limited to, times used, car sharing period pickup and
4 drop-off locations, fees paid by the shared vehicle driver,
5 and revenues received by the shared vehicle owner and
6 provide that information upon request to the shared vehicle
7 owner, the shared vehicle owner's insurer, or the shared
8 vehicle driver's insurer to facilitate a claim coverage
9 investigation, settlement, negotiation, or litigation.

10 (b) The peer-to-peer car sharing program shall retain the
11 records for a time period not less than the applicable
12 personal injury statute of limitations.

§17A-6F-7. Exemption; vicarious liability.

1 A peer-to-peer car sharing program and a shared vehicle
2 owner are exempt from vicarious liability in accordance
3 with 49 U.S.C. §30106 and under any state or local law that
4 imposes liability solely based on vehicle ownership.

§17A-6F-8. Contribution against indemnification.

1 A motor vehicle insurer that defends or indemnifies a
2 claim against a shared vehicle that is excluded under the
3 terms of its policy has the right to seek contribution against
4 the motor vehicle insurer of the peer-to-peer car sharing
5 program if the claim is:

6 (1) Made against the shared vehicle owner or the shared
7 vehicle driver for loss or injury that occurs during the car
8 sharing period; and

9 (2) Excluded under the terms of its policy.

§17A-6F-9. Insurable interest.

1 (a) Notwithstanding any other law, statute, rule, or
2 regulation to the contrary, a peer-to-peer car sharing
3 program has an insurable interest in a shared vehicle during
4 the car sharing period.

5 (b) Nothing in this section creates liability on a peer-to-
6 peer car sharing program to maintain the coverage
7 mandated by this article.

8 (c) A peer-to-peer car sharing program may own and
9 maintain as the named insured one or more policies of motor
10 vehicle liability insurance that provides coverage for:

- 11 (1) Liabilities assumed by the peer-to-peer car sharing
12 program under a peer-to-peer car sharing program
13 agreement;
- 14 (2) Any liability of the shared vehicle owner;
- 15 (3) Damage or loss to the shared motor vehicle; or
- 16 (4) Any liability of the shared vehicle driver.

§17A-6F-10. Consumer protections for car sharing programs.

- 1 Each car sharing program agreement made in this state
2 shall disclose to the shared vehicle owner and the shared
3 vehicle driver, at a minimum:
 - 4 (1) Any right of the peer-to-peer car sharing program to
5 seek indemnification from the shared vehicle owner or the
6 shared vehicle driver for economic loss sustained by the
7 peer-to-peer car sharing program resulting from a breach of
8 the terms and conditions of the car sharing program
9 agreement;
 - 10 (2) That a motor vehicle liability insurance policy issued
11 to the shared vehicle owner for the shared vehicle or to the
12 shared vehicle driver does not provide a defense or
13 indemnification for any claim asserted by the peer-to-peer
14 car sharing program;
 - 15 (3) That the peer-to-peer car sharing program's
16 insurance coverage on the shared vehicle owner and the
17 shared vehicle driver is in effect only during each car
18 sharing period and that, for any use of the shared vehicle by
19 the shared vehicle driver after the car sharing termination
20 time, the shared vehicle driver and the shared vehicle owner
21 may not have insurance coverage;
 - 22 (4) The daily rate, fees, and if applicable, any insurance
23 or protection package costs that are charged to the shared
24 vehicle owner or the shared vehicle driver;

25 (5) That the shared vehicle owner's motor vehicle
26 liability insurance may not provide coverage for a shared
27 vehicle;

28 (6) An emergency telephone number to personnel
29 capable of fielding roadside assistance and other customer
30 service inquiries; and

31 (7) If there are conditions under which a shared vehicle
32 driver must maintain a personal automobile insurance
33 policy with certain applicable coverage limits on a primary
34 basis in order to book a shared motor vehicle.

§17A-6F-11. Driver's license verification and data retention.

1 (a) A peer-to-peer car sharing program may not enter
2 into a peer-to-peer car sharing program agreement with a
3 driver unless the driver who will operate the shared vehicle:

4 (1) Holds a driver's license issued pursuant to the
5 provisions of §17B-2-1 *et seq.* of this code, which
6 authorizes the driver to operate a motor vehicle of the class
7 of the shared vehicle; or

8 (2) Is a nonresident who:

9 (A) Has a driver's license issued by the state or country
10 of the driver's residence that authorizes the driver in that
11 state or country to drive a motor vehicle of the class of the
12 shared vehicle; and

13 (B) Is at least the same age as that required of a resident
14 of this state to operate a motor vehicle of the class of the
15 shared vehicle; or

16 (3) Otherwise is specifically authorized by the
17 applicable provisions of §17B-2-1 *et seq.* of this code to
18 operate a motor vehicle of the class of the shared vehicle.

19 (b) A peer-to-peer car sharing program shall keep a
20 record of:

- 21 (1) The name and address of the shared vehicle driver;
- 22 (2) The number of the driver's license of the shared
23 vehicle driver and each other person, if any, who will
24 operate the shared vehicle; and
- 25 (3) The place of issuance of the driver's license.

§17A-6F-12. Responsibility for equipment of a shared vehicle.

1 A peer-to-peer car sharing program has sole
2 responsibility for any equipment, such as a GPS system or
3 other special equipment that is put in or on the vehicle to
4 monitor or facilitate the car sharing transaction, and shall
5 agree to indemnify and hold harmless the vehicle owner for
6 any damage to or theft of the equipment during the sharing
7 period not caused by the vehicle owner. The peer-to-peer
8 car sharing program may seek indemnity from the shared
9 vehicle driver for any loss or damage to the equipment that
10 occurs during the sharing period.

§17A-6F-13. Registration, notification, and automobile safety recalls.

1 (a) At the time when a vehicle owner registers as a
2 shared vehicle owner on a peer-to-peer car sharing program
3 and prior to the time when the shared vehicle owner makes
4 a shared vehicle available for car sharing on the peer-to-peer
5 car sharing program, the peer-to-peer car sharing program
6 shall:

7 (1) Verify that the shared vehicle does not have any
8 safety recalls on the vehicle for which the repairs have not
9 been made;

10 (2) Notify the shared vehicle owner of the requirements
11 of this section; and

12 (3) Notify the shared vehicle owner that the shared
13 vehicle owner's personal insurance may exclude peer-to-
14 peer car sharing activity.

15 (b)(1) If the shared vehicle owner has received an actual
16 notice of a safety recall on the vehicle, a shared vehicle
17 owner may not make a vehicle available as a shared vehicle
18 on a peer-to-peer car sharing program until the safety recall
19 repair has been made.

20 (2) If a shared vehicle owner receives an actual notice
21 of a safety recall on a shared vehicle while the shared
22 vehicle is made available on the peer-to-peer car sharing
23 program, the shared vehicle owner shall remove the shared
24 vehicle as available on the peer-to-peer car sharing program,
25 as soon as practicably possible after receiving the notice of
26 the safety recall and until the safety recall repair has been
27 made.

28 (3) If a shared vehicle owner receives an actual notice
29 of a safety recall while the shared vehicle is being used in
30 the possession of a shared vehicle driver, as soon as
31 practicably possible after receiving the notice of the safety
32 recall, the shared vehicle owner shall notify the peer-to-peer
33 car sharing program about the safety recall so that the shared
34 vehicle owner may address the safety recall repair.

**§17A-6F-14. Regulation of peer-to-peer car sharing programs
at airports and airport facilities.**

1 (a) Airports or the airport authority in this state may
2 regulate peer-to-peer vehicle rental activity provided to
3 airport customers as set forth in this section.

4 (b) A peer-to-peer car sharing program shall, upon
5 request of an airport or airport authority in this state, enter
6 into an agreement with the airport or airport authority,
7 which agreement may be a concession agreement, prior to:

8 (1) Listing shared vehicles parked on airport property or
9 at airport facilities;

10 (2) Facilitating the use of shared vehicles to transport
11 airport customers to or from airport property or airport
12 facilities, regardless of whether that use is to be initiated or

13 has a car sharing start time which occurs on or off of airport
14 property or airport facilities; or

15 (3) Promoting or marketing shared vehicles to transport
16 airport customers to or from airport property or airport
17 facilities, regardless of whether that transportation is to be
18 initiated or has a car sharing start time which occurs on or
19 off of airport property or airport facilities.

20 (c) The agreement required in subsection (a) of this
21 section shall set forth reasonable standards, regulations,
22 procedures, and fees applicable to a peer-to-peer car sharing
23 program that govern the activity of peer-to-peer car sharing
24 on airport property or airport facilities.

§17A-6F-15. Controlling authority; taxation and other requirements of a peer-to-peer car sharing program.

1 (a) Licensure, registration and qualification. A
2 municipality, county or other local governmental entity, or
3 special district may not require a peer-to-peer car sharing
4 program to obtain a business license or any other similar
5 authorization to operate within the jurisdiction, or subject a
6 peer-to-peer car sharing program or a shared vehicle owner
7 to any licensure requirement, fee, entry requirement,
8 registration requirement, operating or operational
9 requirement, or any other requirement.

10 (b) Duty to collect tax. A peer-to-peer car sharing
11 program operating in this state pursuant to the provisions of
12 this article shall collect and remit all state and municipal
13 consumer sales and service and use taxes on all taxable sales
14 of services to purchasers in this state. For the purposes of
15 collection of tax required under §11-15A-6 and §11-15A-6b
16 of this code, a “peer-to-peer car sharing program” is a
17 remote seller, marketplace facilitator, or referrer that meets
18 the requirements of §11-15A-1(b) of this code.

19 (c) A peer-to-peer car sharing program operating in this
20 state pursuant to the provisions of this article is not subject

21 to the collection and remittance requirements of the daily
22 rental car passenger tax in §17A-6D-2 of this code.

23 (d) A peer-to-peer car sharing program operating in this
24 state pursuant to the provisions of this article may collect
25 the vehicle license cost recovery fee authorized by §17A-
26 6D-16 of this code in the same manner as a daily passenger
27 car rental business.

28 (e) Limitations and interpretation.

29 (1) No provision of this section or this article may be
30 interpreted to void, abrogate, restrict, or affect imposition of
31 the ad valorem property tax on tangible personal property of
32 a peer-to-peer car sharing program or of a shared vehicle
33 owner by any levying body.

34 (2) No provision of this section or this article may be
35 interpreted to void, abrogate, restrict, or affect imposition of
36 the state personal income tax or state corporation net income
37 tax on a peer-to-peer car sharing program or a shared vehicle
38 owner.

39 (3) No provision of this section or this article may be
40 interpreted to void, abrogate, restrict, or affect imposition of
41 the motor fuel excise tax on any taxable motor fuel or
42 alternative fuel purchased by any peer-to-peer car sharing
43 program, shared vehicle owner, or shared vehicle driver.

44 (4) No provision of this section or this article may be
45 interpreted to void, abrogate, restrict, or affect the
46 requirements of chapter 11 of this code for issuance of a
47 business registration certificate for a peer-to-peer car
48 sharing program.

49 (5) No provision of this section or this article may be
50 interpreted to void, abrogate, restrict, or affect any
51 requirement of state law with relation to licensure of drivers
52 of motor vehicles.

53 (6) Shared vehicle owners may not assert the exemption
54 from the consumer sales and service tax and use tax, for
55 purchases of tangible personal property and services
56 directly used in the provision of services in §11-15-9 of this
57 code.

●

CHAPTER 223

**(Com. Sub. for H. B. 4478 - By Delegates Butler, Fast,
J. Jeffries, Cadle, Sypolt, Bartlett, Porterfield and
Hardy)**

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

AN ACT to amend and reenact §17E-1-13 of the Code of West Virginia, 1931, as amended, relating to the lifetime disqualification without reinstatement from operating a commercial motor vehicle for individuals who use a commercial motor vehicle in committing certain felony acts relating to controlled substance violations or human trafficking violations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-13. Disqualification.

1 (a) A person may not operate a commercial motor
2 vehicle if his or her privilege to operate a commercial motor
3 vehicle is disqualified under the provisions of the Federal
4 Motor Carrier Safety Improvement Act of 1999, 49 C. F. R.
5 Part §383, Subpart D (2004) or in accordance with the
6 provisions of this section.

7 (1) For the purposes of determining first and subsequent
8 violations of the offenses listed in this section, each
9 conviction resulting from a separate incident includes
10 convictions for offenses committed in a commercial motor
11 vehicle or a noncommercial motor vehicle.

12 (2) Any person disqualified from operating a
13 commercial motor vehicle for life under the provisions of
14 this chapter for offenses described in subdivisions (1), (2),
15 (3), (4) and (6), subsection (b) of this section is eligible for
16 reinstatement of privileges to operate a commercial motor
17 vehicle after 10 years and after completion of the Safety and
18 Treatment Program or other appropriate program prescribed
19 by the division. Any person whose lifetime disqualification
20 has been amended under the provisions of this subdivision,
21 and who is subsequently convicted of a disqualifying
22 offense described in subdivisions (1) through (7), inclusive,
23 subsection (b) of this section, is not eligible for
24 reinstatement. Any person disqualified from operating a
25 commercial motor vehicle for life under subsection (n) of
26 this section is not eligible for reinstatement.

27 (3) Any person who committed a disqualifying offense
28 contained in paragraph (B) or (E), subdivision (1),
29 subsection (b) of this section prior to obtaining a
30 commercial driver's license, and who committed the
31 disqualifying offense more than 10 years before he or she
32 applied for a commercial driver's license, and who has
33 completed the Safety and Treatment Program or other
34 appropriate program prescribed by the division, shall be
35 considered to have served the period of disqualification and
36 is eligible to obtain a commercial driver's license so long as
37 all other eligibility requirements contained in §17E-1-9 and
38 §17E-1-10 of this code are satisfied.

39 (4) Any disqualification imposed by this section is in
40 addition to any action to suspend, revoke, or cancel the
41 driver's license or driving privileges if suspension,
42 revocation, or cancellation is required under another
43 provision of this code.

44 (5) The provisions of this section apply to any person
45 operating a commercial motor vehicle and to any person
46 holding a commercial driver's license.

47 (b) Any person is disqualified from driving a
48 commercial motor vehicle for the following offenses and
49 time periods if convicted of:

50 (1) Driving a motor vehicle under the influence of
51 alcohol or a controlled substance;

52 (A) For a first conviction or for refusal to submit to any
53 designated secondary chemical test while operating a
54 commercial motor vehicle, a driver is disqualified from
55 operating a commercial motor vehicle for a period of one
56 year.

57 (B) For a first conviction or for refusal to submit to any
58 designated secondary chemical test while operating a
59 noncommercial motor vehicle, a commercial driver's
60 license holder is disqualified from operating a commercial
61 motor vehicle for a period of one year.

62 (C) For a first conviction or for refusal to submit to any
63 designated secondary chemical test while operating a
64 commercial motor vehicle transporting hazardous materials
65 required to be placarded under 49 C. F. R. Part §172,
66 Subpart F, a driver is disqualified from operating a
67 commercial motor vehicle for a period of three years.

68 (D) For a second conviction or for refusal to submit to
69 any designated secondary chemical test in a separate
70 incident of any combination of offenses in this subsection
71 while operating a commercial motor vehicle, a driver is
72 disqualified from operating a commercial motor vehicle for
73 life.

74 (E) For a second conviction or refusal to submit to any
75 designated secondary chemical test in a separate incident of
76 any combination of offenses in this subsection while
77 operating a noncommercial motor vehicle, a commercial

78 motor vehicle license holder is disqualified from operating
79 a commercial motor vehicle for life.

80 (2) Driving a commercial motor vehicle while the
81 person's alcohol concentration of the person's blood,
82 breath, or urine is four hundredths of one percent or more,
83 by weight;

84 (A) For a first conviction or for refusal to submit to any
85 designated secondary chemical test while operating a
86 commercial motor vehicle, a driver is disqualified from
87 operating a commercial motor vehicle for one year.

88 (B) For a first conviction or for refusal to submit to any
89 designated secondary chemical test while operating a
90 commercial motor vehicle transporting hazardous materials
91 required to be placarded under 49 C. F. R. Part §172,
92 Subpart F, a driver is disqualified from operating a
93 commercial motor vehicle for three years.

94 (C) For a second conviction or refusal to submit to any
95 designated secondary chemical test in a separate incident of
96 any combination of offenses in this subsection while
97 operating a commercial motor vehicle, a driver is
98 disqualified from operating a commercial motor vehicle for
99 life.

100 (3) Refusing to submit to any designated secondary
101 chemical test required by the provisions of this code or the
102 provisions of 49 C. F. R. §383.72 (2004);

103 (A) For the first conviction or refusal to submit to any
104 designated secondary chemical test while operating a
105 commercial motor vehicle, a driver is disqualified from
106 operating a commercial motor vehicle for one year.

107 (B) For the first conviction or refusal to submit to any
108 designated secondary chemical test while operating a
109 noncommercial motor vehicle, a commercial driver's
110 license holder is disqualified from operating a commercial
111 motor vehicle for one year.

112 (C) For the first conviction or for refusal to submit to
113 any designated secondary chemical test while operating a
114 commercial motor vehicle transporting hazardous materials
115 required to be placarded under 49 C. F. R. Part §172,
116 Subpart F (2004), a driver is disqualified from operating a
117 commercial motor vehicle for a period of three years.

118 (D) For a second conviction or refusal to submit to any
119 designated secondary chemical test in a separate incident of
120 any combination of offenses in this subsection while
121 operating a commercial motor vehicle, a driver is
122 disqualified from operating a commercial motor vehicle for
123 life.

124 (E) For a second conviction or refusal to submit to any
125 designated secondary chemical test in a separate incident of
126 any combination of offenses in this subsection while
127 operating a noncommercial motor vehicle, a commercial
128 driver's license holder is disqualified from operating a
129 commercial motor vehicle for life.

130 (4) Leaving the scene of an accident;

131 (A) For the first conviction while operating a
132 commercial motor vehicle, a driver is disqualified from
133 operating a commercial motor vehicle for one year.

134 (B) For the first conviction while operating a
135 noncommercial motor vehicle, a commercial driver's
136 license holder is disqualified for one year.

137 (C) For the first conviction while operating a
138 commercial motor vehicle transporting hazardous materials
139 required to be placarded under 49 C. F. R. Part §172,
140 Subpart F (2004), a driver is disqualified from operating a
141 commercial motor vehicle for a period of three years.

142 (D) For a second conviction in a separate incident of any
143 combination of offenses in this subsection while operating
144 a commercial motor vehicle, a driver is disqualified from
145 operating a commercial motor vehicle for life.

146 (E) For a second conviction in a separate incident of any
147 combination of offenses in this subsection while operating
148 a noncommercial motor vehicle, a commercial driver's
149 license holder is disqualified from operating a commercial
150 motor vehicle for life.

151 (5) Using a motor vehicle in the commission of any
152 felony as defined in §17E-1-3 of this code; except as set
153 forth specifically in subsection (n) of this section;

154 (A) For the first conviction while operating a
155 commercial motor vehicle, a driver is disqualified from
156 operating a commercial motor vehicle for one year.

157 (B) For the first conviction while operating a
158 noncommercial motor vehicle, a commercial driver's
159 license holder is disqualified from operating a commercial
160 motor vehicle for one year.

161 (C) For the first conviction while operating a
162 commercial motor vehicle transporting hazardous materials
163 required to be placarded under 49 C. F. R. Part §172,
164 Subpart F (2004), a driver is disqualified from operating a
165 commercial motor vehicle for a period of three years.

166 (D) For a second conviction in a separate incident of any
167 combination of offenses in this subsection while operating
168 a commercial motor vehicle, a driver is disqualified from
169 operating a commercial motor vehicle for life.

170 (E) For a second conviction in a separate incident of any
171 combination of offenses in this subsection while operating
172 a noncommercial motor vehicle, a commercial motor
173 vehicle license holder is disqualified from operating a
174 commercial motor vehicle for life.

175 (6) Operating a commercial motor vehicle when, as a
176 result of prior violations committed operating a commercial
177 motor vehicle, the driver's privilege to operate a motor
178 vehicle has been suspended, revoked, or canceled, or the

179 driver's privilege to operate a commercial motor vehicle has
180 been disqualified.

181 (A) For the first conviction while operating a
182 commercial motor vehicle, a driver is disqualified from
183 operating a commercial motor vehicle for one year.

184 (B) For the first conviction while operating a
185 commercial motor vehicle transporting hazardous materials
186 required to be placarded under 49 C. F. R. Part §172,
187 Subpart F (2004), a driver is disqualified from operating a
188 commercial motor vehicle for a period of three years.

189 (C) For a second conviction in a separate incident of any
190 combination of offenses in this subsection while operating
191 a commercial motor vehicle, a driver is disqualified from
192 operating a commercial motor vehicle for life.

193 (7) Causing a fatality through the negligent operation of
194 a commercial motor vehicle, including, but not limited to,
195 the crimes of motor vehicle manslaughter, homicide and
196 negligent homicide as defined in §17B-3-5, and §17C-5-1
197 of this code;

198 (A) For the first conviction while operating a
199 commercial motor vehicle, a driver is disqualified from
200 operating a commercial motor vehicle for one year.

201 (B) For the first conviction while operating a
202 commercial motor vehicle transporting hazardous materials
203 required to be placarded under 49 C. F. R. Part §172,
204 Subpart F (2004), a driver is disqualified from operating a
205 commercial motor vehicle for a period of three years.

206 (C) For a second conviction in a separate incident of any
207 combination of offenses in this subsection while operating
208 a commercial motor vehicle, a driver is disqualified from
209 operating a commercial motor vehicle for life.

210 (c) Any person is disqualified from driving a
211 commercial motor vehicle if convicted of:

212 (1) Speeding excessively involving any speed of 15
213 miles per hour or more above the posted speed limit;

214 (A) For a second conviction of any combination of
215 offenses in this subsection in a separate incident within a
216 three-year period while operating a commercial motor
217 vehicle, a driver is disqualified from operating a
218 commercial motor vehicle for a period of 60 days.

219 (B) For a second conviction of any combination of
220 offenses in this section in a separate incident within a three-
221 year period while operating a noncommercial motor
222 vehicle, if the conviction results in the suspension,
223 revocation, or cancellation of the commercial driver's
224 license holder's privilege to operate any motor vehicle, a
225 commercial driver's license holder is disqualified from
226 operating a commercial motor vehicle for a period of 60
227 days.

228 (C) For a third or subsequent conviction of any
229 combination of the offenses in this subsection in a separate
230 incident in a three-year period while operating a commercial
231 motor vehicle, a driver is disqualified from operating a
232 commercial motor vehicle for a period of 120 days.

233 (D) For a third or subsequent conviction of any
234 combination of offenses in this subsection in a separate
235 incident within a three-year period while operating a
236 noncommercial motor vehicle, if the conviction results in
237 the suspension, revocation, or cancellation of the
238 commercial driver's license holder's privilege to operate
239 any motor vehicle, a commercial driver's license holder
240 shall be disqualified from operating a commercial motor
241 vehicle for a period of 120 days.

242 (2) Reckless driving as defined in §17C-5-3 of this code,
243 careless or negligent driving, including, but not limited to,
244 the offenses of driving a motor vehicle in willful or wanton
245 disregard for the safety of persons or property;

246 (A) For a second conviction of any combination of
247 offenses in this subsection in a separate incident within a
248 three-year period while operating a commercial motor
249 vehicle, a driver is disqualified from operating a commercial
250 motor vehicle for a period of 60 days.

251 (B) For a second conviction of any combination of
252 offenses in this section in a separate incident within a three-
253 year period while operating a noncommercial motor
254 vehicle, if the conviction results in the suspension,
255 revocation, or cancellation of the commercial driver's
256 license holder's privilege to operate any motor vehicle, a
257 commercial driver's license holder is disqualified from
258 operating a commercial motor vehicle for a period of 60
259 days.

260 (C) For a third or subsequent conviction of any
261 combination of the offenses in this subsection in a separate
262 incident in a three-year period while operating a commercial
263 motor vehicle, a driver is disqualified from operating a
264 commercial motor vehicle for a period of 120 days.

265 (D) For a third or subsequent conviction of any
266 combination of offenses in this subsection in a separate
267 incident within a three-year period while operating a
268 noncommercial motor vehicle, if the conviction results in
269 the suspension, revocation, or cancellation of the
270 commercial driver's license holder's privilege to operate
271 any motor vehicle, a commercial driver's license holder
272 is disqualified from operating a commercial motor vehicle
273 for a period of 120 days.

274 (3) Making improper or erratic traffic lane changes;

275 (A) For a second conviction of any combination of
276 offenses in this subsection in a separate incident within a
277 three-year period while operating a commercial motor
278 vehicle, a driver is disqualified from operating a
279 commercial motor vehicle for a period of 60 days.

280 (B) For a second conviction of any combination of
281 offenses in this section in a separate incident within a three-
282 year period while operating a noncommercial motor
283 vehicle, if the conviction results in the suspension,
284 revocation, or cancellation of the commercial driver's
285 license holder's privilege to operate any motor vehicle, a
286 commercial driver's license holder is disqualified from
287 operating a commercial motor vehicle for a period of 60
288 days.

289 (C) For a third or subsequent conviction of any
290 combination of the offenses in this subsection in a separate
291 incident in a three-year period while operating a commercial
292 motor vehicle, a driver is disqualified from operating a
293 commercial motor vehicle for a period of 120 days.

294 (D) For a third or subsequent conviction of any
295 combination of offenses in this subsection in a separate
296 incident within a three-year period while operating a
297 noncommercial motor vehicle, if the conviction results in
298 the suspension, revocation, or cancellation of the
299 commercial driver's license holder's privilege to operate
300 any motor vehicle, a commercial driver's license holder
301 is disqualified from operating a commercial motor vehicle
302 for a period of 120 days.

303 (4) Following the vehicle ahead too closely;

304 (A) For a second conviction of any combination of
305 offenses in this subsection in a separate incident within a
306 three-year period while operating a commercial motor
307 vehicle, a driver is disqualified from operating a
308 commercial motor vehicle for a period of 60 days.

309 (B) For a second conviction of any combination of
310 offenses in this section in a separate incident within a three-
311 year period while operating a noncommercial motor
312 vehicle, if the conviction results in the suspension,
313 revocation, or cancellation of the commercial driver's
314 license holder's privilege to operate any motor vehicle, a

315 commercial driver's license holder is disqualified from
316 operating a commercial motor vehicle for a period of 60
317 days.

318 (C) For a third or subsequent conviction of any
319 combination of the offenses in this subsection in a separate
320 incident in a three-year period while operating a commercial
321 motor vehicle, a driver is disqualified from operating a
322 commercial motor vehicle for a period of 120 days.

323 (D) For a third or subsequent conviction of any
324 combination of offenses in this subsection in a separate
325 incident within a three-year period while operating a
326 noncommercial motor vehicle, if the conviction results in
327 the suspension, revocation, or cancellation of the
328 commercial driver's license holder's privilege to operate
329 any motor vehicle, a commercial driver's license holder
330 is disqualified from operating a commercial motor vehicle
331 for a period of 120 days.

332 (5) Violating any law relating to traffic control arising
333 in connection with a fatal accident, other than a parking
334 violation;

335 (A) For a second conviction of any combination of
336 offenses in this subsection in a separate incident within a
337 three-year period while operating a commercial motor
338 vehicle, a driver is disqualified from operating a commercial
339 motor vehicle for a period of 60 days.

340 (B) For a second conviction of any combination of
341 offenses in this section in a separate incident within a three-
342 year period while operating a noncommercial motor
343 vehicle, if the conviction results in the suspension,
344 revocation, or cancellation of the commercial driver's
345 license holder's privilege to operate any motor vehicle, a
346 commercial driver's license holder is disqualified from
347 operating a commercial motor vehicle for a period of 60
348 days.

349 (C) For a third or subsequent conviction of any
350 combination of the offenses in this subsection in a separate
351 incident in a three-year period while operating a commercial
352 motor vehicle, a driver is disqualified from operating a
353 commercial motor vehicle for a period of 120 days.

354 (D) For a third or subsequent conviction of any
355 combination of offenses in this subsection in a separate
356 incident within a three-year period while operating a
357 noncommercial motor vehicle, if the conviction results in
358 the suspension, revocation, or cancellation of the
359 commercial driver's license holder's privilege to operate
360 any motor vehicle, a commercial motor vehicle license
361 holder is disqualified from operating a commercial motor
362 vehicle for a period of 120 days.

363 (6) Driving a commercial motor vehicle without
364 obtaining a commercial driver's license;

365 (A) For a second conviction of any combination of
366 offenses in this subsection in a separate incident within a
367 three-year period while operating a commercial motor
368 vehicle, a driver is disqualified from operating a
369 commercial motor vehicle for a period of 60 days.

370 (B) For a third or subsequent conviction of any
371 combination of the offenses in this subsection in a separate
372 incident in a three-year period while operating a commercial
373 motor vehicle, a driver is disqualified from operating a
374 commercial motor vehicle for a period of 120 days.

375 (7) Driving a commercial motor vehicle without a
376 commercial driver's license in the driver's possession
377 except that any person who provides proof of possession of
378 a commercial driver's license to the enforcement agency
379 that issued the citation by the court appearance or fine
380 payment deadline is not guilty of this offense;

381 (A) For a second conviction of any combination of
382 offenses in this subsection in a separate incident within a

383 three-year period while operating a commercial motor
384 vehicle, a commercial driver's license holder is disqualified
385 from operating a commercial motor vehicle for a period of
386 60 days.

387 (B) For a third or subsequent conviction of any
388 combination of the offenses in this subsection in a separate
389 incident in a three-year period while operating a commercial
390 motor vehicle, a commercial driver's license holder
391 is disqualified from operating a commercial motor vehicle
392 for a period of 120 days.

393 (8) Driving a commercial motor vehicle without the
394 proper class of commercial driver's license or the proper
395 endorsements for the specific vehicle group being operated
396 or for the passengers or type of cargo being transported;

397 (A) For a second conviction of any combination of
398 offenses in this subsection in a separate incident within a
399 three-year period while operating a commercial motor
400 vehicle, a commercial driver's license holder is disqualified
401 from operating a commercial motor vehicle for a period of
402 60 days.

403 (B) For a third or subsequent conviction of any
404 combination of the offenses in this subsection in a separate
405 incident in a three-year period while operating a commercial
406 motor vehicle, a commercial driver's license holder
407 is disqualified from operating a commercial motor vehicle
408 for a period of 120 days.

409 (9) Driving a commercial motor vehicle while engaged
410 in texting and convicted pursuant to §17E-1-14a of this code
411 or similar law of this or any other jurisdiction or 49 C. F. R.
412 §392.80;

413 (A) For a second conviction of any combination of
414 offenses in this subsection in a separate incident within a
415 three-year period while operating a commercial motor
416 vehicle, a commercial driver's license holder is disqualified

417 from operating a commercial motor vehicle for a period of
418 60 days.

419 (B) For a third or subsequent conviction of any
420 combination of the offenses in this subsection in a separate
421 incident in a three-year period while operating a commercial
422 motor vehicle, a commercial driver's license holder
423 is disqualified from operating a commercial motor vehicle
424 for a period of 120 days.

425 (d) Any person convicted of operating a commercial
426 motor vehicle in violation of any federal, state, or local law
427 or ordinance pertaining to railroad crossing violations
428 described in subdivisions (1) through (6), inclusive, of this
429 subsection is disqualified from operating a commercial
430 motor vehicle for the period of time specified;

431 (1) Failing to slow down and check that the tracks are
432 clear of an approaching train, if not required to stop in
433 accordance with the provisions of §17C-12-3 of this code;

434 (A) For the first conviction, a driver is disqualified from
435 operating a commercial motor vehicle for a period of 60
436 days;

437 (B) For a second conviction of any combination of
438 offenses in this subsection within a three-year period, a
439 driver is disqualified from operating a commercial motor
440 vehicle for 120 days; and

441 (C) For a third or subsequent conviction of any
442 combination of offenses in this subsection within a three-
443 year period, a driver is disqualified from operating a
444 commercial motor vehicle for one year.

445 (2) Failing to stop before reaching the crossing, if the
446 tracks are not clear, if not required to stop in accordance
447 with the provisions of §17C-12-1 of this code;

448 (A) For the first conviction, a driver is disqualified from
449 operating a commercial motor vehicle for a period of 60
450 days;

451 (B) For a second conviction of any combination of
452 offenses in this subsection within a three-year period, a
453 driver is disqualified from operating a commercial motor
454 vehicle for 120 days; and

455 (C) For a third or subsequent conviction of any
456 combination of offenses in this subsection within a three-
457 year period, a driver is disqualified from operating a
458 commercial motor vehicle for one year.

459 (3) Failing to stop before driving onto the crossing, if
460 required to stop in accordance with the provisions of §17C-
461 12-3 of this code;

462 (A) For the first conviction, a driver is disqualified from
463 operating a commercial motor vehicle for a period of 60
464 days;

465 (B) For a second conviction of any combination of
466 offenses in this subsection within a three-year period, the
467 driver is disqualified from operating a commercial motor
468 vehicle for 120 days; and

469 (C) For a third or subsequent conviction of any
470 combination of offenses in this subsection within a three-
471 year period, a driver is disqualified from operating a
472 commercial motor vehicle for one year.

473 (4) Failing to have sufficient space to drive completely
474 through the crossing without stopping in accordance with
475 the provisions of §17C-12-3 of this code;

476 (A) For the first conviction, a driver is disqualified from
477 operating a commercial motor vehicle for a period of 60
478 days;

479 (B) For a second conviction of any combination of
480 offenses in this subsection within a three-year period, a
481 driver is disqualified from operating a commercial motor
482 vehicle for 120 days; and

483 (C) For a third or subsequent conviction of any
484 combination of offenses in this subsection within a three-
485 year period, a driver is disqualified from operating a
486 commercial motor vehicle for one year.

487 (5) Failing to obey a traffic control device or the
488 directions of an enforcement official at the crossing in
489 accordance with the provisions of §17C-12-1 of this code;

490 (A) For the first conviction, a driver is disqualified from
491 operating a commercial motor vehicle for a period of 60
492 days;

493 (B) For a second conviction of any combination of
494 offenses in this subsection within a three-year period, a
495 driver is disqualified from operating a commercial motor
496 vehicle for 120 days; and

497 (C) For a third or subsequent conviction of any
498 combination of offenses in this subsection within a three-
499 year period, a driver is disqualified from operating a
500 commercial motor vehicle for one year.

501 (6) Failing to negotiate a crossing because of
502 insufficient undercarriage clearance in accordance with the
503 provisions of §17C-12-3 of this code.

504 (A) For the first conviction, a driver is disqualified from
505 operating a commercial motor vehicle for a period of 60
506 days;

507 (B) For a second conviction of any combination of
508 offenses in this subsection within a three-year period, a
509 driver is disqualified from operating a commercial motor
510 vehicle for 120 days; and

511 (C) For a third or subsequent conviction of any
512 combination of offenses in this subsection within a three-
513 year period, a driver is disqualified from operating a
514 commercial motor vehicle for one year.

515 (e) Any person who is convicted of violating an out-of-
516 service order while operating a commercial motor vehicle
517 is disqualified for the following periods of time:

518 (1) If convicted of violating a driver or vehicle out-of-
519 service order while transporting nonhazardous materials;

520 (A) For the first conviction of violating an out-of-
521 service order while operating a commercial motor vehicle,
522 a driver is disqualified from operating a commercial motor
523 vehicle for 180 days.

524 (B) For a second conviction in a separate incident within
525 a 10-year period for violating an out-of-service order while
526 operating a commercial motor vehicle, a driver is
527 disqualified from operating a commercial motor vehicle for
528 two years.

529 (C) For a third or subsequent conviction in a separate
530 incident within a 10-year period for violating an out-of-
531 service order while operating a commercial motor vehicle,
532 a driver is disqualified from operating a commercial motor
533 vehicle for three years.

534 (2) If convicted of violating a driver or vehicle out-of-
535 service order while transporting hazardous materials
536 required to be placarded under 49 C. F. R. Part §172,
537 Subpart F (2004) or while operating a vehicle designed to
538 transport 16 or more passengers including the driver;

539 (A) For the first conviction of violating an out-of-
540 service order while operating a commercial motor vehicle,
541 a driver is disqualified from operating a commercial motor
542 vehicle for 180 days.

543 (B) For a second conviction in a separate incident within
544 a ten-year period for violating an out-of-service order while
545 operating a commercial motor vehicle, a driver
546 is disqualified from operating a commercial motor vehicle
547 for three years.

548 (C) For a third or subsequent conviction in a separate
549 incident within a 10-year period for violating an out-of-
550 service order while operating a commercial motor vehicle,
551 a driver is disqualified from operating a commercial motor
552 vehicle for three years.

553 (f) After disqualifying, suspending, revoking, or
554 canceling a commercial driver's license, the division shall
555 update its records to reflect that action within 10 days.

556 (g) In accordance with the provisions of 49 U. S. C.
557 §313119(a)(19)(2004), and 49 C. F. R. §384.226 (2004),
558 notwithstanding the provisions of §61-11-25 of this code,
559 no record of conviction, revocation, suspension, or
560 disqualification related to any type of motor vehicle traffic
561 control offense, other than a parking violation, of a
562 commercial driver's license holder or a person operating a
563 commercial motor vehicle may be masked, expunged,
564 deferred, or be subject to any diversion program.

565 (h) Notwithstanding any provision in this code to the
566 contrary, the division may not issue any temporary driving
567 permit, work-only driving permit, or hardship license or
568 permit that authorizes a person to operate a commercial
569 motor vehicle when his or her privilege to operate any motor
570 vehicle has been revoked, suspended, disqualified, or
571 otherwise canceled for any reason.

572 (i) In accordance with the provisions of 49 C. F. R.
573 §391.15(b), a driver is disqualified from operating a
574 commercial motor vehicle for the duration of any
575 suspension, revocation, or cancellation of his or her driver's
576 license or privilege to operate a motor vehicle by this state
577 or by any other state or jurisdiction until the driver complies

578 with the terms and conditions for reinstatement set by this
579 state or by another state or jurisdiction.

580 (j) In accordance with the provisions of 49 C. F. R.
581 §353.52 (2006), the division shall immediately disqualify a
582 driver's privilege to operate a commercial motor vehicle
583 upon a notice from the assistant administrator of the Federal
584 Motor Carrier Safety Administration that the driver poses
585 an imminent hazard. Any disqualification period imposed
586 under the provisions of this subsection shall be served
587 concurrently with any other period of disqualification if
588 applicable.

589 (k) In accordance with the provisions of 49 C. F. R.
590 §1572.11(a), the division shall immediately disqualify a
591 driver's privilege to operate a commercial motor vehicle if
592 the driver fails to surrender his or her driver's license with
593 a hazardous material endorsement to the division upon
594 proper notice by the division to the driver that the division
595 received notice from the Department of Homeland Security
596 Transportation Security Administration of an initial
597 determination of threat assessment and immediate
598 revocation that the driver does not meet the standards for
599 security threat assessment provided in 49 C. F. R. §1572.5.
600 The disqualification remains in effect until the driver either
601 surrenders the driver's license to the division or provides the
602 division with an affidavit attesting to the fact that the driver
603 has lost or is otherwise unable to surrender the license.

604 (l) In accordance with 49 C. F. R. §391.41, a driver is
605 disqualified from operating a commercial motor vehicle if
606 the driver is not physically qualified to operate a
607 commercial motor vehicle or does not possess a valid
608 medical certification status.

609 (m) In accordance with the provisions of 49 C. F. R.
610 §383.73(g), the division shall disqualify a driver's privilege
611 to operate a commercial motor vehicle if the division
612 determines that the licensee has falsified any information or
613 certifications required under the provisions of 49 C. F. R.

614 383 Subpart J or 49 C. F. R. §383.71(a) for 60 days in
615 addition to any other penalty prescribed by this code.

616 (n) Lifetime Disqualification Without Reinstatement.—

617 (1) Controlled substance violations — An individual
618 who uses a commercial motor vehicle in committing a
619 felony involving manufacturing, distributing, or dispensing
620 a controlled substance, or involving possession with intent
621 to manufacture, distribute, or dispense a controlled
622 substance is disqualified from operating a commercial
623 motor vehicle for life and is not eligible for reinstatement.

624 (2) Human trafficking violations — An individual who
625 uses a commercial motor vehicle in committing a felony
626 involving an act or practice described in paragraph (9) of
627 section 103 of the Trafficking Victims Protection Act of
628 2000 (22 U.S.C. 7102(9)) is disqualified from operating a
629 commercial motor vehicle for life and is not eligible for
630 reinstatement.

CHAPTER 224

(H. B. 4504 - By Delegate Butler)
[By Request of the Division of Motor Vehicles]

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

AN ACT to amend and reenact §17C-13-6 of the Code of West Virginia, 1931, as amended, relating to application requirements for persons with a mobility impairment for special registration plates and removable windshield placards; modifying meaning of temporary and permanent disability; and providing for limited waiver of disability certification requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. STOPPING, STANDING, AND PARKING.

§17C-13-6. Stopping, standing, or parking privileges for persons with a mobility impairment; disabled veterans; definitions; qualification; special registration plates and removable windshield placards; expiration, application; violation; penalties.

1 (a)(1) The commissioner may issue up to two special
2 registration plates or removable windshield placards to a
3 person with a mobility impairment or a West Virginia
4 organization which transports persons with disabilities and
5 facilitates the mobility of its customers, patients, students,
6 or persons otherwise placed under its responsibility.

7 (2) Special registration plates or placards may only be
8 issued for placement on a Class A or Class G motor vehicle
9 registered under the provisions of §17A-3-1 *et seq.* of this
10 code.

11 (3) The applicant shall specify whether he or she is
12 applying for a special registration plate, a removable
13 windshield placard, or both on the application form
14 prescribed and furnished by the commissioner.

15 (4) The applicant shall submit, with the application, a
16 certificate issued by any physician, chiropractor, advanced
17 nurse practitioner, or physician's assistant who is licensed
18 in this state, stating that the applicant has a mobility
19 impairment, or that the applicant is an organization which
20 regularly transports a person with a mobility impairment as
21 defined in this section. The physician, chiropractor,
22 advanced nurse practitioner, or physician's assistant shall
23 specify in the certificate whether the disability is temporary
24 or permanent. A disability which is temporary is one
25 expected to last for a limited duration and improve during
26 the applicant's life. A disability which is permanent is one
27 which is expected to last during the duration of the
28 applicant's life.

29 (5) Upon receipt of the completed application, the
30 physician's certificate and the regular registration fee for the
31 applicant's vehicle class, if the commissioner finds that the
32 applicant qualifies for the special registration plate or a
33 removable windshield placard as provided in this section, he
34 or she shall issue to the applicant a special registration plate
35 (upon remittance of the regular registration fee) or a
36 removable windshield placard (red for temporary and blue
37 for permanent), or both. Upon request, the commissioner
38 shall also issue to any otherwise qualified applicant one
39 additional placard having the same expiration date as the
40 applicant's original placard. The placard shall be displayed
41 by hanging it from the interior rearview mirror of the motor
42 vehicle so that it is conspicuously visible from outside the
43 vehicle when parked in a designated accessible parking
44 space. The placard may be removed from the rearview
45 mirror whenever the vehicle is being operated to ensure
46 clear vision and safe driving. Only in the event that there is
47 no suitable rearview mirror in the vehicle may the placard
48 be displayed on the dashboard of the vehicle.

49 (6) Organizations which transport people with
50 disabilities will be provided with a placard which will
51 permit them to park in a designated area for the length of
52 time necessary to load and unload passengers. These
53 vehicles must be moved to a nondesignated space once the
54 loading or unloading process is complete.

55 (b) As used in this section, the following terms have the
56 meanings ascribed to them in this subsection:

57 (1) A person or applicant with a "mobility impairment"
58 means a person who is a citizen of West Virginia and as
59 determined by a physician, allopath, or osteopath,
60 chiropractor, advanced nurse practitioner, or physician's
61 assistant licensed to practice in West Virginia:

62 (A) Cannot walk 200 feet without stopping to rest;

63 (B) Cannot walk without the use of or assistance from a
64 brace, cane, crutch, prosthetic device, wheelchair, other
65 assistive device, or another person;

66 (C) Is restricted by lung disease to such an extent that
67 the person's force (respiratory) expiratory volume for one
68 second, when measured by spirometry, is less than one liter
69 or the arterial oxygen tension is less than 60 mm/hg on room
70 air at rest;

71 (D) Uses portable oxygen;

72 (E) Has a cardiac condition to such an extent that the
73 person's functional limitations are classified in severity as
74 Class III or Class IV according to standards established by
75 the American Heart Association; or

76 (F) Is severely limited in his or her ability to walk
77 because of an arthritic, neurological, or other orthopedic
78 condition;

79 (2) "Special registration plate" means a registration
80 plate that displays the international symbol of access, as
81 adopted by the Rehabilitation International Organization in
82 1969 at its Eleventh World Congress on Rehabilitation of
83 the Disabled, in a color that contrasts with the background,
84 in letters and numbers the same size as those on the plate,
85 and which may be used in lieu of a regular registration plate;

86 (3) "Removable windshield placard" (permanent or
87 temporary) means a two-sided, hanger-style placard
88 measuring three inches by nine and one-half inches, with all
89 of the following on each side:

90 (A) The international symbol of access, measuring at
91 least three inches in height, centered on the placard, in white
92 on a blue background for permanent designations and in
93 white on a red background for temporary designations;

94 (B) An identification number measuring one inch in
95 height;

96 (C) An expiration date in numbers measuring one inch
97 in height; and

98 (D) The seal or other identifying symbol of the issuing
99 authority;

100 (4) “Regular registration fee” means the standard
101 registration fee for a vehicle of the same class as the
102 applicant’s vehicle;

103 (5) “Public entity” means state or local government or
104 any department, agency, special purpose district, or other
105 instrumentality of a state or local government;

106 (6) “Public facility” means all or any part of any
107 buildings, structures, sites, complexes, roads, parking lots,
108 or other real or personal property, including the site where
109 the facility is located;

110 (7) “Place or places of public accommodation” means a
111 facility or facilities operated by a private entity whose
112 operations affect commerce and fall within at least one of
113 the following categories:

114 (A) Inns, hotels, motels, and other places of lodging;

115 (B) Restaurants, bars, or other establishments serving
116 food or drink;

117 (C) Motion picture houses, theaters, concert halls,
118 stadiums, or other places of exhibition or entertainment;

119 (D) Auditoriums, convention centers, lecture halls, or
120 other places of public gatherings;

121 (E) Bakeries, grocery stores, clothing stores, hardware
122 stores, shopping centers, or other sales or rental
123 establishments;

124 (F) Laundromats, dry cleaners, banks, barber and beauty
125 shops, travel agencies, shoe repair shops, funeral parlors,
126 gas or service stations, offices of accountants and attorneys,

127 pharmacies, insurance offices, offices of professional health
128 care providers, hospitals, or other service establishments;

129 (G) Terminals, depots, or other stations used for public
130 transportation;

131 (H) Museums, libraries, galleries, or other places of
132 public display or collection;

133 (I) Parks, zoos, amusement parks, or other places of
134 recreation;

135 (J) Public or private nursery, elementary, secondary,
136 undergraduate, or post-graduate schools or other places of
137 learning and day care centers, senior citizen centers,
138 homeless shelters, food banks, adoption agencies, or other
139 social services establishments; and

140 (K) Gymnasiums, health spas, bowling alleys, golf
141 courses, or other places of exercise or recreation;

142 (8) “Commercial facility” means a facility whose
143 operations affect commerce and which are intended for
144 nonresidential use by a private entity;

145 (9) “Accessible parking” formerly known as
146 “handicapped parking” is the present phrase consistent with
147 language within the Americans with Disabilities Act
148 (ADA).

149 (10) “Parking enforcement personnel” includes any
150 law-enforcement officer as defined by §30-29-1 of this
151 code, and private security guards, parking personnel, and
152 other personnel authorized by a city, county, or the state to
153 issue parking citations.

154 Any person who falsely or fraudulently obtains or seeks
155 to obtain the special plate or the removable windshield
156 placard provided for in this section, and any person who
157 falsely certifies that a person is mobility impaired in order
158 that an applicant may be issued the special registration plate

159 or windshield placard under this section is guilty of a
160 misdemeanor and, upon conviction thereof, in addition to
161 any other penalty he or she may otherwise incur, shall be
162 fined \$500. Any person who fabricates, uses, or sells
163 unofficially issued windshield placards to any person or
164 organization is committing a fraudulent act and is guilty of
165 a misdemeanor and, upon conviction thereof, in addition to
166 any other penalty he or she may otherwise incur, shall be
167 fined \$500 per placard fabricated, used, or sold. Any person
168 who fabricates, uses, or sells unofficially issued
169 identification cards to any person or organization is
170 committing a fraudulent act and is guilty of a misdemeanor
171 and, upon conviction thereof, in addition to any other
172 penalty he or she may otherwise incur, shall be fined \$700
173 per identification card fabricated, used, or sold. Any person
174 who fabricates, uses, or sells unofficially issued labels
175 imprinted with a future expiration date to any person or
176 organization is committing a fraudulent act and is guilty of
177 a misdemeanor and, upon conviction thereof, in addition to
178 any other penalty he or she may otherwise incur, shall be
179 fined \$700. Any person covered by this section who sells or
180 gives away their officially issued windshield placard to any
181 person or organization not qualified to apply or receive the
182 placard and then reapplies for a new placard on the basis it
183 was stolen is committing a fraudulent act and is guilty of a
184 misdemeanor and, upon conviction thereof, in addition to
185 any other penalty he or she, or they may otherwise incur,
186 shall lose their right to receive or use a special placard or
187 special license plate for a period of not less than five years.

188 (c) The commissioner shall set the expiration date for
189 special registration plates and permanent removable
190 windshield placards on the last day of a given month and
191 year, to be valid for a minimum of one year but not more
192 than five years, after which time a new application must be
193 submitted to the commissioner. After the commissioner
194 receives the new application, signed by a certified
195 physician, chiropractor, advanced nurse practitioner, or
196 physician's assistant if required under this subsection, the

197 commissioner shall issue: (i) A new special registration
198 plate or new permanent removable windshield placard; or
199 (ii) official labels imprinted with the new expiration date
200 and designed so as to be placed over the old dates on the
201 original registration plate or windshield placard: *Provided*,
202 That a new application under this subsection must not be
203 accompanied by a certificate pursuant to §17C-13-6(a)(4) of
204 this code if a prior application is on file with the
205 commissioner, such application includes a certificate issued
206 pursuant to §17C-13-6(a)(4) of this code, such certificate
207 specifies that the applicant's disability is permanent for life,
208 and such certificate was made within 10 years of the new
209 application.

210 (d) The commissioner shall set the expiration date of
211 temporary removable windshield placards to be valid for a
212 period of approximately six months after the application
213 was received and approved by the commissioner.

214 (e) The commissioner shall issue to each applicant who
215 is granted a special registration plate or windshield placard
216 an identification card bearing the applicant's name,
217 assigned identification number, and expiration date. The
218 applicant shall thereafter carry this identification card on his
219 or her person whenever parking in an accessible parking
220 space. The identification card shall be identical in design for
221 both registration plates and removable windshield placards.

222 (f) An accessible parking space should comply with the
223 provisions of the Americans with Disabilities Act
224 accessibility guidelines, contained in 28 C.F.R. 36,
225 Appendix A, Section 4.6. In particular, the parking space
226 should be a minimum of eight feet wide with an adjacent
227 eight-foot access aisle for vans having side mounted
228 hydraulic lifts or ramps, or a five-foot access aisle for
229 standard vehicles. Access aisles should be marked using
230 diagonal two- to four-inch-wide stripes spaced every 12 or
231 24 inches apart along with the words "no parking" in painted
232 letters which are at least 12 inches in height. All accessible
233 parking spaces must have a signpost in front or adjacent to

234 the accessible parking space displaying the international
235 symbol of access sign mounted at a minimum of eight feet
236 above the pavement or sidewalk and the top of the sign.
237 Lines or markings on the pavement or curbs for parking
238 spaces and access aisles may be in any color, although blue
239 is the generally accepted color for accessible parking.

240 (g) A vehicle displaying a disabled veterans special
241 registration plate issued pursuant to §17A-3-14(c)(6) of this
242 code shall be recognized and accepted as meeting the
243 requirements of this section.

244 (h) A vehicle from any other state, United States
245 territory, or foreign country displaying an officially issued
246 special registration plate, placard, or decal bearing the
247 international symbol of access shall be recognized and
248 accepted as meeting the requirements of this section,
249 regardless of where the plate, placard, or decal is mounted
250 or displayed on the vehicle.

251 (i) Stopping, standing or parking places marked with the
252 international symbol of access shall be designated in close
253 proximity to all public entities, including state, county, and
254 municipal buildings and facilities, places of public
255 accommodation, and commercial facilities. These parking
256 places shall be reserved solely for persons with a mobility
257 impairment and disabled veterans at all times.

258 (j) Any person whose vehicle properly displays a valid,
259 unexpired special registration plate or removable
260 windshield placard may park the vehicle for unlimited
261 periods of time in parking zones unrestricted as to length of
262 parking time permitted: *Provided*, That this privilege does
263 not mean that the vehicle may park in any zone where
264 stopping, standing, or parking is prohibited or which creates
265 parking zones for special types of vehicles or which
266 prohibits parking during heavy traffic periods during
267 specified rush hours or where parking would clearly present
268 a traffic hazard. To the extent any provision of any
269 ordinance of any political subdivision of this state is

270 contrary to the provisions of this section, the provisions of
271 this section take precedence and apply.

272 The parking privileges provided for in this subsection
273 apply only during those times when the vehicle is being used
274 for the loading or unloading of a person with a mobility
275 impairment. Any person who knowingly exercises, or
276 attempts to exercise, these privileges at a time when the
277 vehicle is not being used for the loading or unloading of a
278 person with a mobility impairment is guilty of a
279 misdemeanor and, upon first conviction thereof, in addition
280 to any other penalty he or she may otherwise incur, shall be
281 fined \$200; upon second conviction thereof, in addition to
282 any other penalty he or she may otherwise incur, shall be
283 fined \$300; and upon third and subsequent convictions
284 thereof, in addition to any other penalty he or she may
285 otherwise incur, shall be fined \$500.

286 (k) Any person whose vehicle does not display a valid,
287 special registration plate or removable windshield placard
288 may not stop, stand, or park a motor vehicle in an area
289 designated, zoned, or marked for accessible parking with
290 signs or instructions displaying the international symbol of
291 access, either by itself or with explanatory text. The signs
292 may be mounted on a post or a wall in front of the accessible
293 parking space and instructions may appear on the ground or
294 pavement, but use of both methods is preferred. Accessible
295 parking spaces for vans having an eight-foot adjacent access
296 aisle should be designated as “van accessible” but may be
297 used by any vehicle displaying a valid special registration
298 plate or removable windshield placard.

299 Any person who violates the provisions of this
300 subsection is guilty of a misdemeanor and, upon conviction
301 thereof, shall be fined \$200; upon second conviction
302 thereof, in addition to any other penalty he or she may
303 otherwise incur, shall be fined \$300; and upon third and
304 subsequent convictions thereof, in addition to any other
305 penalty he or she may otherwise incur, shall be fined \$500.

306 (l) All signs that designate areas as “accessible parking”
307 or that display the international symbol of access shall also
308 include the words “Up to \$500 fine”.

309 (m) No person may stop, stand, or park a motor vehicle
310 in an area designated or marked off as an access aisle
311 adjacent to a van-accessible parking space or regular
312 accessible parking space. Any person, including a driver of
313 a vehicle displaying a valid removable windshield placard
314 or special registration plate, who violates the provisions of
315 this subsection is guilty of a misdemeanor and, upon
316 conviction thereof, shall be fined \$200; upon second
317 conviction thereof, in addition to any other penalty he or she
318 may otherwise incur, shall be fined \$300; and upon third and
319 subsequent convictions thereof, in addition to any other
320 penalty he or she may otherwise incur, shall be fined \$500.

321 (n) Parking enforcement personnel who otherwise
322 enforce parking violations may issue citations for violations
323 of this section and shall reference the number on the
324 vehicle’s license plate, since the driver normally will not be
325 present.

326 (o) Law-enforcement agencies may establish a program
327 to use trained volunteers to collect information necessary to
328 issue citations to persons who illegally park in designated
329 accessible parking spaces. Any law-enforcement agency
330 choosing to establish a program shall provide for workers’
331 compensation and liability coverage. The volunteers shall
332 photograph the illegally parked vehicle and complete a
333 form, to be developed by supervising law-enforcement
334 agencies, that includes the vehicle’s license plate number,
335 date, time, and location of the illegally parked vehicle. The
336 photographs must show the vehicle in the accessible space
337 and a readable view of the license plate. Within the
338 discretion of the supervising law-enforcement agency, the
339 volunteers may issue citations or the volunteers may submit
340 the photographs of the illegally parked vehicle and the form
341 to the supervising law-enforcement agency, who may issue
342 a citation, which includes the photographs and the form, to

343 the owner of the illegally parked vehicle. Volunteers shall
344 be trained on the requirements for citations for vehicles
345 parked in marked, zoned, or designated accessible parking
346 areas by the supervising law-enforcement agency.

347 (p) Local authorities who adopt the basic enforcement
348 provisions of this section and issue their own local
349 ordinances shall retain all fines and associated late fees.
350 These revenues shall be used first to fund the provisions of
351 subsection (o) of this section, if adopted by local authorities,
352 or otherwise shall go into the local authorities' General
353 Revenue Fund. Otherwise, any moneys collected as fines
354 shall be collected for and remitted to the state.

355 (q) The commissioner shall prepare and issue a
356 document to applicants describing the privileges accorded a
357 vehicle having a special registration plate and removable
358 windshield placard as well as the penalties when the vehicle
359 is being inappropriately used as described in this section and
360 shall include the document along with the issued special
361 registration plate or windshield placard. In addition, the
362 commissioner shall issue a separate document informing the
363 general public regarding the new provisions and increased
364 fines being imposed either by way of newspaper
365 announcements or other appropriate means across the state.

366 (r) The commissioner shall propose rules for legislative
367 approval in accordance with the provisions of §29A-3-1 *et*
368 *seq.* of this code.

●

CHAPTER 225

**(Com. Sub. for H. B. 4522 - By Delegates Butler,
Porterfield and Kump)
[By Request of the Division of Motor Vehicles]**

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §17B-2-8 of the Code of West Virginia, 1931, as amended, relating to the issuance and content of driver's licenses; providing for display of name in manner selected by applicant when supported by appropriate documentation; and allowing Division of Motor Vehicles to accept documents compliant with federal Real ID Act as proof of identity, residency, and lawful presence.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION,
AND RENEWAL.**

§17B-2-8. Issuance and contents of licenses; fees.

1 (a) The division shall, upon payment of the required fee,
2 issue to every applicant qualifying therefor a driver's
3 license, which shall indicate the type or general class or
4 classes of vehicle or vehicles the licensee may operate in
5 accordance with this chapter or chapter 17E of this code, or
6 motorcycle-only license. Each license shall contain a coded
7 number assigned to the licensee, the full legal name, to be
8 displayed in a manner selected by the applicant when
9 supported by appropriate documentation and consistent
10 with federal law, this code, and existing system capabilities
11 of the division, date of birth, residence address, a brief
12 description and a color photograph of the licensee, and
13 either a facsimile of the signature of the licensee or a space

14 upon which the signature of the licensee is written with pen
15 and ink immediately upon receipt of the license. No license
16 is valid until it has been so signed by the licensee.

17 (b) A driver's license which is valid for operation of a
18 motorcycle shall contain a motorcycle endorsement. A
19 driver's license which is valid for the operation of a
20 commercial motor vehicle shall be issued in accordance
21 with chapter 17E of this code.

22 (c) The division shall use such process or processes in
23 the issuance of licenses that will, insofar as possible, prevent
24 any identity theft, alteration, counterfeiting, duplication,
25 reproduction, forging or modification of, or the
26 superimposition of a photograph on, the license.

27 (d) The fee for the issuance of a Class E driver's license
28 is \$5 per year for each year the license is valid. The Division
29 of Motor Vehicles may adjust this fee every five years on
30 September 1, based on the U. S. Department of Labor,
31 Bureau of Labor Statistics most current Consumer Price
32 Index: *Provided*, That an increase in such fee may not
33 exceed 10 percent of the total fee amount in a single year.
34 The fee for issuance of a Class D driver's license is \$6.25
35 per year for each year the license is valid. An additional fee
36 of 50 cents shall be collected from the applicant at the time
37 of original issuance or each renewal, and the additional fee
38 shall be deposited in the Combined Voter Registration and
39 Driver's Licensing Fund established pursuant to the
40 provisions of §3-2-12 of this code. The additional fee for
41 adding a motorcycle endorsement to a driver's license is \$1
42 per year for each year the license is issued.

43 (e) The fee for issuance of a motorcycle-only license is
44 \$2.50 for each year for which the motorcycle license is
45 valid. The fees for the motorcycle endorsement or
46 motorcycle-only license shall be paid into a special fund in
47 the State Treasury known as the Motorcycle Safety Fund as
48 established in §17B-1D-7 of this code.

49 (f) The fee for the issuance of either the level one or
50 level two graduated driver's license as prescribed in §17B-
51 2-3a of this code is \$5.

52 (g) The fee for issuance of a federally compliant driver's
53 license or identification card for federal use is \$10 in
54 addition to any other fee required by this chapter. Any fees
55 collected under the provisions of this subsection shall be
56 deposited into the Motor Vehicle Fees Fund established in
57 accordance with §17A-2-21 of this code.

58 (h) The division may use an address on the face of the
59 license other than the applicant's address of residence if:

60 (1) The applicant has a physical address or location that
61 is not recognized by the post office for the purpose of
62 receiving mail;

63 (2) The applicant is enrolled in a state address
64 confidentiality program or the alcohol test and lock
65 program;

66 (3) The applicant's address is entitled to be suppressed
67 under a state or federal law or suppressed by a court order;
68 or

69 (4) At the discretion of the commissioner, the
70 applicant's address may be suppressed to provide security
71 for classes of applicants such as law-enforcement officials,
72 protected witnesses, and members of the state and federal
73 judicial systems.

74 (i) Notwithstanding any provision in this article to the
75 contrary, a valid military identification card with an
76 expiration date issued by the United States Department of
77 Defense for active duty, reserve, or retired military
78 personnel containing a digitized photo and the holder's full
79 legal name may be used to establish current full legal name
80 and legal presence. The commissioner may at his or her
81 discretion expand the use of military identification cards for
82 other uses as permitted under this code or federal rule.

83 (j) The division may accept any document as proof of
84 identity, residency, and lawful presence that is acceptable
85 under the Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat.
86 302 (May 11, 2005), 49 U.S.C. §30301 *et seq.*

CHAPTER 226

(Com. Sub. for H. B. 4530 - By Delegate Westfall)

[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 §17A-6D-17, relating to fees that may be charged by daily passenger rental car companies pursuant to the master rental agreement; defining a term; authorizing daily passenger rental car companies to charge administrative fees under a certain amount related to certain costs incurred by the rental customer and paid by the daily passenger car rental company; and requiring that the rental customer affirmatively agree to the administrative fees in the master rental agreement.

Be it enacted by the Legislature of West Virginia:

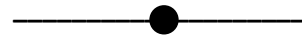
ARTICLE 6D. DAILY PASSENGER RENTAL CAR BUSINESS.

§17A-6D-17. Authorized administrative fees.

1 (a) As used in this section, “administrative fees” means
2 reasonable costs expressly provided for in the master rental
3 agreement pertaining to parking tickets, tolls, citations for
4 other non-moving violations, and other costs incurred by the
5 rental customer and not timely paid by the rental customer
6 and paid by the daily passenger car rental company.

7 Administrative fees may not exceed \$25 per rental
8 agreement or ten percent of the debt owed, whichever is
9 less.

10 (b) Notwithstanding any provision of this code to the
11 contrary, including, but not limited to §46A-2-128(d) of this
12 code, a daily passenger rental car company may collect or
13 charge administrative fees incidental to, or arising from, the
14 rental transaction when the administrative fees are expressly
15 provided for in the master rental agreement and
16 affirmatively acknowledged by the rental customer.



CHAPTER 227

**(H. B. 4958 - By Delegates Hamrick, Canestraro, D.
Kelly, Lovejoy, Miller, Shott, Nelson, Mandt,
Fleischauer, Pushkin and Pyles)**

[Passed March 7, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §8-10-2a and §8-10-2b of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-3-3a and §17B-3-3c of said code; to amend and reenact §50-3-2a of said code; and to amend and reenact §62-4-17 of said code, all relating to eliminating the ability of a person's driver's license to be suspended for the failure to pay court fines and costs; allowing court clerks to accept electronic payments, credit cards, cash, money orders, or certified checks; requiring magistrate, municipal, and circuit clerks to set up a payment plan if an individual signs an affidavit stating that he or she is unable to pay the court fines and costs imposed; authorizing a court to review the reasonableness of the payment plan; authorizing court to waive, modify, or convert the outstanding costs, fines, forfeitures, or penalties to community service; requiring the

Supreme Court of Appeals to develop and distribute forms; authorizing magistrate, municipal, and circuit clerks to assess late fees, to record a judgment lien for unpaid fines and costs in the county clerk's office, and to cosign a debt to collections; authorizing a process for the recording and release of a judgment lien; requiring clerks to issue a notice of delinquency; authorizing the reinstatement of driver's licenses suspended prior to July, 1, 2020; removes Tax Commissioner's authority to withhold income tax returns; establishing fees; and placing limits on collection of fees.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2a. Payment of fines by electronic payments, credit cards, cash, money orders, or certified checks.

1 A municipal court may accept electronic payments,
2 credit cards, cash, money order, or certified checks for all
3 costs, fines, forfeitures, or penalties electronically, by mail,
4 or in person. Any charges made by the credit company shall
5 be paid by the person responsible for paying the cost, fine,
6 fee, or penalty.

§8-10-2b. Payment plan; failure to pay will result in late fee and judgment lien; suspension of licenses for failure to pay fines and costs or failure to appear in court.

1 (a) Upon request and subject to the following
2 requirements, the municipal court clerk or, upon a judgment
3 rendered on appeal, the clerk shall establish a payment plan
4 for a person owing costs, fines, forfeitures, or penalties
5 imposed by the court for a motor vehicle violation as
6 defined in §17B-3-3a of this code, a criminal offense as
7 defined in §17B-3-3c of this code, or other applicable
8 municipal ordinances, so long as the person signs and files
9 with the clerk, an affidavit, stating that he or she is

10 financially unable to pay the costs, fines, forfeitures, or
11 penalties imposed:

12 (1) A \$25 administrative processing fee shall be paid at
13 the time the payment form is filed or, in the alternative, the
14 fee may be paid in no more than 5 equal monthly payments;

15 (2) Unless incarcerated, a person must enroll in a
16 payment plan no later than 90 calendar days after the date
17 the court enters the order assessing the costs, fines,
18 forfeitures, or penalties; and

19 (3) If the person is incarcerated, he or she may enroll in
20 a payment plan within 90 calendar days after release.

21 (b) The West Virginia Supreme Court of Appeals shall
22 develop a uniform payment plan form and financial
23 affidavit for requests for the establishment of a payment
24 plan pursuant to subsection (a) of this section. The forms
25 shall be made available for distribution to the offices of
26 municipal clerks, and municipal clerks shall use the
27 payment plan form and affidavit form developed by the
28 West Virginia Supreme Court of Appeals when establishing
29 payment plans.

30 (c)(1) The payment plan shall specify: (A) The number
31 of payments to be made; (B) The dates on which such
32 payments are due; (C) The amount due for each payment;
33 (D) all acceptable payment methods; and (E) the
34 circumstances under which the person may receive a late
35 fee, have a judgment lien recorded against him or her, or
36 have the debt sent to collections for nonpayment;

37 (2) The monthly payment under the payment plan shall
38 be calculated based upon all costs, fines, forfeitures, or
39 penalties owed within the court, and shall be two percent of
40 the person's annual net income divided by 12, or \$10,
41 whichever is greater;

42 (3) The court may review the reasonableness of the
43 payment plan, and may on its own motion or by petition,

44 waive, modify, or convert the outstanding costs, fines,
45 forfeitures, or penalties to community service if the court
46 determines that the individual has had a change in
47 circumstances and is unable to comply with the terms of the
48 payment plan.

49 (d) (1) The clerk may assess a \$10 late fee each month
50 if a person fails to comply with the terms of a payment plan
51 and if any payment due is not received within 30 days after
52 the due date, and the person:

53 (A) Is not incarcerated;

54 (B) Has not brought the account current;

55 (C) Has not made alternative payment arrangements
56 with the court; or

57 (D) Has not entered into a revised payment plan with the
58 clerk before the due date.

59 (2) If after 90 days, a payment has not been received,
60 the clerk may do one or both of the following (A) Record a
61 judgment lien as described in subsection (f) of this section,
62 or (B) Consign the delinquent costs, fines, forfeitures, or
63 penalties to a debt collection agency contained on the State
64 Tax Commissioner's list of eligible debt collection agencies
65 established and maintained pursuant to §14-1-18c of this
66 code, an internal collection division, or both: *Provided*, That
67 the entire amount of all delinquent payments collected shall
68 be remitted to the court and may not be reduced by any
69 collection costs or fees: *Provided, however*, That the
70 collection fee may not exceed 25 percent of the delinquent
71 payment amount. The clerk may send notices, electronically
72 or by U.S. mail, to remind the person of an upcoming or
73 missed payment.

74 (e)(1) If after 90 days of a judgment a person fails to
75 enroll in a payment plan and fails to pay their costs, fines,
76 forfeitures, or penalties, the clerk may assess a \$10 late fee
77 and shall notify the person of the following:

78 (A) That he or she is 90 days past due in the payment of
79 costs, fines, forfeitures, or penalties imposed pursuant to a
80 judgment of the court;

81 (B) That he or she has failed to enroll in a payment plan;

82 (C) Whether a \$10 late fee has been assessed; and

83 (D) That he or she may be the subject of a judgment lien
84 or have his or her debt sent to a collection agency if the
85 overdue payment of costs, fines, forfeitures, or penalties is
86 not resolved within 30 days of the date of the notice issued
87 pursuant to this subsection.

88 (2) If after 30 days from the issuance of a notice
89 pursuant to subdivision (1) of this subsection, a payment has
90 not been received, the clerk may do one or both of the
91 following:

92 (A) Record a judgment lien as described in subsection
93 (f) of this section; or

94 (B) Consign the delinquent costs, fines, forfeitures, or
95 penalties to a debt collection agency contained on the State
96 Tax Commissioner's list of eligible debt collection agencies
97 established and maintained pursuant to §14-1-18c of this
98 code, an internal collection division, or both: *Provided*, That
99 the entire amount of all delinquent payments collected shall
100 be remitted to the court and may not be reduced by any
101 collection costs or fees: *Provided, however*, That the
102 collection fee may not exceed 25 percent of the delinquent
103 payment amount.

104 (f) To record a judgment lien, the clerk shall notify the
105 prosecuting attorney of the county of nonpayment and shall
106 provide the prosecuting attorney with an abstract of
107 judgment. The prosecuting attorney shall file the abstract of
108 judgment in the office of the clerk of the county commission
109 in the county where the defendant was convicted and in any
110 county in which the defendant resides or owns property. The
111 clerk of the county commission shall record and index these

112 abstracts of judgment without charge or fee to the
113 prosecuting attorney and when recorded, the amount stated
114 to be owed in the abstract constitutes a lien against all
115 property of the defendant: *Provided*, That when all the costs,
116 fines, fees, forfeitures, restitution or penalties for which an
117 abstract of judgment has been recorded are paid in full, the
118 clerk of the municipal court shall notify the prosecuting
119 attorney of the county of payment and provide the
120 prosecuting attorney with a release of judgment, prepared in
121 accordance with the provisions of §38-12-1 of this code, for
122 filing and recordation pursuant to the provisions of this
123 subdivision. Upon receipt from the clerk, the prosecuting
124 attorney shall file the release of judgment in the office of the
125 clerk of the county commission in each county where an
126 abstract of the judgment was recorded. The clerk of the
127 county commission shall record and index the release of
128 judgment without charge or fee to the prosecuting attorney.

129 (g) A person whose driver's license was suspended prior
130 to July 1, 2020, solely for the nonpayment of costs, fines,
131 forfeitures, or penalties, if otherwise eligible, shall have his
132 or her license reinstated:

133 (1) Upon payment in full of all outstanding costs, fines,
134 forfeitures, or penalties and a \$25 reinstatement fee paid to
135 the Division of Motor Vehicles; or

136 (2) Upon establishing a payment plan pursuant to
137 subsection (a) and the payment of a \$25 administrative fee.
138 The clerk shall notify the Division of Motor Vehicles that a
139 payment plan is in effect, and upon receipt of the
140 notification, the division shall waive the reinstatement fee.

141 (h) If a person charged with a motor vehicle violation as
142 defined in §17B-3-3a of this code or criminal offense fails
143 to appear or otherwise respond in court, the municipal court
144 clerk shall notify the Division of Motor Vehicles of the
145 failure to appear: *Provided*, That notwithstanding any other
146 provision of this code to the contrary, for residents of this
147 state, the municipal court clerk shall wait at least 90 days

148 from the date of the person's failure to appear or otherwise
149 respond before notifying the Division of Motor Vehicles
150 thereof. Upon notice, the Division of Motor Vehicles shall
151 suspend the person's driver's license or privilege to operate
152 a motor vehicle in this state until such time that the person
153 appears as required.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION, OR REVOCAION OF LICENSES.

§17B-3-3a. Suspending license for failure to respond or appear in court.

1 (a) The division shall suspend the license of any resident
2 of this state or the privilege of a nonresident to drive a motor
3 vehicle in this state upon receiving notice from a magistrate
4 court or municipal court of this state that such person has
5 failed to respond or appear in court when charged with a
6 motor vehicle violation.

7 (b) For the purposes of this section, §50-3-2a of this
8 code and §8-10-2b of this code, "motor vehicle violation"
9 is as any violation designated in chapters 17A, 17B, 17C,
10 17D, or 17E of this code, or the violation of any municipal
11 ordinance relating to the operation of a motor vehicle for
12 which the violation thereof would result in a fine or penalty:
13 *Provided*, That any parking violation or other violation for
14 which a citation may be issued to an unattended vehicle
15 shall not be considered a motor vehicle violation for the
16 purposes of this section, §50-3-2a of this code, or §8-10-2b
17 of this code.

§17B-3-3c. Suspending license for failure to appear in court.

1 (a) The division shall suspend the license of any resident
2 of this state or the privilege of a nonresident to drive a motor
3 vehicle in this state upon receiving notice from a circuit
4 court, magistrate court, or municipal court of this state,

5 pursuant to §8-10-2b or §62-4-17 of this code, that the
6 person has failed to appear in court when charged with a
7 criminal offense. For the purposes of this section, §8-10-2b
8 or §62-4-17 of this code, “criminal offense” shall be defined
9 as any violation of the provisions of this code, or the
10 violation of any municipal ordinance, for which the
11 violation of the offense may result in a fine, confinement in
12 jail, or imprisonment in a correctional facility of this state:
13 *Provided*, That any parking violation or other violation for
14 which a citation may be issued to an unattended vehicle
15 shall not be considered a criminal offense for the purposes
16 of this section, §8-10-2b or §62-4-17 of this code.

17 (b) A copy of the order of suspension shall be forwarded
18 to the person by certified mail, return receipt requested. No
19 order of suspension becomes effective until 10 days after
20 receipt of a copy of the order. The order of suspension shall
21 advise the person that because of the receipt of notice of the
22 failure to appear, a presumption exists that the person
23 named in the order of suspension is the same person named
24 in the notice. The commissioner may grant an
25 administrative hearing which substantially complies with
26 the requirements of the provisions of §17C-5A-2 of this
27 code upon a preliminary showing that a possibility exists
28 that the person named in the notice of conviction is not the
29 same person whose license is being suspended. The request
30 for hearing shall be made within 10 days after receipt of a
31 copy of the order of suspension. The sole purpose of this
32 hearing shall be for the person requesting the hearing to
33 present evidence that he or she is not the person named in
34 the notice. In the event the commissioner grants an
35 administrative hearing, the commissioner shall stay the
36 license suspension pending the commissioner’s order
37 resulting from the hearing.

38 (c) A suspension under this section and §17B-3-3a of
39 this code will continue until the person provides proof of
40 compliance from the municipal, magistrate, or circuit court
41 and pays the reinstatement fee as provided in §17B-3-9 of
42 this code. The reinstatement fee is assessed upon issuance

43 of the order of suspension regardless of the effective date of
44 suspension.

45 (d) Upon notice from an appropriate state official that
46 the person is successfully participating in an approved
47 treatment and job program as prescribed in §61-11-26a of
48 this code, and that the person is believed to be safe to drive,
49 the Division of Motor Vehicles shall stay or supersede the
50 imposition of any suspension under this section or §17B-3-
51 3a of this code. The Division of Motor Vehicles shall waive
52 the reinstatement fee established by the provisions §17B-3-
53 9 upon receipt of proper documentation of the person's
54 successful completion of a program under §61-11-26a of
55 this code and proof of compliance from the municipal,
56 magistrate, or circuit court. The stay or supersedeas shall be
57 removed by the Division of Motor Vehicles upon receipt of
58 notice from an appropriate state official of a participant's
59 failure to complete or comply with the approved treatment
60 and job program as established under §61-11-26a of this
61 code.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2a. Payment by electronic payments, credit card payments, cash, money orders, or certified checks; payment plan; failure to pay fines results in a late fee and judgment lien.

1 (a) A magistrate court may accept electronic payments,
2 credit cards, cash, money order, or certified check for
3 payment of all costs, fines, fees, forfeitures, restitution, or
4 penalties in accordance with rules promulgated by the
5 Supreme Court of Appeals. Any charges made by the credit
6 company shall be paid by the person responsible for paying
7 the cost, fine, forfeiture or penalty.

8 (b) Upon request and subject to the following
9 requirements, the magistrate clerk shall establish a payment
10 plan for a person owing costs, fines, forfeitures, or penalties

11 imposed by the court, so long as the person signs and files
12 with the clerk, an affidavit stating that he or she is
13 financially unable to pay the costs, fines, forfeitures, or
14 penalties imposed:

15 (1) A \$25 administrative processing fee shall be paid at
16 the time the payment form is filed or, in the alternative, the
17 fee may be paid in no more than 5 equal monthly payments;

18 (2) Unless incarcerated, a person must enroll in a
19 payment plan no later than 180 calendar days after the date
20 the court enters the order assessing the costs, fines,
21 forfeitures, or penalties; and

22 (3) If the person is incarcerated, he or she may enroll in
23 a payment plan within 180 calendar days after release.

24 (c) The West Virginia Supreme Court of Appeals shall
25 develop a uniform payment plan form and financial
26 affidavit for requests for the establishment of payment plan
27 pursuant to subsection (a) of this section. The forms shall be
28 made available for distribution to the offices of magistrate
29 clerks, and magistrate clerks shall use the payment plan
30 form and affidavit form developed by the West Virginia
31 Supreme Court of Appeals when establishing payment
32 plans.

33 (d)(1) The payment plan shall specify: (A) The number
34 of payments to be made; (B) The dates on which the
35 payments are due; (C) The amount due for each payment;
36 (D) All acceptable payment methods; and (E) The
37 circumstances under which the person may receive a late
38 fee, have a judgment lien recorded against him or her, or
39 have the debt sent to collections for nonpayment.

40 (2) The monthly payment under the payment plan shall
41 be calculated based upon all costs, fines, forfeitures, or
42 penalties owed within the court, and shall be two percent of
43 the person's annual net income divided by 12 or \$10,
44 whichever is greater.

45 (3) The court may review the reasonableness of the
46 payment plan, and may on its own motion or by petition,
47 waive, modify, or convert the outstanding costs, fines,
48 forfeitures, or penalties to community service if the court
49 determines that the individual has had a change in
50 circumstances and is unable to comply with the terms of the
51 payment plan.

52 (e) (1) The clerk may assess a \$10 late fee each month
53 if a person fails to comply with the terms of a payment plan,
54 and if any payment due is not received within 30 days after
55 the due date, and the person:

56 (A) Is not incarcerated;

57 (B) Has not brought the account current;

58 (C) Has not made alternative payment arrangements
59 with the court; or

60 (D) Has not entered into a revised payment plan with the
61 clerk before the due date.

62 (2) If, after 90 days, a payment has not been received,
63 the clerk may do one or both of the following: (A) Record a
64 judgment lien as described in subsection (f) of this section,
65 or (B) Consign the delinquent costs, fines, forfeitures, or
66 penalties to a debt collection agency contained on the State
67 Tax Commissioner's list of eligible debt collection agencies
68 established and maintained pursuant to §14-1-18c of this
69 code, an internal collection division, or both: *Provided*, That
70 the entire amount of all delinquent payments collected shall
71 be remitted to the court and may not be reduced by any
72 collection costs or fees: *Provided, however*, That the
73 collection fee may not exceed 25 percent of the delinquent
74 payment amount. The clerk may send notices, electronically
75 or by U.S. mail, to remind the person of an upcoming or
76 missed payment.

77 (f)(1) If after 180 days of a judgment a person fails to
78 enroll in a payment plan and fails to pay his or her costs,

79 fines, forfeitures, or penalties, the clerk may assess a \$10
80 late fee and shall notify the person of the following:

81 (A) That he or she is 180 days past due in the payment
82 of costs, fines, forfeitures, or penalties imposed pursuant to
83 a judgment of the court;

84 (B) That he or she has failed to enroll in a payment plan;

85 (C) Whether a \$10 late fee has been assessed; and

86 (D) That he or she may be the subject of a judgment lien
87 or have his or her debt sent to a collection agency if the
88 overdue payment of costs, fines, forfeitures, or penalties is
89 not resolved within 30 days of the date of the notice issued
90 pursuant to this subsection.

91 (2) If after 30 days from the issuance of a notice
92 pursuant to subdivision (1) of this subsection, a payment has
93 not been received, the clerk may do one or both of the
94 following:

95 (A) Record a judgment lien as described in subsection
96 (f) of this section; or

97 (B) Consign the delinquent costs, fines, forfeitures, or
98 penalties to a debt collection agency contained on the State
99 Tax Commissioner's list of eligible debt collection agencies
100 established and maintained pursuant to §14-1-18c of this
101 code, an internal collection division, or both: *Provided*, That
102 the entire amount of all delinquent payments collected shall
103 be remitted to the court and may not be reduced by any
104 collection costs or fees: *Provided, however*, That the
105 collection fee may not exceed 25 percent of the delinquent
106 payment amount.

107 (g) To record a judgment lien, the clerk shall notify the
108 prosecuting attorney of the county of nonpayment and shall
109 provide the prosecuting attorney with an abstract of
110 judgment. The prosecuting attorney shall file the abstract of
111 judgment in the office of the clerk of the county commission

112 in the county where the defendant was convicted and in any
113 county wherein the defendant resides or owns property. The
114 clerk of the county commission shall record and index these
115 abstracts of judgment without charge or fee to the
116 prosecuting attorney and when recorded, the amount stated
117 to be owed in the abstract constitutes a lien against all
118 property of the defendant: *Provided*, That when all the costs,
119 fines, fees, forfeitures, restitution, or penalties for which an
120 abstract of judgment has been recorded are paid in full, the
121 clerk of the municipal court shall notify the prosecuting
122 attorney of the county of payment and provide the
123 prosecuting attorney with a release of judgment, prepared in
124 accordance with the provisions of §38-12-1 of this code, for
125 filing and recordation pursuant to the provisions of this
126 subdivision. Upon receipt from the clerk, the prosecuting
127 attorney shall file the release of judgment in the office of the
128 clerk of the county commission in each county where an
129 abstract of the judgment was recorded. The clerk of the
130 county commission shall record and index the release of
131 judgment without charge or fee to the prosecuting attorney.

132 (h) A person whose driver's license was suspended
133 before July 1, 2020, solely for the nonpayment of costs,
134 fines, forfeitures, or penalties, if otherwise eligible, shall
135 have his or her license reinstated:

136 (1) Upon payment in full of all outstanding costs, fines,
137 forfeitures, or penalties and a \$25 reinstatement fee paid to
138 the Division of Motor Vehicles; or

139 (2) Upon establishing a payment plan pursuant to
140 subsection (a) of this section and the payment of a \$25
141 administrative fee. The clerk shall notify the Division of
142 Motor Vehicles that a payment plan is in effect, and upon
143 receipt of the notification, the division shall waive the
144 reinstatement fee.

145 (i)(1) If any costs, fines, fees, forfeitures, restitution, or
146 penalties imposed or ordered by the magistrate court for a
147 hunting violation described in chapter 20 of this code are

148 not paid within 180 days from the date of judgment and the
149 expiration of any stay of execution, the magistrate court
150 clerk or, upon a judgment rendered on appeal, the circuit
151 clerk shall notify the Director of the Division of Natural
152 Resources of the failure to pay. Upon notice, the Director of
153 the Division of Natural Resources shall suspend any
154 privilege the person failing to appear or otherwise respond
155 may have to hunt in this state, including any hunting license
156 issued to the person by the Division of Natural Resources,
157 until all the costs, fines, fees, forfeitures, restitution, or
158 penalties are paid in full.

159 (2) If any costs, fines, fees, forfeitures, restitution, or
160 penalties imposed or ordered by the magistrate court for a
161 fishing violation described in chapter 20 of this code are not
162 paid within 180 days from the date of judgment and the
163 expiration of any stay of execution, the magistrate court
164 clerk or, upon a judgment rendered on appeal, the circuit
165 clerk shall notify the Director of the Division of Natural
166 Resources of the failure to pay. Upon notice, the Director of
167 the Division of Natural Resources shall suspend any
168 privilege the person failing to appear or otherwise respond
169 may have to fish in this state, including any fishing license
170 issued to the person by the Division of Natural Resources,
171 until all the costs, fines, fees, forfeitures, restitution, or
172 penalties are paid in full.

173 (j)(1) If a person charged with any criminal violation of
174 this code fails to appear or otherwise respond in court, the
175 magistrate court shall notify the Commissioner of the
176 Division of Motor Vehicles thereof within 90 days of the
177 scheduled date to appear unless the person sooner appears
178 or otherwise responds in court to the satisfaction of the
179 magistrate. Upon notice, the Division of Motor Vehicles
180 shall suspend any privilege the person failing to appear or
181 otherwise respond may have to operate a motor vehicle in
182 this state, including any driver's license issued to the person
183 by the Division of Motor Vehicles, until final judgment in
184 the case and, if a judgment of guilty, until all costs, fines,

185 fees, forfeitures, restitution, or penalties imposed are paid in
186 full. The suspension shall be imposed in accordance with
187 the provisions of §17B-3-6 of this code.

188 (2) In addition to the provisions of subdivision (1) of
189 this subsection, if a person charged with any hunting
190 violation described in chapter 20 of this code fails to appear
191 or otherwise respond in court, the magistrate court shall
192 notify the Director of the Division of Natural Resources of
193 the failure thereof within 15 days of the scheduled date to
194 appear unless the person sooner appears or otherwise
195 responds in court to the satisfaction of the magistrate. Upon
196 notice, the Director of the Division of Natural Resources
197 shall suspend any privilege the person failing to appear or
198 otherwise respond may have to hunt in this state, including
199 any hunting license issued to the person by the Division of
200 Natural Resources, until final judgment in the case and, if a
201 judgment of guilty, until all costs, fines, fees, forfeitures,
202 restitution, or penalties imposed are paid in full.

203 (3) In addition to the provisions of subdivision (1) of
204 this subsection, if a person charged with any fishing
205 violation described in chapter 20 of this code fails to appear
206 or otherwise respond in court, the magistrate court shall
207 notify the Director of the Division of Natural Resources of
208 the failure thereof within 15 days of the scheduled date to
209 appear unless the person sooner appears or otherwise
210 responds in court to the satisfaction of the magistrate. Upon
211 notice, the Director of the Division of Natural Resources
212 shall suspend any privilege the person failing to appear or
213 otherwise respond may have to fish in this state, including
214 any fishing license issued to the person by the Division of
215 Natural Resources, until final judgment in the case and, if a
216 judgment of guilty, until all costs, fines, fees, forfeitures,
217 restitution, or penalties imposed are paid in full.

218 (k) In every criminal case which involves a
219 misdemeanor violation, a magistrate may order restitution
220 where appropriate when rendering judgment.

221 (1) Notwithstanding any provision of this code to the
222 contrary, except as authorized by this section, payments of
223 all costs, fines, fees, forfeitures, restitution, or penalties
224 imposed by the magistrate court in civil or criminal matters
225 shall be made in full. Partial payments of costs, fines, fees,
226 forfeitures, restitution, or penalties made pursuant to this
227 section shall be credited to amounts due in the following
228 order:

- 229 (1) Regional Jail Fund;
- 230 (2) Worthless Check Payee;
- 231 (3) Restitution;
- 232 (4) Magistrate Court Fund;
- 233 (5) Worthless Check Fund;
- 234 (6) Per Diem Regional Jail Fee;
- 235 (7) Community Corrections Fund;
- 236 (8) Regional Jail Operational Fund;
- 237 (9) Law Enforcement Training Fund;
- 238 (10) Crime Victims Compensation Fund;
- 239 (11) Court Security Fund;
- 240 (12) Courthouse Improvement Fund;
- 241 (13) Litter Control Fund;
- 242 (14) Sheriff arrest fee;
- 243 (15) Teen Court Fund;
- 244 (16) Other costs, if any;
- 245 (17) Fine.

CHAPTER 62. CRIMINAL PROCEDURE.**ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.****§62-4-17. Suspension of licenses for failure to appear in court; payment plan; failure to pay fines will result in late fee and judgment lien.**

1 (a) Upon request and subject to the following
2 requirements, the circuit clerk shall establish a payment plan
3 for a person owing costs, fines, forfeitures, or penalties
4 imposed by the court, so long as the person signs and files
5 with the clerk, an affidavit, stating that he or she is
6 financially unable to pay the costs, fines, forfeitures, or
7 penalties imposed:

8 (1) A \$25 administrative processing fee shall be paid at
9 the time the payment form is filed or, in the alternative, the
10 fee may be paid in no more than 5 equal monthly payments;

11 (2) Unless incarcerated, a person must enroll in a
12 payment plan no later than 180 calendar days after the date
13 the court enters the order assessing the costs, fines,
14 forfeitures, or penalties; and

15 (3) If the person is incarcerated, he or she enroll in a
16 payment plan within 180 calendar days after release.

17 (b) The West Virginia Supreme Court of Appeals shall
18 develop a uniform payment plan form and financial
19 affidavit for requests for the establishment of payment plan
20 pursuant to subsection (a) of this section. The forms shall be
21 made available for distribution to the offices of circuit clerks
22 and circuit clerks shall use the payment plan form and
23 affidavit form developed by the West Virginia Supreme
24 Court of Appeals when establishing payment plans.

25 (c)(1) The payment plan shall specify: (A) The number
26 of payments to be made; (B) The dates on which such
27 payments are due; (C) The amount due for each payment;

28 (D) All acceptable payment methods; and (E) The
29 circumstances under which the person may receive a late
30 fee, have a judgment lien recorded against them, or have the
31 debt sent to collections for nonpayment.

32 (2) The monthly payment under the payment plan shall
33 be calculated based upon all costs, fines, forfeitures, or
34 penalties owed within the court, and shall be two percent of
35 the person's annual net income divided by 12, or \$10,
36 whichever is greater.

37 (3) The court may review the reasonableness of the
38 payment plan, and may on its own motion or by petition,
39 waive, modify, or convert the outstanding costs, fines,
40 forfeitures, or penalties to community service if the court
41 determines that the individual has had a change in
42 circumstances and is unable to comply with the terms of the
43 payment plan.

44 (d) (1) The clerk may assess a \$10 late fee each month
45 if a person fails to comply with the terms of a payment plan,
46 and if any payment due is not received within 30 days after
47 the due date, and the person:

48 (A) Is not incarcerated;

49 (B) Has not brought the account current;

50 (C) Has not made alternative payment arrangements
51 with the court; or

52 (D) Has not entered into a revised payment plan with the
53 clerk before the due date.

54 (2) If, after 90 days, a payment has not been received,
55 the clerk may do one or both of the following (A) Record a
56 judgment lien as described in subsection (f) of this section,
57 or (B) Consign the delinquent costs, fines, forfeitures, or
58 penalties to a debt collection agency contained on the State
59 Tax Commissioner's list of eligible debt collection agencies
60 established and maintained pursuant to §14-1-18c of this

61 code, an internal collection division, or both: *Provided*, That
62 the entire amount of all delinquent payments collected shall
63 be remitted to the court and may not be reduced by any
64 collection costs or fees: *Provided, however*, That the
65 collection fee may not exceed 25 percent of the delinquent
66 payment amount. The clerk may send notices, electronically
67 or by U.S. mail, to remind the person of an upcoming or
68 missed payment.

69 (e)(1) If after 180 days of a judgment a person fails to
70 enroll in a payment plan and fails to pay his or her costs,
71 fines, forfeitures, or penalties, the clerk may assess a \$10
72 late fee and shall notify the person of the following:

73 (A) That he or she is 180 days past due in the payment
74 of costs, fines, forfeitures, or penalties imposed pursuant to
75 a judgment of the court;

76 (B) That he or she has failed to enroll in a payment plan;

77 (C) Whether a \$10 late fee has been assessed; and

78 (D) That he or she may be the subject of a judgment lien
79 or have his or her debt sent to a collection agency if the
80 overdue payment of costs, fines, forfeitures, or penalties is
81 not resolved within 30 days of the date of the notice issued
82 pursuant to this subsection.

83 (2) If after 30 days from the issuance of a notice
84 pursuant to subdivision (1) of this subsection, a payment has
85 not been received, the clerk may do one or both of the
86 following:

87 (A) Record a judgment lien as described in subsection
88 (f) of this section; or

89 (B) Consign the delinquent costs, fines, forfeitures, or
90 penalties to a debt collection agency contained on the State
91 Tax Commissioner's list of eligible debt collection agencies
92 established and maintained pursuant to §14-1-18c of this
93 code, an internal collection division, or both: *Provided*, That

94 the entire amount of all delinquent payments collected shall
95 be remitted to the court and may not be reduced by any
96 collection costs or fees: *Provided, however,* That the
97 collection fee may not exceed 25 percent of the delinquent
98 payment amount.

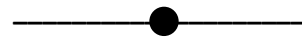
99 (f) To record a judgment lien, the clerk shall notify the
100 prosecuting attorney of the county of nonpayment and shall
101 provide the prosecuting attorney with an abstract of
102 judgment. The prosecuting attorney shall file the abstract of
103 judgment in the office of the clerk of the county commission
104 in the county where the defendant was convicted and in any
105 county wherein the defendant resides or owns property. The
106 clerk of the county commission shall record and index these
107 abstracts of judgment without charge or fee to the
108 prosecuting attorney, and when recorded, the amount stated
109 to be owed in the abstract constitutes a lien against all
110 property of the defendant: *Provided,* That when all the costs,
111 fines, fees, forfeitures, restitution, or penalties for which an
112 abstract of judgment has been recorded are paid in full, the
113 clerk of the municipal court shall notify the prosecuting
114 attorney of the county of payment and provide the
115 prosecuting attorney with a release of judgment, prepared in
116 accordance with the provisions of §38-12-1 of this code, for
117 filing and recordation pursuant to the provisions of this
118 subdivision. Upon receipt from the clerk, the prosecuting
119 attorney shall file the release of judgment in the office of the
120 clerk of the county commission in each county where an
121 abstract of the judgment was recorded. The clerk of the
122 county commission shall record and index the release of
123 judgment without charge or fee to the prosecuting attorney.

124 (g) A person whose driver's license was suspended prior
125 to July 1, 2020, solely for the nonpayment of costs, fines,
126 forfeitures, or penalties, if otherwise eligible, shall have his
127 or her license reinstated:

128 (1) Upon payment in full of all outstanding (1) costs, fines,
129 forfeitures, or penalties and a \$25 reinstatement fee paid to
130 the Division of Motor Vehicles; or

131 (2) Upon establishing a payment plan pursuant to
 132 subsection (a) and the payment of a \$25 administrative fee.
 133 The clerk shall notify the Division of Motor Vehicles that a
 134 payment plan is in effect, and upon receipt of the
 135 notification, the division shall waive the reinstatement fee.

136 (h) If a person charged with a criminal offense fails to
 137 appear or otherwise respond in court after having received
 138 notice to do so, the court shall notify the Division of Motor
 139 Vehicles thereof within 15 days of the scheduled date to
 140 appear unless such person sooner appears or otherwise
 141 responds in court to the satisfaction of the court. Upon such
 142 notice, the Division of Motor Vehicles shall suspend the
 143 person's driver's license or privilege to operate a motor
 144 vehicle in this state until such time that the person appears
 145 as required.



CHAPTER 228

**(Com. Sub. for S. B. 470 - By Senators Cline,
 Hamilton, Pitsenbarger, Sypolt, Roberts and Azinger)**

[Passed February 11, 2020; in effect ninety days from passage.]
 [Approved by the Governor on February 24, 2020.]

AN ACT to amend and reenact §20-2-5g of the Code of West Virginia, 1931, as amended, relating to the use of a crossbow to hunt; decreasing length of crossbow bolt; and specifying measurement method.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5g. Use of a crossbow to hunt.

1 (a) Notwithstanding any other provision of this code to
 2 the contrary, any person lawfully entitled to hunt may hunt

3 with a crossbow during big game firearms season. A person
4 who possesses a valid Class Y permit may also hunt with a
5 crossbow in accordance with §20-2-42w of this code.
6 Further, the director shall designate a separate season for
7 crossbow hunting and identify which species of wildlife
8 may be hunted with a crossbow.

9 (b) Only crossbows meeting all of the following
10 specifications may be used for hunting in West Virginia:

11 (1) The crossbow has a minimum draw weight of 125
12 pounds;

13 (2) The crossbow has a working safety; and

14 (3) The crossbow is used with bolts and arrows not less
15 than 16 inches in length as measured from the leading end
16 of the shaft, including the insert, to the trailing end of the
17 shaft, including the nock, with a broad head having at least
18 two sharp cutting edges, measuring at least three fourths of
19 an inch in width.



CHAPTER 229

**(Com. Sub. for S. B. 487 - By Senators Sypolt,
Hamilton, Azinger and 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 §20-1-7 of the Code of West Virginia, 1931, as amended, relating to additional powers, duties, and services of Director of Division of Natural Resources; and creating exception to requirement that Division of Natural Resources payments be deposited in bank within 24 hours.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

***§20-1-7. Additional powers, duties, and services of director.**

1 In addition to all other powers, duties, and
2 responsibilities granted and assigned to the director in this
3 chapter and elsewhere by law, the director may:

4 (1) With the advice of the commission, prepare and
5 administer, through the various divisions created by this
6 chapter, a long-range comprehensive program for the
7 conservation of the natural resources of the state which best
8 effectuates the purpose of this chapter and which makes
9 adequate provisions for the natural resources laws of the
10 state;

11 (2) Sign and execute in the name of the state by the Division
12 of Natural Resources any contract or agreement with the federal
13 government or its departments or agencies, subdivisions of the
14 state, corporations, associations, partnerships, or individuals:
15 *Provided*, That intergovernmental cooperative agreements and
16 agreements with nongovernmental organizations in furtherance
17 of providing a comprehensive program for the exploration,
18 conservation, development, protection, enjoyment, and use
19 of the natural resources of the state are exempt from the
20 provisions of §5A-3-1 *et seq.* of this code: *Provided*,
21 *however*, That repair, renovation, and rehabilitation of
22 existing facilities, buildings, amenities, and infrastructure
23 necessary to protect public health or safety or to provide
24 uninterrupted enjoyment and public use of state parks,
25 state forests, wildlife management areas, and state natural
26 areas under the jurisdiction of the Division of Natural
27 Resources are exempt from the provisions of §5A-3-1 *et*
28 *seq.* of this code. Nothing in this section authorizes new
29 construction of buildings and new construction of
30 recreational facilities as defined in §20-5-4 of this code
31 without complying with the provisions of §5A-3-1 *et seq.*
32 of this code;

*NOTE: This section was also amended by S. B. 586 (Chapter 158), which passed subsequent to this act.

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 readvertise 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 readvertise 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
220 chapter, and he or she shall account for and report on all
221 such receipts 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) Establish procedures and fee schedules for
252 individuals applying for limited permit hunts;

253 (31) Exempt designated sections within the Division of
254 Natural Resources from the requirement that all payments
255 must be deposited in a bank within 24 hours for amounts
256 less than \$500, notwithstanding any other provision of this
257 code to the contrary: *Provided*, That such designated
258 sections shall make a deposit in any amount no less than
259 every seven working days; and

260 (32) Promulgate rules, in accordance with the
261 provisions of §29A-1-1 *et seq.* of this code, to implement
262 and make effective the powers and duties vested in him or
263 her by the provisions of this chapter and take such other
264 steps as may be necessary in his or her discretion for the
265 proper and effective enforcement of the provisions of this
266 chapter.

●

CHAPTER 230

(Com. Sub. for S. B. 500 - By Senators Hamilton, Pitsenbarger, Sypolt and Cline)

[Passed February 12, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 24, 2020.]

AN ACT to amend and reenact §20-2-42w of the Code of West Virginia, 1931, as amended, relating to Class Y special crossbow hunting permit application requirements; removing requirement for applicant to provide written release authorizing examination of all medical records regarding qualifying disability; and removing language that completed permit form constitutes Class Y permit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-42w. Class Y special crossbow hunting permit for certain disabled persons.

1 (a) A Class Y permit is a special statewide hunting
2 permit entitling a person to hunt all wildlife during
3 established archery and firearm seasons if the person meets
4 the following requirements:

5 (1) He or she holds a Class Q permit; or

6 (2) He or she has a permanent and substantial loss of
7 function in one or both hands while failing to meet the
8 minimum standards of the upper extremity pinch, grip, and
9 nine-hole peg tests administered under the direction of a
10 licensed physician; or

11 (3) He or she has a permanent and substantial loss of
12 function in one or both shoulders while failing to meet the
13 minimum standards of the shoulder strength test
14 administered under the direction of a licensed physician.

15 (b) The application form shall include a written
16 statement or report prepared by the physician conducting
17 the test no more than six months preceding the application
18 and verifying that the applicant is physically disabled as
19 described in this section. The completed Class Y permit
20 application shall be submitted to the division, which shall
21 issue a wallet-sized card to the permittee. The card and all
22 other documents and identification required to be carried by
23 this article shall be in the permittee's possession when
24 hunting.

25 (c) A Class Y permit shall be accompanied by a valid
26 statewide hunting license or the applicant shall be exempt
27 from hunting licenses as provided in this chapter.

CHAPTER 231

**(Com. Sub. for S. B. 501 - By Senators Hamilton,
Pitsenbarger, Sypolt, Prezioso, Baldwin, Woelfel,
Jeffries and Stollings)**

[Passed February 12, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 24, 2020.]

AN ACT to amend and reenact §20-5-3 of the Code of West Virginia, 1931, as amended, relating to purposes and duties of Section of Parks and Recreation of Division of Natural Resources; clarifying location of Greenbrier River Trail; clarifying location of North Bend Rail Trail; and adding protection, operation, and maintenance of Elk River Trail as duty of Section of Parks and Recreation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PARKS AND RECREATION.

§20-5-3. Section of Parks and Recreation; purpose; powers and duties generally.

1 The purposes of the Section of Parks and Recreation
2 shall be to promote conservation by preserving and
3 protecting natural areas of unique or exceptional scenic,
4 scientific, cultural, archaeological, or historic significance,
5 and to provide outdoor recreational opportunities for the
6 citizens of this state and its visitors. The Section of Parks
7 and Recreation has within its jurisdiction and supervision:

8 (a) All state parks and recreation areas, including all
9 lodges, cabins, swimming pools, motorboating, and all other
10 recreational facilities therein, except the roads heretofore
11 transferred pursuant to §17-4-1 *et seq.* of this code to the
12 state road system and to the responsibility of the
13 Commissioner of Highways with respect to the
14 construction, reconstruction, and maintenance of the roads
15 or any future roads for public usage on publicly owned lands
16 for future state parks, state forests, and public hunting and
17 fishing areas;

18 (b) The authority and responsibility to do the necessary
19 cutting and planting of vegetation along road rights-of-way
20 in state parks and recreational areas;

21 (c) The administration of all laws and regulations
22 relating to the establishment, development, protection, and
23 use and enjoyment of all state parks and state recreational
24 facilities consistent with the provisions of this article;

25 (d) The continued operation and maintenance of the
26 Berkeley Springs Historical State Park in Morgan County,
27 as a state recreational facility, designated the Berkeley
28 Springs Sanitarium under prior enactment of this code;

29 (e) The continued operation and maintenance of that
30 portion of Washington Carver Camp in Fayette County,
31 formerly incorporated within the boundaries of Babcock
32 State Park;

33 (f) The continued operation and maintenance of Camp
34 Creek State Park as a state recreational facility, formerly
35 delineated according to §19-1A-3 of this code;

36 (g) The continued operation and maintenance of
37 Moncove Lake State Park as a state recreational facility,
38 formerly delineated pursuant to enactment of §5B-1-13 of
39 this code in 1990;

40 (h) The continued protection, operation, and
41 maintenance of the right-of-way along the former
42 Greenbrier subdivision of the CSX railway system,
43 collectively designated as the Greenbrier River Trail,
44 including the protection of the trail from motorized
45 vehicular traffic and operation for the protection of adjacent
46 public and private property;

47 (i) The continued protection, operation, and
48 maintenance of the right-of-way of the CSX railway system
49 designated as the North Bend Rail Trail, including the
50 protection of the trail from motorized vehicular traffic and
51 operation for the protection of adjacent public and private
52 property;

53 (j) The continued development, operation, and
54 maintenance of Blennerhassett Island Historical State Park,
55 including all the property, powers, and authority previously
56 held by the Blennerhassett Island Historical State Park
57 Commission, formerly delineated pursuant to §29-8-1 *et*
58 *seq.* of this code; and

59 (k) The continued protection, operation, and
60 maintenance of the rights-of-way of the Elk River Coal &
61 Lumber Railroad, the Buffalo Creek & Gauley Railroad,
62 and the Middle Creek Spur, collectively designated as the

63 Elk River Trail, including the protection of the trail from
64 motorized vehicular traffic and operation for the protection
65 of adjacent public and private property.

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CHAPTER 232

**(Com. Sub. for S. B. 517 - By Senators Hamilton,
Prezioso, Stollings and Lindsay)**

[Passed March 6, 2020; in effect 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 §20-5A-1 and §20-5A-2, all relating to State Parks and Recreation Endowment Fund; establishing fund; providing for deposits; providing terms for expenditures; requiring investment of fund assets; and establishing board of trustees to administer fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. STATE PARKS AND RECREATION ENDOWMENT FUND.

§20-5A-1. Establishment of fund; deposits; expenditures; investments.

1 (a) There is created in the office of the State Treasurer a
2 special revenue account fund to be known as the West
3 Virginia State Parks and Recreation Endowment Fund.

4 (b) The following shall be deposited into the fund:

5 (1) The royalties received from the leasing of state-
6 owned gas, oil, and other mineral rights beneath the Ohio
7 River and its tributaries; and

8 (2) The proceeds of any gifts, grants, contributions, or
9 other moneys accruing to the state which are specifically
10 designated for inclusion in the fund.

11 (c) Expenditures from the fund shall be for the purposes
12 set forth in this section and are to be made in accordance
13 with appropriation of the Legislature under the provisions
14 of §12-3-1 *et seq.* of this code, and in compliance with the
15 provisions of §11B-2-1 *et seq.* of this code: *Provided*, That
16 income accruing from investments of the fund pursuant to
17 this article shall be distributed or expended for either of the
18 following purposes:

19 (1) Maintenance, repair, and improvement of any
20 existing recreational facilities, including any supporting or
21 related infrastructure and associated recreational features,
22 all to provide uninterrupted enjoyment and public use of
23 state parks, state forests, and state rail trails.

24 (2) Maintenance, repair, and procurement of any fixture,
25 furnishing, and equipment necessary to provide
26 uninterrupted enjoyment and public use of state parks, state
27 forests, and state rail trails.

28 (d) The board of trustees established pursuant to this
29 article shall invest the assets of the fund consistent with the
30 provisions of §12-6-1 of this code. The board may
31 accumulate investment income of the fund within the fund
32 until the income, in the sole judgment of the board, can
33 provide a significant supplement to the budget of the
34 Division of Natural Resources. After that time, the board
35 may direct expenditures from the income for the purposes
36 set forth in this section.

§20-5A-2. Board of trustees.

1 (a) A board of trustees is hereby created to administer
2 the State Parks and Recreation Endowment Fund.

3 (b) The board shall be composed of the Director of the
4 Division of Natural Resources, serving as chair, the Chief

5 of the Parks and Recreation Section of the Division of
6 Natural Resources, the executive secretary of the division,
7 the division fiscal officer, and the President of the West
8 Virginia State Parks Foundation, who shall serve as voting
9 ex officio members, and six voting members to be appointed
10 by the Governor. Two of the appointed members shall be
11 state park superintendents and four of the appointed
12 members shall be selected from citizen membership of state
13 park associations that represent a lodge state park, a cabin
14 state park, a day-use state park, a state forest, or a state rail
15 trail under the jurisdiction of the division: *Provided*, That
16 to the extent possible, the Governor shall appoint the citizen
17 members to ensure an equal geographic representation
18 throughout the state and their terms shall be staggered from
19 July 1, 2020. Of the citizen members first appointed, two
20 citizen members shall be appointed for a term of three years;
21 and two citizen members shall be appointed for a term of
22 four years. Successors to appointed citizen members whose
23 terms expire shall be appointed for terms of four years.
24 Vacancies shall be filled for the unexpired term. An
25 appointed citizen member may not serve for more than two
26 successive terms. Appointment to fill a vacancy may not be
27 considered as one of two terms.



CHAPTER 233

**(H. B. 4381 - By Delegates J. Jeffries, Bibby, Hanna,
Hardy, Cooper, Fast, Steele, Summers, Sypolt,
Maynard and Kessinger)**

[Passed February 17, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §20-2B-7 of the Code of West Virginia, 1931, as amended, relating to lifetime hunting,

fishing, and trapping licenses for adopted children; and providing for resident children who have been legally adopted and have not yet reached their 12th birthday to obtain their lifetime hunting, fishing, and trapping license for one half of the adult fee for a period of two years from the date of entry of the order or decree of adoption.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-7. Lifetime hunting, fishing, and trapping licenses created.

1 (a) Pursuant to §20-2B-3 of this code, the director may
2 issue the following lifetime hunting, fishing, and trapping
3 licenses and for the lifetime of the licensee, the lifetime
4 licenses serve in lieu of the equivalent annual license:
5 Lifetime resident statewide hunting and trapping license;
6 lifetime resident combination statewide hunting, fishing,
7 and trapping license; lifetime statewide fishing license; and
8 lifetime resident trout fishing license.

9 (b) The director shall propose a rule for legislative
10 approval in accordance with §29A-3-1 *et seq.*, of this code,
11 setting the fees for the lifetime licenses. The rule shall
12 provide that the fee for any resident who has not reached his
13 or her second birthday shall be one half of the adult fee set
14 under the rule. The rule shall also provide that the fee for
15 any resident who has not reached his or her 12th birthday
16 and has been legally adopted, shall be provided with a
17 period of two years from the date of entry of the order or
18 decree of adoption to obtain his or her lifetime license at one
19 half of the adult fee set under the rule. The fees for lifetime
20 licenses shall be 23 times the fee for the equivalent annual
21 licenses or stamps.

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CHAPTER 234

**(H. B. 4499 - By Delegates Hansen, Howell, C. Martin
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 §20-17-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-17A-2 and §20-17A-3 of said code, all relating to trail network authorities; eliminating the permit requirement for multicounty trail networks; continuing the Mountaineer Trail Network Recreation Authority; expanding counties in the Mountaineer Trail Network Recreation Authority; and expanding permitted recreational activities in the Mountaineer Trail Network Recreation Area.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. MULTICOUNTY TRAIL NETWORK AUTHORITIES.

§20-17-7. Requirements for trail users and prohibited acts; criminal penalties.

1 (a) An authority may require recreational users to wear
2 protective helmets or use safety equipment that the authority
3 determines to be appropriate for the recreational activity in
4 which the user is engaged.

5 (b) Each trail user operating a bicycle or mountain
6 bicycle shall obey all traffic laws, traffic-control devices,
7 and signs within the recreational area, including those which
8 restrict trails to certain types of bicycles or mountain
9 bicycles.

10 (c) Each trail user shall at all times remain within and
11 on a designated and marked trail while within the
12 recreational area.

13 (d) A person may not ignite or maintain any fire within
14 the recreational area except in a designated camp site.

15 (e) A person may not operate a motor vehicle within the
16 recreational area unless the person is authorized to operate
17 a motor vehicle in the area to perform maintenance services
18 or emergency response.

19 (f) A person who violates any provision of this section
20 is guilty of a misdemeanor and, upon conviction, shall be
21 fined not more than \$100. Prosecution or conviction for the
22 misdemeanor described in this subsection shall not prevent
23 or disqualify any other civil or criminal remedies for the
24 conduct prohibited by this section.

ARTICLE 17A. MOUNTAINEER TRAIL NETWORK RECREATION AUTHORITY.

§20-17A-2. Continuation of Mountaineer Trail Network Recreation Authority and establishment of recreation area.

1 (a) There is hereby continued the Mountaineer Trail
2 Network Recreation Authority consisting of representatives
3 from the counties of Barbour, Doddridge, Grant, Harrison,
4 Lewis, Marion, Mineral, Monongalia, Preston, Randolph,
5 Ritchie, Taylor, Tucker, Upshur, and Wood organized
6 pursuant to the provisions of §20-17-1 *et seq.* of this code.
7 This authority is authorized to establish a Mountaineer Trail
8 Network Recreation Area within the jurisdictions of those
9 counties and the authority shall be subject to the powers,
10 duties, immunities, and restrictions provided in §20-17-1 *et*
11 *seq.* of this code. Visitors and participants in recreational
12 activities within the trail network shall, in similar respects,
13 be subject to the user requirements and prohibitions of §20-
14 17-7 of this code.

15 (b) Notwithstanding subsection (a) of this section, an
 16 adjacent county may join the Mountaineer Trail Network
 17 Recreation Authority pursuant to the procedures set forth in
 18 §20-17-3(b) of this code.

19 (c) Notwithstanding subsection (a) of this section, the
 20 Mountaineer Trail Network Recreation Authority may merge
 21 with another multicounty trail network authority, pursuant to
 22 the procedures set forth in §20-17-3(c) of this code.

§20-17A-3. Recreational purposes.

1 The permitted recreational purposes for the
 2 Mountaineer Trail Network Recreation Area include, but
 3 are not limited to, any one or any combination of the
 4 following recreational activities: Hunting, fishing,
 5 swimming, boating, camping, picnicking, hiking, bicycling,
 6 mountain bicycling, running, cross-country running, nature
 7 study, winter sports and visiting, viewing or enjoying
 8 historical, archaeological, scenic, or scientific sites.

CHAPTER 235

**(Com. Sub. for H. B. 4513 - By Delegates Atkinson,
 Anderson, Tomblin, Westfall, Cadle, Dean and
 Porterfield)**

[Passed February 29, 2020; in effect ninety days from passage.]
 [Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §20-2-5a of the Code of West Virginia, 1931, as amended, relating to increasing the replacement costs required of a person causing injury or death of game or protected species; providing additional replacement costs for antlered deer; and requiring revocation of hunting and fishing licenses for conviction of described offenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5a. Forfeiture by person causing injury or death of game or protected species of animal; additional replacement costs for antlered deer; forfeiture procedures and costs.

1 (a) Any person who is convicted of violating a criminal
2 law of this state that results in the injury or death of game,
3 as defined in §20-1-2 of this code, or a protected species of
4 animal, in addition to any other penalty to which he or she
5 is subject, shall forfeit the replacement cost of the game or
6 protected species of animal to the state as follows:

7 (1) For each game fish or each fish of a protected species
8 taken illegally other than by pollution kill, \$20 for each
9 pound and any fraction thereof: *Provided*, That for each
10 native brook trout that exceeds the creel limit, \$100 each for
11 the first five illegally taken and \$20 for each thereafter;

12 (2) For each bear, \$1,000;

13 (3) For each deer, \$500;

14 (4) For each wild turkey, \$250;

15 (5) For each beaver, otter or mink, \$100;

16 (6) For each muskrat, raccoon, skunk, or fox, \$15;

17 (7) For each rabbit, squirrel, opossum, duck, quail,
18 woodcock, grouse, or pheasant, \$10;

19 (8) For each wild boar, \$500;

20 (9) For each bald eagle, \$5,000;

21 (10) For each golden eagle, \$5,000;

22 (11) For each elk, \$10,000;

23 (12) For each raven, hawk, or owl \$200; and

24 (13) For any other game or protected species of animal,
25 \$100.

26 (b) In addition to the replacement value for deer in
27 subdivision (3), subsection (a) of this section, the following
28 replacement cost shall also be forfeited to the state by any
29 person who is convicted of violating any criminal law of this
30 state and the violation causes the injury or death of antlered
31 deer:

32 (1) For any deer in which the inside spread of the main
33 beams of the antlers measured at the widest point equals 14
34 inches or greater but less than 16 inches, \$2,500;

35 (2) For any deer in which the inside spread of the main
36 beams of the antlers measured at the widest point equals 16
37 inches or greater but less than 18 inches, \$5,000;

38 (3) For any deer in which the inside spread of the main
39 beams of the antlers measured at the widest point equals 18
40 inches or greater but less than 20 inches, \$7,500; and

41 (4) For any deer in which the inside spread of the main
42 beams of the antlers measured at the widest point equals 20
43 inches or greater, \$10,000.

44 (5) Any person convicted of a second or subsequent
45 violation of any criminal law of this state which violation
46 causes the injury or death of antlered deer is subject to
47 double the authorized range of replacement cost to be
48 forfeited.

49 (c) Upon conviction, the court shall order the person to
50 forfeit to the state the amount set forth in this section for the
51 injury or death of the game or protected species of animal.
52 If two or more defendants are convicted for the same
53 violation causing the injury or death of game or protected
54 species of animal, the replacement costs shall be paid by
55 each person in an equal amount. The replacement costs shall

56 be paid by the person so convicted within the time
57 prescribed by the court not to exceed 60 days. In each
58 instance, the court shall pay the replacement costs to the
59 Division of Natural Resources to be deposited into the
60 License Fund-Wildlife Resources and used only for the
61 replacement, habitat management or enforcement programs
62 for injured or killed game or protected species of animal.

63 (d) Any person convicted of an offense described in
64 subsection (a) of this section and subject to the replacement
65 cost provisions of subsection (b) or subdivision (a)(11) of
66 this section shall also be subject to a revocation of hunting
67 and fishing license for a period of five years pursuant to
68 §20-2-38 of this code and such person shall not be issued
69 any other hunting license for a period of five years.



CHAPTER 236

**(H. B. 4514 - By Delegates Atkinson, Anderson,
Cadle, Westfall, Tomblin, Porterfield and Hott)
[By Request of the Division of Natural Resources,
Department of Commerce]**

[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 §20-2-5j; and to amend and reenact §20-2-16 and §20-2-22a of said code, all relating to hunting; permitting the use of leashed dogs to track mortally wounded deer or bear; amending protocol for possession by natural resources police officers of dogs known to have unlawfully hunted or chased deer; and excepting the use of leashed dogs to track mortally wounded deer or bear from statutory prohibition on commercial bear hunts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.**§20-2-5j. Leashed dogs for tracking mortally wounded deer or bear.**

1 (a) Notwithstanding any provision of this chapter to the
2 contrary, a person who is legally hunting and reasonably
3 believes he or she has mortally wounded a deer or bear may
4 use leashed dogs to track and locate the mortally wounded
5 deer or bear. The hunter is also permitted to use a dog
6 handler of leashed dogs to track and locate the mortally
7 wounded deer or bear. The hunter or the dog handler shall
8 maintain physical control of the leashed dogs at all times.

9 (b) The act of tracking a mortally wounded deer or bear
10 with a dog is hunting and the hunter and handler are subject
11 to all applicable laws and rules. It is unlawful for a hunter
12 or dog handler to track deer or bear with leashed dogs under
13 the provisions of this section unless he or she is in
14 possession of a valid hunting license issued pursuant to this
15 article or is a person excepted from licensing requirements
16 pursuant to this article, and all other lawful authorizations
17 as prescribed in this article. The hunter shall accompany the
18 dog handler and only the hunter may kill a mortally
19 wounded deer or bear. The deer or bear shall count toward
20 the bag limit of the hunter.

21 (c) Any dog handler providing tracking services for
22 profit must be licensed as an outfitter or guide pursuant to
23 §20-2-23 of this code.

§20-2-16. Dogs chasing deer.

1 Except as provided in §20-2-5j of this code, no person
2 may permit or use his or her dog to hunt or chase deer. A
3 natural resources police officer shall take into possession
4 any dog known to have unlawfully hunted or chased deer. If
5 the owner of the dog can be determined, the dog shall be
6 returned to the owner. If the owner of the dog cannot be
7 determined, the natural resources police officer shall deliver

- 8 the dog to the appropriate county humane officer or facility
9 consistent with the provisions of this code.

§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.

1 (a) A person may not hunt, capture, or kill any bear, or
2 have in his or her possession any bear or bear parts, except
3 during the hunting season for bear in the manner designated
4 by rule or law. For the purposes of this section, bear parts
5 include, but are not limited to, the pelt, gallbladder, skull
6 and claws of bear.

7 (b) A person who kills a bear shall, within twenty-four
8 hours after the killing, electronically register the bear. A
9 game tag number shall be issued to the person and recorded
10 in writing with the person's name and address, or on a field
11 tag and shall remain on the skin until it is tanned or
12 mounted. Any bear or bear parts not properly tagged shall
13 be forfeited to the state for disposal to a charitable
14 institution, school or as otherwise designated by the
15 director.

16 (c) Training dogs on bears or pursuing bears with dogs
17 is the hunting of bear for all purposes of this chapter,
18 including all applicable regulations and license
19 requirements.

20 (d) It is unlawful:

21 (1) To hunt bear without a bear damage stamp, as
22 prescribed in section forty-four-b of this article, in addition
23 to a hunting license as prescribed in this article;

24 (2) To hunt a bear with:

25 (A) A shotgun using ammunition loaded with more than
26 one solid ball; or

27 (B) A rifle of less than twenty-five caliber using rimfire
28 ammunition;

29 (3) To kill or attempt to kill, or wound or attempt to
30 wound, any bear through the use of bait, poison, explosives,
31 traps or deadfalls or to feed bears at any time. For purposes
32 of this section, bait includes, but is not limited to, corn and
33 other grains, animal carcasses or animal remains, grease,
34 sugars in any form, scent attractants and other edible
35 enticements, and an area is considered baited for ten days
36 after all bait has been removed;

37 (4) To shoot at or kill:

38 (A) A bear weighing less than seventy-five pounds live
39 weight or fifty pounds field dressed weight, after removal
40 of all internal organs;

41 (B) Any bear accompanied by a cub; or

42 (C) Any bear cub so accompanied, regardless of its
43 weight;

44 (5) To transport or possess any part of a bear not tagged
45 in accordance with the provisions of this section;

46 (6) To possess, harvest, sell or purchase bear parts
47 obtained from bear killed in violation of this section; or

48 (7) Except as provided in §20-2-5j of this code, to
49 organize for commercial purposes or to professionally outfit
50 a bear hunt, or to give or receive any consideration
51 whatsoever or any donation in money, goods or services in
52 connection with a bear hunt, notwithstanding the provisions
53 of sections twenty-three and twenty-four of this article.

54 (e) The following provisions apply to bear damaging or
55 destroying property:

56 (1)(A) Any property owner or lessee who has suffered
57 damage to real or personal property, including loss
58 occasioned by the death or injury of livestock or the unborn
59 issue of livestock, caused by an act of a bear may complain

60 to any natural resources police officer of the division for
61 protection against the bear.

62 (B) Upon receipt of the complaint, the officer shall
63 immediately investigate the circumstances of the complaint.
64 If the officer is unable to personally investigate the
65 complaint, he or she shall designate a wildlife biologist to
66 investigate on his or her behalf.

67 (C) If the complaint is found to be justified, the officer
68 or designated wildlife biologist may issue a permit to kill
69 the bear that caused the property damage or may authorize
70 the owner and other residents to proceed to hunt, destroy or
71 capture the bear that caused the property damage: *Provided*,
72 That only the natural resources police officer or the wildlife
73 biologist may recommend other measures to end or
74 minimize property damage: *Provided, however*, That, if out-
75 of-state dogs are used in the hunt, the owners of the dogs are
76 the only nonresidents permitted to participate in hunting the
77 bear.

78 (2)(A) When a property owner has suffered damage to
79 real or personal property as the result of an act by a bear, the
80 owner shall file a report with the director of the division. A
81 bear damage report shall be completed by a representative
82 of the division and shall state whether or not the bear was
83 hunted and destroyed or killed under authorization of a
84 depredation permit and, if so, the sex and weight shall be
85 recorded and a premolar tooth collected from the bear, all of
86 which shall be submitted with the report. The report shall
87 also include an appraisal of the property damage occasioned
88 by the bear fixing the value of the property lost. Bear
89 damage claims will not be accepted for personal and real
90 property which is commonly used for the purposes of
91 feeding, baiting, observing or hunting wildlife, including,
92 but not limited to, hunting blinds, tree stands, artificial
93 feeders, game or trail cameras and crops planted for the
94 purposes of feeding or baiting wildlife.

95 (B) The report shall be ruled upon and the alleged
96 damages examined by a commission comprised of the
97 complaining property owner, an officer of the division and
98 a person to be jointly selected by the officer and the
99 complaining property owner.

100 (C) The division shall establish the procedures to be
101 followed in presenting and deciding claims, issuing bear
102 depredation permits and organizing bear hunts under this
103 section in accordance with §29A-3-1 *et seq.* of this code.

104 (D) All claims shall be paid in the first instance from the
105 Bear Damage Fund provided in section forty-four-b of this
106 article: *Provided*, That the claimant shall submit accurate
107 information as to whether he or she is insured for the
108 damages caused by the acts of bear on forms prescribed by
109 the director, and all damage claims shall first be made by
110 the claimant against any insurance policies before payment
111 may be approved from the Bear Damage Fund. Claims for
112 an award of compensation from the Bear Damage Fund
113 shall be reduced or denied in the amount the claimant is
114 actually reimbursed by insurance for the economic loss
115 upon which the claim is based. In the event the fund is
116 insufficient to pay all claims determined by the commission
117 to be just and proper, the remainder due to owners of lost or
118 destroyed property shall be paid from the special revenue
119 account of the division.

120 (3) In all cases where the act of the bear complained of
121 by the property owner is the killing of livestock, the value
122 to be established is the fair market value of the livestock at
123 the date of death. In cases where the livestock killed is
124 pregnant, the total value is the sum of the values of the
125 mother and the unborn issue, with the value of the unborn
126 issue to be determined on the basis of the fair market value
127 of the issue had it been born.

128 (f) Criminal penalties. (1) Any person who commits a
129 violation of the provisions of this section is guilty of a
130 misdemeanor and, upon conviction thereof, shall be fined

131 not less than \$500 nor more than \$1,000, which is not
132 subject to suspension by the court, confined in jail not less
133 than 10 nor more than 30 days, or both fined and confined.
134 Further, the person's hunting and fishing licenses shall be
135 assigned six points, however, the hunting and fishing
136 licenses of any person convicted of a violation of this
137 section which results in the killing or death of a bear shall
138 be suspended for two years.

139 (2) Any person who commits a second violation of the
140 provisions of this section is guilty of a misdemeanor and,
141 upon conviction thereof, shall be fined not less than \$1,000
142 nor more than \$3,000, which is not subject to suspension by
143 the court, confined in jail not less than 30 days nor more
144 than 100 days, or both fined and confined. The person's
145 hunting and fishing licenses shall be suspended for five
146 years.

147 (3) Any person who commits a third or subsequent
148 violation of the provisions of this section is guilty of a
149 misdemeanor and, upon conviction thereof, shall be fined
150 not less than \$2,500 nor more than \$5,000, which is not
151 subject to suspension by the court, confined in jail not less
152 than six months nor more than one year, or both fined and
153 confined. The person's hunting and fishing licenses shall be
154 suspended for 10 years.

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CHAPTER 237

**(H. B. 4515 - By Delegates Sypolt, Hartman, Westfall,
Tomblin, Anderson, Cooper, Cadle, Hott, Atkinson,
Dean and D. Kelly)
[By Request of the Division of Natural Resources]**

[Passed February 21, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §20-2-30 of the Code of West Virginia, 1931, as amended; relating to eligibility for license or permit application and unlawful acts when applying for a license or permit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-30. Application and statement of eligibility for licenses or permits; procuring license or permit in violation of chapter.

- 1 (a) Each person who applies for any class of license or
- 2 permit must state to the issuing agent that he or she is
- 3 eligible for and has satisfied all prerequisites required by
- 4 this chapter for that class of license or permit.

- 5 (b) It is unlawful for a person to make a false statement
- 6 when applying for any license or permit issued pursuant to
- 7 the provisions of this chapter.

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CHAPTER 238

(H. B. 4523 - By Delegates Summers, Paynter, Hardy, Worrell and Maynard)

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

AN ACT to amend and reenact §20-2-42y of the Code of West Virginia, 1931, as amended, relating to Class AH, AHJ, AAH, AAHJ apprentice hunting and trapping licenses; and removing the limitation of number of apprentice hunting and trapping licenses a person may purchase.

Be it enacted by the Legislature of West Virginia;

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-42y. Class AH, AHJ, AAH, AAHJ apprentice hunting and trapping licenses; penalties.

1 (a) Except for persons otherwise exempted, Class AH,
2 AHJ, AAH, and AAHJ licenses are apprentice hunting and
3 trapping licenses and entitle the licensee to hunt and trap for
4 all legal species of wild animals and wild birds. The licenses
5 shall be base licenses and entitle the licensee to a deferral of
6 the proof of a certificate of training required under §20-2-
7 30a of this code.

8 (b) The apprentice hunting and trapping licensee may
9 not hunt or trap unless he or she is in possession of all other
10 required documentation and stamps and is accompanied and
11 directly supervised by an adult 18 years of age or older who
12 either possesses a valid West Virginia hunting license or has
13 the lawful privilege to hunt pursuant to the provisions of this
14 chapter. For purposes of this section, “accompanied and

15 directly supervised” means that a person maintains a close
16 visual and verbal contact with, provides adequate direction
17 to, and can assume control of the firearm from the
18 apprentice hunter.

19 (c) The cost of the Class AH license for residents who
20 have reached their 18th birthday shall be \$19 and shall have
21 the same privileges associated with Class A base license.
22 The cost of the Class AAH license for nonresidents who
23 have reached their 18th birthday shall be \$119 and shall
24 have the same privileges associated with a Class E base
25 license. The cost of the Class AHJ license shall be \$16 for
26 residents who have reached their 15th birthday and who
27 have not reached their 18th birthday, and shall have the
28 same privileges associated with Class XJ base license. The
29 cost of the Class AAHJ license shall be \$16 for nonresidents
30 who have not reached their 18th birthday and shall have the
31 same privileges associated with a Class XXJ base license.

32 (d) An apprentice hunting and trapping license is a
33 yearly license and may only be purchased electronically in
34 a manner designated by the director. No person who has
35 ever had a valid base hunting license, other than a Class AH,
36 Class AHJ, Class AAH, or Class AAHJ license, may be
37 issued one of the apprentice hunting and trapping licenses.

38 (e) The director may promulgate rules in accordance
39 with §29A-3-1 *et seq.* of this code regulating the issuance of
40 apprentice hunting and trapping licenses.

41 (f) Any person violating the provisions of this section is
42 guilty of a misdemeanor and, upon conviction thereof, is
43 subject to the punishment and penalties prescribed in §20-
44 7-9 of this code.

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CHAPTER 239

**(Com. Sub. for S. B. 689 - By Senators Maroney,
Takubo, Palumbo, Roberts, Rucker, Stollings, Weld,
Cline, Plymale, Prezioso and Woelfel)**

[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 article, designated †§33-54-1, †§33-54-2, †§33-54-3, †§33-54-4, and †§33-54-5, all relating to enacting the Requiring Accountable Pharmaceutical Transparency, Oversight, and Reporting Act; providing a short title; providing for definitions; outlining reporting requirements for drug manufacturers and health benefit plan issuers to the Auditor; outlining the pharmaceutical data required by the Auditor; directing the Auditor to create a searchable pharmaceutical transparency website; protecting confidentiality of patient information; providing registration requirements to drug manufacturers and health benefit plan issuers; requiring reporting to the Legislature; and outlining penalties when a health benefit plan or drug manufacturer fails to submit or submits inaccurate information to the Auditor.

Be it enacted by the Legislature of West Virginia:

**†ARTICLE 54. REQUIRING ACCOUNTABLE
PHARMACEUTICAL TRANSPARENCY, OVERSIGHT,
AND REPORTING ACT.**

†§33-54-1. Short title.

- 1 This article shall be known and cited as the Requiring
- 2 Accountable Pharmaceutical Transparency, Oversight, and
- 3 Reporting Act.

† Redesignated

†§33-54-2. Definitions.

1 For the purpose of this article:

2 “Auditor” means the State Auditor of West Virginia, by
3 himself or herself, or by any person appointed, designated,
4 or approved by the State Auditor to perform the service.

5 “Brand-name drug” means a prescription drug approved
6 under 21 USC §355(b) or 42 USC §262.

7 “Drug” or “prescription drug” refers to a brand-name,
8 specialty, or generic prescription drug.

9 “Drug manufacturer” means any entity that holds the
10 national drug code for a prescription drug and is engaged in
11 the production, preparation, propagation, compounding,
12 conversion, or processing of drug products; or is engaged in
13 the packaging, repackaging, labeling, relabeling, or
14 distribution of drug products, and is not a wholesale
15 distributor of drugs or a retail pharmacy licensed under state
16 law.

17 “Generic drug” means a prescription drug approved
18 under 21 USC §355(j).

19 “Health benefit plan” means an individual, blanket, or
20 group plan, policy, or contract for health care services
21 issued or delivered by a health benefit plan issuer in the
22 state.

23 “Health benefit plan issuer” means an entity subject to
24 the insurance laws and rules of this state, or subject to the
25 jurisdiction of the Insurance Commissioner, that contracts
26 or offers to contract, or enters into an agreement to provide,
27 deliver, arrange for, pay for, or reimburse any of the costs
28 of health care services, including government agencies and
29 any insurer subject to §5-16-1 *et seq.*, §33-15-1 *et seq.*, §33-
30 16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-
31 25A-1 *et seq.* of this code. For purposes of this article, the
32 term “health benefit plan issuer” does not include insurers

33 or managed care organizations with respect to their
34 Medicaid or CHIP plans or contracts which are reviewed
35 and approved by the Department of Health and Human
36 Resources Bureau of Medical Services.

37 “Market introduction” means the month and year in
38 which the manufacturer acquired or first marketed the drug
39 for sale in the United States.

40 “National drug code” or “NDC” means the numerical
41 code maintained by the United States Food and Drug
42 Administration that includes the labeler code, product code,
43 and package code.

44 “Specialty drug” means a prescription drug covered
45 under Medicare Part D that exceeds the specialty tier cost
46 threshold established by the Centers for Medicare and
47 Medicaid Services.

48 “Total spending” means the total of allowed amounts
49 associated with payment for a specified drug or drug group,
50 for all covered lives.

51 “Utilization management” means a set of formal
52 techniques designed to monitor the use of, or evaluate the
53 medical necessity, appropriateness, efficacy, or efficiency
54 of, health care services, procedures, or settings.

55 “Wholesale acquisition cost” or “WAC” is the
56 manufacturer’s list price to wholesalers or direct purchasers
57 in the United States on December 31 of the reference year,
58 as reported in wholesale price guides or other publications
59 of drug or biological pricing data; it does not include prompt
60 pay or other discounts, rebates, or reductions in price. The
61 current or proposed WAC is the amount that prompts
62 reporting under this act. If reported by a drug group, it is
63 the average WAC weighted by the relevant number of WAC
64 units.

65 “Wholesale drug distributor” means an entity licensed
66 by the West Virginia State Board of Pharmacy that is

67 engaged in the sale of generic, brand-name, or specialty
68 drugs to persons other than a consumer or patient.

†§33-54-3. Drug manufacturer reporting requirements.

1 (a) Not later than January 15 of each calendar year, a
2 drug manufacturer shall submit a report to the Auditor
3 stating the following information for each brand-name,
4 specialty, and generic drug manufactured by the drug
5 manufacturer and sold in the state directly by the drug
6 manufacturer or a wholesale drug distributor: *Provided*,
7 That the requirements of this section only apply to:

8 (1) Generic, brand-name, or specialty drugs with a
9 wholesale acquisition cost of at least \$100 for a 30-day
10 supply; and

11 (2) A generic, brand-name, or specialty drug
12 manufactured by a drug manufacturer that recognizes a
13 wholesale acquisition cost increase of 40 percent or greater
14 over the preceding three calendar years, or 15 percent or
15 greater in the previous calendar year.

16 (b) The report shall include:

17 (1) The name of the drug;

18 (2) Whether the drug is a brand-name drug or generic
19 drug;

20 (3) The effective date of any change or any reportable
21 change in the wholesale acquisition cost price;

22 (4) The introductory price of the prescription drug when
23 it was approved for marketing by the United States Food
24 and Drug Administration;

25 (5) The national drug code for the specific drug;

26 (6) Aggregate company-level research and development
27 costs for the most recent calendar year for which final audit
28 data is available;

29 (7) The name and annual U.S. sales/revenue of each
30 drug manufacturer's prescription drugs that lost patent
31 exclusivity in the United States in the previous three
32 calendar years; and

33 (8) A statement regarding the factor or factors that
34 caused any increase in the wholesale acquisition cost.

35 (c) If the drug manufacturer is subject to reporting
36 requirements established by the Securities and Exchange
37 Commission, the quality and types of information submitted
38 to the Auditor under this section must be consistent with the
39 information that the drug manufacturer includes in the drug
40 manufacturer's annual report submitted on Form 10-K to
41 the Securities and Exchange Commission.

†§33-54-4. **Health benefit plan issuer reporting requirements.**

1 No later than March 1 of each calendar year, each health
2 benefit plan issuer shall submit to the Auditor a report
3 providing the following information for the immediately
4 preceding calendar year: *Provided*, That nothing in this
5 article should be construed as to requiring a health benefit
6 plan issuer to disclose confidential health information
7 protected by the Health Insurance Portability and
8 Accountability Act:

9 (1) The names of the 25 most frequently prescribed
10 prescription drugs across all plans;

11 (2) The percent increase in annual net spending for
12 prescription drugs across all plans;

13 (3) The percent increase in premiums that were
14 attributable to prescription drugs across all plans;

15 (4) The percentage of specialty drugs with utilization
16 management requirements across all plans; and

17 (5) The premium reductions that were attributable to
18 specialty drug utilization management.

†§33-54-5. Auditor's searchable pharmaceutical transparency website created.

1 (a) By July 1, 2021, the Auditor shall create a searchable
2 pharmaceutical price transparency website, containing the
3 information specified in §33-53-3 and §33-53-4 of this
4 code, available to the public at no cost, and presented in a
5 consumer-friendly, searchable format.

6 (b) Effective July 1, 2021, the Auditor shall update the
7 information displayed on the searchable pharmaceutical
8 price transparency website within 30 days of receiving
9 updated or revised information from a drug manufacturer or
10 health benefit plan issuer.

11 (c) Each drug manufacturer or health benefit plan issuer
12 shall submit to the Auditor in writing contact information
13 for those entities or individuals employed by the health
14 benefit plan issuer or drug manufacturer responsible for
15 complying with reporting requirements specified in §33-53-
16 3 of this code, and shall notify the Auditor within 30 days
17 of any changes to this information.

18 (d) The Auditor shall publish the identity of any drug
19 manufacturer or health benefit plan issuer who fails to
20 comply with the requirements of this article or who submits
21 false or inaccurate information to the Auditor.

22 (e) The Auditor shall compile a report regarding
23 information submitted pursuant to the provisions of §33-53-
24 4 of this code and submit this analysis to the Legislative
25 Oversight Commission on Health and Human Resources
26 Accountability created pursuant to §16-29E-1 *et seq.* of this
27 code beginning on December 30, 2022, and annually
28 thereafter.

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CHAPTER 240

**(Com. Sub. for S. B. 312 - By Senators Weld,
Stollings, Rucker, Roberts, Plymale, Maynard, Cline,
Hamilton, Jeffries, Woelfel and Palumbo)**

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §30-30-16 and §30-30-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-30-30, all relating to provisional licensure requirements for social workers; creating licensure exception for Bureau for Children and Families service workers; permitting emergency rulemaking; creating registration process for service workers employed by the Bureau for Children and Families; providing deadline for conversion of license to registry; and setting forth registration eligibility criteria and continuing education requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30. SOCIAL WORKERS.

§30-30-16. Provisional license to practice as a social worker.

- 1 (a) To be eligible for a provisional license to practice as
2 a social worker, the applicant must:
 - 3 (1) Submit an application to the board;
 - 4 (2) Be at least 18 years of age;
 - 5 (3) Have a baccalaureate degree in a related field, as
6 provided by legislative rule;

7 (4) Have obtained regular supervised employment, or
8 the reasonable promise of regular supervised employment,
9 contingent upon receiving a provisional license, in a critical
10 social work workforce shortage position, area, or setting
11 requiring a social work license: *Provided*, That such
12 employment shall not be as an independent practitioner,
13 contracted employee, sole proprietor, consultant, or other
14 nonregular employment;

15 (5) Have satisfied the board that he or she merits the
16 public trust by providing the board with three letters of
17 recommendation from persons not related to the applicant;

18 (6) Not be an alcohol or drug abuser, as these terms are
19 defined in §27-1A-11 of this code: *Provided*, That an
20 applicant in an active recovery process, which may, in the
21 discretion of the board, be evidenced by participation in an
22 acknowledged substance abuse treatment and/or recovery
23 program, may be considered;

24 (7) Not have been convicted of a felony in any
25 jurisdiction within five years preceding the date of
26 application for license, which conviction remains
27 unreversed;

28 (8) Not have been convicted of a misdemeanor or felony
29 in any jurisdiction if the offense for which he or she was
30 convicted related to the practice of social work, which
31 conviction remains unreversed; and

32 (9) Meet any other requirements established by the
33 board.

34 (b) The board shall promulgate emergency rules, in
35 accordance with §29A-3-15 of this code, to implement the
36 provisions of subsection (a) of this section.

37 (c) A provisionally licensed social worker may become
38 a licensed social worker by completing the following:

39 (1) Be continuously employed for four years as a social
40 worker and supervised. The board shall promulgate by
41 legislative rule the supervision requirements;

42 (2) Complete 12 credit hours of core social work study
43 from a program accredited by the council on social work
44 education, as defined by legislative rule, within the four-
45 year provisional license period;

46 (3) Complete continuing education as required by
47 legislative rule; and

48 (4) Pass an examination approved by the board.

49 (d) On or before July 1, 2020, the Legislative Auditor
50 shall cause to be performed a performance audit of the
51 provisional license to practice as a social worker application
52 process and the application process by which a provisional
53 licensee may become a licensed social worker.

54 (e) Any employee of the Department of Health and
55 Human Resources with a provisional license as of the
56 effective date of this section who opted to take the
57 department-provided courses previously allowed has until
58 June 30, 2022, to convert his or her license to a social work
59 license or provisional license under this section. If the
60 individual cannot or desires not to complete this process, he
61 or she shall be eligible for registration as provided in §30-
62 30-30 of this code.

§30-30-18. Exemptions from this article.

1 The following persons are exempt from licensure,
2 unless specifically stated in writing by the employer:

3 (1) A person employed as the director or administrative
4 head of a social service agency or division, or applicants for
5 employment to be licensed;

6 (2) Licensed or qualified members of other professions,
7 such as physicians, psychologists, lawyers, counselors,

8 clergy, educators, or the general public engaged in social
9 work-like activities, from doing social work consistent with
10 their training if they do not hold themselves out to the public
11 by a title or description incorporating the words “licensed
12 social worker” or “licensed clinical social worker” or a
13 variation thereof;

14 (3) An employer from performing social work-like
15 activities performed solely for the benefit of employees;

16 (4) Activities and services of a student, intern, or
17 resident in social work pursuing a course of study at an
18 accredited university or college, or working in a generally
19 recognized training center, if the activities and services
20 constitute a part of the supervised course of study; and

21 (5) Pending disposition of the application for a license,
22 activities and services by a person who has recently become
23 a resident of this state, has applied for a license within 90
24 days of taking up residency in this state, and is licensed to
25 perform the activities and services in the state of former
26 residence.

27 (6) An individual registered pursuant to §30-30-30 of
28 this code.

**§30-30-30. Registration as a Bureau for Children and Families
service worker.**

1 To be eligible to be registered as a service worker for
2 the Bureau for Children and Families of the Department of
3 Health and Human Resources, the applicant must:

4 (1) Submit an application to the board;

5 (2) Be at least 18 years of age;

6 (3) Have a baccalaureate degree;

7 (4) Have obtained employment by the bureau;

- 8 (5) Satisfy the requirements of the West Virginia
9 Clearance for Access: Registry and Employment Screening
10 Act provided in §16-49-1 *et seq.* of this code;
- 11 (6) Satisfy the requirements provided in §30-1-24 of this
12 code;
- 13 (7) Complete 240 hours of pre-service training
14 developed by the bureau;
- 15 (8) Complete 20 hours of board-approved continuing
16 social work education every two years, up to 10 of which
17 may be earned through board-approved online education
18 hours: *Provided*, That at least two of the hours shall be
19 related to the Code of Ethics adopted by the board, and at
20 least two hours shall be related to social, health, and mental
21 health concerns of veterans and their families; and
- 22 (9) Pay the application fee.

CHAPTER 241

**(Com. Sub. for S. B. 544 - By Senators Ihlenfeld,
Romano and Stollings)**

[Passed February 18, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §30-5-7 of the Code of West Virginia, 1931, as amended, relating to immunizations; authorizing joint rules regulating the administration of immunizations; requiring those rules to be based on certain standards; permitting a licensee to perform immunizations based on the Center for Disease Control and Prevention's recommended schedule; requiring written parental permission for immunizations of minors; requiring a prescription for

immunization of a minor; and requiring that the joint rules permits a licensee to administer immunizations in accordance with the latest definitive treatment guidelines promulgated by the Center for Disease Control and Prevention guidelines.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS,
PHARMACY INTERNS, AND PHARMACIES.**

§30-5-7. Rule-making authority.

1 (a) The board shall propose rules for legislative
2 approval, in accordance with the provisions of §29A-3-1 *et*
3 *seq.* of this code, to implement the provisions of this article
4 and §60A-2-201 *et seq.*, §60A-3-301 *et seq.*, §60A-8-1 *et*
5 *seq.*, §60A-9-1 *et seq.*, and §60A-10-1 *et seq.* of this code,
6 including:

7 (1) Standards and requirements for a license, permit,
8 and registration;

9 (2) Educational and experience requirements;

10 (3) Procedures for examinations and reexaminations;

11 (4) Requirements for third parties to prepare, administer
12 or prepare, and administer examinations and
13 reexaminations;

14 (5) The passing grade on the examination;

15 (6) Procedures for the issuance and renewal of a license,
16 permit, and registration;

17 (7) A fee schedule;

18 (8) Continuing education requirements;

19 (9) Set standards for professional conduct;

20 (10) Establish equipment and facility standards for
21 pharmacies;

22 (11) Approve courses and standards for training
23 pharmacist technicians;

24 (12) Regulation of charitable clinic pharmacies;

25 (13) Regulation of mail-order pharmacies: *Provided,*
26 That until the board establishes requirements that provide
27 further conditions for pharmacists who consult with or who
28 provide pharmacist care to patients regarding prescriptions
29 dispensed in this state by a mail-order pharmacy, the
30 pharmacist in charge of the out-of-state mail-order
31 pharmacy shall be licensed in West Virginia and any other
32 pharmacist providing pharmacist care from the mail-order
33 pharmacy shall be licensed in the state where the pharmacy
34 is located;

35 (14) Agreements with organizations to form pharmacist
36 recovery networks;

37 (15) Create an alcohol or chemical dependency
38 treatment program;

39 (16) Establish a ratio of pharmacy technicians to on-
40 duty pharmacist operating in any outpatient, mail order, or
41 institutional pharmacy;

42 (17) Regulation of telepharmacy;

43 (18) The minimum standards for a charitable clinic
44 pharmacy and rules regarding the applicable definition of a
45 pharmacist-in-charge, who may be a volunteer, at charitable
46 clinic pharmacies: *Provided,* That a charitable clinic
47 pharmacy may not be charged any applicable licensing fees
48 and such clinics may receive donated drugs;

49 (19) Establish standards for substituted drug products;

50 (20) Establish the regulations for E-prescribing;

51 (21) Establish the proper use of the automated data
52 processing system;

53 (22) Registration and control of the manufacture and
54 distribution of controlled substances within this state;

55 (23) Regulation of pharmacies;

56 (24) Sanitation and equipment requirements for
57 wholesalers, distributors, and pharmacies;

58 (25) Procedures for denying, suspending, revoking,
59 reinstating, or limiting the practice of a licensee, permittee,
60 or registrant;

61 (26) Regulations on prescription paper as provided in
62 §16-5-27 of this code;

63 (27) Regulations on controlled substances as provided
64 in §60A-2-201 *et seq.* of this code;

65 (28) Regulations on manufacturing, distributing, or
66 dispensing any controlled substance as provided in §60A-3-
67 301 of this code;

68 (29) Regulations on wholesale drug distribution as
69 provided in §60A-8-1 *et seq.* of this code;

70 (30) Regulations on controlled substances monitoring as
71 provided in §60A-9-1 *et seq.* of this code;

72 (31) Regulations on Methamphetamine Laboratory
73 Eradication Act as provided in §60A-10-1 *et seq.* of this
74 code;

75 (32) Establish and maintain an official prescription
76 paper program; and

77 (33) Any other rules necessary to effectuate the
78 provisions of this article.

79 (b) The board may provide an exemption to the
80 pharmacist-in-charge requirement for the opening of a new
81 retail pharmacy or during a declared emergency.

82 (c) The board, the Board of Medicine, and the Board of
83 Osteopathic Medicine shall jointly agree and propose rules
84 concerning collaborative pharmacy practice for legislative
85 approval in accordance with the provisions of §29A-3-1 *et*
86 *seq.* of this code.

87 (d) The board, with the advice of the Board of Medicine
88 and the Board of Osteopathic Medicine, shall propose rules
89 for legislative approval in accordance with the provisions of
90 §29A-3-1 *et seq.* of this code to perform influenza and
91 pneumonia immunizations on a person of 18 years of age or
92 older. These rules shall provide, at a minimum, for the
93 following:

94 (1) Establishment of a course, or provide a list of
95 approved courses, in immunization administration. The
96 courses shall be based on the standards established for such
97 courses by the Centers for Disease Control and Prevention
98 in the public health service of the United States Department
99 of Health and Human Services;

100 (2) Definitive treatment guidelines which shall include,
101 but not be limited to, appropriate observation for an adverse
102 reaction of an individual following an immunization;

103 (3) Prior to administration of immunizations, a
104 pharmacist shall have completed a board-approved
105 immunization administration course and completed an
106 American Red Cross or American Heart Association basic
107 life-support training, and maintain certification in the same;

108 (4) Continuing education requirements for this area of
109 practice;

110 (5) Reporting requirements for pharmacists
111 administering immunizations to report to the primary care
112 physician or other licensed health care provider as identified
113 by the person receiving the immunization;

114 (6) Reporting requirements for pharmacists
115 administering immunizations to report to the West Virginia
116 Statewide Immunization Information;

117 (7) That a pharmacist may not delegate the authority to
118 administer immunizations to any other person, unless
119 administered by a licensed pharmacy intern under the direct
120 supervision of a pharmacist of whom both pharmacist and
121 intern have successfully completed all board-required
122 training; and

123 (8) Any other provisions necessary to implement the
124 provisions of this section.

125 (e) The Board of Medicine and the Board of Osteopathic
126 Medicine shall propose joint rules for legislative approval
127 in accordance with the provisions of §29A-3-1 *et seq.* of this
128 code to permit a licensed pharmacist or pharmacy intern to
129 administer immunizations in accordance with definitive
130 treatment guidelines for immunizations promulgated by the
131 latest notice from the U.S. Department of Health and
132 Human Services, Centers for Disease Control and
133 Prevention (CDC), including, but not limited to, the CDC's
134 recommended immunization schedule for adults, children,
135 and adolescents. In addition, the joint rules shall permit a
136 licensed pharmacist or pharmacy intern to administer
137 immunizations in accordance with definitive treatment
138 guidelines for immunizations promulgated by the latest
139 notice from the CDC, including, but not limited to, the
140 CDC's recommended immunization schedule for adults,
141 children, and adolescents to a person age 11 through 17,
142 with written informed parental consent when presented with
143 a prescription from a physician and there are no
144 contraindications to that patient receiving that
145 immunization. These rules shall provide, at a minimum, the
146 same provisions contained in subsections (d)(1) through
147 (d)(8), inclusive, of this section.

148 (f) All of the board's rules in effect and not in conflict
149 with these provisions shall remain in effect until they are
150 amended or rescinded.

CHAPTER 242

(Com. Sub. for S. B. 706 - By Senators Trump and Clements)

[Passed February 29, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §30-29-3 and §30-29-5 of the Code of West Virginia, 1931, as amended, all relating to the duties of the law-enforcement training and certification subcommittee; providing for a minimum of 800 classroom hours for a law-enforcement academy; clarifying that the required classroom hours shall be accumulated on the basis of a full-time curricula; authorizing the law-enforcement training and certification subcommittee to deny an application for the establishment of a new law-enforcement academy if it is determined that no need exists; requiring that a person seeking certification complete the approved law-enforcement training academy within 18 consecutive months of the commencement of employment as a law-enforcement officer; authorizing extensions of such requirement; requiring graduates of state law-enforcement academies successfully complete an entry level law-enforcement examination promulgated by the law-enforcement training and certification subcommittee prior to certification; establishing time frames for completion of training requirements; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-3. Duties of the subcommittee.

1 (a) The subcommittee shall, by or pursuant to rules
2 proposed for legislative approval in accordance with §29A-
3 3-1 *et seq.* of this code:

4 (1) Provide funding for the establishment and support of
5 law-enforcement training academies in the state;

6 (2) Establish standards governing the establishment and
7 operation of the law-enforcement training academies,
8 including regional locations throughout the state, in order to
9 provide access to each law-enforcement agency in the state
10 in accordance with available funds;

11 (3) Establish minimum law-enforcement instructor
12 qualifications;

13 (4) Certify qualified law-enforcement instructors;

14 (5) Maintain a list of approved law-enforcement
15 instructors;

16 (6) Promulgate standards governing the training,
17 firearms qualification, and initial and ongoing professional
18 certification of law-enforcement officers and the entry-level
19 law-enforcement training curricula. These standards shall
20 require satisfactory completion of a minimum of 800
21 classroom hours as promulgated by legislative rule and shall
22 provide that the required classroom hours shall be
23 accumulated on the basis of a full-time curricula;

24 (7) Establish standards governing in-service law-
25 enforcement officer training curricula and in-service
26 supervisory level training curricula;

27 (8) Certify organized criminal enterprise investigation
28 techniques with a qualified anti-racial profiling training
29 course or module;

30 (9) Establish standards governing mandatory training to
31 effectively investigate organized criminal enterprises as
32 defined in §61-13-1 *et seq.* of this code while preventing
33 racial profiling, as defined in §30-29-10 of this code, for
34 entry level training curricula and for law-enforcement
35 officers who have not received such training as certified by
36 the subcommittee as required in this section;

37 (10) Establish procedures for implementation of a
38 course in investigation of organized criminal enterprises
39 which includes an anti-racial training module to be available
40 on the Internet or otherwise to all law-enforcement officers.
41 The procedures shall include the frequency with which a
42 law-enforcement officer shall receive training in
43 investigation of organized criminal enterprises and anti-
44 racial profiling and a time frame for which all law-
45 enforcement officers must receive such training: *Provided,*
46 That all law-enforcement officers in this state shall receive
47 such training no later than July 1, 2012. In order to
48 implement and carry out the intent of this section, the
49 subcommittee may promulgate emergency rules pursuant to
50 §29A-3-15 of this code;

51 (11) Certify or decertify or reactivate law-enforcement
52 officers, as provided in §30-29-5 and §30-29-11 of this
53 code;

54 (12) Establish standards and procedures for the
55 reporting of complaints and certain disciplinary matters
56 concerning law-enforcement officers and for reviewing the
57 certification of law-enforcement officers. These standards
58 and procedures shall provide for preservation of records and
59 access to records by law-enforcement agencies and
60 conditions as to how the information in those records is to
61 be used regarding an officer's law-enforcement
62 employment by another law-enforcement agency;

63 (A) The subcommittee shall establish and manage a
64 database that is available to all law-enforcement agencies in
65 the state concerning the status of any person's certification.

66 (B) Personnel or personal information not resulting in a
67 criminal conviction is exempt from disclosure pursuant to
68 the provisions of chapter 29B of this code;

69 (13) Seek supplemental funding for law-enforcement
70 training academies from sources other than the fees
71 collected pursuant to §30-29-4 of this code;

72 (14) Any responsibilities and duties as the Legislature
73 may, from time to time, see fit to direct to the subcommittee;
74 and

75 (15) Submit, on or before September 30 of each year, to
76 the Governor, the Speaker of the House, the President of the
77 Senate, and, upon request, to any individual member of the
78 Legislature a report on its activities during the previous
79 year, and an accounting of funds paid into and disbursed
80 from the special revenue account established pursuant to
81 §30-29-4 of this code;

82 (16) Develop and promulgate rules for state, county, and
83 municipal law-enforcement officers, law-enforcement
84 agencies, and communications and emergency operations
85 centers that dispatch law-enforcement officers with regard
86 to the identification, investigation, reporting, and
87 prosecution of suspected child abuse and neglect: *Provided,*
88 That such rules and procedures must be consistent with the
89 priority criteria prescribed by generally applicable
90 department procedures;

91 (17) Make recommendations to the Governor's
92 Committee on Crime, Delinquency, and Correction for
93 legislation related to the subcommittee's duties and
94 responsibilities, or for research or studies by the Division of
95 Administrative Services on topics related to the
96 subcommittee's duties and responsibilities.

97 (b) In addition to the duties authorized and established
98 by this section, the subcommittee may:

99 (1) Establish training to effectively investigate human
100 trafficking offenses as defined in §61-2-1 *et seq.* of this code
101 for entry level training curricula and for law-enforcement
102 officers who have not received such training as certified by
103 the committee as required by this section; and

104 (2) Establish procedures for the implementation of a
105 course in investigation of human trafficking offenses. The
106 course may include methods of identifying and
107 investigating human trafficking and methods for assisting
108 trafficking victims. In order to implement and carry out the
109 intent of this subdivision, the committee may promulgate
110 emergency rules pursuant to §29A-3-15 of this code.

111 (c) Notwithstanding any provision of this code to the
112 contrary, the subcommittee may deny an application for the
113 establishment of a new law-enforcement training academy
114 if it is determined by the subcommittee that no actual need
115 exists for the establishment of additional law-enforcement
116 training academies to meet the needs of existing law-
117 enforcement agencies in the state.

***§30-29-5. Certification requirements and power to decertify
or reinstate.**

1 (a) Except as provided in subsections (b) and (e) of this
2 section, a person may not be employed as a law-
3 enforcement officer by any West Virginia law-enforcement
4 agency or by any state institution of higher education or by
5 the Public Service Commission of West Virginia on or after
6 the effective date of this article unless the person is certified,
7 or is certifiable in the manner specified in subsection (c) of
8 this section, by the subcommittee as having met the
9 minimum entry level law-enforcement qualification and
10 training program requirements promulgated pursuant to this
11 article: *Provided*, That the provisions of this section do not
12 apply to persons hired by the Public Service Commission as
13 motor carrier inspectors and weight enforcement officers
14 before July 1, 2007.

*NOTE: This section was also amended by S. B. 797 (Chapter 269),
which passed subsequent to this act.

15 (b) Except as provided in subsection (e) of this section,
16 a person who is not certified, or certifiable in the manner
17 specified in subsection (c) of this section, may be
18 conditionally employed as a law-enforcement officer until
19 certified: *Provided*, That within 90 calendar days of the
20 commencement of employment or the effective date of this
21 article, if the person is already employed on the effective
22 date, he or she makes a written application to attend an
23 approved law-enforcement training academy and that the
24 person satisfactorily completes the approved law-
25 enforcement training academy within 18 consecutive
26 months of the commencement of his or her employment:
27 *Provided, however*, That the subcommittee may grant an
28 extension, one-time only, not to exceed six months, based
29 upon a written request from the person justifying the need
30 for such an extension: *Provided further*, That the
31 subcommittee, in its sole discretion, may grant an additional
32 extension upon demonstration of a hardship warranting it.
33 The person's employer shall provide notice, in writing, of
34 the 90-day deadline to file a written application to the
35 academy within 30 calendar days of that person's
36 commencement of employment. The employer shall
37 provide full disclosure as to the consequences of failing to
38 file a timely written application. The academy shall notify
39 the applicant in writing of the receipt of the application and
40 of the tentative date of the applicant's enrollment. Any
41 applicant who, as the result of extenuating circumstances
42 acceptable to his or her employing law-enforcement
43 official, is unable to attend the scheduled training program
44 to which he or she was admitted may reapply and shall be
45 admitted to the next regularly scheduled training program.
46 One year after the effective date of this section, certification
47 as a law-enforcement officer within this state of persons
48 who are not certifiable as provided in subsection (c) of this
49 section, shall, in addition to graduation from an established
50 academy in the state, be based on: Current employment as a
51 sworn law-enforcement officer by any West Virginia law-
52 enforcement agency or any state institution of higher
53 education or the Public Service Commission; and the

54 person's successful completion of an approved entry level
55 law-enforcement examination established by legislative
56 rule of the subcommittee, which shall include, at a
57 minimum, written testing requirements, medical standards,
58 physical standards, and good moral character standards
59 conducted in accordance with such rule. The production of
60 a record of successful passage of the approved entry level
61 law-enforcement examination shall indicate the applicant as
62 qualified under the law-enforcement training and
63 certification standards within this state. An applicant who
64 satisfactorily completes the program and successfully
65 passes the approved entry level law-enforcement
66 examination shall, within 30 days of completion, make
67 written application to the subcommittee requesting
68 certification as having met the minimum entry level law-
69 enforcement qualification and training program
70 requirements. Upon determining that an applicant has met
71 the requirements for certification as set forth in this section,
72 the subcommittee shall forward to the applicant
73 documentation of certification. An applicant who fails to
74 complete the training program to which he or she is first
75 admitted, or was admitted upon reapplication, or who fails
76 to pass the approved entry level law-enforcement
77 examination, may not be certified by the subcommittee: *And*
78 *provided further*, That an applicant who has completed the
79 minimum training and examination required by the
80 subcommittee may be certified as a law-enforcement
81 officer, notwithstanding the applicant's failure to complete
82 additional training hours required in the training program to
83 which he or she originally applied. If more than 24 months
84 but less than 60 months have passed since the applicant for
85 certification has successfully completed the approved entry
86 level law-enforcement examination, the person may be
87 certified but must complete the additional training set forth
88 in legislative rules promulgated by the subcommittee
89 addressing the recertification requirements of certified
90 officers. If more than 60 months have passed since the
91 applicant for certification has successfully completed the
92 approved entry level law-enforcement examination, the

93 person must then attend a subcommittee-approved training
94 program and successfully complete a separate
95 subcommittee entry level law-enforcement examination.

96 (c) Any person who begins employment on or after the
97 effective date of this article as a law-enforcement officer is
98 certifiable as having met the minimum entry level law-
99 enforcement training program requirements and is exempt
100 from attending a law-enforcement training academy if the
101 person has satisfactorily completed a course of instruction
102 in law enforcement equivalent to or exceeding the minimum
103 applicable law-enforcement training curricula promulgated
104 by the subcommittee. To receive certification, the person
105 shall make written application within 90 calendar days
106 following the commencement of employment to the
107 subcommittee requesting certification. The application shall
108 include a notarized statement of the applicant's satisfactory
109 completion of the course of instruction in law enforcement,
110 a notarized transcript of the applicant's relevant scholastic
111 records, and a notarized copy of the curriculum of the
112 completed course of instruction. The subcommittee shall
113 review the application and, if it finds the applicant has met
114 the requirements for certification, shall forward to the
115 applicant documentation of certification. The subcommittee
116 may set the standards for required records to be provided by
117 or on behalf of the applicant officer to verify his or her
118 training, status, or certification as a law-enforcement
119 officer. The subcommittee may allow an applicant officer to
120 participate in the approved equivalent certification program
121 to gain certification as a law-enforcement officer in this
122 state.

123 (d) Except as provided in subdivisions (1) through (3),
124 inclusive, of this subsection, any person who is employed as
125 a law-enforcement officer on or after the effective date of
126 this article and fails to be certified shall be automatically
127 terminated and no further emoluments shall be paid to such
128 officer by his or her employer. Any person terminated shall
129 be entitled to reapply, as a private citizen, to the

130 subcommittee for training and certification, and upon being
131 certified may again be employed as a law-enforcement
132 officer in this state: *Provided*, That if a person is terminated
133 under this subsection because an application was not timely
134 filed to the academy, and the person's employer failed to
135 provide notice or disclosure to that person as set forth in
136 subsection (b) of this section, the employer shall pay the full
137 cost of attending the academy if the person's application to
138 the subcommittee as a private citizen is subsequently
139 approved.

140 (1) Any person who is employed as a law-enforcement
141 officer on or after the effective date of this article and fails
142 to be certified as a result of hardship and/or circumstance
143 beyond his or her control may apply to the director of a
144 training academy for reentry to the next available academy.

145 (2) Any person who is employed as a law-enforcement
146 officer on or after the effective date of this article and fails
147 to be certified as a result of voluntary separation from an
148 academy program shall be automatically terminated and no
149 further emoluments may be paid to such officer by his or her
150 employer. Any person terminated as a result of voluntary
151 separation from an academy program may not be
152 conditionally employed as a law-enforcement officer for a
153 period of two years from the date of voluntary separation.

154 (3) Any person who is employed as a law-enforcement
155 officer on or after the effective date of this article and fails
156 to be certified as a result of dismissal from an academy
157 program shall be automatically terminated and no further
158 emoluments may be paid to such officer by his or her
159 employer. Any person terminated as a result of dismissal
160 from an academy program may not be conditionally
161 employed as a law-enforcement officer for a period of five
162 years from the date of dismissal and receiving approval
163 from the subcommittee.

164 (e) Nothing in this article may be construed as
165 prohibiting any governing body, Civil Service Commission

166 or chief executive of any West Virginia law-enforcement
167 agency from requiring their law-enforcement officers to
168 meet qualifications and satisfactorily complete a course of
169 law-enforcement instruction which exceeds the minimum
170 entry level law-enforcement qualification and training
171 curricula promulgated by the subcommittee.

172 (f) The subcommittee, or its designee, may decertify or
173 reactivate a law-enforcement officer pursuant to the
174 procedure contained in this article and legislative rules
175 promulgated by the subcommittee.

176 (g) Any person aggrieved by a decision of the
177 subcommittee made pursuant to this article may contest the
178 decision in accordance with the provisions of §29A-5-1 *et*
179 *seq.* of this code.

180 (h) The subcommittee may issue subpoenas for the
181 attendance of witnesses and the production of necessary
182 evidence or documents in any proceeding, review, or
183 investigation relating to certification or hearing before the
184 subcommittee.



CHAPTER 243

**(Com. Sub. for S. B. 770 - By Senators Takubo,
Stollings, Rucker 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 §30-14-2 and §30-14-4 of the Code of West Virginia, 1931, as amended, all relating to definitions and applications for licensure or educational permits for osteopathic physicians and surgeons; revising requirements for post-doctoral training; and eliminating continuing medical education requirements for initial licensure.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-2. Definitions.

1 “Accreditation Council for Graduate Medical
2 Education” (ACGME) is the body responsible for
3 accrediting the majority of graduate medical education
4 programs for physicians (both medical doctors and doctors
5 of osteopathic medicine), including medical internship,
6 residency, and fellowship programs;

7 “Accredited osteopathic college” means a college of
8 osteopathy and surgery which requires as a minimum
9 prerequisite for admission preprofessional training of at
10 least two years of academic work in specified scientific
11 subjects, as prescribed by the board or by the college
12 accrediting agency of the American Osteopathic
13 Association, in an accredited college of arts and sciences
14 and which requires for graduation a course of study
15 approved by the board in accordance with the minimum
16 standards established by the American Osteopathic
17 Association;

18 “American Osteopathic Association” (AOA) is the
19 entity that serves as the primary certifying body for
20 osteopathic physicians and is the accrediting agency for
21 osteopathic graduate medical education. Prior to the
22 implementation of a single accreditation system for
23 graduate medical education in the United States of America
24 under the ACGME, which began in 2015 and will be fully
25 implemented by July 1, 2020, the AOA also served as the
26 accrediting body for osteopathic graduate medical
27 education programs in the United States of America;

28 “Approved program of post-graduate clinical training”
29 means a program of clinical training approved by, or subject
30 to approval by, the American Osteopathic Association or
31 approved by the Accreditation Council for Graduate

32 Medical Education for the purposes of intern or resident
33 training;

34 “Board” means the West Virginia Board of Osteopathic
35 Medicine: *Provided*, That where used elsewhere in the code,
36 the West Virginia Board of Osteopathy and Board of
37 Osteopathy shall also mean the West Virginia Board of
38 Osteopathic Medicine;

39 “License” means legal authorization issued by the board
40 to a fully qualified osteopathic physician to engage in the
41 regular practice of osteopathic medicine and surgery;

42 “Osteopathy” means that system of the healing art
43 which places the chief emphasis on the structural integrity
44 of the body mechanism as being the most important single
45 factor in maintaining the well-being of the organism in
46 health and disease;

47 “Permit” means a limited, legal authorization issued by
48 the board to an osteopathic physician to practice osteopathic
49 medicine and surgery in this state while serving under
50 special circumstances of public need or while undergoing
51 post-graduate clinical training as a prerequisite to licensure;

52 “Reciprocal endorsement” means a duly authenticated
53 verification of the board, addressed to a board or agency of
54 another country, state, territory, province, or the District of
55 Columbia, vouching that a license issued to an osteopathic
56 physician and surgeon pursuant to the laws of this state is
57 currently valid and not suspended or revoked for any cause
58 or causes specified in this article.

§30-14-4. Application for license or educational permit.

1 (a) Each applicant for examination by the board, with
2 the exception of assistants to osteopathic physicians and
3 surgeons, as hereinafter provided, shall submit an
4 application therefor on forms prepared and furnished by the
5 board.

6 (b) Each applicant for a license shall furnish evidence,
7 verified by oath and satisfactory to the board, establishing
8 that the applicant has satisfied the following requirements:

9 (1) The applicant is 18 years of age or over;

10 (2) The applicant has graduated from an accredited
11 osteopathic college;

12 (3) The applicant has successfully completed a
13 minimum of one year of post-doctoral, clinical training in a
14 program approved by the American Osteopathic
15 Association or the Accreditation Council for Graduate
16 Medical Education.

17 (c) Each applicant for an educational permit shall
18 furnish evidence, verified by oath and satisfactory to the
19 board, establishing that the applicant has satisfied the
20 following requirements:

21 (1) The applicant is 18 years of age or over;

22 (2) The applicant has graduated from an accredited
23 osteopathic college; and

24 (3) The applicant is under contract as an intern or
25 resident in an approved program of post-graduate clinical
26 training.

27 (d) The board may not issue a license or permit to any
28 person until the applicant has paid the application fee
29 established by legislative rule of the board.

30 (e) In order to give timely effect to the amendments to
31 this section and §30-14-10 of this article, the board is
32 authorized to propose a legislative rule consistent with these
33 amendments as an emergency rule under the provisions of
34 §29A-3-15 of this code.

CHAPTER 244

**(Com. Sub. for H. B. 4020 - By Delegates Foster,
Phillips, Jennings, Atkinson, Bibby, Steele, Butler,
Waxman, Espinosa, Porterfield and Mandt)**

[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 §7-1-3tt; to amend said code by adding thereto a new section, designated †§8-12-21; and to amend said code by adding thereto a new section, designated §30-1-25, all relating to prohibiting the regulation and licensing of occupations by local governments; declaring state authority to regulate trades, occupations, and professions; prohibiting regulation of occupations by county commissions; prohibiting municipalities from enacting or enforcing laws regulating trades, occupations, and professions; and preserving the authority of local governments to regulate certain projects, construction, and modifications.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3tt. Restriction on the regulation of trades, occupations, and professions.

1 Unless specifically authorized under this code, a county
2 commission shall not enact, and shall not enforce, any law,
3 ordinance, regulation, or rule, requiring the licensing,
4 certification, or registration of any person or business in
5 order to practice or conduct a trade, occupation, or

† Redesignated

6 profession within the jurisdiction of the county: *Provided,*
7 That this section shall not limit the authority of a county to
8 impose or levy per project fees upon development projects
9 and other forms of capital improvement affecting the county
10 and its government.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

†§8-12-21. Restriction on the regulation of trades, occupations, and professions.

1 Except as expressly provided by this code, neither a
2 municipality nor the governing body of any municipality
3 may, by ordinance or otherwise, enact or enforce any law,
4 ordinance, regulation, or rule, requiring the licensing,
5 certification, or registration of any person or business in
6 order to practice or conduct a trade, occupation, or
7 profession within the jurisdiction of the municipality. This
8 section does not limit the authority of a municipality to
9 regulate the repair, alteration, improvement, demolition or
10 removal of buildings, structures, or of any equipment or part
11 of a structure as provided in §8-12-14 and §8-12-16 of this
12 code.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-25. Primacy of state regulation of occupational practice.

1 The power to regulate occupations for the protection of
2 the public is exclusively a function of the Legislature. A
3 public body or political subdivision may only propose and

† Redesignated

4 administer the regulation of a trade, occupation, or
5 profession – including, but not limited to, the issuance of a
6 license, requirement of registration, or recognition of a
7 certification – to the extent expressly authorized to do so
8 under this code.

●

CHAPTER 245

**(Com. Sub. for H. B. 4099 - By Delegates Foster,
Butler, Waxman, Cadle, J. Jeffries and Porterfield)**

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §30-27-11a of the Code of West Virginia, 1931, as amended; to amend and reenact §30-27-1 and §30-27-3 of said code; all relating to eliminating the regulation of shampooing and eliminating the permit requirement for shampoo assistants.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-1. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to
2 practice barbering, barber permanent waving, cosmetology,
3 hairstyling, waxing, aesthetics or nail care in this state
4 without a license or certification issued under the provisions
5 of this article, or advertise or use any title or description
6 tending to convey the impression that the person is a
7 licensed or certified aesthetician, barber, barber crossover,
8 barber permanent waviest, cosmetologist, cosmetologist
9 crossover, hairstylist, waxing specialist or nail technician

10 unless the person has been licensed or obtained certification
11 under the provisions of this article and the license or
12 certification has not expired, been suspended or revoked.

13 (b) No salon, except through a licensee or certification,
14 may render any service or engage in any activity which, if
15 rendered or engaged in by an individual, would constitute
16 the practices licensed or certified under the provisions of
17 this article.

18 (c) No school, except through a certified instructor, may
19 instruct, render any service or engage in any activity which,
20 if taught, rendered or engaged in by an individual, would
21 constitute the practices licensed under the provisions of this
22 article.

***§30-27-3. Definitions.**

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (a) “Aesthetics” or “esthetics” means any one or any
5 combination of the following acts when done on the human
6 body for compensation and not for the treatment of disease:

7 (1) Administering cosmetic treatments to enhance or
8 improve the appearance of the skin, including cleansing,
9 toning, performing effleurage or other related movements,
10 stimulating, exfoliating or performing any other similar
11 procedure on the skin of the human body or scalp;

12 (2) Applying, by hand or with a mechanical or electrical
13 apparatus, any cosmetics, makeups, oils, powders, clays,
14 antiseptics, tonics, lotions, creams or chemical preparations
15 necessary for the practice of aesthetics to another person’s
16 face, neck, back, shoulders, hands, elbows and feet up to and
17 including the knee;

*NOTE: This section was also amended by H. B. 4607 (Chapter 251),
which passed subsequent to this act.

18 (3) The rubbing, cleansing, exercising, beautifying or
19 grooming of another person's face, neck, back, shoulders,
20 hands, elbows and feet up to and including the knee;

21 (4) The waxing and tweezing of hair on another person's
22 body;

23 (5) The wrapping of another person's body in a body
24 wrap;

25 (6) Applying artificial eyelashes and eyebrows; and

26 (7) The lightening of hair on the body except the scalp.

27 (b) "Aesthetician" or "esthetician" means a person
28 licensed under the provisions of this article who engages in
29 the practice of aesthetics and has completed six hundred
30 clock-hours of training.

31 (c) "Applicant" means a person making application for
32 a professional license, license, certificate, registration,
33 permit or renewal under the provisions of this article.

34 (d) "Barber" means a person licensed under the
35 provisions of this article who engages in the practice of
36 barbering and has completed a twelve hundred clock-hour
37 barber training program without chemical services or a
38 fifteen hundred clock-hour barber training program with
39 chemical services, or has successfully completed the barber
40 apprenticeship program.

41 (e) "Barbering" means any one or any combination of
42 the following acts when done on the head and neck for
43 compensation and not for the treatment of disease:

44 (1) Shaving, shaping and trimming the beard, or both;

45 (2) Cutting, singeing, arranging, dressing, tinting,
46 bleaching, or applying lotions or tonics on human hair, or a
47 wig or hairpiece; and

48 (3) Applications, treatments or rubs of the scalp, face,
49 or neck with oils, creams, lotions, cosmetics, antiseptics,
50 powders, or other preparations in connection with the
51 shaving, cutting or trimming of the hair or beard.

52 (f) “Barber crossover” is a person who has completed
53 twelve hundred or fifteen hundred clock-hours of training,
54 is licensed as a barber, and completed additional hours of
55 training in nails, aesthetics and/or chemical services, to the
56 total amount of twenty-one hundred hours, to perform
57 cosmetology.

58 (g) “Barber permanent waving” means the following
59 acts performed on the head and neck for compensation and
60 not for the treatment of disease:

61 (1) The bleaching or tinting of hair; and

62 (2) The permanent waving of hair.

63 (h) “Barber permanent waviest” means a person who has
64 completed two thousand clock-hours of training and was
65 licensed to perform barbering and barber permanent
66 waving enrolled by August 28, 2012.

67 (i) “Board” means the West Virginia Board of Barbers
68 and Cosmetologists.

69 (j) “Certificate” means an instructor certificate to teach
70 in a school under the provisions of this article or a document
71 issued by the board for certification obtained pursuant to
72 section eight-b of this article.

73 (k) “Certificate holder” means a person certified as an
74 instructor to teach in a school under the provisions of this
75 article or who has obtained a certification pursuant to
76 section eight-b of this article.

77 (l) “Cosmetologist” means a person licensed under the
78 provisions of this article who engages in the practice of

79 cosmetology and who has completed eighteen hundred
80 clock-hours of training.

81 (m) “Cosmetology” means any one or any combination
82 of the following acts when done on the human body for
83 compensation and not for the treatment of disease:

84 (1) Cutting, styling, shaping, arranging, braiding,
85 weaving, dressing, adding extensions, curling, waving,
86 permanent waving, relaxing, straightening, cleansing,
87 singeing, bleaching, tinting, coloring, waxing, tweezing, or
88 similarly work on human hair, or a wig or hairpiece, by any
89 means, including hands, mechanical or electrical devices or
90 appliances;

91 (2) Nail care;

92 (3) Applying by hand or with a mechanical or electrical
93 device or appliance, any cosmetics, makeups, oils, powders,
94 clays, antiseptics, tonics, lotions, creams or chemical
95 preparations necessary for the practice of aesthetics to
96 another person’s face, neck, shoulders, hands, elbows and
97 feet up to and including the knee;

98 (4) The rubbing, cleansing, exercising, beautifying or
99 grooming of another person’s face, neck, shoulders, hands,
100 elbows and feet up to and including the knee;

101 (5) The wrapping of another person’s body in a body
102 wrap; and

103 (6) Performing aesthetics.

104 (n) “Cosmetology crossover” is a person who has
105 completed eighteen hundred clock-hours of training, is
106 licensed as a cosmetologist and completes an additional
107 three hundred hours of training in clipper cuts and face
108 shaving to perform barbering, for a total of twenty-one
109 hundred hours.

110 (o) “General supervision” means:

111 (1) For schools, a master or certified instructor is on the
112 premises and is quickly and easily available; or

113 (2) For salons, a professional licensee is on the premises
114 and is quickly and easily available.

115 (p) “Hair styling” means any one or any combination of
116 the following acts when done on the head and neck for
117 compensation and not for the treatment of disease:

118 Cutting, styling, shaping, arranging, braiding, weaving,
119 dressing, adding extensions, curling, facial hair trimming,
120 scalp treatments, waving, permanent waving, relaxing,
121 straightening, singeing, bleaching, tinting, coloring, or
122 similarly work on human hair, or a wig or hairpiece, by any
123 means, including hands, mechanical or electrical devices or
124 appliances.

125 (q) “Hair stylist” means a person licensed under the
126 provisions of this article who engages in the practice of hair
127 styling and who has completed one thousand clock-hours of
128 training, effective July 1, 2016.

129 (r) “License” means a professional license, a salon
130 license or a school license.

131 (s) “Licensed school” means a facility which has been
132 approved by the West Virginia Council for Community and
133 Technical College Education (CCTCE), Department of
134 Education in conjunction with CCTCE or Department of
135 Education in conjunction with the Department of
136 Corrections pursuant to section nine, article two-b, chapter
137 eighteen-b of this code to educate persons to be licensed or
138 issued certain permits under the provisions of this article.

139 (t) “Licensee” means a person, corporation or firm
140 holding a license issued under the provisions of this article.

141 (u) “Nail care” means any one or any combination of the
142 following acts when done on the human body for
143 compensation and not for the treatment of disease:

144 (1) The cleansing, dressing, or polishing of nails of a
145 person;

146 (2) Performing artificial nail service; and

147 (3) The cosmetic treatment of the feet up to the knee and
148 the hands up to the elbow.

149 (v) “Nail technician” or “manicurist” means a person
150 licensed under the provisions of this article who engages in
151 the practice of nail care and has completed four hundred
152 clock-hours of training.

153 (w) “Permit” means a work permit.

154 (x) “Permitee” means a person holding a work permit.

155 (y) “Professional license” means a license to practice as
156 an aesthetician, barber, barber crossover, barber permanent
157 waviest, cosmetologist, cosmetologist crossover, hairstylist
158 or nail technician.

159 (z) “Registration” means a registration issued by the
160 board to a person who rents or leases a booth or chair from
161 a licensed salon owner and operator, or both, or a
162 registration issued by the board to a person who is a student
163 in a school.

164 (aa) “Registrant” means a person who holds a
165 registration under the provisions of this article.

166 (bb) “Salon” means a shop or other facility where a
167 person practices under a professional license.

168 (cc) “Salon license” means a license to own and operate
169 a salon.

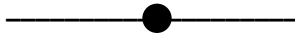
170 (dd) “Student registration” means a registration issued
171 by the board to a student to study at a school licensed under
172 the provisions of this article.

173 (ee) “Waxing specialist” means a person certified under
174 the provisions of this article who engages in the practice of
175 waxing and tweezing of hair on another person’s body.

176 (ff) Hair braiding, threading and any other item not
177 spelled out are not regulated by the West Virginia Board of
178 Barbers and Cosmetologists.

§30-27-11a. Shampoo assistant.

1 [Repealed]



CHAPTER 246

**(Com. Sub. for H. B. 4352 - By Delegates Jennings,
Maynard, Bibby, Lovejoy, Miller, Pack, Sypolt,
Worrell, Waxman, Hardy and Summers)**

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

AN ACT to amend and reenact §29-3B-4 and §29-3B-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-3C-4 of said code; and to amend and reenact §29-3D-2 and §29-3D-6 of said code, all relating to licenses issued by the Fire Marshal; removing the use of post-criminal conduct in professional and occupational initial licensure or certification in decision making; creating a rational nexus requirement between prior criminal conduct and initial licensure or certification in decision making; providing criteria for the State Fire Marshal as licensing or certification authority to determine whether a criminal conviction has a rational nexus to an occupation; limiting licensure disqualification; authorizing persons to petition the State Fire Marshal as to whether a person’s criminal records precludes licensure; and reducing the number of necessary hours as a

qualification for licensure as a journeyman sprinkler fitter or sprinkler fitter in training.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal; reciprocity.

1 (a) The following classes of license may be issued by
2 the State Fire Marshal: “Master electrician license,”
3 “journeyman electrician license,” “apprentice electrician
4 license” and “temporary electrician license.” Additional
5 classes of specialty electrician license may be issued by the
6 State Fire Marshal.

7 (b) The State Fire Marshal shall issue the appropriate
8 class of license upon a finding that the applicant possesses
9 the qualifications for the class of license to be issued. When
10 considering whether an applicant possess the qualifications
11 for the class of license, the State Fire Marshal shall consider
12 whether an applicant’s prior criminal convictions bear a
13 rational nexus on the license being sought.

14 (1) The State Fire Marshal may not disqualify an
15 applicant from initial licensure because of a prior criminal
16 conviction that remains unreversed unless that conviction is
17 for a crime that bears a rational nexus to the activity
18 requiring licensure. In determining whether a criminal
19 conviction bears a rational nexus to a profession or
20 occupation, the State Fire Marshal shall consider at a
21 minimum:

22 (A) The nature and seriousness of the crime for which
23 the individual was convicted;

24 (B) The passage of time since the commission of the
25 crime;

26 (C) The relationship of the crime to the ability, capacity,
27 and fitness required to perform the duties and discharge the
28 responsibilities of the profession or occupation; and

29 (D) Any evidence of rehabilitation or treatment
30 undertaken by the individual.

31 (2) Notwithstanding any other provision of this code to
32 the contrary, if an applicant is disqualified from licensure
33 because of a prior criminal conviction, the State Fire
34 Marshal shall permit the applicant to apply for initial
35 licensure if:

36 (A) A period of five years has elapsed from the date of
37 conviction or the date of release from incarceration,
38 whichever is later;

39 (B) The individual has not been convicted of any other
40 crime during the period of time following the disqualifying
41 offense; and

42 (C) The conviction was not for an offense of a violent
43 or sexual nature: *Provided*, That a conviction for an offense
44 of a violent or sexual nature may subject an individual to a
45 longer period of disqualification from licensure, to be
46 determined by the State Fire Marshal.

47 (3) An individual with a criminal record who has not
48 previously applied for licensure may petition the State Fire
49 Marshal at any time for a determination of whether the
50 individual's criminal record will disqualify the individual
51 from obtaining a license. This petition shall include
52 sufficient details about the individual's criminal record to
53 enable the State Fire Marshal to identify the jurisdiction
54 where the conviction occurred, the date of the conviction,
55 and the specific nature of the conviction.

56 (c) The State Fire Marshal shall propose rules for
57 legislative approval regarding qualifications for testing,
58 issuance of licenses, and renewal in accordance with the
59 provisions of §29A-3-1 *et seq.*, of this code.

60 (d) To the extent that other jurisdictions provide for the
61 licensing of electricians, the State Fire Marshal may grant
62 the same or equivalent classification of license without
63 written examination upon satisfactory proof furnished to the
64 state Fire Marshal that the qualifications of the applicant are
65 equal to the qualifications required by this article and upon
66 payment of the required fee: *Provided*, That as a condition
67 to reciprocity, the other jurisdictions must extend to licensed
68 electricians of this state, the same or equivalent
69 classification.

70 (e) In addition to any other information required, the
71 applicant's social security number shall be recorded on any
72 application for a license submitted pursuant to the
73 provisions of this section.

§29-3B-7. Denial of license; suspension and revocation of license.

1 (a) The State Fire Marshal may deny a license to any
2 applicant who fails to comply with the rules established by
3 the State Fire Marshal, or who lacks the necessary
4 qualifications; *Provided*, That the State Fire Marshal shall
5 apply §29-3B-4(b) when determining if an applicant is
6 eligible for licensure.

7 (b) The State Fire Marshal may upon complaint or upon
8 his or her own inquiry and, after notice to the licensee,
9 suspend or revoke a licensee's license if:

10 (1) The license was granted upon an application or
11 documents supporting such application which materially
12 misstated the terms of the applicant's qualifications or
13 experience;

14 (2) The licensee subscribed or vouched for a material
15 misstatement by an applicant;

16 (3) The licensee incompetently or unsafely performs
17 electrical work; or

18 (4) The licensee fails to comply with any rule of the
19 State Fire Marshal promulgated to fulfill his or her
20 responsibilities under this article.

21 (c) Any person aggrieved by an order or decision of the
22 State Fire Marshal under this article is entitled to judicial
23 review as provided by section eighteen, article three of this
24 chapter and by chapter twenty-nine-a of this code.

ARTICLE 3C. CERTIFICATION OF ELECTRICAL INSPECTORS.

§29-3C-4. Certification program; duties of the State Fire Marshal; rulemaking.

1 (a) The State Fire Marshal shall propose rules for
2 legislative approval in accordance with the provisions of
3 §29A-3-1 *et seq.*, of this code to establish a program for the
4 certification of electrical inspectors. Proposed rules shall
5 provide: Standards and procedures for certification,
6 including applications, examinations, fees, qualifications,
7 procedures for investigating complaints, revoking or
8 suspending certifications and for renewing licenses. The
9 State Fire Marshal is also authorized to propose emergency
10 rules to implement the provisions of this article: *Provided*,
11 That the emergency rules specify an initial certification fee
12 of \$50.

13 (b) The State Fire Marshal shall certify an electrical
14 inspector upon a finding that the applicant possesses the
15 requisite qualifications.

16 (c) When considering whether an applicant possess the
17 qualifications for certification as an electrical inspector, the
18 State Fire Marshal shall consider whether an applicant's
19 prior criminal convictions bear a rational nexus on the
20 certification being sought.

21 (1) The State Fire Marshal may not disqualify an
22 applicant from initial certification because of a prior
23 criminal conviction that remains unreversed unless that

24 conviction is for a crime that bears a rational nexus to the
25 activity requiring certification. In determining whether a
26 criminal conviction bears a rational nexus to a profession or
27 occupation, the State Fire Marshal shall consider at a
28 minimum:

29 (A) The nature and seriousness of the crime for which
30 the individual was convicted;

31 (B) The passage of time since the commission of the
32 crime;

33 (C) The relationship of the crime to the ability, capacity,
34 and fitness required to perform the duties and discharge the
35 responsibilities of the profession or occupation; and

36 (D) Any evidence of rehabilitation or treatment
37 undertaken by the individual.

38 (2) Notwithstanding any other provision of this code to
39 the contrary, if an applicant is disqualified from certification
40 because of a prior criminal conviction, the State Fire
41 Marshal shall permit the applicant to apply for initial
42 certification if:

43 (A) A period of five years has elapsed from the date of
44 conviction or the date of release from incarceration,
45 whichever is later;

46 (B) The individual has not been convicted of any other
47 crime during the period of time following the disqualifying
48 offense; and

49 (C) The conviction was not for an offense of a violent
50 or sexual nature: *Provided*, That a conviction for an offense
51 of a violent or sexual nature may subject an individual to a
52 longer period of disqualification from certification, to be
53 determined by the State Fire Marshal.

54 (3) An individual with a criminal record who has not
55 previously applied for certification may petition the State

56 Fire Marshal at any time for a determination of whether the
57 individual's criminal record will disqualify the individual
58 from obtaining a certification. This petition shall include
59 sufficient details about the individual's criminal record to
60 enable the State Fire Marshal to identify the jurisdiction
61 where the conviction occurred, the date of the conviction,
62 and the specific nature of the conviction.

ARTICLE 3D. SUPERVISION OF FIRE PROTECTION WORK.

§29-3D-2. Definitions.

1 As used in this article and the legislative rules
2 promulgated pursuant to this article:

3 "Combination Fire/Smoke Damper" means a device
4 that meets both fire damper and smoke damper
5 requirements.

6 "Damper" means a fire damper, smoke damper or
7 combination fire/smoke damper.

8 "Damper work" means to install, test, maintain or repair
9 a damper.

10 "Engineered Suppression Systems Installer" means a
11 person certified by a manufacturer to install, alter, extend,
12 maintain, layout or repair an agent suppression system.

13 "Engineered Suppression Systems Technician" means a
14 person certified by a manufacturer to maintain or repair an
15 agent suppression system.

16 "Fire damper" means a device installed in an air
17 distribution system, designed to close automatically upon
18 detection of heat, to interrupt migratory airflow and to
19 restrict the passage of flame. Fire dampers are classified for
20 use in either static systems or for dynamic systems, where
21 the dampers are rated for closure under airflow.

22 “Fire protection damper technician” means a person
23 certified to install, test, maintain or repair a damper.

24 “Fire protection damper technician in training” means a
25 person with interest in and an aptitude for performing
26 installation, maintenance or repair work to a damper as
27 defined in this article, but who alone is not capable or
28 authorized to perform damper work unless directly
29 supervised by a Fire Protection Damper Technician.

30 “Fire protection layout technician” is an individual who
31 has achieved National Institute for Certification in
32 Engineering Technologies (NICET) Level III or higher
33 certification, and who has the knowledge, experience and
34 skills necessary to layout fire protection systems based on
35 engineering design documents.

36 “Fire protection system” means any fire protection
37 suppression device or system designed, installed and
38 maintained in accordance with the applicable National Fire
39 Protection Association (NFPA) codes and standards, but
40 does not include public or private mobile fire vehicles.

41 “Fire protection work” means the installation,
42 alteration, extension, maintenance, or testing of all piping,
43 materials and equipment inside a building, including the use
44 of shop drawings prepared by a fire protection layout
45 technician, in connection with the discharge of water, other
46 special fluids, chemicals or gases and backflow preventers
47 for fire protection for the express purpose of extinguishing
48 or controlling fire.

49 “Journeyman sprinkler fitter” means a person qualified
50 by at least 5,000 hours of work experience installing,
51 adjusting, repairing and dismantling fire protection systems
52 and who is competent to instruct and supervise the fire
53 protection work of a sprinkler fitter in training.

54 “License” means a valid and current license issued by
55 the State Fire Marshal in accordance with the provisions of
56 this article.

57 “Portable Fire Extinguisher Technician” means a person
58 certified in accordance with NFPA 10 to install, maintain,
59 repair and certify portable fire extinguishers as defined by
60 NFPA 10.

61 “Preengineered Suppression Systems Installer” means a
62 person certified by a manufacturer to install, alter, extend,
63 maintain, layout or repair an agent suppression system.

64 “Preengineered Suppression Systems Technician”
65 means a person certified to maintain or repair an agent
66 suppression system.

67 “Single family dwelling” means a building which is
68 occupied as, or designed or intended for occupancy as, a
69 single residence for one or more persons.

70 “Smoke Damper” means a device within an operating
71 (dynamic) air distribution system to control the movement
72 of smoke.

73 “Sprinkler fitter in training” means a person with
74 interest in and an aptitude for performing fire protection
75 work but who alone is not capable of performing such work,
76 and who has fewer than 5,000 hours of experience
77 installing, adjusting, repairing and dismantling fire
78 protection systems.

§29-3D-6. Denial, suspension and revocation of license.

1 (a) The State Fire Marshal may deny a license to any
2 applicant who fails to comply with the rules established by
3 the State Fire Marshal, or who lacks the necessary
4 qualifications. When considering whether an applicant
5 possess the qualifications for a license, the State Fire
6 Marshal shall consider whether an applicant’s prior criminal

7 convictions bear a rational nexus on the license being
8 sought.

9 (1) The State Fire Marshal may not disqualify an
10 applicant from initial licensure because of a prior criminal
11 conviction that remains unreversed unless that conviction is
12 for a crime that bears a rational nexus to the activity
13 requiring licensure. In determining whether a criminal
14 conviction bears a rational nexus to a profession or
15 occupation, the State Fire Marshal shall consider at a
16 minimum:

17 (A) The nature and seriousness of the crime for which
18 the individual was convicted;

19 (B) The passage of time since the commission of the
20 crime;

21 (C) The relationship of the crime to the ability, capacity,
22 and fitness required to perform the duties and discharge the
23 responsibilities of the profession or occupation; and

24 (D) Any evidence of rehabilitation or treatment
25 undertaken by the individual.

26 (2) Notwithstanding any other provision of this code to
27 the contrary, if an applicant is disqualified from licensure
28 because of a prior criminal conviction, the State Fire
29 Marshal shall permit the applicant to apply for initial
30 licensure if:

31 (A) A period of five years has elapsed from the date of
32 conviction or the date of release from incarceration,
33 whichever is later;

34 (B) The individual has not been convicted of any other
35 crime during the period of time following the disqualifying
36 offense; and

37 (C) The conviction was not for an offense of a violent
38 or sexual nature: *Provided*, That a conviction for an offense

39 of a violent or sexual nature may subject an individual to a
40 longer period of disqualification from licensure, to be
41 determined by the State Fire Marshal.

42 (3) An individual with a criminal record who has not
43 previously applied for licensure may petition the State Fire
44 Marshal at any time for a determination of whether the
45 individual's criminal record will disqualify the individual
46 from obtaining a license. This petition shall include
47 sufficient details about the individual's criminal record to
48 enable the State Fire Marshal to identify the jurisdiction
49 where the conviction occurred, the date of the conviction,
50 and the specific nature of the conviction.

51 (b) The State Fire Marshal may, upon complaint or upon
52 his or her own inquiry, and after notice to the licensee,
53 suspend or revoke a licensee's license if:

54 (1) The license was granted upon an application or
55 documents supporting the application which materially
56 misstated the terms of the applicant's qualifications or
57 experience;

58 (2) The licensee subscribed or vouched for a material
59 misstatement in his or her application for licensure; or

60 (3) The licensee incompetently or unsafely performs
61 plumbing, fire protection work or damper work.



CHAPTER 247

(H. B. 4353 - By Delegates Howell, Porterfield, J. Jeffries, Hott, Kump, Cadle, Sypolt and Hamrick)

[Passed February 19, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §17A-6-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-23-8 of said code; to amend said code by adding thereto a new section, designated §21-1-6; to amend and reenact §21-2-9 of said code; to amend and reenact §21-5-5c of said code; to amend and reenact §21-14-6 of said code; to amend and reenact §21-16-7 of said code; to amend and reenact §29-22-8 of said code; to amend and reenact §29-22A-7 of said code; to amend and reenact §29-22B-502 of said code; to amend and reenact §29-22C-15 and §29-22C-16 of said code; to amend and reenact §29-22D-10 of said code; to amend and reenact §29-25-13 of said code; to amend and reenact §31-17A-5 of said code; to amend and reenact §32A-2-8 of said code; and to amend and reenact §33-13C-3 and §33-13C-4 of said code; all relating to the use of post-criminal conduct in professional and occupational initial licensure decision making; creating a rational nexus requirement between prior criminal conduct and initial licensure decision making; providing criteria for commissioners or commissions as licensing authorities to determine whether a criminal conviction bears a rational nexus to an occupation; removing offenses described as one of moral turpitude as a basis for license denial unless the underlying crime bears a rational nexus to the occupation or profession requiring licensure; limiting licensure disqualification; and authorizing persons to petition licensure commissioners or commissions as to whether a person's criminal records precludes licensure.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 17A. MOTOR VEHICLE
ADMINISTRATION, REGISTRATION, CERTIFICATE
OF TITLE, AND ANTITHEFT PROVISIONS.**

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS
OR DISMANTLERS; SPECIAL PLATES; TEMPORARY
PLATES OR MARKERS.**

**§17A-6-6. Refusal or issuance of license certificate; license
certificate not transferable.**

1 (a) Upon the review of the application and all other
2 information before him or her, the commissioner may make
3 and enter an order denying an application for a license
4 certificate and refuse the license certificate sought. A denial
5 and refusal are final and conclusive unless an appeal is made
6 in accordance with the provisions of rules proposed for
7 legislative approval in accordance with the provisions of
8 §29A-3-1 *et seq.*, of this code. The commissioner shall
9 make and enter an order denying or refusing a license, if the
10 commissioner finds that the applicant (individually, if an
11 individual, or the partners, if a co-partnership, or the officers
12 and directors, if a corporation):

13 (1) Has failed to furnish the required bond unless
14 otherwise exempt under the provisions of §17A-2-2a of this
15 code;

16 (2) Has failed to furnish the required certificate of
17 insurance;

18 (3) Has knowingly made false statement of a material
19 fact in his or her application;

20 (4) Has habitually defaulted on financial obligations in
21 this state or any other state or jurisdiction;

22 (5) Has been convicted of a felony: *Provided*, That the
23 commissioner shall apply §17A-6-6(c) and §17A-6-6(d) of

24 this code in determining whether an applicant's prior
25 criminal convictions bear a rational nexus to the license
26 being sought;

27 (6) So far as can be ascertained, has not complied with
28 and will not comply with the registration and title laws of
29 this state or any other state or jurisdiction;

30 (7) Does not or will not have or maintain at each place
31 of business, subject to the qualification contained in §17A-
32 6-1(a)(17) of this code with respect to a new motor vehicle
33 dealer (an established place of business as defined for the
34 business in question) in that section;

35 (8) Has been convicted of any fraudulent act in
36 connection with the business of new motor vehicle dealer,
37 used motor vehicle dealer, house trailer dealer, trailer
38 dealer, recreational vehicle dealer, motorcycle dealer, used
39 parts dealer, or wrecker or dismantler in this state or any
40 other state or jurisdiction: *Provided*, That the commissioner
41 shall apply §17A-6-6(c) and §17A-6-6(d) of this code in
42 determining whether an applicant's prior criminal
43 convictions bear a rational nexus to the license being
44 sought;

45 (9) Has done any act or has failed or refused to perform
46 any duty for which the license certificate sought could be
47 suspended or revoked were it then issued and outstanding;

48 (10) Is not age 18 years or older;

49 (11) Is delinquent in the payment of any taxes owed to
50 the United States, the State of West Virginia, or any political
51 subdivision of the state;

52 (12) Has been denied a license in another state or has
53 been the subject of license revocation or suspension in
54 another state;

55 (13) Has committed any action in another state which,
56 if it had been committed in this state, would be grounds for
57 denial and refusal of the application for a license certificate;

58 (14) Has failed to pay any civil penalty assessed by this
59 state or any other state;

60 (15) Has failed to reimburse when ordered, any claim
61 against the dealer recovery fund as prescribed in §17A-6-2a
62 of this code; or

63 (16) Has failed to comply with the provisions of §17A-
64 6E-1 *et seq.* of this code, pertaining to the employment of
65 licensed salespersons.

66 Otherwise, the commissioner shall issue to the applicant
67 the appropriate license certificate which entitles the licensee
68 to engage in the business of new motor vehicle dealer, used
69 motor vehicle dealer, house trailer dealer, trailer dealer,
70 recreational vehicle dealer, motorcycle dealer, used parts
71 dealer, or wrecker or dismantler, as the case may be.

72 (b) A license certificate issued in accordance with the
73 provisions of this article is not transferable.

74 (c) The commissioner may not disqualify an applicant
75 from initial licensure because of a prior criminal conviction
76 that remains unreversed unless that conviction is for a crime
77 that bears a rational nexus to the activity requiring licensure.
78 In determining whether a criminal conviction bears a
79 rational nexus to a profession or occupation, the
80 commissioner shall consider at a minimum:

81 (1) The nature and seriousness of the crime for which
82 the individual was convicted;

83 (2) The passage of time since the commission of the
84 crime;

85 (3) The relationship of the crime to the ability, capacity,
86 and fitness required to perform the duties and discharge the
87 responsibilities of the profession or occupation; and

88 (4) Any evidence of rehabilitation or treatment
89 undertaken by the individual.

90 (d) Notwithstanding any other provision of this code to
91 the contrary, if an applicant is disqualified from licensure
92 because of a prior criminal conviction, the commissioner
93 shall permit the applicant to apply for initial licensure if:

94 (1) A period of five years has elapsed from the date of
95 conviction or the date of release from incarceration,
96 whichever is later;

97 (2) The individual has not been convicted of any other
98 crime during the period of time following the disqualifying
99 offense; and

100 (3) The conviction was not for an offense of a violent or
101 sexual nature: *Provided*, That a conviction for an offense of
102 a violent or sexual nature may subject an individual to a
103 longer period of disqualification from licensure, to be
104 determined by the commissioner.

105 (e) An individual with a criminal record who has not
106 previously applied for licensure may petition the
107 commissioner at any time for a determination of whether the
108 individual's criminal record will disqualify the individual
109 from obtaining a license. This petition shall include
110 sufficient details about the individual's criminal record to
111 enable the commissioner to identify the jurisdiction where
112 the conviction occurred, the date of the conviction, and the
113 specific nature of the conviction. The commissioner shall
114 provide the determination within 60 days of receiving the
115 petition from the applicant. The commissioner may charge
116 a fee to recoup its costs for each petition.

CHAPTER 19. AGRICULTURE.**ARTICLE 23. HORSE AND DOG RACING.****§19-23-8. Consideration of application for license or permit; issuance or denial; contents of license or permit; grounds for denial of application; determination of racing dates; license or permit not transferable or assignable; limitation on license; validity of permit.**

1 (a) The Racing Commission shall promptly consider
2 any application for a license or permit, as the case may be.
3 Based upon such application and all other information
4 before it, the Racing Commission shall make and enter an
5 order either approving or denying the application. The
6 application may be denied for any reason specified in
7 subsection (b) of this section. If an application for a license
8 is approved, the Racing Commission shall issue a license to
9 conduct a horse or dog race meeting and shall designate on
10 the face of the license the kind or type of horse or dog racing
11 for which the same is issued, the racing association to which
12 the same is issued, the dates upon which the horse or dog
13 race meeting is to be held or conducted (which may be any
14 weekdays, or week-nights, including Sundays), the location
15 of the horse or dog racetrack, place or enclosure where the
16 horse or dog race meeting is to be held or conducted, and
17 other information as the Racing Commission shall consider
18 proper. If an application for a permit is approved, the Racing
19 Commission shall issue a permit and shall designate on the
20 face of the permit such information as the Racing
21 Commission considers proper.

22 (b) The Racing Commission may deny the application
23 and refuse to issue the license or permit, as the case may be,
24 which denial and refusal is final and conclusive unless a
25 hearing is demanded in accordance with the provisions of
26 §19-23-16 of this code, if the Racing Commission finds that
27 the applicant individually, if an individual, or the partners
28 or members, if a partnership, firm, or association, or the
29 owners and directors, if a corporation:

30 (1) Has knowingly made false statement of a material
31 fact in the application or has knowingly failed to disclose
32 any information called for in the application;

33 (2) Is or has been guilty of any corrupt or fraudulent act,
34 practice, or conduct in connection with a horse or dog race
35 meeting in this or any other state;

36 (3) Has been convicted, within 10 years prior to the date
37 of the application, of an offense which under the law of this
38 state, of any other state, or of the United States of America,
39 shall constitute a felony: *Provided*, That the Racing
40 Commission shall apply §19-23-8(g) and §19-23-8(h) of
41 this code in determining whether an applicant's prior
42 criminal convictions bear a rational nexus to the license or
43 permit being sought;

44 (4) Has failed to comply with the provisions of this
45 article or any reasonable rules of the Racing Commission;

46 (5) Has had a license to hold or conduct a horse or dog
47 race meeting or a permit to participate therein denied for just
48 cause, suspended, or revoked in any other state;

49 (6) Has defaulted in the payment of any obligation or
50 debt due to this state under the provisions of this article;

51 (7) Is, if a corporation, neither incorporated under the
52 laws of this state nor qualified to do business within this
53 state;

54 (8) In the case of an application for a license, has failed
55 to furnish bond or other adequate security, if the same is
56 required by the Racing Commission under the provisions of
57 §19-23-7 of this code;

58 (9) In the case of an application for a permit, is
59 unqualified to perform the duties required for the permit
60 sought; or

61 (10) In the case of an application for a permit, is, for just
62 cause, determined to be undesirable to perform the duties
63 required of the applicant.

64 (c) In issuing licenses and fixing dates for horse or dog
65 race meetings at the various horse racetracks and dog
66 racetracks in this state, the Racing Commission shall
67 consider the horse racing circuits and dog racing circuits
68 with which the horse racetracks and dog racetracks in this
69 state are associated or contiguous to and shall also consider
70 dates which are calculated to increase the tax revenues
71 accruing from horse racing and dog racing.

72 (d) A license issued under the provisions of this article
73 is neither transferable nor assignable to any other racing
74 association and may not permit the holding or conducting of
75 a horse or dog race meeting at any horse or dog racetrack,
76 place, or enclosure not specified thereon. However, if the
77 specified horse or dog racetrack, place, or enclosure
78 becomes unsuitable for the horse or dog race meeting
79 because of flood, fire, or other catastrophe, or cannot be
80 used for any reason, the Racing Commission may, upon
81 application, authorize the horse or dog race meeting, or any
82 remaining portion thereof, to be conducted at any other
83 racetrack, place, or enclosure available for that purpose,
84 provided that the owner of the racetrack, place, or enclosure
85 willingly consents to the use.

86 (e) No type of horse racing or dog racing shall be
87 conducted by a licensee at any race meeting other than that
88 type for which a license was issued.

89 (f) Each permit issued under the provisions of this
90 section shall be for a period of one year, unless approved
91 otherwise by the commission. Effective January 1, 2012,
92 each permit shall be renewed according to the following
93 schedule: Permits issued to persons whose date of birth is
94 January 1 through and including April 30 shall be renewed
95 no later than April 30 of each year; permits issued to persons
96 whose date of birth is May 1 through and including August

197 31 shall be renewed no later than August 31 of each year;
198 and permits issued to persons whose date of birth is
199 September 1 through and including December 31 shall be
200 renewed no later than December 31 of each year. Each
201 permit shall be valid at all horse or dog race meetings during
202 the period for which it was issued unless it be sooner
203 suspended or revoked in accordance with the provisions of
204 this article. A permit issued under the provisions of this
205 article is neither transferable nor assignable to any other
206 person.

207 (g) The Racing Commission may not disqualify an
208 applicant from an initial license or permit because of a prior
209 criminal conviction that remains unreversed unless that
210 conviction is for a crime that bears a rational nexus to the
211 activity requiring a license or permit. In determining
212 whether a criminal conviction bears a rational nexus to a
213 profession or occupation, the Racing Commission shall
214 consider at a minimum:

215 (1) The nature and seriousness of the crime for which
216 the individual was convicted;

217 (2) The passage of time since the commission of the
218 crime;

219 (3) The relationship of the crime to the ability, capacity,
220 and fitness required to perform the duties and discharge the
221 responsibilities of the profession or occupation; and

222 (4) Any evidence of rehabilitation or treatment
223 undertaken by the individual.

224 (h) Notwithstanding any other provision of this code to
225 the contrary, if an applicant is disqualified from a license or
226 permit because of a prior criminal conviction, the
227 commissioner shall permit the applicant to apply for an
228 initial license or permit if:

129 (1) A period of five years has elapsed from the date of
130 conviction or the date of release from incarceration,
131 whichever is later;

132 (2) The individual has not been convicted of any other
133 crime during the period of time following the disqualifying
134 offense; and

135 (3) The conviction was not for an offense of a violent or
136 sexual nature: *Provided*, That a conviction for an offense of
137 a violent or sexual nature may subject an individual to a
138 longer period of disqualification from licensure, to be
139 determined by the commissioner.

140 (i) An individual with a criminal record who has not
141 previously applied for a license or permit may petition the
142 Racing Commission at any time for a determination of
143 whether the individual's criminal record will disqualify the
144 individual from obtaining a license or permit. This petition
145 shall include sufficient details about the individual's
146 criminal record to enable the Racing Commission to
147 identify the jurisdiction where the conviction occurred, the
148 date of the conviction, and the specific nature of the
149 conviction. The Racing Commission shall provide the
150 determination within 60 days of receiving the petition from
151 the applicant. The Racing Commission may charge a fee to
152 recoup its costs for each petition.

153 (j) The Racing Commission shall propose rules for
154 legislative approval in accordance with the provisions of
155 §29A-3-1 *et seq.* of this code which establish the criteria for
156 the approval or denial of a license or permit.

CHAPTER 21. LABOR.

ARTICLE 1. DIVISION OF LABOR.

§21-1-6. Use of criminal records as disqualification from authorization to engage in licensed profession or occupation.

1 (a) The commissioner may not disqualify an applicant
2 from initial licensure, as required in this chapter, because of
3 a prior criminal conviction that remains unreversed unless
4 that conviction is for a crime that bears a rational nexus to
5 the activity requiring licensure. In determining whether a
6 criminal conviction bears a rational nexus to a profession or
7 occupation, the commissioner shall consider at a minimum:

8 (1) The nature and seriousness of the crime for which
9 the individual was convicted;

10 (2) The passage of time since the commission of the
11 crime;

12 (3) The relationship of the crime to the ability, capacity,
13 and fitness required to perform the duties and discharge the
14 responsibilities of the profession or occupation; and

15 (4) Any evidence of rehabilitation or treatment
16 undertaken by the individual.

17 (b) Notwithstanding any other provision of this code to
18 the contrary, if an applicant is disqualified from licensure
19 because of a prior criminal conviction, the commissioner
20 shall permit the applicant to apply for initial licensure if:

21 (1) A period of five years has elapsed from the date of
22 conviction or the date of release from incarceration,
23 whichever is later;

24 (2) The individual has not been convicted of any other
25 crime during the period of time following the disqualifying
26 offense; and

27 (3) The conviction was not for an offense of a violent or
28 sexual nature: *Provided*, That a conviction for an offense of
29 a violent or sexual nature may subject an individual to a
30 longer period of disqualification from licensure, to be
31 determined by the commissioner.

32 (c) An individual with a criminal record who has not
33 previously applied for licensure may petition the
34 commissioner at any time for a determination of whether the
35 individual's criminal record will disqualify the individual
36 from obtaining a license. This petition shall include
37 sufficient details about the individual's criminal record to
38 enable the commissioner to identify the jurisdiction where
39 the conviction occurred, the date of the conviction, and the
40 specific nature of the conviction. The commissioner shall
41 provide the determination within 60 days of receiving the
42 petition from the applicant. The commissioner may charge
43 a fee to recoup its costs for each petition.

ARTICLE 2. EMPLOYMENT AGENCIES.

§21-2-9. Refusal to issue license.

1 The State Tax Commissioner shall refuse to issue a
2 license if, upon investigation, he or she finds that the
3 applicant is unfit to engage in the business or has had a
4 license previously revoked, or that the business is to be
5 conducted on or immediately adjoining what is considered
6 by him or her to be unsuitable premises, or that any other
7 good reason exists within the meaning of the law: *Provided*,
8 That the commissioner shall apply §21-1-6 of this code
9 when determining to refuse a license.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-5c. License required for psychophysiological detection of deception examiners; qualifications; promulgation of rules governing administration of psychophysiological detection of deception examinations.

1 (a) No person, firm, or corporation shall administer a
2 psychophysiological detection of deception examination, lie
3 detector, or other similar examination utilizing mechanical
4 or electronic measures of physiological reactions to evaluate
5 truthfulness without holding a current valid license to do so
6 as issued by the Commissioner of Labor. No examination

7 shall be administered by a licensed corporation except by an
8 officer or employee thereof who is also licensed.

9 (b) A person is qualified to receive a license as an
10 examiner if he or she:

11 (1) Is at least 21 years of age;

12 (2) Is a citizen of the United States;

13 (3) Has not been convicted of a felony: *Provided*, That
14 the commissioner shall apply §21-1-6 of this code to
15 determine if the prior criminal conviction bears a rational
16 nexus to the license being sought;

17 (4) Has not been released or discharged with other than
18 honorable conditions from any of the armed services of the
19 United States or that of any other nation;

20 (5) Has passed an examination conducted by the
21 Commissioner of Labor or under his or her supervision to
22 determine his or her competency to obtain a license to
23 practice as an examiner;

24 (6) Has satisfactorily completed not less than six months
25 of internship training; and

26 (7) Has met any other qualifications of education or
27 training established by the Commissioner of Labor in his or
28 her sole discretion which qualifications are to be at least as
29 stringent as those recommended by the American Polygraph
30 Association.

31 (c) The Commissioner of Labor may designate and
32 administer any test he or she considers appropriate to those
33 persons applying for a license to administer
34 psychophysiological detection of deception, lie detector, or
35 similar examination. The test shall be designed to ensure
36 that the applicant is thoroughly familiar with the code of
37 ethics of the American Polygraph Association and has been
38 trained in accordance with association rules. The test must

39 also include a rigorous examination of the applicant's
40 knowledge of and familiarity with all aspects of operating
41 psychophysiological detection of deception equipment and
42 administering psychophysiological detection of deception
43 examinations.

44 (d) The license to administer psychophysiological
45 detection of deception, lie detector, or similar examinations
46 to any person shall be issued for a period of one year. It may
47 be reissued from year to year. The licenses to be issued are:

48 (1) "Class I license" which authorizes an individual to
49 administer psychophysiological detection of deception
50 examinations for all purposes which are permissible under
51 the provisions of this article and other applicable laws and
52 rules.

53 (2) "Class II license" which authorizes an individual
54 who is a full-time employee of a law-enforcement agency to
55 administer psychophysiological detection of deception
56 examinations to its employees or prospective employees
57 only.

58 (e) The Commissioner of Labor shall charge an annual
59 fee to be established by legislative rule. All fees paid
60 pursuant to this section shall be paid to the Commissioner
61 of Labor and deposited in an appropriated special revenue
62 account hereby created in the State Treasury to be known as
63 the Psychophysiological Examiners Fund and expended for
64 the implementation and enforcement of this section.
65 Through June 30, 2019, amounts collected which are found
66 from time to time to exceed funds needed for the purposes
67 set forth in this section may be utilized by the commissioner
68 as needed to meet the division's funding obligations:
69 *Provided*, That beginning July 1, 2019, amounts collected
70 may not be utilized by the commissioner as needed to meet
71 the division's funding obligations. In addition to any other
72 information required, an application for a license shall
73 include the applicant's Social Security number.

74 (f) The Commissioner of Labor shall propose rules for
75 legislative approval in accordance with §29A-3-1 *et seq.* of
76 this code governing the administration of
77 psychophysiological detection of deception, lie detector, or
78 similar examination to any person: *Provided*, That all
79 applicable rules in effect on the effective date of §21-5-5a,
80 §21-5-5b, §21-5-5c, and §21-5-5d of this code will remain
81 in effect until amended, withdrawn, revoked, repealed, or
82 replaced. The legislative rules shall include:

83 (1) The type and amount of training or schooling
84 necessary for a person before which he or she may be
85 licensed to administer or interpret a psychophysiological
86 detection of deception, lie detector, or similar examination;

87 (2) Testing requirements, including the designation of
88 the test to be administered to persons applying for licensure;

89 (3) Standards of accuracy which shall be met by
90 machines or other devices to be used in psychophysiological
91 detection of deception, lie detector, or similar examination;

92 (4) The conditions under which a psychophysiological
93 detection of deception, lie detector, or similar examination
94 may be administered;

95 (5) Fees for licenses, renewals of licenses, and other
96 services provided by the commissioner;

97 (6) Any other qualifications or requirements, including
98 continuing education, established by the commissioner for
99 the issuance or renewal of licenses; and

100 (7) Any other purpose to carry out the requirements of
101 §21-5-5a, §21-5-5b, §21-5-5c, and §21-5-5d of this code.

ARTICLE 14. SUPERVISION OF PLUMBING WORK.

§21-14-6. Denial, suspension, and revocation of license.

1 (a) The Commissioner of Labor may deny a license to
2 any applicant who fails to comply with the rules established
3 by the Commissioner of Labor, or who lacks the necessary
4 qualifications: *Provided*, That the commissioner shall apply
5 §21-1-6 of this code to determine if the prior criminal
6 conviction bears a rational nexus to the license being
7 sought.

8 (b) The Commissioner of Labor may, upon complaint or
9 upon his or her own inquiry, and after notice to the licensee,
10 suspend or revoke a licensee's license if:

11 (1) The license was granted upon an application or
12 documents supporting the application which materially
13 misstated the terms of the applicant's qualifications or
14 experience;

15 (2) The licensee subscribed or vouched for a material
16 misstatement in his or her application for licensure;

17 (3) The licensee incompetently or unsafely performs
18 plumbing work; or

19 (4) The licensee violated any statute of this state, any
20 legislative rule or any ordinance of any municipality or
21 county of this state which protects the consumer or public
22 against unfair, unsafe, unlawful, or improper business
23 practices.

ARTICLE 16. REGULATION OF HEATING, VENTILATING, AND COOLING WORK.

§21-16-7. Denial, suspension, and revocation of license.

1 (a) The Commissioner of Labor may deny a license to
2 any applicant who fails to comply with the provisions of this
3 article or the rules established by the Commissioner of
4 Labor, or who lacks the necessary qualifications: *Provided*,
5 That the commissioner shall apply §21-1-6 of this code to
6 determine if the prior criminal conviction bears a rational
7 nexus to the license being sought.

8 (b) The Commissioner of Labor may, upon complaint or
9 upon his or her own inquiry, and after notice to the licensee,
10 suspend or revoke a licensee's license if:

11 (1) The license was granted upon an application or
12 documents supporting the application which materially
13 misstated the terms of the applicant's qualifications or
14 experience;

15 (2) The licensee subscribed or vouched for a material
16 misstatement in his or her application for licensure;

17 (3) The licensee incompetently or unsafely performs
18 heating, ventilating, and cooling work; or

19 (4) The licensee violated any statute of this state, any
20 legislative rule, or any ordinance of any municipality or
21 county of this state which protects the consumer or public
22 against unfair, unsafe, unlawful, or improper business
23 practices.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-8. Lottery director; powers and duties; deputy directors; hiring of staff; civil service coverage; submission of proposed appropriations.

1 (a) The director shall have the authority to:

2 (1) Appoint, with the approval of the commission, a
3 deputy director for each of the divisions established in this
4 article. The deputy directors appointed shall serve at the will
5 and pleasure of the director at an annual salary established
6 by the commission. Deputy directors shall not be eligible
7 for civil service coverage as provided in §29-6-4 of this
8 code;

9 (2) The director shall hire, pursuant to the approval of
10 the commission, such professional, clerical, technical, and

11 administrative personnel as may be necessary to carry out
12 the provisions of this article. Each person employed by the
13 commission shall execute an authorization to allow an
14 investigation of that person's background: *Provided*, That
15 the director and the commission shall apply §29-22-8(d) and
16 §29-22-8(e) of this code in determining whether an
17 applicant's prior criminal convictions bear a rational nexus
18 to the occupation being sought.

19 (3) Designate the number and types of locations at
20 which tickets may be sold.

21 (b) Effective July 1, 1986, all employees of the
22 commission, except as otherwise provided herein, shall be
23 in the classified service under the provisions of §29-6-1 *et*
24 *seq.* of this code.

25 (c) The director shall, pursuant to the approval of the
26 commission, prepare and submit the annual proposed
27 appropriations for the commission to the Governor.

28 (d) The director and the Lottery Commission may not
29 disqualify an applicant from initial employment because of
30 a prior criminal conviction that remains unreversed unless
31 that conviction is for a crime that bears a rational nexus to
32 the activity required for employment. In determining
33 whether a criminal conviction bears a rational nexus to a
34 profession or occupation, the director and the Lottery
35 Commission shall consider at a minimum:

36 (1) The nature and seriousness of the crime for which
37 the individual was convicted;

38 (2) The passage of time since the commission of the
39 crime;

40 (3) The relationship of the crime to the ability, capacity,
41 and fitness required to perform the duties and discharge the
42 responsibilities of the profession or occupation; and

43 (4) Any evidence of rehabilitation or treatment
44 undertaken by the individual.

45 (e) Notwithstanding any other provision of this code to
46 the contrary, if an applicant is disqualified from
47 employment because of a prior criminal conviction, the
48 director and the Lottery Commission shall permit the
49 applicant to apply for initial employment if:

50 (1) A period of five years has elapsed from the date of
51 conviction or the date of release from incarceration,
52 whichever is later;

53 (2) The individual has not been convicted of any other
54 crime during the period of time following the disqualifying
55 offense; and

56 (3) The conviction was not for an offense of a violent or
57 sexual nature: *Provided*, That a conviction for an offense of
58 a violent or sexual nature may subject an individual to a
59 longer period of disqualification from employment, to be
60 determined by the Lottery Commission.

61 (f) An individual with a criminal record who has not
62 previously applied for employment may petition the Lottery
63 Commission at any time for a determination of whether the
64 individual's criminal record will disqualify the individual
65 from obtaining employment. This petition shall include
66 sufficient details about the individual's criminal record to
67 enable the Lottery Commission to identify the jurisdiction
68 where the conviction occurred, the date of the conviction,
69 and the specific nature of the conviction. The Lottery
70 Commission shall provide the determination within 60 days
71 of receiving the petition from the applicant. The Lottery
72 Commission may charge a fee to recoup its costs for each
73 petition.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-7. License and permit qualifications; individual qualifications; applicant required to furnish information;

waiver of liability; oath or affirmation; duty to provide accurate and material information.

1 (a) No video lottery license or permit may be granted
2 unless the commission has determined that the applicant
3 satisfies all of the following qualifications:

4 (1) An applicant for a video lottery license must hold a
5 valid racing license granted by the West Virginia Racing
6 Commission under provisions of §19-23-1 *et seq.* of this
7 code.

8 (2) An applicant must be a person of good character and
9 integrity.

10 (3) An applicant must be a person whose background,
11 including criminal record, reputation, and associations, does
12 not pose a threat to the security and integrity of the lottery
13 or to the public interest of the state. All new applicants for
14 licenses and permits issued by the commission shall furnish
15 fingerprints for a national criminal records check by the
16 Criminal Identification Bureau of the West Virginia State
17 Police and the Federal Bureau of Investigation. The
18 fingerprints shall be furnished by all persons required to be
19 named in the application and shall be accompanied by a
20 signed authorization for the release of information by the
21 Criminal Investigation Bureau and the Federal Bureau of
22 Investigation. The commission may require any applicant
23 seeking the renewal of a license or permit to furnish
24 fingerprints for a national criminal records check by the
25 Criminal Identification Bureau of the West Virginia State
26 Police and the Federal Bureau of Investigation: *Provided,*
27 That the Lottery Commission shall apply §29-22A-7(g) and
28 §29-22A-7(h) of this code in determining whether an
29 applicant's prior criminal convictions bear a rational nexus
30 to the license or permit being sought.

31 (4) An applicant must be a person who demonstrates the
32 business ability and experience necessary to establish,

33 operate, and maintain the business for which a video lottery
34 license or permit application is made.

35 (5) An applicant must be a person who has secured
36 adequate financing for the business for which a video lottery
37 license or permit application is made. The commission shall
38 determine whether financing is from a source which meets
39 the qualifications of this section and is adequate to support
40 the successful performance of the duties and responsibilities
41 of the licensed racetrack or permit holder. An applicant for
42 a video lottery license shall disclose all financing or
43 refinancing arrangements for the purchase, lease, or other
44 acquisition of video lottery terminals and associated
45 equipment in the degree of detail requested by the
46 commission. A licensed racetrack shall request commission
47 approval of any change in financing or lease arrangements
48 at least 30 days before the effective date of the change.

49 (6) A racetrack applying for a video lottery license or a
50 license renewal must present to the commission evidence of
51 the existence of an agreement, regarding the proceeds from
52 video lottery terminals, between the applicant and the
53 representative of a majority of the horse owners and
54 trainers, the representative of a majority of the pari-mutuel
55 clerks and the representative of a majority of the breeders or
56 the representative of a majority of the kennel owners for the
57 applicable racetrack who hold permits required by §19-23-
58 2 of this code.

59 (7) A racetrack applying for a video lottery license or a
60 license renewal must file with the commission a copy of any
61 current or proposed agreement between the applicant and
62 any manufacturer for the sale, lease, or other assignment to
63 the racetrack of video lottery terminals, the electronic
64 computer components of the terminals, the random number
65 generator of the terminals, or the cabinet in which it is
66 housed. Once filed with the commission, the agreement is a
67 public document subject to the provisions of §29B-1-1 *et*
68 *seq.* of this code.

69 (b) No video lottery license or permit may be granted to
70 an applicant until the commission determines that each
71 person who has control of the applicant meets all applicable
72 qualifications of subsection (a) of this section. The
73 following persons are considered to have control of an
74 applicant:

75 (1) Each person associated with a corporate applicant,
76 including any corporate holding company, parent company,
77 or subsidiary company of the applicant, but not including a
78 bank or other licensed lending institution which holds a
79 mortgage or other lien acquired in the ordinary course of
80 business, who has the ability to control the activities of the
81 corporate applicant or elect a majority of the board of
82 directors of that corporation.

83 (2) Each person associated with a noncorporate
84 applicant who directly or indirectly holds any beneficial or
85 proprietary interest in the applicant or whom the
86 commission determines to have the ability to control the
87 applicant.

88 (3) Key personnel of an applicant, including any
89 executive, employee or agent, having the power to exercise
90 significant influence over decisions concerning any part of
91 the applicant's business operation.

92 (c) Applicants must furnish all information, including
93 financial data and documents, certifications, consents,
94 waivers, individual history forms, and other materials
95 requested by the commission for purposes of determining
96 qualifications for a license or permit. No video lottery
97 license or permit may be granted to an applicant who fails
98 to provide information and documentation requested by the
99 commission. The burden of proving qualification for any
100 video lottery license or permit is on the applicant.

101 (d) Each applicant bears all risks of adverse public
102 notice, embarrassment, criticism, damages, or financial loss
103 which may result from any disclosure or publication of any

104 material or information obtained by the commission
105 pursuant to action on an application. The applicant shall, as
106 a part of its application, expressly waive any and all claims
107 against the commission, the State of West Virginia and the
108 employees of either for damages as a result of any
109 background investigation, disclosure, or publication
110 relating to an application for a video lottery license or
111 permit.

112 (e) All application, registration, and disclosure forms
113 and other documents submitted to the commission by or on
114 behalf of the applicant for purposes of determining
115 qualification for a video lottery license or permit shall be
116 sworn to or affirmed before an officer qualified to
117 administer oaths.

118 (f) An applicant who knowingly fails to reveal any fact
119 material to qualification or who knowingly submits false or
120 misleading material information is ineligible for a video
121 lottery license or permit.

122 (g) The Lottery Commission may not disqualify an
123 applicant from an initial license or permit because of a prior
124 criminal conviction that remains unreversed unless that
125 conviction is for a crime that bears a rational nexus to the
126 activity requiring a license or permit. In determining
127 whether a criminal conviction bears a rational nexus to a
128 profession or occupation, the Lottery Commission shall
129 consider at a minimum:

130 (1) The nature and seriousness of the crime for which
131 the individual was convicted;

132 (2) The passage of time since the commission of the
133 crime;

134 (3) The relationship of the crime to the ability, capacity,
135 and fitness required to perform the duties and discharge the
136 responsibilities of the profession or occupation; and

137 (4) Any evidence of rehabilitation or treatment
138 undertaken by the individual.

139 (h) Notwithstanding any other provision of this code to
140 the contrary, if an applicant is disqualified from a license or
141 permit because of a prior criminal conviction, the Lottery
142 Commission shall permit the applicant to apply for an initial
143 license or permit if:

144 (1) A period of five years has elapsed from the date of
145 conviction or the date of release from incarceration,
146 whichever is later;

147 (2) The individual has not been convicted of any other
148 crime during the period of time following the disqualifying
149 offense; and

150 (3) The conviction was not for an offense of a violent or
151 sexual nature: *Provided*, That a conviction for an offense of
152 a violent or sexual nature may subject an individual to a
153 longer period of disqualification from a license or permit, to
154 be determined by the Lottery Commission.

155 (i) An individual with a criminal record who has not
156 previously applied for a license or permit may petition the
157 Lottery Commission at any time for a determination of
158 whether the individual's criminal record will disqualify the
159 individual from obtaining a license or permit. This petition
160 shall include sufficient details about the individual's
161 criminal record to enable the Lottery Commission to
162 identify the jurisdiction where the conviction occurred, the
163 date of the conviction, and the specific nature of the
164 conviction. The Lottery Commission shall provide the
165 determination within 60 days of receiving the petition from
166 the applicant. The Lottery Commission may charge a fee to
167 recoup its costs for each petition.

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-502. General qualifications for all types of limited video lottery licenses.

1 (a) No limited video lottery license or license renewal
2 may be granted unless the Lottery Commission has
3 determined that the applicant satisfies all of the following
4 qualifications:

5 (1) The applicant is a person of good character, honesty,
6 and integrity;

7 (2) The applicant is a person whose background,
8 criminal record, if any, reputation, habits, and associations,
9 do not threaten to (A) compromise the public interest of the
10 citizens of the state, (B) weaken the effective regulation and
11 control of video gaming, (C) breach the security and
12 integrity of the lottery, or (D) introduce corrupt, unfair, or
13 illegal practices, methods, and activities into the operation
14 of video gaming or the business or financial transactions
15 incidental to the operation of video gaming;

16 (3) The applicant has not been convicted of any
17 violation of §29-22B-101 *et seq.*, §19-23-1 *et seq.*, §29-22-
18 1 *et seq.*, §29-22A-1 *et seq.*, §29-25-1 *et seq.* of this code,
19 or any felony related to theft, bribery, or gambling in this or
20 in any other state or foreign country: *Provided*, That the
21 Lottery Commission shall apply §29-22B-502(b) and §29-
22 22B-502(c) of this code in determining whether an
23 applicant's prior criminal convictions bear a rational nexus
24 to the license being sought.

25 (4) The applicant has disclosed to the Lottery
26 Commission the identity of each person who has control of
27 the applicant, as control is described in §29-22B-507 of this
28 code, and those persons satisfy all qualifications required by
29 this section and any applicable qualifications required by
30 §29-22B-503 through §29-22B-506 of this code;

31 (5) The applicant has provided a set of fingerprints and
32 has completed and signed the statement provided for in §29-
33 22B-602 of this code;

34 (6) The applicant has furnished all information,
35 including financial data and documents, certifications,

36 consents, waivers, individual history forms, and other
37 materials requested by the Lottery Commission for purposes
38 of determining qualifications for a license.

39 (b) The Lottery Commission may not disqualify an
40 applicant from initial licensure because of a prior criminal
41 conviction that remains unreversed unless that conviction is
42 for a crime that bears a rational nexus to the activity
43 requiring licensure. In determining whether a criminal
44 conviction bears a rational nexus to a profession or
45 occupation, the Lottery Commission shall consider at a
46 minimum:

47 (1) The nature and seriousness of the crime for which
48 the individual was convicted;

49 (2) The passage of time since the commission of the
50 crime;

51 (3) The relationship of the crime to the ability, capacity,
52 and fitness required to perform the duties and discharge the
53 responsibilities of the profession or occupation; and

54 (4) Any evidence of rehabilitation or treatment
55 undertaken by the individual.

56 (c) Notwithstanding any other provision of this code to
57 the contrary, if an applicant is disqualified from licensure
58 because of a prior criminal conviction, the Lottery
59 Commission shall permit the applicant to apply for initial
60 licensure if:

61 (1) A period of five years has elapsed from the date of
62 conviction or the date of release from incarceration,
63 whichever is later;

64 (2) The individual has not been convicted of any other
65 crime during the period of time following the disqualifying
66 offense; and

67 (3) The conviction was not for an offense of a violent or
68 sexual nature: *Provided*, That a conviction for an offense of
69 a violent or sexual nature may subject an individual to a
70 longer period of disqualification from licensure, to be
71 determined by the Lottery Commission.

72 (d) An individual with a criminal record who has not
73 previously applied for licensure may petition the Lottery
74 Commission at any time for a determination of whether the
75 individual's criminal record will disqualify the individual
76 from obtaining a license. This petition shall include
77 sufficient details about the individual's criminal record to
78 enable the Lottery Commission to identify the jurisdiction
79 where the conviction occurred, the date of the conviction,
80 and the specific nature of the conviction. The Lottery
81 Commission shall provide the determination within 60 days
82 of receiving the petition from the applicant. The Lottery
83 Commission may charge a fee to recoup its costs for each
84 petition.

ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.

§29-22C-15. License or registration prohibitions.

1 (a) The commission may not grant any license or
2 registration pursuant to the provisions of this article if
3 evidence satisfactory to the commission exists that the
4 applicant:

5 (1) Has knowingly made a false statement of a material
6 fact to the commission;

7 (2) Has been suspended from operating a gambling
8 game, gaming device, or gaming operation, or had a license
9 or registration revoked by any governmental authority of a
10 state of the United States having responsibility for the
11 regulation of gambling or gaming activities; or

12 (3) Has been convicted of a crime, a gambling-related
13 offense, a theft or fraud offense, or has otherwise

14 demonstrated, either by a police record or other satisfactory
15 evidence, a lack of respect for law and order: *Provided*, That
16 the Lottery Commission shall apply §29-22C-15(d) and
17 §29-22C-15(e) of this code in determining whether an
18 applicant's prior criminal convictions bear a rational nexus
19 to the license being sought.

20 (b) In the case of an applicant for a license to supply a
21 racetrack with West Virginia Lottery table games, the
22 commission may deny a license to any applicant, reprimand
23 any licensee, or suspend or revoke a license:

24 (1) If the applicant or licensee has not demonstrated to
25 the satisfaction of the commission financial responsibility
26 sufficient to adequately meet the requirements of the
27 proposed enterprise;

28 (2) If the applicant or licensee is not the true owner of
29 the business or is not the sole owner and has not disclosed
30 the existence or identity of other persons who have an
31 ownership interest in the business; or

32 (3) If the applicant or licensee is a corporation which
33 sells more than five percent of a licensee's voting stock, or
34 more than five percent of the voting stock of a corporation
35 which controls the licensee, or sells a licensee's assets, other
36 than those bought and sold in the ordinary course of
37 business, or any interest in the assets, to any person not
38 already determined by the commission to have met the
39 qualifications of a licensee under this article.

40 (c) In the case of an applicant for a racetrack table games
41 license, the commission may deny a license to any
42 applicant, reprimand any licensee, or suspend or revoke a
43 license:

44 (1) If the applicant or licensee knowingly employs an
45 individual in a job classification which includes West
46 Virginia Lottery table games management duties who has
47 been convicted of a gambling-related offense, or a theft, or

48 fraud offense under the laws of this state, another state, the
49 United States or a territory of the United States or
50 knowingly employs any individual in a job classification
51 which includes West Virginia Lottery table games
52 management duties who has had a license relating to the
53 operation of a gaming activity revoked by this state or any
54 other state: *Provided*, That the Lottery Commission shall
55 apply §29-22C-15(d) and §29-22C-15(e) of this code in
56 determining whether an applicant's prior criminal
57 convictions bear a rational nexus to the licensed profession.

58 (2) If the applicant or licensee is not the true owner of
59 the business or is not the sole owner and has not disclosed
60 the existence or identity of other persons who have an
61 ownership interest in the business; or

62 (3) If the applicant or licensee is a corporation, which
63 sells more than five percent of a licensee's voting stock, or
64 more than five percent of the voting stock of a corporation
65 which controls the licensee or sells a licensee's assets, other
66 than those bought and sold in the ordinary course of
67 business, or any interest in the assets, to any person not
68 already determined by the commission to have met the
69 qualifications of a licensee under this article, unless the sale
70 has been approved in advance by the commission.

71 (d) The Lottery Commission may not disqualify an
72 applicant from initial licensure because of a prior criminal
73 conviction that remains unreversed unless that conviction is
74 for a crime that bears a rational nexus to the activity
75 requiring licensure. In determining whether a criminal
76 conviction bears a rational nexus to a profession or
77 occupation, the Lottery Commission shall consider at a
78 minimum:

79 (1) The nature and seriousness of the crime for which
80 the individual was convicted;

81 (2) The passage of time since the commission of the
82 crime;

83 (3) The relationship of the crime to the ability, capacity,
84 and fitness required to perform the duties and discharge the
85 responsibilities of the profession or occupation; and

86 (4) Any evidence of rehabilitation or treatment
87 undertaken by the individual.

88 (e) Notwithstanding any other provision of this code to
89 the contrary, if an applicant is disqualified from licensure
90 because of a prior criminal conviction, the Lottery
91 Commission shall permit the applicant to apply for initial
92 licensure if:

93 (1) A period of five years has elapsed from the date of
94 conviction or the date of release from incarceration,
95 whichever is later;

96 (2) The individual has not been convicted of any other
97 crime during the period of time following the disqualifying
98 offense; and

99 (3) The conviction was not for an offense of a violent or
100 sexual nature: *Provided*, That a conviction for an offense of
101 a violent or sexual nature may subject an individual to a
102 longer period of disqualification from licensure, to be
103 determined by the Lottery Commission.

104 (f) An individual with a criminal record who has not
105 previously applied for licensure may petition the Lottery
106 Commission at any time for a determination of whether the
107 individual's criminal record will disqualify the individual
108 from obtaining a license. This petition shall include
109 sufficient details about the individual's criminal record to
110 enable the Lottery Commission to identify the jurisdiction
111 where the conviction occurred, the date of the conviction,
112 and the specific nature of the conviction. The Lottery
113 Commission shall provide the determination within 60 days
114 of receiving the petition from the applicant. The Lottery
115 Commission may charge a fee to recoup its costs for each
116 petition.

§29-22C-16. License or registration denial, revocation, suspension, and reprimand.

1 (a) Notwithstanding any provision of §29-22C-13(b) of
2 this code to the contrary, the commission may deny a license
3 or registration to any applicant, reprimand any licensee or
4 registrant, or suspend or revoke a license or registration if
5 the applicant, licensee, registrant, or any person having
6 control of the applicant, licensee, or registrant:

7 (1) Fraudulently or deceptively obtains or attempts to
8 obtain a license or registration for the applicant, licensee,
9 registrant, or another person;

10 (2) Fraudulently or deceptively uses a license or
11 registration;

12 (3) Is or has been convicted of a felony under the laws
13 of this state, another state, the United States, or a territory
14 of the United States: *Provided*, That in the event an
15 applicant is seeking initial licensure, the Lottery
16 Commission shall apply §29-22C-15(d) and §29-22C-15(e)
17 of this code in determining whether an applicant's prior
18 criminal convictions bear a rational nexus to the licensed
19 profession; or

20 (4) Is or has been convicted of a misdemeanor under the
21 laws of this state, another state, the United States or a
22 territory of the United States for gambling or a gambling
23 related activity: *Provided*, That in the event an applicant is
24 seeking initial licensure, the Lottery Commission shall
25 apply §29-22C-15(d) and §29-22C-15(e) of this code in
26 determining whether an applicant's prior criminal
27 convictions bear a rational nexus to the licensed profession.

28 (b) Instead of or in addition to reprimanding a licensee
29 or registrant or suspending or revoking a license or
30 registration, the commission may impose a civil penalty
31 under §29-22C-31 of this code.

**ARTICLE 22D. WEST VIRGINIA LOTTERY SPORTS
WAGERING ACT.****§29-22D-10. License prohibitions.**

1 (a) The commission may not grant any license, pursuant
2 to the provisions of this article, if evidence satisfactory to
3 the commission exists that the applicant:

4 (1) Has knowingly made a false statement of a material
5 fact to the commission;

6 (2) Has been suspended from operating a gambling
7 game, gaming device, or gaming operation, or had a license
8 revoked by any governmental authority responsible for
9 regulation of gaming activities;

10 (3) Has been convicted of a gambling-related offense, a
11 theft, or fraud offense, or has otherwise demonstrated, either
12 by a police record or other satisfactory evidence, a lack of
13 respect for law and order: *Provided*, That the Lottery
14 Commission shall apply §29-22D-10(c) and §29-22D-10(d)
15 of this code in determining whether an applicant's prior
16 criminal convictions bear a rational nexus to the license
17 being sought; or

18 (4) Is a company or individual who has been directly
19 employed by any illegal or offshore book that serviced the
20 United States, or otherwise accepted black market wagers
21 from individuals located in the United States.

22 (b) The commission may deny a license to any
23 applicant, reprimand any licensee, or suspend or revoke a
24 license:

25 (1) If the applicant or licensee has not demonstrated to
26 the satisfaction of the commission financial responsibility
27 sufficient to adequately meet the requirements of the
28 proposed enterprise;

29 (2) If the applicant or licensee is not the true owner of
30 the business or is not the sole owner and has not disclosed
31 the existence or identity of other persons who have an
32 ownership interest in the business; or

33 (3) If the applicant or licensee is a corporation which
34 sells more than five percent of a licensee's voting stock, or
35 more than five percent of the voting stock of a corporation
36 which controls the licensee, or sells a licensee's assets, other
37 than those bought and sold in the ordinary course of
38 business, or any interest in the assets, to any person not
39 already determined by the commission to have met the
40 qualifications of a licensee under this article.

41 (c) The Lottery Commission may not disqualify an
42 applicant from initial licensure because of a prior criminal
43 conviction that remains unreversed unless that conviction is
44 for a crime that bears a rational nexus to the activity
45 requiring licensure. In determining whether a criminal
46 conviction bears a rational nexus to a profession or
47 occupation, the Lottery Commission shall consider at a
48 minimum:

49 (1) The nature and seriousness of the crime for which
50 the individual was convicted;

51 (2) The passage of time since the commission of the
52 crime;

53 (3) The relationship of the crime to the ability, capacity,
54 and fitness required to perform the duties and discharge the
55 responsibilities of the profession or occupation; and

56 (4) Any evidence of rehabilitation or treatment
57 undertaken by the individual.

58 (d) Notwithstanding any other provision of this code to
59 the contrary, if an applicant is disqualified from licensure
60 because of a prior criminal conviction, the Lottery
61 Commission shall permit the applicant to apply for initial
62 licensure if:

63 (1) A period of five years has elapsed from the date of
64 conviction or the date of release from incarceration,
65 whichever is later;

66 (2) The individual has not been convicted of any other
67 crime during the period of time following the disqualifying
68 offense; and

69 (3) The conviction was not for an offense of a violent or
70 sexual nature: *Provided*, That a conviction for an offense of
71 a violent or sexual nature may subject an individual to a
72 longer period of disqualification from licensure, to be
73 determined by the Lottery Commission.

74 (e) An individual with a criminal record who has not
75 previously applied for licensure may petition the Lottery
76 Commission at any time for a determination of whether the
77 individual's criminal record will disqualify the individual
78 from obtaining a license. This petition shall include
79 sufficient details about the individual's criminal record to
80 enable the Lottery Commission to identify the jurisdiction
81 where the conviction occurred, the date of the conviction,
82 and the specific nature of the conviction. The Lottery
83 Commission shall provide the determination within 60 days
84 of receiving the petition from the applicant. The Lottery
85 Commission may charge a fee to recoup its costs for each
86 petition.

87 (f) In the case of an applicant for a sports wagering
88 license, the commission may deny a license to any
89 applicant, reprimand any licensee, or suspend or revoke a
90 license if an applicant has not met the requirements of this
91 section or any other provision of this article.

ARTICLE 25. AUTHORIZED GAMING FACILITY.

§29-25-13. False statements on applications; other license or registration requirements and prohibitions.

1 (a) Any person who knowingly makes a false statement
2 on an application is guilty of a misdemeanor and, upon

3 conviction thereof, shall be fined not more than \$1,000 and
4 confined in jail for not more than six months except that in
5 the case of a person other than a natural person, the amount
6 of the fine imposed may not be more than \$25,000.

7 (b) The commission may not grant a license or
8 registration pursuant to the provisions of this article if there
9 is substantial evidence that the applicant:

10 (1) Has knowingly made a false statement of a material
11 fact to the commission;

12 (2) Has been suspended from operating a gambling
13 game, gaming device, or gambling operation in another
14 jurisdiction by a board or other governmental authority of
15 that jurisdiction having responsibility for the regulation of
16 gambling or gaming activities;

17 (3) Has been convicted of a felony, a gambling offense,
18 a theft or fraud offense or has otherwise demonstrated,
19 either by a police record or other satisfactory evidence, a
20 lack of respect for law and order: *Provided*, That the Lottery
21 Commission shall apply §29-25-13(d) and §29-25-13(e) of
22 this code in determining whether an applicant's prior
23 criminal convictions bear a rational nexus to the license
24 being sought;

25 (4) Has failed to meet any monetary obligation in
26 connection with a gaming facility or any other form of
27 gaming; or

28 (5) In the case of an applicant for a license to operate a
29 gaming facility or to supply a gaming facility:

30 (A) Has not demonstrated financial responsibility
31 sufficient to meet adequately the requirements of the
32 enterprise proposed;

33 (B) Is not the true owner of the enterprise or is not the
34 sole owner and has not disclosed the existence or identity of

35 other persons who have an ownership interest in such
36 enterprise; or

37 (C) Is a corporation and five percent or more of the stock
38 of the corporation is subject to a contract or option to
39 purchase at any time during the period for which the license
40 is issued unless the contract or option was disclosed to and
41 approved by the commission.

42 (c) In addition to any other grounds specified in this
43 article, and subject to the hearing provisions of §29-25-17
44 of this code, in the case of a license to operate a gaming
45 facility the commission may deny a license to any applicant,
46 reprimand any licensee, or suspend or revoke a license if the
47 applicant or licensee or any controlling person of the
48 applicant or licensee knowingly employs an individual in a
49 senior management position who has been convicted of a
50 felony, bearing a rational nexus to the license, under the
51 laws of this state, another state, a territory of the United
52 States, or the United States or employs any individual in a
53 senior management position who has had a license relating
54 to the operation of a gaming facility revoked by this state or
55 any other state: *Provided*, That the Lottery Commission
56 shall apply §29-25-13(d) and §29-25-13(e) of this code in
57 determining whether an applicant's prior criminal
58 convictions bear a rational nexus to the license being
59 sought.

60 (d) The Lottery Commission may not disqualify an
61 applicant from initial licensure because of a prior criminal
62 conviction that remains unreversed unless that conviction is
63 for a crime that bears a rational nexus to the activity
64 requiring licensure. In determining whether a criminal
65 conviction bears a rational nexus to a profession or
66 occupation, the Lottery Commission shall consider at a
67 minimum:

68 (1) The nature and seriousness of the crime for which
69 the individual was convicted;

70 (2) The passage of time since the commission of the
71 crime;

72 (3) The relationship of the crime to the ability, capacity,
73 and fitness required to perform the duties and discharge the
74 responsibilities of the profession or occupation; and

75 (4) Any evidence of rehabilitation or treatment
76 undertaken by the individual.

77 (e) Notwithstanding any other provision of this code to
78 the contrary, if an applicant is disqualified from licensure
79 because of a prior criminal conviction, the Lottery
80 Commission shall permit the applicant to apply for initial
81 licensure if:

82 (1) A period of five years has elapsed from the date of
83 conviction or the date of release from incarceration,
84 whichever is later;

85 (2) The individual has not been convicted of any other
86 crime during the period of time following the disqualifying
87 offense; and

88 (3) The conviction was not for an offense of a violent or
89 sexual nature: *Provided*, That a conviction for an offense of
90 a violent or sexual nature may subject an individual to a
91 longer period of disqualification from licensure, to be
92 determined by the Lottery Commission.

93 (f) An individual with a criminal record who has not
94 previously applied for licensure may petition the Lottery
95 Commission at any time for a determination of whether the
96 individual's criminal record will disqualify the individual
97 from obtaining a license. This petition shall include
98 sufficient details about the individual's criminal record to
99 enable the Lottery Commission to identify the jurisdiction
100 where the conviction occurred, the date of the conviction,
101 and the specific nature of the conviction. The Lottery
102 Commission shall provide the determination within 60 days
103 of receiving the petition from the applicant. The Lottery

104 Commission may charge a fee to recoup its costs for each
105 petition.

106 (g) Character references may be required of persons
107 licensed, but the character reference may not be obtained
108 from persons in the same or similar occupations or
109 professions in other states.

CHAPTER 31. CORPORATIONS.

ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.

§31-17A-5. Issuance of license.

1 (a) The commissioner may not issue a mortgage loan
2 originator license unless the commissioner makes at a
3 minimum the following findings:

4 (1) The applicant has never had a mortgage loan
5 originator license revoked in any governmental jurisdiction,
6 except that a subsequent formal vacation of the revocation
7 may not be considered a revocation.

8 (2) The applicant has not been convicted of, or pled
9 guilty or nolo contendere to, a felony in a domestic, foreign
10 or military court: *Provided*, That any pardon of a conviction
11 may not be a conviction for purposes of this subsection:
12 *Provided, however*, That the commissioner shall apply §31-
13 17A-5(b) and §31-17A-5(c) of this code in determining
14 whether an applicant's prior criminal convictions bear a
15 rational nexus to the license being sought;

16 (A) During the five-year period preceding the date of
17 the application for licensing and registration; or

18 (B) At any time preceding the date of application if the
19 crime bears a rational nexus to the license being sought.

20 (3) The applicant has demonstrated financial
21 responsibility, character, and general fitness such as to
22 command the confidence of the community and to warrant

23 a determination that the mortgage loan originator will
24 operate honestly, fairly, and efficiently within the purposes
25 of this article.

26 For purposes of this subsection a person has shown that
27 he or she is not financially responsible when he or she has
28 shown a disregard in the management of his or her own
29 financial condition. The commissioner shall not use a credit
30 score as the sole basis for license denial. A determination
31 that an individual has not shown financial responsibility
32 may include, but not be limited to:

33 (A) Current outstanding judgments, except judgments
34 solely as a result of medical expenses;

35 (B) Current outstanding tax liens or other government
36 liens and filings;

37 (C) Foreclosures within the past three years; and

38 (D) A pattern of seriously delinquent accounts within
39 the past three years.

40 (4) The applicant has completed the pre-licensing
41 education requirement described in §31-17A-6 of this code.

42 (5) The applicant has passed a written test that meets the
43 test requirement described in §31-17A-7 of this code.

44 (6) The applicant has met the surety bond requirement
45 as required pursuant to §31-17A-13 of this code.

46 (b) The commissioner may not disqualify an applicant
47 from initial licensure because of a prior criminal conviction
48 that remains unreversed unless that conviction is for a crime
49 that bears a rational nexus to the activity requiring licensure.
50 In determining whether a criminal conviction bears a
51 rational nexus to a profession or occupation, the
52 commissioner shall consider at a minimum:

53 (1) The nature and seriousness of the crime for which
54 the individual was convicted;

55 (2) The passage of time since the commission of the
56 crime;

57 (3) The relationship of the crime to the ability, capacity,
58 and fitness required to perform the duties and discharge the
59 responsibilities of the profession or occupation; and

60 (4) Any evidence of rehabilitation or treatment
61 undertaken by the individual.

62 (c) Notwithstanding any other provision of this code to
63 the contrary, if an applicant is disqualified from licensure
64 because of a prior criminal conviction, the commissioner
65 shall permit the applicant to apply for initial licensure if:

66 (1) A period of five years has elapsed from the date of
67 conviction or the date of release from incarceration,
68 whichever is later;

69 (2) The individual has not been convicted of any other
70 crime during the period of time following the disqualifying
71 offense; and

72 (3) The conviction was not for an offense of a violent or
73 sexual nature: *Provided*, That a conviction for an offense of
74 a violent or sexual nature may subject an individual to a
75 longer period of disqualification from licensure, to be
76 determined by the commissioner.

77 (d) An individual with a criminal record who has not
78 previously applied for licensure may petition the
79 commissioner at any time for a determination of whether the
80 individual's criminal record will disqualify the individual
81 from obtaining a license. This petition shall include
82 sufficient details about the individual's criminal record to
83 enable the commissioner to identify the jurisdiction where
84 the conviction occurred, the date of the conviction, and the
85 specific nature of the conviction. The commissioner shall

86 provide the determination within 60 days of receiving the
87 petition from the applicant. The commissioner may charge
88 a fee to recoup its costs for each petition.

**CHAPTER 32A. LAND SALES; FALSE
ADVERTISING; ISSUANCE AND SALE OF CHECKS,
DRAFTS, MONEY ORDERS, ETC.**

**ARTICLE 2. CHECKS AND MONEY ORDER SALES,
MONEY TRANSMISSION SERVICES,
TRANSPORTATION, AND CURRENCY EXCHANGE.**

§32A-2-8. Qualifications for license or renewal of license.

1 (a) The commissioner may issue a license to an
2 applicant only upon first determining that the financial
3 condition, business experience, and character and general
4 fitness of an applicant are such that the issuance of the
5 license is in the public interest: *Provided*, That the
6 commissioner shall apply §32A-2-8(f) and §32A-2-8(g) of
7 this code in determining whether an applicant's prior
8 criminal convictions bear a rational nexus to the license
9 being sought.

10 (b) An applicant for a license shall agree in writing to
11 comply with the currency reporting and record-keeping
12 requirements of 31 U.S.C. §5313, as well as those set forth
13 in 31 C.F.R. Chapter X and any other relevant federal law.

14 (c) A person is not eligible for a license or shall
15 surrender an existing license if, during the previous five
16 years:

17 (1) The person or a principal of the person, of a business:

18 (A) Has been convicted of a felony or a crime involving
19 fraud or deceit under the laws of this state, any other state,
20 or the United States;

21 (B) Has been convicted of a crime under the laws of
22 another country that involves fraud or deceit or would be a
23 felony if committed in the United States; or

24 (C) Has been convicted under a state or federal law
25 relating to currency exchange or transmission or any state
26 or federal monetary instrument reporting requirement; or

27 (2) The person, a principal of the person, or the spouse
28 of the person or a principal of the person has been convicted
29 of an offense under a state or federal law relating to drug
30 trafficking, money laundering, or a reporting requirement of
31 the Bank Secrecy Act, 12 U.S.C. §1951 *et seq.*, as amended.

32 (d) The commissioner will review the application to
33 determine whether the applicant:

34 (1) Has recklessly failed to file or evaded the obligation
35 to file a currency transaction report as required by 31 U.S.C.
36 §5313 during the previous three years;

37 (2) Has recklessly accepted currency for exchange,
38 transport, or transmission during the previous three years in
39 which a portion of the currency was derived from an illegal
40 transaction or activity;

41 (3) Will conduct its authorized business within the
42 bounds of state and federal law, including, but not limited
43 to, §31D-15-1501 of this code;

44 (4) Warrants the trust of the community;

45 (5) Has and will maintain a minimum tangible net worth
46 of \$50,000 computed according to generally accepted
47 accounting principles as shown by the most recent audited
48 financial statement filed with and satisfactory to the
49 commissioner, and in addition has and will maintain a
50 minimum tangible net worth of \$25,000, computed
51 according to generally accepted accounting principles for
52 each office or delegate location other than its principal
53 office at which its licensed business is transacted, except
54 that an applicant for a license or renewal of a license may
55 not be required by this article to maintain a tangible net
56 worth of more than \$1 million, computed according to
57 generally accepted accounting principles; and

58 (6) Does not owe delinquent taxes, fines, or fees to any
59 local or state taxing authority or governmental agency,
60 department, or other political subdivision of this state.

61 (e) A person is not eligible for a license, and a person
62 who holds a license shall surrender the license to the
63 commissioner, if the person or a principal of the person has
64 at any time been convicted of:

65 (1) A felony involving the laundering of money that is
66 the product of or proceeds from criminal activity under
67 chapter 61 of this code, or a similar provision of the laws of
68 another state or the United States; or

69 (2) A felony violation of 31 U.S.C. §5313 or 5324, or a
70 rule adopted under those sections.

71 (f) The commissioner may not disqualify an applicant
72 from initial licensure because of a prior criminal conviction
73 that remains unreversed unless that conviction is for a crime
74 that bears a rational nexus to the activity requiring licensure.
75 In determining whether a criminal conviction bears a
76 rational nexus to a profession or occupation, the
77 commissioner shall consider at a minimum:

78 (1) The nature and seriousness of the crime for which
79 the individual was convicted;

80 (2) The passage of time since the commission of the
81 crime;

82 (3) The relationship of the crime to the ability, capacity,
83 and fitness required to perform the duties and discharge the
84 responsibilities of the profession or occupation; and

85 (4) Any evidence of rehabilitation or treatment
86 undertaken by the individual.

87 (g) Notwithstanding any other provision of this code to
88 the contrary, if an applicant is disqualified from licensure

89 because of a prior criminal conviction, the commissioner
90 shall permit the applicant to apply for initial licensure if:

91 (1) A period of five years has elapsed from the date of
92 conviction or the date of release from incarceration,
93 whichever is later;

94 (2) The individual has not been convicted of any other
95 crime during the period of time following the disqualifying
96 offense; and

97 (3) The conviction was not for an offense of a violent or
98 sexual nature: *Provided*, That a conviction for an offense of
99 a violent or sexual nature may subject an individual to a
100 longer period of disqualification from licensure, to be
101 determined by the commissioner.

102 (h) An individual with a criminal record who has not
103 previously applied for licensure may petition the
104 commissioner at any time for a determination of whether the
105 individual's criminal record will disqualify the individual
106 from obtaining a license. This petition shall include
107 sufficient details about the individual's criminal record to
108 enable the commissioner to identify the jurisdiction where
109 the conviction occurred, the date of the conviction, and the
110 specific nature of the conviction. The commissioner shall
111 provide the determination within 60 days of receiving the
112 petition from the applicant. The commissioner may charge
113 a fee to recoup its costs for each petition.

114 (i) Before approving an application for a license of an
115 applicant who has less than one year's experience in the
116 proposed business governed by this article as a regulated
117 entity in another state, or whose license has been suspended
118 or revoked by another state, the commissioner may, in his
119 or her discretion, conduct an on-site investigation of an
120 applicant at the sole expense of the applicant and may
121 require the applicant to pay a nonrefundable payment of the
122 anticipated expenses for conducting the investigation.

123 Failure to make the payment or cooperate with the
124 investigation is grounds for denying the application.

CHAPTER 33. INSURANCE.

ARTICLE 13C. VIATICAL SETTLEMENTS ACT.

§33-13C-3. License and bond requirements.

1 (a)(1) A person may not operate as a viatical settlement
2 provider or viatical settlement broker without first obtaining
3 a license from the commissioner.

4 (2)(A) An insurance producer who is authorized to sell
5 life insurance in this state pursuant to a resident or
6 nonresident license issued in accordance with the provisions
7 of §33-12-1 *et seq.* of this code may operate as a viatical
8 settlement broker without obtaining a license pursuant to
9 this section if the viatical settlement activities of the
10 producer are incidental to the producer's insurance business
11 activities.

12 (B) The insurer that issued the policy being viaticated is
13 not responsible for any act or omission of a viatical
14 settlement broker or viatical settlement provider arising out
15 of or in connection with the viatical settlement transaction,
16 unless the insurer receives compensation for the placement
17 of a viatical settlement contract from the viatical settlement
18 provider or viatical settlement broker in connection with the
19 viatical settlement contract.

20 (3) A person licensed as an attorney, certified public
21 accountant, or financial planner accredited by a nationally
22 recognized accreditation agency who is retained to represent
23 the viator, whose compensation is not paid directly or
24 indirectly by the viatical settlement provider, may negotiate
25 viatical settlement contracts on behalf of the viator without
26 having to obtain a license as a viatical settlement broker.

27 (b) Application for a viatical settlement provider or
28 viatical settlement broker license and for renewals of the

29 licenses shall be made in the manner prescribed by the
30 commissioner and shall be accompanied by fees established
31 in legislative rules, including emergency rules, promulgated
32 by the commissioner.

33 (1) The commissioner may not disqualify an applicant
34 from initial licensure because of a prior criminal conviction
35 that remains unreversed unless that conviction is for a crime
36 that bears a rational nexus to the activity requiring licensure.
37 In determining whether a criminal conviction bears a
38 rational nexus to a profession or occupation, the
39 commissioner shall consider at a minimum:

40 (A) The nature and seriousness of the crime for which
41 the individual was convicted;

42 (B) The passage of time since the commission of the
43 crime;

44 (C) The relationship of the crime to the ability, capacity,
45 and fitness required to perform the duties and discharge the
46 responsibilities of the profession or occupation; and

47 (D) Any evidence of rehabilitation or treatment
48 undertaken by the individual.

49 (2) Notwithstanding any other provision of this code to
50 the contrary, if an applicant is disqualified from licensure
51 because of a prior criminal conviction, unless that
52 conviction is a felony pursuant to §33-13C-14 of this code,
53 the commissioner shall permit the applicant to apply for
54 initial licensure if:

55 (A) A period of five years has elapsed from the date of
56 conviction or the date of release from incarceration,
57 whichever is later;

58 (B) The individual has not been convicted of any other
59 crime during the period of time following the disqualifying
60 offense; and

61 (C) The conviction was not for an offense of a violent
62 or sexual nature: *Provided*, That a conviction for an offense
63 of a violent or sexual nature may subject an individual to a
64 longer period of disqualification from licensure, to be
65 determined by the commissioner.

66 (3) An individual with a criminal record who has not
67 previously applied for licensure may petition the
68 commissioner at any time for a determination of whether the
69 individual's criminal record will disqualify the individual
70 from obtaining a license. This petition shall include
71 sufficient details about the individual's criminal record to
72 enable the commissioner to identify the jurisdiction where
73 the conviction occurred, the date of the conviction, and the
74 specific nature of the conviction. The commissioner shall
75 provide the determination within 60 days of receiving the
76 petition from the applicant. The commissioner may charge
77 a fee to recoup its costs for each petition.

78 (c) The commissioner has the authority, at any time, to
79 require the applicant to fully disclose the identity of all
80 stockholders, partners, officers, members, and employees
81 and the commissioner may, in the exercise of the
82 commissioner's discretion, refuse to issue a license in the
83 name of a legal entity if not satisfied that any officer,
84 employee, stockholder, partner, or member of the entity
85 who may materially influence the applicant's conduct meets
86 the standards of this article.

87 (d) The commissioner shall make an investigation of
88 each applicant and issue a license if the commissioner finds
89 that the applicant:

90 (1) If a viatical settlement provider, has provided a
91 detailed plan of operation;

92 (2) Is competent and trustworthy and acts in good faith
93 in the capacity of a licensee;

94 (3) Has a good business reputation and is qualified by
95 experience, training, or education as a viatical settlement
96 provider or broker;

97 (4) Has demonstrated evidence of financial
98 responsibility, in a format prescribed by the commissioner,
99 by possessing a minimum equity of not less than \$250,000
100 in cash or cash equivalents reflected in the applicant's
101 audited financial statements or through a surety bond
102 executed and issued by an insurer authorized to issue surety
103 bonds in this state in the amount of \$250,000: *Provided*,
104 That the commissioner may permit an applicant for a
105 broker's license to demonstrate evidence of financial
106 responsibility through a policy of insurance covering legal
107 liability resulting from erroneous acts or failure to act in
108 their capacity as a viatical settlement broker and inuring to
109 the benefit of any aggrieved party as the result of any single
110 occurrence in the sum of not less than \$100,000 and
111 \$300,000 in the aggregate for all occurrences within one
112 year. Any surety bond issued pursuant to this subdivision
113 shall be in the favor of this state and shall specifically
114 authorize recovery by the commissioner on behalf of any
115 person in this state who sustained damages as the result of
116 erroneous acts, failure to act, conviction of fraud, or
117 conviction of unfair practices by the viatical settlement
118 provider or viatical settlement broker. The commissioner
119 shall accept, as evidence of financial responsibility, proof
120 that financial instruments in accordance with the
121 requirements in this paragraph have been filed with a state
122 in which the applicant is licensed as a viatical settlement
123 provider or viatical settlement broker. The commissioner
124 may ask for evidence of financial responsibility at any time
125 he or she considers it necessary.

126 (5) If a legal entity has provided a certificate of good
127 standing from the state of its domicile; and

128 (6) Has provided an antifraud plan that meets the
129 requirements of §33-13C-14(g) of this code.

130 (e) The commissioner may not issue a license to a
131 nonresident applicant unless the applicant files with the
132 commissioner either a written designation of an agent for
133 service of process or the applicant's written irrevocable
134 consent that any action against the applicant may be
135 commenced against the applicant by service of process on
136 the commissioner.

137 (f) A viatical settlement provider or viatical settlement
138 broker shall provide to the commissioner new or revised
139 information about officers, 10 percent or more stockholders,
140 partners, directors, members, or designated employees
141 within 30 days of the change.

142 (g) An individual licensed as a viatical settlement broker
143 shall complete on a biennial basis 15 hours of training
144 related to viatical settlements and viatical settlement
145 transactions as required by the commissioner. A life
146 insurance producer operating as a viatical settlement broker
147 pursuant to subdivision (2), subsection (a) of this section is
148 not subject to the requirements of this subsection. Any
149 person failing to meet the requirements of this subsection is
150 subject to the penalties imposed by the commissioner.

§33-13C-4. License revocation and denial.

1 (a) The commissioner may refuse to issue, suspend,
2 revoke, place on probation, or refuse to renew the license of
3 a viatical settlement provider or viatical settlement broker if
4 the commissioner finds that:

5 (1) There was any material misrepresentation in the
6 application for the license;

7 (2) The licensee or any officer, partner, member, or key
8 management personnel has been convicted of fraudulent or
9 dishonest practices, is subject to a final administrative
10 action, or is otherwise shown to be untrustworthy or
11 incompetent;

12 (3) The viatical settlement provider demonstrates a
13 pattern of unreasonable payments to viators;

14 (4) The licensee or any officer, partner, member, or key
15 management personnel has been found guilty of, or has
16 pleaded guilty or nolo contendere to, any felony, or to a
17 misdemeanor involving fraud, regardless of whether a
18 judgment of conviction has been entered by the court:
19 *Provided*, That the commissioner shall apply §33-13C-3(b)
20 of this code and any relevant legislative rules in determining
21 whether an applicant's prior criminal convictions bear a
22 rational nexus to the license being sought;

23 (5) The viatical settlement provider has entered into any
24 viatical settlement contract that has not been approved
25 pursuant to this article;

26 (6) The viatical settlement provider has failed to honor
27 contractual obligations set out in a viatical settlement
28 contract;

29 (7) The licensee no longer meets the requirements for
30 initial licensure;

31 (8) The viatical settlement provider has assigned,
32 transferred or pledged a viaticated policy to a person other
33 than a viatical settlement provider licensed in this state,
34 viatical settlement purchaser, an accredited investor, or
35 qualified institutional buyer as defined respectively in Rule
36 501(a) or Rule 144A promulgated under the Federal
37 Securities Act of 1933, as amended, financing entity, special
38 purpose entity, or related provider trust; or

39 (9) The licensee or any officer, partner, member, or key
40 management personnel has violated any provision of this
41 article.

42 (b) The commissioner may suspend, revoke, or refuse to
43 renew the license of a viatical settlement broker or a life
44 insurance producer operating as a viatical settlement broker
45 pursuant to this article if the commissioner finds that the

46 viatical settlement broker or life insurance producer has
47 violated the provisions of this article or has otherwise
48 engaged in bad faith conduct with one or more viators.

49 (c) If the commissioner denies a license application or
50 suspends, revokes, or refuses to renew the license of a
51 viatical settlement provider, viatical settlement broker, or
52 life insurance producer operating as a viatical settlement
53 broker, the commissioner shall conduct a hearing in
54 accordance with §33-2-13 of this code.



CHAPTER 248

**(Com. Sub. for H. B. 4360 - By Delegates Foster,
Waxman, Householder, Barnhart, Jennings,
Porterfield, Ellington, Phillips, D. Jeffries, C. Martin
and Wilson)**

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

AN ACT to amend and reenact §21-16-3 of the Code of West Virginia, 1931, as amended, relating to heating, ventilating, and cooling system licensing requirements; exempting from licensure requirements certain persons only performing electrical, or plumbing work on a heating, ventilating, and cooling system, including, but not limited to, thermostats, bathroom fans, and tankless water heater ventilation; providing for recognition of verified military service, training or education; and clarifying reciprocity provisions.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 16. REGULATION OF HEATING,
VENTILATING AND COOLING WORK.**

§21-16-3. License required; exemptions.

1 (a) On and after January 1, 2016, a person performing
2 or offering to perform work on a heating, ventilating, and
3 cooling system in this state shall have a license issued by
4 the Commissioner of Labor, in accordance with the
5 provisions of this article and the legislative rules
6 promulgated pursuant hereto: *Provided*, That the
7 commissioner shall issue HVAC residential technician
8 licenses to qualified applicants without examination who
9 present satisfactory evidence no later than December 31,
10 2019, of having at least 2,000 hours of experience and/or
11 training working on heating, ventilating, and cooling
12 systems: *Provided, however*, That if a license issued under
13 the authority of this subsection subsequently lapses, the
14 applicant is subject to all licensure requirements, including
15 the examination.

16 (b) Notwithstanding any other provision of this article
17 to the contrary, the commissioner shall credit verified
18 military service, training, or education toward the licensing
19 requirements, other than examination requirements, for a
20 license issued under this article. The commissioner shall
21 expedite the issuance of a provisional license or a license by
22 endorsement or reciprocity under this article to an applicant
23 who: has verified military experience or holds a current
24 license issued by another jurisdiction that has license
25 requirements that are substantially equivalent to the license
26 requirements of this state.

27 (c) A person licensed under this article shall carry a
28 copy of the license on any job in which heating, ventilating,
29 and cooling work is being performed.

30 (d) This article does not apply to:

31 (1) A person who personally performs work on a
32 heating, ventilating, and cooling system in a single family
33 dwelling owned by that person or by a member of that
34 person's immediate family;

35 (2) A person who performs work on a heating,
36 ventilating, and cooling system at a manufacturing plant or
37 other industrial establishment as an employee of the person,
38 firm, or corporation operating the plant or establishment;

39 (3) A person who performs only electrical, or plumbing
40 work on a heating, ventilating, and cooling system, which
41 includes, but is not limited to, thermostats, bathroom fans,
42 and tankless water heater ventilation, so long as the work is
43 within the scope of practice which the person is otherwise
44 licensed or authorized to perform; or

45 (4) A person who performs routine maintenance on any
46 heating, ventilating, and cooling system.



CHAPTER 249

**(H. B. 4375 - By Delegates Summers, Kessinger, Hill,
Pack, Porterfield 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 article designated §30-32A-1, §30-32A-2, §30-32A-3, §30-32A-4, §30-32A-5, §30-32A-6, §30-32A-7, §30-32A-8, §30-32A-9, §30-32A-10, §30-32A-11, §30-32A-12, §30-32A-13, and §30-32A-14, all relating to joining the Audiology and Speech-Language Pathology Compact Commission; providing for a purpose; providing for definitions; providing for telehealth; requiring criminal background check and setting educational and other requirements for audiologists and speech-language pathologists; authorizing member state to charge fee for granting compact privilege; providing for state participation in the compact; establishing the privilege to practice in

member states; providing for change in primary state or residence procedures relating to licensing for active duty military personnel and their spouses; providing for procedures relating to duties, meetings, responsibilities, and adverse actions; establishing the Audiology and Speech-Language Pathology Compact Commission and providing for an executive committee; providing for a data system available for use among the member states; providing for rulemaking authority of the commission; providing for dispute resolution, and enforcement provisions of the commission among the member states; providing for date of implementation among the member states; providing for applicability of the existing rules at the time a new member state joins the commission; providing for withdrawal of any member states and conditions that must be met until withdrawal is effective; providing for a six-month period before withdrawal is effective; providing for construction and severability of the provisions of the compact; and providing for a binding effect of the laws and rules of the compact among the member states.

Be it enacted by the Legislature of West Virginia:

ARTICLE 32A. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS COMPACT.

§30-32A-1. Purpose.

1 The purpose of this compact is to facilitate interstate
2 practice of audiology and speech-language pathology with
3 the goal of improving public access to audiology and
4 speech-language pathology services. The practice of
5 audiology and speech-language pathology occurs in the
6 state where the patient, client, or student is located at the
7 time of the patient, client, or student encounter. The
8 compact preserves the regulatory authority of states to
9 protect public health and safety through the current system
10 of state licensure. This compact is designed to achieve the
11 following objectives:

- 12 (1) Increase public access to audiology and speech-
13 language pathology services by providing for the mutual
14 recognition of other member state licenses;
- 15 (2) Enhance the state's ability to protect the public's
16 health and safety;
- 17 (3) Encourage the cooperation of member states in
18 regulating multistate audiology and speech-language
19 pathology practice;
- 20 (4) Support spouses of relocating active duty military
21 personnel;
- 22 (5) Enhance the exchange of licensure, investigative,
23 and disciplinary information between member states;
- 24 (6) Allow a remote state to hold a provider of services
25 with a compact privilege in that state accountable to that
26 state's practice standards; and
- 27 (7) Allow for the use of telehealth technology to
28 facilitate increased access to audiology and speech-
29 language pathology services.

§30-32A-2. Definitions.

1 As used in this compact, except as otherwise provided,
2 the following definitions shall apply:

3 "Active duty military" means full-time duty status in the
4 active uniformed service of the United States, including
5 members of the National Guard and Reserve on active duty
6 orders pursuant to 10 U.S.C. Section 1209 and 1211.

7 "Adverse action" means any administrative, civil,
8 equitable, or criminal action permitted by a state's laws
9 which is imposed by a licensing board or other authority
10 against an audiologist or speech-language pathologist,
11 including actions against an individual's license or privilege
12 to practice such as revocation, suspension, probation,

13 monitoring of the licensee, or restriction on the licensee's
14 practice.

15 "Alternative program" means a nondisciplinary
16 monitoring process approved by an audiology or speech-
17 language pathology licensing board to address impaired
18 practitioners.

19 "Audiologist" means an individual who is licensed by a
20 state to practice audiology.

21 "Audiology" means the care and services provided by a
22 licensed audiologist as set forth in the member state's
23 statutes and rules.

24 "Audiology and Speech-Language Pathology Compact
25 Commission" or "Commission" means the national
26 administrative body whose membership consists of all states
27 that have enacted the compact.

28 "Audiology and speech-language pathology licensing
29 board", "audiology licensing board", "speech-language
30 pathology licensing board", or "licensing board" means the
31 agency of a state that is responsible for the licensing and
32 regulation of audiologists or speech-language pathologists,
33 or both, which in West Virginia is the West Virginia Board
34 of Examiners for Speech-Language Pathology and
35 Audiology ("board").

36 "Compact privilege" means the authorization granted
37 by a remote state to allow a licensee from another member
38 state to practice as an audiologist or speech-language
39 pathologist in the remote state under its laws and rules. The
40 practice of audiology or speech-language pathology occurs
41 in the member state where the patient, client, or student is
42 located at the time of the patient, client, or student
43 encounter.

44 "Current significant investigative information" means
45 investigative information that a licensing board, after an
46 inquiry or investigation that includes notification and an

47 opportunity for the audiologist or speech-language
48 pathologist to respond, if required by state law, has reason
49 to believe is not groundless and, if proved true, would
50 indicate more than a minor infraction.

51 “Data system” means a repository of information about
52 licensees, including, but not limited to, continuing
53 education, examination, licensure, investigation, compact
54 privilege, and adverse action.

55 “Encumbered license” means a license in which an
56 adverse action restricts the practice of audiology or speech-
57 language pathology by the licensee and the adverse action
58 has been reported to the National Practitioners Data Bank
59 (NPDB).

60 “Executive committee” means a group of directors
61 elected or appointed to act on behalf of, and within the
62 powers granted to them by, the commission.

63 “Home state” means the member state that is the
64 licensee’s primary state of residence.

65 “Impaired practitioner” means individuals whose
66 professional practice is adversely affected by substance
67 abuse, addiction, or other health-related conditions.

68 “Licensee” means an individual who currently holds an
69 authorization from the state licensing board to practice as an
70 audiologist or speech-language pathologist.

71 “Member state” means a state that has enacted the
72 compact.

73 “Privilege to practice” means a legal authorization
74 permitting the practice of audiology or speech-language
75 pathology in a remote state.

76 “Remote state” means a member state other than the
77 home state where a licensee is exercising or seeking to
78 exercise the compact privilege.

79 “Rule” means a regulation, principle, or directive
80 promulgated by the commission that has the force of law.

81 “Single-state license” means an audiology or speech-
82 language pathology license issued by a member state that
83 authorizes practice only within the issuing state and does not
84 include a privilege to practice in any other member state.

85 “Speech-language pathologist” means an individual
86 who is licensed by a state to practice speech-language
87 pathology.

88 “Speech-language pathology” means the care and
89 services provided by a licensed speech-language pathologist
90 as set forth in the member state’s statutes and rules.

91 “State” means any state, commonwealth, district, or
92 territory of the United States of America that regulates the
93 practice of audiology and speech-language pathology.

94 “State practice laws” means a member state’s laws,
95 rules, and regulations that govern the practice of audiology
96 or speech-language pathology, define the scope of
97 audiology or speech-language pathology practice, and
98 create the methods and grounds for imposing discipline.

99 “Telehealth” means the application of
100 telecommunication, audio-visual, or other technologies that
101 meets the applicable standard of care to deliver audiology
102 or speech-language pathology services at a distance for
103 assessment, intervention, or consultation.

§30-32A-3. State participation in the compact.

1 (a) Upon the grant of the compact privilege, a license
2 issued to an audiologist or speech-language pathologist by
3 a home state to a resident in that state shall be recognized
4 by each member state as authorizing an audiologist or
5 speech-language pathologist to practice audiology or
6 speech-language pathology, under a privilege to practice, in
7 the member state where the licensee obtains this privilege.

8 (b) A state must implement or use procedures for
9 considering the criminal history records of applicants for
10 initial privilege to practice. These procedures shall include
11 the submission of fingerprints or other biometric-based
12 information by applicants for the purpose of obtaining an
13 applicant's criminal history record information from the
14 Federal Bureau of Investigation and the agency responsible
15 for retaining that state's criminal records.

16 (1) A member state must fully implement a criminal
17 background check requirement, within a timeframe
18 established by rule, by receiving the results of the Federal
19 Bureau of Investigation record search on criminal
20 background checks and using the results in making
21 licensure decisions.

22 (2) Communication between a member state, the
23 commission, and among member states regarding the
24 verification of eligibility for licensure through the compact
25 shall not include any information received from the Federal
26 Bureau of Investigation relating to a federal criminal
27 records check performed by a member state under Public
28 Law 92-544.

29 (c) Upon application for a privilege to practice, the
30 licensing board in the issuing remote state shall ascertain,
31 through the data system, whether the applicant has ever
32 held, or is the holder of, a license issued by any other state,
33 whether there are any encumbrances on any license or
34 privilege to practice held by the applicant, and whether any
35 adverse action has been taken against any license or
36 privilege to practice held by the applicant.

37 (d) Each member state shall require an applicant to
38 obtain or retain a license in the home state and meet the
39 home state's qualifications for licensure or renewal of
40 licensure, as well as all other applicable state laws.

41 (e) An audiologist:

42 (1) Must meet one of the following educational
43 requirements:

44 (A) On or before, December 31, 2007, the applicant
45 graduated with a master's degree or doctorate in audiology,
46 or equivalent degree regardless of degree name, from a
47 program that is accredited by an accrediting agency
48 recognized by the Council for Higher Education
49 Accreditation, or its successor, or by the United States
50 Department of Education, and operated by a college or
51 university accredited by a regional or national accrediting
52 organization recognized by the board;

53 (B) After Jan. 1, 2008, the applicant graduated with a
54 doctoral degree in audiology, or equivalent degree,
55 regardless of degree name, from a program that is accredited
56 by an accrediting agency recognized by the Council for
57 Higher Education Accreditation, or its successor, or by the
58 United States Department of Education, and operated by a
59 college or university accredited by a regional or national
60 accrediting organization recognized by the board; or

61 (C) The applicant graduated from an audiology program
62 that is housed in an institution of higher education outside
63 of the United States: (i) For which the program and
64 institution have been approved by the authorized accrediting
65 body in the applicable country; and (ii) the degree program
66 has been verified by an independent credentials review
67 agency to be comparable to a state licensing board-approved
68 program;

69 (2) Completed a supervised clinical practicum
70 experience from an accredited educational institution or its
71 cooperating programs as required by the commission;

72 (3) Successfully passed a national examination
73 approved by the commission;

74 (4) Holds an active, unencumbered license;

75 (5) Has not been convicted or found guilty, and has not
76 entered into an agreed disposition, of a felony related to the
77 practice of audiology under applicable state or federal
78 criminal law; and

79 (6) Has a valid United States Social Security or National
80 Practitioner Identification number.

81 (f) A speech-language pathologist:

82 (1) Must meet one of the following educational
83 requirements:

84 (A) The applicant graduated with a master's degree
85 from a speech-language pathology program that is
86 accredited by an organization recognized by the United
87 States Department of Education and operated by a college
88 or university accredited by a regional or national accrediting
89 organization recognized by the board; or

90 (B) The applicant graduated from a speech-language
91 pathology program that is housed in an institution of higher
92 education outside of the United States: (i) For which the
93 program and institution have been approved by the
94 authorized accrediting body in the applicable country; and
95 (ii) the degree program has been verified by an independent
96 credentials review agency to be comparable to a state
97 licensing board-approved program.

98 (2) Completed a supervised clinical practicum
99 experience from an educational institution or its cooperating
100 programs as required by the commission;

101 (3) Completed a supervised postgraduate professional
102 experience as required by the commission;

103 (4) Successfully passed a national examination
104 approved by the commission;

105 (5) Holds an active, unencumbered license;

106 (6) Has not been convicted or found guilty, and has not
107 entered into an agreed disposition, of a felony related to the
108 practice of speech-language pathology under applicable
109 state or federal criminal law; and

110 (7) Has a valid United States Social Security or National
111 Practitioner Identification number.

112 (g) The privilege to practice is derived from the home
113 state license.

114 (h) An audiologist or speech-language pathologist
115 practicing in a member state must comply with the state
116 practice laws of the state in which the client is located at the
117 time service is provided. The practice of audiology and
118 speech-language pathology shall include all audiology and
119 speech-language pathology practice as defined by the state
120 practice laws of the member state in which the client is
121 located. The practice of audiology and speech-language
122 pathology in a member state under a privilege to practice
123 shall subject an audiologist or speech-language pathologist
124 to the jurisdiction of the licensing board, the courts, and the
125 laws of the member state in which the client is located at the
126 time service is provided.

127 (i) Individuals not residing in a member state shall
128 continue to be able to apply for a member state's single-state
129 license as provided under the laws of each member state.
130 However, the single-state license granted to these
131 individuals shall not be recognized as granting the privilege
132 to practice audiology or speech-language pathology in any
133 other member state. Nothing in this compact affects the
134 requirements established by a member state for the issuance
135 of a single-state license.

136 (j) Member states may charge a fee for granting a
137 compact privilege.

138 (k) Member states must comply with the bylaws and
139 rules and regulations of the commission.

§30-32A-4. Compact privilege.

1 (a) To exercise the compact privilege under the terms
2 and provisions of the compact, the audiologist or speech-
3 language pathologist shall:

4 (1) Hold an active license in the home state;

5 (2) Have no encumbrance on any state license;

6 (3) Be eligible for a compact privilege in any member
7 state in accordance with §30-32A-3 of this code;

8 (4) Had no adverse action against any license or
9 compact privilege within the previous two years from date
10 of application;

11 (5) Notify the Commission that the licensee is seeking
12 the compact privilege within a remote state or states;

13 (6) Pay any applicable fees, including any state fee, for
14 the compact privilege; and

15 (7) Report to the commission adverse action taken by
16 any nonmember state within 30 days from the date the
17 adverse action is taken.

18 (b) For the purposes of the compact privilege, an
19 audiologist or speech-language pathologist may only hold
20 one home state license at a time.

21 (c) Except as provided in §30-32A-6 of this code, if an
22 audiologist or speech-language pathologist changes primary
23 state of residence by moving between two member states,
24 the audiologist or speech-language pathologist must apply
25 for licensure in the new home state, and the license issued
26 by the prior home state shall be deactivated in accordance
27 with applicable rules adopted by the commission.

28 (d) The audiologist or speech-language pathologist may
29 apply for licensure in advance of a change in primary state
30 of residence.

31 (e) A license shall not be issued by the new home state
32 until the audiologist or speech-language pathologist
33 provides satisfactory evidence of a change in primary state
34 of residence to the new home state and satisfies all
35 applicable requirements to obtain a license from the new
36 home state.

37 (f) If an audiologist or speech-language pathologist
38 changes primary state of residence by moving from a
39 member state to a nonmember state, the license issued by
40 the prior home state shall convert to a single-state license,
41 valid only in the former home state, and the privilege to
42 practice in any member state is deactivated in accordance
43 with the rules promulgated by the commission.

44 (g) The compact privilege is valid until the expiration
45 date of the home state license. The licensee must comply
46 with the requirements of subsection (a) of this section to
47 maintain the compact privilege in the remote state.

48 (h) A licensee providing audiology or speech-language
49 pathology services in a remote state under the compact
50 privilege shall function within the laws and regulations of
51 the remote state.

52 (i) A licensee providing audiology or speech-language
53 pathology services in a remote state is subject to that state's
54 regulatory authority. A remote state may, in accordance
55 with due process and that state's laws, remove a licensee's
56 compact privilege in the remote state for a specific period
57 of time, impose fines, or take any other necessary actions to
58 protect the health and safety of its citizens.

59 (j) If a home state license is encumbered, the licensee
60 shall lose the compact privilege in any remote state until the
61 following occur:

62 (1) The home state license is no longer encumbered; and

63 (2) Two years have elapsed from the date of the adverse
64 action.

65 (k) Once an encumbered license in the home state is
66 restored to good standing, the licensee must meet the
67 requirements of subsection (a) of this section to obtain a
68 compact privilege in any remote state.

§30-32A-5. Compact privilege to practice telehealth.

1 (a) Member states shall recognize the right of an
2 audiologist or speech-language pathologist, licensed by a
3 home state in accordance with §30-32A-3 of this code and
4 under rules promulgated by the commission, to practice
5 audiology or speech-language pathology in any member
6 state via telehealth under a privilege to practice as provided
7 in the compact and rules promulgated by the commission.

8 (b) A licensee providing audiology or speech-language
9 pathology services in a remote state under the compact
10 privilege shall function within the laws and regulations of
11 the state where the patient, client, or student is located.

§30-32A-6. Active duty military personnel or their spouses.

1 Active duty military personnel, or their spouse, shall
2 designate a home state where the individual has a current
3 license in good standing. The individual may retain the
4 home state designation during the period the service
5 member is on active duty. Subsequent to designating a home
6 state, the individual shall only change their home state
7 through application for licensure in the new state.

§30-32A-7. Adverse actions.

1 (a) In addition to the other powers conferred by state
2 law, a remote state may, in accordance with existing state
3 due process law:

4 (1) Take adverse action against an audiologist's or
5 speech-language pathologist's privilege to practice within
6 that member state; and

7 (2) Issue subpoenas for both hearings and investigations
8 that require the attendance and testimony of witnesses as
9 well as the production of evidence. Subpoenas issued by a
10 licensing board in a member state for the attendance and
11 testimony of witnesses or the production of evidence from
12 another member state shall be enforced in the latter state by
13 any court of competent jurisdiction, according to the
14 practice and procedure of that court applicable to subpoenas
15 issued in proceedings pending before it. The issuing
16 authority shall pay any witness fees, travel expenses,
17 mileage, and other fees required by the service statutes of
18 the state in which the witnesses or evidence are located.

19 (b) Only the home state may take adverse action against
20 an audiologist's or speech-language pathologist's license
21 issued by the home state.

22 (c) For purposes of taking adverse action, the home state
23 shall give the same priority and effect to reported conduct
24 received from a member state as it would if the conduct had
25 occurred within the home state. In so doing, the home state
26 shall apply its own state laws to determine appropriate
27 action.

28 (d) The home state shall complete any pending
29 investigations of an audiologist or speech-language
30 pathologist who changes primary state of residence during
31 the course of the investigation. The home state may also
32 take appropriate action or actions and shall promptly report
33 the conclusions of the investigations to the administrator of
34 the data system. The administrator of the data system shall
35 promptly notify the new home state of any adverse actions.

36 (e) If otherwise permitted by state law, the home state
37 may recover from the affected audiologist or speech-
38 language pathologist the costs of investigations and
39 disposition of cases resulting from any adverse action taken
40 against that audiologist or speech-language pathologist.

41 (f) The home state may take adverse action based on the
42 factual findings of the remote state, provided that the home
43 state follows its own procedures for taking the adverse
44 action.

45 (g) Joint Investigations -

46 (1) In addition to the authority granted to a member state
47 by its respective audiology or speech-language pathology
48 practice act or other applicable state law, any member state
49 may participate with other member states in joint
50 investigations of licensees.

51 (2) Member states shall share any investigative,
52 litigation, or compliance materials in furtherance of any
53 joint or individual investigation initiated under the compact.

54 (h) If adverse action is taken by the home state against
55 an audiologist's or speech-language pathologist's license,
56 the audiologist's or speech-language pathologist's privilege
57 to practice in all other member states shall be suspended
58 until all encumbrances have been removed from the state
59 license. All home state disciplinary orders that impose
60 adverse action against an audiologist's or speech-language
61 pathologist's license shall include a statement that the
62 audiologist's or speech-language pathologist's privilege to
63 practice is deactivated in all member states during the
64 pendency of the order.

65 (i) If a member state takes adverse action against a
66 licensee, it shall promptly notify the administrator of the
67 data system. The administrator of the data system shall
68 promptly notify the home state and any remote states in
69 which the licensee has the privilege to practice of any
70 adverse actions by the home state or remote states.

71 (j) Nothing in this compact shall override a member
72 state's decision that participation in an alternative program
73 may be used in lieu of adverse action.

§30-32A-8. Establishment of the Audiology and Speech-Language Pathology Compact Commission.

1 (a) The compact member states hereby create and
2 establish a joint public agency known as the Audiology and
3 Speech-Language Pathology Compact Commission:

4 (1) The commission is an instrumentality of the compact
5 states;

6 (2) Venue is proper and judicial proceedings by or
7 against the commission shall be brought solely and
8 exclusively in a court of competent jurisdiction where the
9 principal office of the commission is located. The
10 commission may waive venue and jurisdictional defenses to
11 the extent it adopts or consents to participate in alternative
12 dispute resolution proceedings; and

13 (3) Nothing in this compact shall be construed to be a
14 waiver of sovereign immunity.

15 (b) Membership, voting and meetings -

16 (1) Each member state shall have two delegates selected
17 by that member state's licensing board. The delegates shall
18 be current members of the licensing board. One shall be an
19 audiologist and one shall be a speech-language pathologist.

20 (2) An additional five delegates, who are either a public
21 member or board administrators from a state licensing
22 board, shall be chosen by the executive committee from a
23 pool of nominees provided by the commission at large.

24 (3) Any delegate may be removed or suspended from
25 office as provided by the law of the state from which the
26 delegate is appointed.

27 (4) The member state board shall fill any vacancy
28 occurring on the commission within 90 days.

29 (5) Each delegate is entitled to one vote with regard to
30 the promulgation of rules and creation of bylaws and shall
31 otherwise have an opportunity to participate in the business
32 and affairs of the commission.

33 (6) A delegate shall vote in person or by other means as
34 provided in the bylaws. The bylaws may provide for
35 delegates' participation in meetings by telephone or other
36 means of communication.

37 (7) The commission shall meet at least once during each
38 calendar year. Additional meetings shall be held as set forth
39 in the bylaws.

40 (c) The commission may:

41 (1) Establish the fiscal year of the commission;

42 (2) Establish bylaws;

43 (3) Establish a code of ethics;

44 (4) Maintain its financial records in accordance with the
45 bylaws;

46 (5) Meet and take actions as are consistent with the
47 provisions of this compact and the bylaws;

48 (6) Promulgate uniform rules to facilitate and coordinate
49 implementation and administration of this compact. The
50 rules shall have the force and effect of law and shall be
51 binding in all member states to the extent and in the manner
52 provided for in the compact;

53 (7) Bring legal proceedings or prosecute actions in the
54 name of the commission, provided that the standing of any
55 state audiology or speech-language pathology licensing
56 board to sue or be sued under applicable law shall not be
57 affected;

58 (8) Purchase and maintain insurance and bonds;

59 (9) Borrow, accept, or contract for services of personnel,
60 including, but not limited to, employees of a member state;

61 (10) Hire employees, elect or appoint officers, fix
62 compensation, define duties, grant individuals appropriate
63 authority to carry out the purposes of the compact, and
64 establish the commission's personnel policies and programs
65 relating to conflicts of interest, qualifications of personnel,
66 and other related personnel matters;

67 (11) Accept any and all appropriate donations and
68 grants of money, equipment, supplies, materials, and
69 services, and receive, use, and dispose of the same:
70 *Provided*, That at all times the commission shall avoid any
71 appearance of impropriety or conflict of interest;

72 (12) Lease, purchase, accept appropriate gifts or
73 donations of, or otherwise to own, hold, improve, or use,
74 any property, real, personal, or mixed: *Provided*, That at all
75 times the commission shall avoid any appearance of
76 impropriety;

77 (13) Sell, convey, mortgage, pledge, lease, exchange,
78 abandon, or otherwise dispose of any property real,
79 personal, or mixed;

80 (14) Establish a budget and make expenditures;

81 (15) Borrow money;

82 (16) Appoint committees, including standing
83 committees composed of members and other interested
84 persons designated in this compact and the bylaws;

85 (17) Provide and receive information from, and
86 cooperate with, law enforcement agencies;

87 (18) Establish and elect an executive committee; and

88 (19) Perform other functions necessary or appropriate to
89 achieve the purposes of this compact consistent with the

90 state regulation of audiology and speech-language
91 pathology licensure and practice.

92 (d) The commission may not change or modify the laws
93 of the member states which define the practice of audiology
94 and speech-language pathology in the respective states.

95 (e) The executive committee may act on behalf of the
96 commission, within the powers of the commission,
97 according to the terms of this compact. The executive
98 committee shall be composed of 10 members:

99 (1) Seven voting members who are elected by the
100 commission from the current membership of the
101 commission;

102 (2) Two ex officio members, consisting of one
103 nonvoting member from a recognized national audiology
104 professional association and one nonvoting member from a
105 recognized national speech-language pathology association;
106 and

107 (3) One ex officio, nonvoting member from the
108 recognized membership organization of the audiology and
109 speech-language pathology licensing boards.

110 (f) The ex officio members shall be selected by their
111 respective organizations.

112 (1) The commission may remove any member of the
113 executive committee as provided in the bylaws.

114 (2) The executive committee shall meet at least
115 annually.

116 (3) The executive committee shall:

117 (A) Recommend to the entire commission changes to
118 the rules or bylaws, changes to this compact legislation, fees
119 paid by compact member states such as annual dues, and

120 any commission compact fee charged to licensees for the
121 compact privilege;

122 (B) Ensure compact administration services are
123 appropriately provided, contractual or otherwise;

124 (C) Prepare and recommend the budget;

125 (D) Maintain financial records on behalf of the
126 commission;

127 (E) Monitor compact compliance of member states and
128 provide compliance reports to the commission;

129 (F) Establish additional committees as necessary; and

130 (G) Perform duties as provided in rules or bylaws.

131 (4) All meetings of the commission or the executive
132 committee shall be open to the public, and public notice of
133 meetings shall be given in the same manner as required
134 under the rule-making provisions in §30-32A-10 of this
135 code.

136 (5) The commission or the executive committee or other
137 committees of the commission may convene in a closed,
138 nonpublic meeting if the commission or executive
139 committee or other committees of the commission must
140 discuss:

141 (A) Noncompliance of a member state with its
142 obligations under the compact;

143 (B) The employment, compensation, discipline or other
144 matters, practices or procedures related to specific
145 employees or other matters related to the commission's
146 internal personnel practices and procedures;

147 (C) Current, threatened, or reasonably anticipated
148 litigation;

149 (D) Negotiation of contracts for the purchase, lease, or
150 sale of goods, services, or real estate;

151 (E) Accusing any person of a crime or formally
152 censuring any person;

153 (F) Disclosure of trade secrets or commercial or
154 financial information that is privileged or confidential;

155 (G) Disclosure of information of a personal nature
156 where disclosure would constitute a clearly unwarranted
157 invasion of personal privacy;

158 (H) Disclosure of investigative records compiled for law
159 enforcement purposes;

160 (I) Disclosure of information related to any investigative
161 reports prepared by or on behalf of or for use of the
162 commission or other committee charged with the
163 responsibility of investigation or the determination of
164 compliance issues pursuant to the compact; or

165 (J) Matters specifically exempted from disclosure by
166 federal or member state statutes.

167 (6) If a meeting, or portion of a meeting, is closed
168 pursuant to this provision, the commission's legal counsel
169 or designee shall certify that the meeting may be closed and
170 shall reference each relevant exempting provision.

171 (7) The commission shall keep minutes that fully and
172 clearly describe all matters discussed in a meeting and shall
173 provide a full and accurate summary of actions taken, and
174 the reasons therefore, including a description of the views
175 expressed. All documents considered in connection with an
176 action shall be identified in the minutes. All minutes and
177 documents of meetings, other than closed meetings, shall be
178 made available to members of the public upon request. All
179 minutes and documents of a closed meeting shall remain
180 under seal, subject to release by a majority vote of the
181 commission or order of a court of competent jurisdiction.

182 (8) Financing of the commission -

183 (A) The commission shall pay, or provide for the
184 payment of, the reasonable expenses of its establishment,
185 organization, and ongoing activities.

186 (B) The commission may accept any and all appropriate
187 revenue sources, donations, and grants of money,
188 equipment, supplies, materials, and services.

189 (C) The commission may levy on and collect an annual
190 assessment from each member state's licensing board,
191 which in West Virginia is the West Virginia Board of
192 Examiners for Speech-Language Pathology and Audiology
193 Board, or impose fees on parties, other than the member
194 states, to cover the cost of the operations and activities of
195 the commission and its staff, which must be in a total
196 amount sufficient to cover its annual budget as approved
197 each year for which revenue is not provided by other
198 sources. The aggregate annual assessment amount shall be
199 allocated based upon a formula to be determined by the
200 commission, which shall promulgate a rule binding upon all
201 member states.

202 (9) The commission shall not incur obligations of any
203 kind prior to securing the funds adequate to meet the
204 obligation; nor shall the commission pledge the credit of any
205 of the member states, except by and with the authority of the
206 member state.

207 (10) The commission shall keep accurate accounts of all
208 receipts and disbursements. The receipts and disbursements
209 of the commission are subject to the audit and accounting
210 procedures established under its bylaws. However, all
211 receipts and disbursements of funds handled by the
212 commission shall be audited yearly by a certified or licensed
213 public accountant, and the report of the audit shall be
214 included in and become part of the annual report of the
215 commission.

216 (g) Qualified immunity, defense, and indemnification -

217 (1) The members, officers, executive director,
218 employees, and representatives of the Commission are
219 immune from suit and liability, either personally or in their
220 official capacity, for any claim for damage to or loss of
221 property or personal injury or other civil liability caused by
222 or arising out of any actual or alleged act, error, or omission
223 that occurred, or that the person against whom the claim is
224 made had a reasonable basis for believing occurred within
225 the scope of Commission employment, duties or
226 responsibilities: *Provided*, That nothing in this subdivision
227 shall be construed to protect any person from suit or liability
228 for any damage, loss, injury, or liability caused by the
229 intentional or willful or wanton misconduct of that person;

230 (2) The commission shall defend any member, officer,
231 executive director, employee, or representative of the
232 commission in any civil action seeking to impose liability
233 arising out of any actual or alleged act, error, or omission
234 that occurred within the scope of commission employment,
235 duties, or responsibilities, or that the person against whom
236 the claim is made had a reasonable basis for believing
237 occurred within the scope of commission employment,
238 duties, or responsibilities: *Provided*, That nothing in this
239 subdivision prohibits that person from retaining his or her
240 own counsel: *Provided, however*, That the actual or alleged
241 act, error, or omission did not result from that person's
242 intentional or willful or wanton misconduct; and

243 (3) The commission shall indemnify and hold harmless
244 any member, officer, executive director, employee, or
245 representative of the commission for the amount of any
246 settlement or judgment obtained against that person arising
247 out of any actual or alleged act, error, or omission that
248 occurred within the scope of commission employment,
249 duties, or responsibilities, or that person had a reasonable
250 basis for believing occurred within the scope of commission
251 employment, duties, or responsibilities: *Provided*, That the
252 actual or alleged act, error, or omission did not result from
253 the intentional or willful or wanton misconduct of that
254 person.

§30-32A-9. Data system.

1 (a) The commission shall provide for the development,
2 maintenance, and use of a coordinated database and
3 reporting system containing licensure, adverse action, and
4 investigative information on all licensed individuals in
5 member states.

6 (b) Notwithstanding any other provision of state law to
7 the contrary, a member state shall submit a uniform data set
8 to the data system on all individuals to whom this compact
9 is applicable as required by the rules of the commission,
10 including:

11 (1) Identifying information;

12 (2) Licensure data;

13 (3) Adverse actions against a license or compact
14 privilege;

15 (4) Nonconfidential information related to alternative
16 program participation;

17 (5) Any denial of application for licensure, and the
18 reason for denial; and

19 (6) Other information that may facilitate the
20 administration of this compact, as determined by the rules
21 of the commission.

22 (c) Investigative information pertaining to a licensee in
23 any member state shall only be available to other member
24 states.

25 (d) The commission shall promptly notify all member
26 states of any adverse action taken against a licensee or an
27 individual applying for a license. Adverse action
28 information pertaining to a licensee in any member state
29 shall be available to any other member state.

30 (e) Member states contributing information to the data
31 system may designate information that may not be shared
32 with the public without the express permission of the
33 contributing state.

34 (f) Any information submitted to the data system that is
35 subsequently required to be expunged by the laws of the
36 member state contributing the information shall be removed
37 from the data system.

§30-32A-10. Rulemaking.

1 (a) The commission shall exercise its rulemaking
2 powers pursuant to the criteria set forth in this section and
3 the rules adopted thereunder. Rules and amendments
4 become binding as of the date specified in each rule or
5 amendment.

6 (b) If a majority of the legislatures of the member states
7 rejects a rule, by enactment of a statute or resolution in the
8 same manner used to adopt the compact within four years
9 of the date of adoption of the rule, the rule shall have no
10 further force and effect in any member state.

11 (c) Rules or amendments to the rules shall be adopted at
12 a regular or special meeting of the commission.

13 (d) Prior to promulgation and adoption of a final rule or
14 rules by the commission, and at least 30 days in advance of
15 the meeting at which the rule shall be considered and voted
16 upon, the commission shall file a Notice of Proposed
17 Rulemaking:

18 (1) On the website of the commission or other publicly
19 accessible platform; and

20 (2) On the website of each member state audiology or
21 speech-language pathology licensing board or other
22 publicly accessible platform or the publication in which
23 each state would otherwise publish proposed rules.

24 (e) The Notice of Proposed Rulemaking shall include:

25 (1) The proposed time, date, and location of the meeting
26 in which the rule shall be considered and voted upon;

27 (2) The text of the proposed rule or amendment and the
28 reason for the proposed rule or amendment;

29 (3) A request for comments on the proposed rule from
30 any interested person; and

31 (4) The manner in which interested persons may submit
32 notice to the commission of their intention to attend the
33 public hearing and any written comments.

34 (f) Prior to the adoption of a proposed rule, the
35 commission shall allow persons to submit written data,
36 facts, opinions, and arguments, which shall be made
37 available to the public.

38 (g) The commission shall grant an opportunity for a
39 public hearing before it adopts a rule or amendment if a
40 hearing is requested by:

41 (1) At least 25 persons;

42 (2) A state or federal governmental subdivision or
43 agency; or

44 (3) An association having at least 25 members.

45 (h) If a hearing is held on the proposed rule or
46 amendment, the commission shall publish the place, time,
47 and date of the scheduled public hearing. If the hearing is
48 held via electronic means, the commission shall publish the
49 mechanism for access to the electronic hearing.

50 (1) All persons wishing to be heard at the hearing shall
51 notify the executive director of the commission or other
52 designated member in writing of their desire to appear and
53 testify at the hearing not less than five business days before
54 the scheduled date of the hearing.

55 (2) Hearings shall be conducted in a manner providing
56 each person who wishes to comment a fair and reasonable
57 opportunity to comment orally or in writing.

58 (3) All hearings shall be recorded. A copy of the
59 recording shall be made available to any person, upon
60 request, at his or her own expense.

61 (4) Nothing in this section shall be construed as
62 requiring a separate hearing on each rule. Rules may be
63 grouped for the convenience of the commission at hearings
64 required by this section.

65 (i) Following the scheduled hearing date, or by the close
66 of business on the scheduled hearing date if the hearing was
67 not held, the Commission shall consider all written and oral
68 comments received.

69 (j) If no written notice of intent to attend the public
70 hearing by interested parties is received, the commission
71 may proceed with promulgation of the proposed rule
72 without a public hearing.

73 (k) The commission shall, by majority vote of all
74 members, take final action on the proposed rule and shall
75 determine the effective date of the rule, if any, based on the
76 rulemaking record and the full text of the rule.

77 (l) Upon determination that an emergency exists, the
78 commission may consider and adopt an emergency rule
79 without prior notice, opportunity for comment, or hearing,
80 provided that the usual rule-making procedures provided in
81 the compact and in this section are retroactively applied to
82 the rule as soon as reasonably possible, in no event later than
83 90 days after the effective date of the rule. For the purposes
84 of this provision, an emergency rule is one that must be
85 adopted immediately in order to:

86 (1) Meet an imminent threat to public health, safety, or
87 welfare;

88 (2) Prevent a loss of commission or member state funds;
89 or

90 (3) Meet a deadline for the promulgation of an
91 administrative rule that is established by federal law or rule.

92 (m) The commission or an authorized committee of the
93 commission may direct revisions to a previously adopted
94 rule or amendment for purposes of correcting typographical
95 errors, errors in format, errors in consistency, or
96 grammatical errors. Public notice of any revisions shall be
97 posted on the website of the commission. The revision is
98 subject to challenge by any person for a period of 30 days
99 after posting. The revision may be challenged only on
100 grounds that the revision results in a material change to a
101 rule. A challenge shall be made in writing and delivered to
102 the chair of the commission prior to the end of the notice
103 period. If no challenge is made, the revision shall take effect
104 without further action. If the revision is challenged, the
105 revision may not take effect without the approval of the
106 commission.

§30-32A-11. Dispute resolution and enforcement.

1 (a) Dispute resolution -

2 (1) Upon request by a member state, the commission
3 shall attempt to resolve disputes related to the compact that
4 arise among member states and between member and
5 nonmember states.

6 (2) The commission shall promulgate a rule providing
7 for both mediation and binding dispute resolution for
8 disputes as appropriate.

9 (b) Enforcement -

10 (1) The commission, in the reasonable exercise of its
11 discretion, shall enforce the provisions and rules of this
12 compact.

13 (2) By majority vote, the commission may initiate legal
14 action in the United States District Court for the District of
15 Columbia or the federal district where the commission has
16 its principal offices against a member state in default to
17 enforce compliance with the provisions of the compact and
18 its promulgated rules and bylaws. The relief sought may
19 include both injunctive relief and damages. In the event
20 judicial enforcement is necessary, the prevailing member
21 shall be awarded all costs of litigation, including reasonable
22 attorney's fees.

23 (3) The remedies in this section are not the exclusive
24 remedies of the commission. The commission may pursue
25 any other remedies available under federal or state law.

**§30-32A-12. Date of implementation of the interstate
commission for audiology and speech-language pathology
practice and associated rules, withdrawal, and
amendment.**

1 (a) The compact takes effect on the date on which the
2 compact statute is enacted into law in the 10th member state.
3 The provisions, which become effective at that time, shall
4 be limited to the powers granted to the commission relating
5 to assembly and the promulgation of rules. Thereafter, the
6 commission shall meet and exercise rulemaking powers
7 necessary to the implementation and administration of the
8 compact.

9 (b) Any state that joins the compact subsequent to the
10 commission's initial adoption of the rules is subject to the
11 rules as they exist on the date on which the compact
12 becomes law in that state. Any rule that has been previously
13 adopted by the commission has the full force and effect of
14 law on the day the compact becomes law in that state.

15 (c) Any member state may withdraw from this compact
16 by enacting a statute repealing participation in this compact.

17 (1) A member state's withdrawal shall not take effect
18 until six months after enactment of the repealing statute.

19 (2) Withdrawal shall not affect the continuing
20 requirement of the withdrawing state's audiology or speech-
21 language pathology licensing board to comply with the
22 investigative and adverse action reporting requirements of
23 this act prior to the effective date of withdrawal.

24 (d) Nothing contained in this compact shall be construed
25 to invalidate or prevent any audiology or speech-language
26 pathology licensure agreement or other cooperative
27 arrangement between a member state and a nonmember
28 state that does not conflict with the provisions of this
29 compact.

30 (e) This compact may be amended by the member
31 states. No amendment to this compact shall become
32 effective and binding upon any member state until it is
33 enacted into the laws of all member states.

§30-32A-13. Construction and severability.

1 This compact shall be liberally construed so as to
2 effectuate the purposes of the compact. The provisions of
3 this compact are severable and if any phrase, clause,
4 sentence, or provision of this compact is declared to be
5 contrary to the Constitution of any member state or of the
6 United States or the applicability thereof to any government,
7 agency, person, or circumstance is held invalid, the validity
8 of the remainder of this compact and the applicability
9 thereof to any government, agency, person, or circumstance
10 shall not be affected. If this compact is held contrary to the
11 constitution of any member state, the compact shall remain
12 in full force and effect as to the remaining member states
13 and in full force and effect as to the member state affected
14 as to all severable matters.

§30-32A-14. Binding effect of compact and other laws.

1 (a) Nothing in this article prevents the enforcement of
2 any other law of a member state that is not inconsistent with
3 the compact.

4 (b) All laws in a member state in conflict with the
5 compact are superseded to the extent of the conflict.

6 (c) All lawful actions of the commission, including all
7 rules and bylaws promulgated by the commission, are
8 binding upon the member states.

9 (d) All agreements between the commission and the
10 member states are binding in accordance with their terms.

11 (e) In the event any provision of the compact exceeds
12 the constitutional limits imposed on the legislature of any
13 member state, the provision shall be ineffective to the extent
14 of the conflict with the constitutional provision in question
15 in that member state.



CHAPTER 250

**(H. B. 4417 - By Delegates Rohrbach, Kessinger,
Robinson, Walker, Bartlett, Ellington, Hanna,
Hornbuckle, D. Kelly, Mandt and Pushkin)**

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §30-1-7a of the Code of West Virginia, 1931, as amended; relating to permitting professional boards to approve different continuing education programs on drug diversion.

Be it enacted by the Legislature of West Virginia:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-7a. Continuing education.

1 (a) A board referred to in this chapter shall establish
2 continuing education requirements as a prerequisite to
3 license renewal. A board shall develop continuing education
4 criteria appropriate to its discipline, which shall include, but
5 not be limited to, course content, course approval, hours
6 required and reporting periods.

7 (b) Notwithstanding any other provision of this code or
8 the provision of a legislative rule to the contrary, each
9 person issued a license to practice medicine and surgery, a
10 license to practice podiatry or licensed as a physician
11 assistant by the West Virginia Board of Medicine; each
12 person issued a license to practice dentistry by the West
13 Virginia Board of Dental Examiners, each person issued a
14 license to practice optometry by the West Virginia Board of
15 Optometry, each person licensed as a pharmacist by the
16 West Virginia Board of Pharmacy, each person licensed to
17 practice registered professional nursing or licensed as an
18 advanced nurse practitioner by the West Virginia Board of
19 Examiners for Registered Professional Nurses, each person
20 licensed as a licensed practical nurse by the West Virginia
21 State Board of Examiners for Licensed Practical Nurses and
22 each person licensed to practice medicine and surgery as an
23 osteopathic physician and surgeon or licensed or certified as
24 an osteopathic as physician assistant by the West Virginia
25 Board of Osteopathy shall complete drug diversion training,
26 best-practice prescribing of controlled substances training,
27 and training on prescribing and administration of an opioid
28 antagonist and other relevant trainings as promulgated by
29 the appropriate licensing board, as the trainings are
30 established by his or her respective licensing board, if that
31 person prescribes, administers or dispenses a controlled
32 substance, as that term is defined in section one hundred
33 one, article one, chapter sixty-a of this code.

34 (1) Notwithstanding any other provision of this code or
35 the provision of any legislative rule to the contrary, the West
36 Virginia Board of Medicine, the West Virginia Board of

37 Dental Examiners, the West Virginia Board of Optometry,
38 the West Virginia Board of Pharmacy, the West Virginia
39 Board of Examiners for Registered Professional Nurses, the
40 West Virginia State Board of Examiners for Licensed
41 Practical Nurses and the West Virginia Board of Osteopathy
42 shall establish continuing education requirements and
43 criteria appropriate to their respective discipline on the
44 subject of drug diversion training, best-practice prescribing
45 of controlled substances training and prescribing and
46 administration of an opioid antagonist training for each
47 person issued a license or certificate by their respective
48 board who prescribes, administers or dispenses a controlled
49 substance, as that term is defined in section one hundred
50 one, article one, chapter sixty-a of this code, and shall
51 develop a certification form pursuant to subdivision (b)(2)
52 of this section.

53 (2) Each person who receives his or her initial license or
54 certificate from any of the boards set forth in subsection (b)
55 of this section shall complete the continuing education
56 requirements set forth in subsection (b) of this section
57 within one year of receiving his or her initial license from
58 that board and each person licensed or certified by any of
59 the boards set forth in subsection (b) of this section who has
60 held his or her license or certificate for longer than one year
61 shall complete the continuing education requirements set
62 forth in subsection (b) of this section as a prerequisite to
63 each license renewal: *Provided*, That a person subject to
64 subsection (b) of this section may waive the continuing
65 education requirements for license renewal set forth in
66 subsection (b) of this section if he or she completes and
67 submits to his or her licensing board a certification form
68 developed by his or her licensing board attesting that he or
69 she has not prescribed, administered or dispensed a
70 controlled substance, as that term is defined in section one
71 hundred one, article one, chapter sixty-a of this code, during
72 the entire applicable reporting period.

73 (c) Notwithstanding any other provision of this code or
74 the provision of any legislative rule to the contrary, each
75 person licensed to practice registered professional nursing
76 or licensed as an advanced nurse practitioner by the West
77 Virginia Board of Examiners for Registered Professional
78 Nurses, each person licensed as a licensed practical nurse
79 by the West Virginia State Board of Examiners for Licensed
80 Practical Nurses, each person licensed to practice
81 psychology by the Board of Examiners of Psychologists,
82 each person licensed to practice social work by the West
83 Virginia Board of Social Work and each person licensed to
84 practice professional counseling by the West Virginia Board
85 of Examiners in Counseling shall complete two hours of
86 continuing education for each reporting period on mental
87 health conditions common to veterans and family members
88 of veterans, as the continuing education is established by his
89 or her respective licensing board. In cooperation with the
90 Secretary of the Department of Veterans' Assistance, the
91 continuing education shall include training on inquiring
92 about whether the patients are veterans or family members
93 of veterans, and screening for conditions such as post-
94 traumatic stress disorder, risk of suicide, depression and
95 grief and prevention of suicide. The two hours shall be part
96 of the total hours of continuing education required by each
97 board and not two additional hours.



CHAPTER 251

(H. B. 4607 - By Delegate Howell)

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

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

AN ACT to amend and reenact §30-27-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact said

code by adding thereto a new section, designated §30-27-17a, all relating to authorizing the operation of mobile shops for hair, nail, cosmetology, and aesthetics services; defining “mobile shop”; establishing prerequisites for operation of a mobile shop; removing antiquated language; specifying mandatory features and systems; setting the term of licenses; and requiring shop identification and display of license.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

***§30-27-3. Definitions.**

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (a) “Aesthetics” or “esthetics” means any one or any
5 combination of the following acts when done on the human
6 body for compensation and not for the treatment of disease:

7 (1) Administering cosmetic treatments to enhance or
8 improve the appearance of the skin, including cleansing,
9 toning, performing effleurage or other related movements,
10 stimulating, exfoliating, or performing any other similar
11 procedure on the skin of the human body or scalp;

12 (2) Applying, by hand or with a mechanical or electrical
13 apparatus, any cosmetics, makeups, oils, powders, clays,
14 antiseptics, tonics, lotions, creams, or chemical preparations
15 necessary for the practice of aesthetics to another person’s
16 face, neck, back, shoulders, hands, elbows and feet up to and
17 including the knee;

18 (3) The rubbing, cleansing, exercising, beautifying, or
19 grooming of another person’s face, neck, back, shoulders,
20 hands, elbows, and feet, up to and including the knee;

*NOTE: This section was also amended by H. B. 4099 (Chapter 245), which passed prior to this act.

21 (4) The waxing and tweezing of hair on another person's
22 body;

23 (5) The wrapping of another person's body in a body
24 wrap;

25 (6) Applying artificial eyelashes and eyebrows; and

26 (7) The lightening of hair on the body except the scalp.

27 (b) "Aesthetician" or "esthetician" means a person
28 licensed under the provisions of this article who engages in
29 the practice of aesthetics and has completed 600 clock hours
30 of training.

31 (c) "Applicant" means a person making application for
32 a professional license, license, certificate, registration,
33 permit, or renewal under the provisions of this article.

34 (d) "Barber" means a person licensed under the
35 provisions of this article who engages in the practice of
36 barbering and has completed a 1,200 clock-hour barber
37 training program without chemical services, or a 1,500
38 clock-hour barber training program with chemical services,
39 or has successfully completed the barber apprenticeship
40 program.

41 (e) "Barbering" means any one or any combination of
42 the following acts when done on the head and neck for
43 compensation and not for the treatment of disease:

44 (1) Shaving, shaping, and trimming the beard, or both;

45 (2) Cutting, singeing, arranging, dressing, tinting,
46 bleaching, or applying lotions or tonics on human hair, or a
47 wig or hairpiece; and

48 (3) Applications, treatments, or rubs of the scalp, face,
49 or neck with oils, creams, lotions, cosmetics, antiseptics,
50 powders, or other preparations in connection with the
51 shaving, cutting, or trimming of the hair or beard.

52 (f) “Barber crossover” is a person who has completed
53 1,200 or 1,500 clock hours of training, is licensed as a
54 barber, and completed additional hours of training in nails,
55 aesthetics, and/or chemical services, to the total amount of
56 2,100 hours, to perform cosmetology.

57 (g) “Barber permanent waving” means the following
58 acts performed on the head and neck for compensation and
59 not for the treatment of disease:

60 (1) The bleaching or tinting of hair; and

61 (2) The permanent waving of hair.

62 (h) “Barber permanent waviest” means a person who has
63 completed 2,000 clock hours of training and was licensed to
64 perform barbering and barber permanent waving enrolled
65 by August 28, 2012.

66 (i) “Board” means the West Virginia Board of Barbers
67 and Cosmetologists.

68 (j) “Certificate” means an instructor certificate to teach
69 in a school under the provisions of this article or a document
70 issued by the board for certification obtained pursuant to
71 §30-27-8b of this code.

72 (k) “Certificate holder” means a person certified as an
73 instructor to teach in a school under the provisions of this
74 article, or who has obtained a certification pursuant to §30-
75 27-8b of this code.

76 (l) “Cosmetologist” means a person licensed under the
77 provisions of this article who engages in the practice of
78 cosmetology and who has completed 1,800 clock hours of
79 training.

80 (m) “Cosmetology” means any one or any combination
81 of the following acts when done on the human body for
82 compensation and not for the treatment of disease:

83 (1) Cutting, styling, shaping, arranging, braiding,
84 weaving, dressing, adding extensions, curling, waving,
85 permanent waving, relaxing, straightening, cleansing,
86 singeing, bleaching, tinting, coloring, waxing, tweezing, or
87 similarly, work on human hair, or a wig or hairpiece, by any
88 means, including hands, mechanical, or electrical devices or
89 appliances;

90 (2) Nail care;

91 (3) Applying by hand or with a mechanical or electrical
92 device or appliance, any cosmetics, makeups, oils, powders,
93 clays, antiseptics, tonics, lotions, creams or chemical
94 preparations necessary for the practice of aesthetics to
95 another person's face, neck, shoulders, hands, elbows, and
96 feet, up to and including the knee;

97 (4) The rubbing, cleansing, exercising, beautifying, or
98 grooming of another person's face, neck, shoulders, hands,
99 elbows, and feet, up to and including the knee;

100 (5) The wrapping of another person's body in a body
101 wrap; and

102 (6) Performing aesthetics.

103 (n) "Cosmetology crossover" is a person who has
104 completed 1,800 clock hours of training, is licensed as a
105 cosmetologist, and completes an additional 300 hours of
106 training in clipper cuts and face shaving to perform
107 barbering, for a total of 2,100 hours.

108 (o) "General supervision" means:

109 (1) For schools, a master or certified instructor is on the
110 premises and is quickly and easily available; or

111 (2) For salons, a professional licensee is on the premises
112 and is quickly and easily available.

113 (p) “Hair styling” means any one or any combination of
114 the following acts when done on the head and neck for
115 compensation and not for the treatment of disease:

116 Cutting, styling, shaping, arranging, braiding, weaving,
117 dressing, adding extensions, curling, facial hair trimming,
118 scalp treatments, waving, permanent waving, relaxing,
119 straightening, singeing, bleaching, tinting, coloring, or
120 similar, work on human hair, or a wig or hairpiece, by any
121 means, including hands, mechanical or electrical devices, or
122 appliances.

123 (q) “Hair stylist” means a person licensed under the
124 provisions of this article who engages in the practice of hair
125 styling and who has completed 1,000 clock hours of
126 training, effective July 1, 2016.

127 (r) “License” means a professional license, a salon
128 license, or a school license.

129 (s) “Licensed school” means a facility which has been
130 approved by the West Virginia Council for Community and
131 Technical College Education (CCTCE), Department of
132 Education in conjunction with CCTCE, or Department of
133 Education in conjunction with the Department of
134 Corrections pursuant to §18B-2B-9 of this code to educate
135 persons to be licensed or issued certain permits under the
136 provisions of this article.

137 (t) “Licensee” means a person, corporation, or firm
138 holding a license issued under the provisions of this article.

139 (u) “Mobile shop” means any self-contained, self-
140 supporting, enclosed unit which is constructed in either a
141 motorized vehicle or a towable trailer as a portable facility
142 for providing any of the professional services set forth in
143 this article to the public.

144 (v) “Nail care” means any one or any combination of the
145 following acts when done on the human body for
146 compensation and not for the treatment of disease:

147 (1) The cleansing, dressing, or polishing of nails of a
148 person;

149 (2) Performing artificial nail service; and

150 (3) The cosmetic treatment of the feet up to the knee and
151 the hands up to the elbow.

152 (w) “Nail technician” or “manicurist” means a person
153 licensed under the provisions of this article who engages in
154 the practice of nail care and has completed 400 clock hours
155 of training.

156 (x) “Permit” means a work permit.

157 (y) “Permitee” means a person holding a work permit.

158 (z) “Professional license” means a license to practice as
159 an aesthetician, barber, barber crossover, barber permanent
160 wavist, cosmetologist, cosmetologist crossover, hairstylist,
161 or nail technician.

162 (aa) “Registration” means a registration issued by the
163 board to a person who rents or leases a booth or chair from
164 a licensed salon owner and operator, or both, or a
165 registration issued by the board to a person who is a student
166 in a school.

167 (bb) “Registrant” means a person who holds a
168 registration under the provisions of this article.

169 (cc) “Salon” means a shop or other facility where a
170 person practices under a professional license.

171 (dd) “Salon license” means a license to own and operate
172 a salon.

173 (ee) “Student registration” means a registration issued
174 by the board to a student to study at a school licensed under
175 the provisions of this article.

176 (ff) “Waxing specialist” means a person certified under
177 the provisions of this article who engages in the practice of
178 waxing and tweezing of hair on another person’s body.

179 (gg) Hair braiding, threading, and any other item not
180 spelled out are not regulated by the West Virginia Board of
181 Barbers and Cosmetologists.

§30-27-17a. Mobile shops.

1 (a) Every mobile shop in this state offering services set
2 forth in this article shall be operated under the supervision
3 and management of a professional licensee or certificate
4 holder licensed under this article.

5 (b) Prior to opening a mobile shop, any person, firm, or
6 corporation owning and/or operating the mobile shop shall
7 meet the following requirements to acquire a mobile shop
8 license to do business:

9 (1) Provide to the board a physical description and
10 photographs of the exterior of the mobile shop and, if
11 applicable, its vehicle registration number to facilitate ready
12 identification of the mobile shop;

13 (2) Meet all board requirements and qualifications for a
14 place of business, not incompatible with a mobile facility,
15 as are required by this article;

16 (3) Notify the board, in writing, at least 20 days before
17 the proposed opening date, so there can be an inspection of
18 the mobile shop: *Provided*, That if an inspection is not made
19 within 10 days of the opening of the mobile shop, or a
20 mobile shop license to open has not been granted or refused,
21 then the mobile shop may open provisionally subject to a
22 later inspection and to all other provisions and rules
23 provided in this article; and

24 (4) Pay all applicable fees.

25 (c) Every mobile shop shall be equipped with an
26 electronic device, approved by the board, capable of
27 transmitting its location, as well as an identifying label or
28 call sign, to the board at all times. This device shall be in
29 operation at all times that the mobile shop is open and at
30 additional times specified by the board.

31 (d) If the mobile shop visits identified locations on a
32 regular schedule, the managing licensee shall provide a
33 copy of the schedule to the board and shall notify the board
34 in writing of any changes to the regular schedule within five
35 days of changing the schedule.

36 (e) Each mobile unit shall, at a minimum, be equipped
37 with each of the following functioning systems:

38 (1) A self-contained, potable water supply of not less
39 than 100 gallons, and waste water collection tanks shall be
40 of adequate capacity;

41 (2) Continuous, on-demand hot water tanks which shall
42 have not less than a six-gallon capacity; and

43 (3) A cooling and heating system sufficient to maintain
44 a comfortable room temperature in the mobile shop during
45 all hours of operation.

46 (f) All mobile shop licenses must be renewed annually
47 on or before July 1 and pay a renewal fee.

48 (g) The mobile shop license shall be permanently
49 displayed in the mobile shop, and a suitable sign shall be
50 displayed at the entrance of the mobile shop which shall
51 plainly indicate the business conducted therein.

●

CHAPTER 252

(H. B. 4749 - By Delegates Howell and C. Martin)
[By Request of the West Virginia 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 §30-18-2, §30-18-3, §30-18-5, §30-18-6, §30-18-9, and §30-18-10 of the Code of West Virginia, 1931, as amended, all relating to providing more efficient application processes for private investigators, security guards, and firms; reducing experience necessary for licensure as private investigator; allowing military service to be included as experience that may be used for licensure; removing conviction for crime involving moral turpitude or dishonesty as disqualification for licensure as private investigator; removing unnecessary requirements for each private investigator and security guard applicant to submit fingerprints and photographs of each applicant to the Secretary of State; permitting private investigators, security guards, and private investigator or security guard firms to obtain liability insurance in lieu of a surety bond; increasing the amount of a surety bond; removing conviction for crime involving moral turpitude or dishonesty as disqualification for licensure as security guard; increasing the licensure renewal term of a private investigator, security guard, and private investigator or security guard firms from one to two years; eliminating disparate application fee for foreign individuals and businesses for private investigator, private investigator firm, security guard, and security guard business licensure; and limiting amount of renewal fee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.

§30-18-2. Eligibility requirements for license to conduct the private investigation business.

1 (a) In order to be eligible for any license to conduct the
2 private investigation business, an applicant shall:

3 (1) Be at least 18 years of age;

4 (2) Be a citizen of the United States or an alien who is
5 legally residing within the United States;

6 (3) Not have had any previous license to conduct a
7 private investigation business or to conduct a security guard
8 business revoked or any application for any such licenses or
9 registrations denied by the appropriate governmental
10 authority in this or any other state or territory;

11 (4) Not have been declared incompetent by reason of
12 mental defect or disease by any court of competent
13 jurisdiction unless a court has subsequently determined that
14 the applicant's competency has been restored;

15 (5) Not suffer from habitual drunkenness or from
16 narcotics addiction or dependence;

17 (6) Be of good moral character;

18 (7) Have a minimum of one year of experience,
19 education, or training in any one of the following areas, or
20 some combination thereof:

21 (A) Course work that is relevant to the private
22 investigation business at an accredited college or university;

23 (B) Employment as a member of any United States
24 government investigative agency, employment as a member
25 of a state or local law-enforcement agency, or service as a
26 sheriff;

27 (C) Employment by a licensed private investigative or
28 detective agency for the purpose of conducting the private
29 investigation business;

- 30 (D) Service as a magistrate in this state; or
- 31 (E) Any other substantially equivalent training or
32 experience; or
- 33 (F) Military service.
- 34 (8) Not have been convicted of a felony in this state or
35 any other state or territory;
- 36 (9) Not have been convicted of any of the following:
- 37 (A) Illegally using, carrying, or possessing a pistol or
38 other dangerous weapon;
- 39 (B) Making or possessing burglar's instruments;
- 40 (C) Buying or receiving stolen property;
- 41 (D) Entering a building unlawfully;
- 42 (E) Aiding an inmate's escape from prison;
- 43 (F) Possessing or distributing illicit drugs;
- 44 (G) Any misdemeanor involving moral turpitude or for
45 which dishonesty of character is a necessary element; and
- 46 (10) Not have violated any provision of §30-18-8 of this
47 code.
- 48 The provisions of this section shall not prevent the
49 issuance of a license to any person who, subsequent to his
50 or her conviction, shall have received an executive pardon
51 therefor, removing this disability.
- 52 (b) Any person who qualifies for a private investigator's
53 license shall also be qualified to conduct security guard
54 business upon notifying the Secretary of State in writing that
55 the person will be conducting such business.
- 56 (c) No person may be employed as a licensed private
57 investigator while serving as magistrate.

§30-18-3. Application requirements for a license to conduct the private investigation business.

1 (a) To be licensed to be a private detective, a private
2 investigator or to operate a private detective or investigative
3 firm, each applicant shall file an application with the
4 Secretary of State in a manner or method authorized and in
5 such form as the secretary may prescribe.

6 (b) On the application each applicant shall provide the
7 following information: The applicant's name, birth date,
8 citizenship, physical description, military service, current
9 residence, residences for the preceding seven years,
10 qualifying education or experience, the location of each of
11 his or her offices in this state, and any other information
12 requested by the Secretary of State in order to comply with
13 the requirements of this article.

14 (c) In the case of a corporation that is seeking a firm
15 license, the application shall be signed by the president of
16 such corporation and shall specify the name of the
17 corporation, the date and place of its incorporation, the
18 names and titles of all officers, the location of its principal
19 place of business, and the name of the city, town or village,
20 stating the street and number, and otherwise such apt
21 description as will reasonably indicate the location. If the
22 corporation has been incorporated in a state other than West
23 Virginia, a certificate of good standing from the state of
24 incorporation must accompany the application. This
25 information must be provided in addition to that required to
26 be provided by the applicant.

27 (d) The applicant shall provide:

28 (1) Information in the application about whether the
29 applicant has ever been arrested for or convicted of any
30 crime or wrongs, either done or threatened, against the
31 government of the United States;

32 (2) Information about offenses against the laws of West
33 Virginia or any state; and

34 (3) Any facts as may be required by the Secretary of
35 State to show the good character, competency and integrity
36 of the applicant.

37 To qualify for a firm license, the applicant shall provide
38 such information for each person who will be authorized to
39 conduct the private investigation business and for each
40 officer, member, or partner of the firm.

41 (e) As part of the application, each applicant shall give
42 the Secretary of State permission to review the records held
43 by the West Virginia State Police for any convictions that
44 may be on record for the applicant.

45 (f) For each applicant applying for a license, the
46 application shall be accompanied by one recent full-face
47 photograph.

48 (g) For each applicant, the application shall be
49 accompanied by:

50 (1) Character references from at least five reputable
51 citizens. Each reference must have known the applicant for
52 at least five years preceding the application. No reference
53 may be connected to the applicant by blood or marriage. All
54 references must have been written for the purpose of the
55 application for a license to conduct the private investigation
56 business; and

57 (2) A nonrefundable application processing service
58 charge of \$50, which shall be payable to the Secretary of
59 State to offset the cost of license review and criminal
60 investigation background report from the West Virginia
61 State Police, along with a license fee of \$100 if the applicant
62 is an individual, or \$200 if the applicant is a firm. The
63 license fee shall be deposited to the General Revenue Fund
64 and shall be refunded only if the license is denied.

65 (h) All applicants for private detective or private
66 investigator licenses or for private investigation firm
67 licenses shall file in the office of Secretary of State a surety

68 bond or sufficient proof of liability insurance as required by
69 the Secretary of State.

70 (i) If a surety bond is obtained in lieu of liability
71 insurance, such bond shall:

72 (1) Be in the sum of \$5,000 and conditioned upon the
73 faithful and honest conduct of such business by such
74 applicant;

75 (2) Be written by a company recognized and approved
76 by the Insurance Commissioner of West Virginia and
77 approved by the Attorney General of West Virginia with
78 respect to its form;

79 (3) Be in favor of the State of West Virginia for any
80 person who is damaged by any violation of this article. The
81 bond must also be in favor of any person damaged by such
82 a violation.

83 (j) Any person claiming against the bond required by
84 subsection (i) of this section for a violation of this article
85 may maintain an action at law against any licensed
86 individual or firm and against the surety. The surety shall be
87 liable only for damages awarded under §30-18-12 of this
88 code and not the punitive damages permitted under that
89 section. The aggregate liability of the surety to all persons
90 damaged by a person or firm licensed under this article may
91 not exceed the amount of the bond.

**§30-18-5. Eligibility requirements to be licensed to conduct
security guard business.**

1 (a) In order to be eligible for any license to conduct
2 security guard business, an applicant shall:

3 (1) Be at least 18 years of age;

4 (2) Be a citizen of the United States or an alien who is
5 legally residing within the United States;

6 (3) Not have had any previous license to conduct
7 security guard business or to conduct the private
8 investigation business revoked or any application for any
9 such licenses or registrations denied by the appropriate
10 governmental authority in this or any other state or territory;

11 (4) Not have been declared incompetent by reason of
12 mental defect or disease by any court of competent
13 jurisdiction unless said court has subsequently determined
14 that the applicant's competency has been restored;

15 (5) Not suffer from habitual drunkenness or from
16 narcotics addiction or dependence;

17 (6) Have had at least one year verified, full time
18 employment conducting security guard business or
19 conducting the private investigation business working for a
20 licensed firm or have one year of substantially equivalent
21 training or experience;

22 (7) Not have been convicted of a felony in this state or
23 any other state or territory;

24 (8) Not have been convicted of any of the following:

25 (A) Illegally using, carrying, or possessing a pistol or
26 other dangerous weapon;

27 (B) Making or possessing burglar's instruments;

28 (C) Buying or receiving stolen property;

29 (D) Entering a building unlawfully;

30 (E) Aiding an inmate's escape from prison;

31 (F) Possessing or distributing illicit drugs; and

32 (9) Not have violated any provision of §30-18-8 of this
33 code.

34 The provisions of this section shall not prevent the
35 issuance of a license to any person who, subsequent to his
36 or her conviction, shall have received an executive pardon
37 therefor, removing this disability.

§30-18-6. Application requirements for a license to conduct security guard business.

1 (a) To be licensed as a security guard or to operate a
2 security guard firm, each applicant shall file a written
3 application, under oath, and file an application with the
4 Secretary of State in a manner or method authorized and in
5 such form as the secretary may prescribe.

6 (b) On the application, each applicant shall provide the
7 following information: The applicant's name, birth date,
8 citizenship, physical description, military service, current
9 residence, residences for the preceding seven years,
10 qualifying education or experience, the location of each of
11 his or her offices in this state, and any other information
12 requested by the Secretary of State in order to comply with
13 the requirements of this article.

14 (c) In the case of a corporation that is seeking a firm
15 license, the application shall be signed by the president of
16 such corporation and shall specify the name of the
17 corporation, the date and place of its incorporation, the
18 names and titles of all officers, the location of its principal
19 place of business, and the name of the city, town, or village,
20 stating the street and number, and otherwise such apt
21 description as will reasonably indicate the location. If the
22 corporation has been incorporated in a state other than West
23 Virginia, a certificate of good standing from the state of
24 incorporation must accompany the application. This
25 information shall be provided in addition to that required to
26 be provided the applicant.

27 (d) The applicant shall provide:

28 (1) Information in the application about whether the
29 applicant has ever been arrested for or convicted of any

30 crime or wrongs, either done or threatened, against the
31 government of the United States;

32 (2) Information about offenses against the laws of West
33 Virginia or any state;

34 (3) Any facts as may be required by the Secretary of
35 State to show the good character, competency, and integrity
36 of the applicant; and

37 (4) To qualify for a firm license, the same information
38 for each person who would be authorized to conduct
39 security guard business under the applicant's firm license
40 and for each officer, member, or partner in the firm.

41 (e) As part of the application, each applicant shall give
42 the Secretary of State permission to review the records held
43 by the West Virginia State Police for any convictions that
44 may be on record for the applicant.

45 (f) For each applicant for a license, the application shall
46 be accompanied by one recent full-face photograph of the
47 applicant.

48 (g) For each applicant, the application shall be
49 accompanied by:

50 (1) Character references from at least five reputable
51 citizens. Each reference must have known the applicant for
52 at least five years preceding the application. No reference
53 may be connected to the applicant by blood or marriage. All
54 references must have been written for the purpose of the
55 application for a license to conduct security guard business;
56 and

57 (2) A nonrefundable application processing service
58 charge of \$50, which shall be payable to the Secretary of
59 State to offset the cost of license review and criminal
60 investigation background report from the West Virginia
61 State Police, along with a license fee of \$100 if the applicant
62 is an individual, or \$200 if the applicant is a firm. The

63 license fee shall be deposited to the General Revenue Fund,
64 and shall be refunded only if the license is denied.

65 (h) All applicants for security guard licenses or security
66 guard firm licenses shall file in the office of the Secretary of
67 State a surety bond or sufficient proof of liability insurance
68 as required by the Secretary of State.

69 (i) If a surety bond is obtained in lieu of liability
70 insurance, such bond shall:

71 (1) Be in the sum of \$5,000 and conditioned upon the
72 faithful and honest conduct of such business by such
73 applicant;

74 (2) Be written by a company recognized and approved
75 by the Insurance Commissioner of West Virginia and the
76 Attorney General of West Virginia with respect to its form;

77 (3) Be in favor of the State of West Virginia for any
78 person who is damaged by any violation of this article. The
79 bond must also be in favor of any person damaged by such
80 a violation.

81 (j) Any person claiming against the bond required by
82 subsection (i) of this section for a violation of this article
83 may maintain an action at law against any licensed
84 individual or firm and against the surety. The surety shall be
85 liable only for damages awarded under §30-18-12 of this
86 code and not the punitive damages permitted under that
87 section. The aggregate liability of the surety to all persons
88 damaged by a person or firm licensed under this article may
89 not exceed the amount of the bond.

§30-18-9. Renewal of license.

1 A license granted under the provisions of this article
2 shall be in effect for two years from the date the certificate
3 of license is issued and may be renewed for a period of one
4 year by the Secretary of State upon application, in such form
5 as the secretary may prescribe, and upon payment of the fee

6 and the filing of the surety bond or proof of liability
7 insurance. At the time of applying for renewal of a license,
8 the Secretary of State may require any person to provide
9 additional information to reflect any changes in the original
10 application or any previous renewal. Any fee charged by the
11 Secretary of State for renewal of a license shall not exceed
12 \$50.

§30-18-10. Authority of Secretary of State.

1 (a) When the Secretary of State is satisfied as to the
2 good character, competency, and integrity of an applicant,
3 of all employees or individuals conducting the private
4 investigation business or security guard services under a
5 firm license and, if the applicant is a firm, of each member,
6 officer or partner, he or she shall issue and deliver to the
7 applicant a certificate of license. Each license issued shall
8 be for a period of one year and is revocable at all times for
9 cause shown pursuant to subsection (b) of this section or any
10 rules promulgated pursuant thereto.

11 (b) The Secretary of State may propose for
12 promulgation in accordance with the provisions of chapter
13 29A of this code legislative rules necessary for the
14 administration and enforcement of this article and for the
15 issuance, suspension, and revocation of licenses issued
16 under the provisions of this article. The Secretary of State
17 shall afford any applicant an opportunity to be heard in
18 person or by counsel when a determination is made to deny,
19 revoke, or suspend an applicant's license or application for
20 license, including a renewal of a license. The applicant has
21 15 days from the date of receiving written notice of the
22 Secretary of State's adverse determination to request a
23 hearing on the matter of denial, suspension, or revocation.
24 The action of the Secretary of State in granting, renewing,
25 or in refusing to grant or to renew, a license is subject to
26 review by the circuit court of Kanawha County or other
27 court of competent jurisdiction.

28 (c) At any hearing before the Secretary of State to
29 challenge an adverse determination by the Secretary of State
30 on the matter of a denial, suspension, or revocation of a
31 license, if the adverse determination is based upon a
32 conviction for a crime which would bar licensure under the
33 provisions of this article, the hearing shall be an identity
34 hearing only and the sole issue which may be contested is
35 whether the person whose application is denied or whose
36 license is suspended or revoked is the same person
37 convicted of the crime.

38 (d) The Secretary of State shall require each applicant
39 to submit to a state and national criminal history record
40 check, as set forth in this subsection:

41 (1) The criminal history record check shall be based on
42 fingerprints submitted to the West Virginia State Police or
43 its assigned agent for forwarding to the Federal Bureau of
44 Investigation.

45 (2) The applicant shall meet all requirements necessary
46 to accomplish the state and national criminal history record
47 check, including:

48 (A) Submitting fingerprints for the purposes set forth in
49 this section, if required by the Secretary of State, West
50 Virginia State Police, or the Federal Bureau of
51 Investigation; and

52 (B) Authorizing the Secretary of State, the West
53 Virginia State Police, and the Federal Bureau of
54 Investigation to use all records submitted and produced for
55 the purpose of screening the applicant for a license.

56 (3) The results of the state and national criminal history
57 record check may not be released to or by a private entity
58 except:

59 (A) To the individual who is the subject of the criminal
60 history record check;

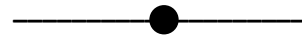
61 (B) With the written authorization of the individual who
62 is the subject of the criminal history record check; or

63 (C) Pursuant to a court order.

64 (4) The criminal history record check and related
65 records are not public records for the purposes of chapter
66 29B of this code.

67 (5) The applicant shall ensure that the criminal history
68 record check is completed as soon as possible after the date
69 of the original application for registration.

70 (6) The applicant shall pay the actual costs of the
71 fingerprinting and criminal history record check.



CHAPTER 253

**(H. B. 4777 - By Delegates Dean, Howell, C. Martin,
Hamrick and Steele)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §30-6-22a of the Code of West Virginia, 1931, as amended, relating to the right of disposition of remains.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.

§30-6-22a. Right of disposition; preneed contract; affidavit on disposition of remains; role of county commission; liability of funeral home.

1 (a) Notwithstanding section 22 of this article, a person
2 who is 18 years of age or older and of sound mind, by
3 entering into a preneed funeral contract, as defined in §47-
4 14-2 of this code, may direct the location, manner and
5 conditions of the disposition of the person's remains and the
6 arrangements for funeral goods and services to be provided
7 upon the person's death. The disposition directions and
8 funeral prearrangements that are contained in a preneed
9 funeral contract are not subject to cancellation or revision
10 unless any resources set aside to fund the preneed funeral
11 contract are insufficient under the terms of the preneed
12 funeral contract to carry out the disposition directions and
13 funeral prearrangements contained in the contract.

14 (b) As to any matter not addressed in a preneed funeral
15 contract as described in subsection (a) of this section and
16 except as provided in subsection (c) of this section, the right
17 to control the disposition of the remains of a deceased
18 person, the location, manner and conditions of disposition,
19 and arrangements for funeral goods and services to be
20 provided vests in the following, in the order named,
21 provided that the person is 18 years or older and is of sound
22 mind:

23 (1)(A) A person designated by the decedent as the
24 person with the right to control the disposition in an affidavit
25 executed in accordance with paragraph (B) of this
26 subdivision; and

27 (B) A person who is 18 years of age or older and of
28 sound mind wishing to authorize another person to control
29 the disposition of his or her remains may execute an
30 affidavit before a notary public in substantially the
31 following form:

32 "I, _____, do hereby designate
33 _____ with the right to control the
34 disposition of my remains upon my death. I ___ have/ ___
35 have not attached specific directions concerning the
36 disposition of my remains with which the designee shall

37 substantially comply, provided that these directions are
38 lawful and there are sufficient resources in my estate to
39 carry out the directions.

40 _____

41 Signed

42 State of _____

43 County of _____

44 I, _____, a Notary Public of
45 said _____ County, do certify that
46 _____, as principal
47 whose name is signed to the writing above bearing date on
48 the _____ day of _____, 20____, has this day
49 acknowledged the same before me.

50 Given under my hand this _____ day of _____, 20__.

51 My commission expires: _____

52 _____

53 Notary Public”;

54 (2) The surviving spouse of the decedent;

55 (3) The sole surviving child of the decedent or, if there
56 is more than one child of the decedent, the majority of the
57 surviving children. However, less than one half of the
58 surviving children shall be vested with the rights under this
59 section if they have used reasonable efforts to notify all
60 other surviving children of their instructions and are not
61 aware of any opposition to those instructions on the part of
62 more than one half of all surviving children;

63 (4) The surviving parent or parents of the decedent. If
64 one of the surviving parents is absent, the remaining parent
65 shall be vested with the rights and duties under this section

66 after reasonable efforts have been unsuccessful in locating
67 the absent surviving parent;

68 (5) The surviving brother or sister of the decedent or, if
69 there is more than one sibling of the decedent, the majority
70 of the surviving siblings. However, less than the majority of
71 surviving siblings shall be vested with the rights and duties
72 under this section if they have used reasonable efforts to
73 notify all other surviving siblings of their instructions and
74 are not aware of any opposition to those instructions on the
75 part of more than one half of all surviving siblings;

76 (6) The surviving grandparent of the decedent or, if
77 there is more than one surviving grandparent, the majority
78 of the grandparents. However, less than the majority of the
79 surviving grandparents shall be vested with the rights and
80 duties under this section if they have used reasonable efforts
81 to notify all other surviving grandparents of their
82 instructions and are not aware of any opposition to those
83 instructions on the part of more than one half of all surviving
84 grandparents;

85 (7) Adult grandchildren.

86 (8) The guardian of the person of the decedent at the
87 time of the decedent's death if one had been appointed;

88 (9) The personal representative of the estate of the
89 decedent;

90 (10) The person in the classes of the next degree of
91 kinship, in descending order, under the laws of descent and
92 distribution to inherit the estate of the decedent. If there is
93 more than one person of the same degree, any person of that
94 degree may exercise the right of disposition;

95 (11) If the disposition of the remains of the decedent is
96 the responsibility of the state or a political subdivision of the
97 state, the public officer, administrator or employee
98 responsible for arranging the final disposition of decedent's
99 remains; or

100 (12) In the absence of any person under subdivisions (1)
101 through (11) of this subsection, any other person willing to
102 assume the responsibilities to act and arrange the final
103 disposition of the decedent's remains, including the funeral
104 director with custody of the body, after attesting in writing
105 that a good-faith effort has been made to no avail to contact
106 the individuals under subdivisions (1) through (11) of this
107 subsection.

108 (c) A person entitled under law to the right of
109 disposition forfeits that right, and the right is passed on to
110 the next qualifying person as listed in subsection (b) of this
111 section, in the following circumstances:

112 (1) Any person charged with murder or voluntary
113 manslaughter in connection with the decedent's death and
114 whose charges are known to the funeral director. However,
115 if the charges against that person are dismissed or if the
116 person is acquitted of the charges, the right of disposition is
117 returned to the person;

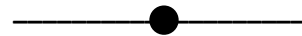
118 (2) Any person who does not exercise his or her right of
119 disposition within two days of notification of the death of
120 decedent or within three days of decedent's death,
121 whichever is earlier;

122 (3) If the person and the decedent are spouses and a
123 petition to dissolve the marriage was pending at the time of
124 decedent's death.

125 (d) Any person signing a funeral service agreement,
126 cremation authorization form or any other authorization for
127 disposition shall be deemed to warrant the truthfulness of
128 any facts set forth therein, including the identity of the
129 decedent whose remains are to be buried, cremated or
130 otherwise disposed of, and the party's authority to order the
131 disposition. A funeral home has the right to rely on that
132 funeral service agreement or authorization and shall have
133 the authority to carry out the instructions of the person or
134 persons the funeral home reasonably believes holds the right

135 of disposition. The funeral home has no responsibility to
136 independently investigate the existence of any next of kin or
137 relative of the decedent where a means of disposition is fully
138 set forth in a preneed funeral contract or other written
139 directive of the deceased in accordance with this section. If
140 there is more than one person in a class who are equal in
141 priority and the funeral home has no knowledge of any
142 objection by other members of that class, the funeral home
143 may rely on and act according to the instructions of the first
144 person in the class to make funeral and disposition
145 arrangements, if no other person in that class provides
146 written objections to the funeral home.

147 (e) No funeral establishment or funeral director who
148 relies in good faith upon the instructions of a preneed
149 funeral contract, written directive of the deceased, or an
150 individual claiming the right of disposition in accordance
151 with this section shall be subject to criminal or civil liability
152 or subject to disciplinary action under this section for
153 carrying out the disposition of the remains in accordance
154 with those instructions.



CHAPTER 254

(Com. Sub. for H. B. 4803 - By Delegate Capito)

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

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

AN ACT to amend and reenact §29-3C-3 and §29-3C-5 of the Code of West Virginia, 1931, as amended, all relating to certification of electrical inspectors.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 29. MISCELLANEOUS BOARDS AND
OFFICERS.**

**ARTICLE 3C. CERTIFICATION OF ELECTRICAL
INSPECTORS.**

§29-3C-3. Certification of electrical inspectors required.

1 After January 1, 2003, no electrical inspections may be
2 performed, offered or engaged in for compensation or hire
3 within the State of West Virginia by any person who is not
4 certified pursuant to this article: *Provided*, That any person
5 who is employed by this state or any subdivision of this state
6 and who in the normal course of his or her business conducts
7 electrical inspections may perform electrical inspections as
8 within the scope of his or her employment without
9 certification pursuant to this article. Notwithstanding any
10 other provision of this code to the contrary, for purposes of
11 this section any electrical building code inspector shall be
12 considered an electrical inspector.

**§29-3C-5. Denial of license; suspension and revocation of
license.**

1 The State Fire Marshal shall deny certification to any
2 applicant, except those exempt under §29-3C-3 of this code,
3 who:

4 (1) Fails to establish that he or she holds any other
5 required qualifications for certification established pursuant
6 to rules promulgated pursuant to section four of this article;
7 or

8 (2) Is not a licensed journeyman or master electrician in
9 accordance with rules promulgated pursuant to section four
10 of this article.

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CHAPTER 255

**(Com. Sub. for S. B. 534 - By Senators Trump, Blair,
Hamilton and Ihlenfeld)**

[Passed February 28, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §21A-1A-17 of the Code of West Virginia, 1931, as amended, relating to employees serving the Legislature on a temporary basis, or in support of the legislative session, are not exempt from unemployment benefits coverage.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. DEFINITIONS.

§21A-1A-17. Exclusions from employment.

1 The term “employment” does not include:

2 (1) Service performed in the employ of the United States
3 or any instrumentality of the United States exempt under the
4 Constitution of the United States from the payments
5 imposed by this law, except that to the extent that the
6 Congress of the United States permits states to require any
7 instrumentalities of the United States to make payments into
8 an unemployment fund under a state unemployment
9 compensation law, all of the provisions of this law are
10 applicable to the instrumentalities and to service performed
11 for the instrumentalities in the same manner, to the same
12 extent, and on the same terms as to all other employers,
13 employing units, individuals, and services: *Provided*, That
14 if this state is not certified for any year by the Secretary of
15 Labor under 26 U.S.C. § 3404, subsection (c), the payments

16 required of the instrumentalities with respect to the year
17 shall be refunded by the commissioner from the fund in the
18 same manner and within the same period as is provided in
19 §21A-5-19 of this code with respect to payments
20 erroneously collected;

21 (2) Service performed with respect to which
22 unemployment compensation is payable under the Railroad
23 Unemployment Insurance Act and service with respect to
24 which unemployment benefits are payable under an
25 unemployment compensation system for maritime
26 employees established by an Act of Congress. The
27 commissioner may enter into agreements with the proper
28 agency established under an Act of Congress to provide
29 reciprocal treatment to individuals who, after acquiring
30 potential rights to unemployment compensation under an
31 Act of Congress or who have, after acquiring potential
32 rights to unemployment compensation under an Act of
33 Congress, acquired rights to benefit under this chapter. Such
34 agreement shall become effective 10 days after the
35 publications which shall comply with the general rules of
36 the department;

37 (3) Service performed by an individual in agricultural
38 labor, except as provided in §21A-1A-16(12) of this code,
39 the definition of “employment”. For purposes of this
40 subdivision, the term “agricultural labor” includes all
41 services performed:

42 (A) On a farm, in the employ of any person, in
43 connection with cultivating the soil, or in connection with
44 raising or harvesting any agricultural or horticultural
45 commodity, including the raising, shearing, feeding, caring
46 for, training, and management of livestock, bees, poultry,
47 and fur-bearing animals and wildlife;

48 (B) In the employ of the owner or tenant or other
49 operator of a farm, in connection with the operation,
50 management, conservation, improvement, or maintenance
51 of the farm and its tools and equipment, or in salvaging

52 timber or clearing land of brush and other debris left by a
53 hurricane, if the major part of the service is performed on a
54 farm;

55 (C) In connection with the production or harvesting of
56 any commodity defined as an agricultural commodity in §
57 15(g) of the Agricultural Marketing Act, as amended, as
58 codified in 12 U.S.C. § 1141j, subsection (g), or in
59 connection with the ginning of cotton, or in connection with
60 the operation or maintenance of ditches, canals, reservoirs,
61 or waterways, not owned or operated for profit, used
62 exclusively for supplying and storing water for farming
63 purposes;

64 (D) (i) In the employ of the operator of a farm in
65 handling, planting, drying, packing, packaging, processing,
66 freezing, grading, storing, or delivering to storage or to
67 market or to a carrier for transportation to market, in its
68 unmanufactured state, any agricultural or horticultural
69 commodity; but only if the operator produced more than one
70 half of the commodity with respect to which the service is
71 performed; or (ii) in the employ of a group of operators of
72 farms (or a cooperative organization of which the operators
73 are members) in the performance of service described in
74 subparagraph (i) of this paragraph, but only if the operators
75 produced more than one half of the commodity with respect
76 to which the service is performed; but the provisions of
77 subparagraphs (i) and (ii) of this paragraph are not
78 applicable with respect to service performed in connection
79 with commercial canning or commercial freezing or in
80 connection with any agricultural or horticultural commodity
81 after its delivery to a terminal market for distribution for
82 consumption;

83 (E) On a farm operated for profit if the service is not in
84 the course of the employer's trade or business or is domestic
85 service in a private home of the employer. As used in this
86 subdivision, the term "farm" includes stock, dairy, poultry,
87 fruit, fur-bearing animals, truck farms, plantations, ranches,
88 greenhouses, ranges, and nurseries, or other similar land

89 areas or structures used primarily for the raising of any
90 agricultural or horticultural commodities;

91 (4) Domestic service in a private home except as
92 provided in §21A-1A-16(13) of this code, the definition of
93 “employment”;

94 (5) Service performed by an individual in the employ of
95 his or her son, daughter, or spouse;

96 (6) Service performed by a child under the age of 18
97 years in the employ of his or her father or mother;

98 (7) Service as an officer or member of a crew of an
99 American vessel, performed on or in connection with the
100 vessel, if the operating office, from which the operations of
101 the vessel operating on navigable waters within or without
102 the United States are ordinarily and regularly supervised,
103 managed, directed, and controlled, is without this state;

104 (8) Service performed by agents of mutual fund broker-
105 dealers or insurance companies, exclusive of industrial
106 insurance agents, or by agents of investment companies,
107 who are compensated wholly on a commission basis;

108 (9) Service performed: (A) In the employ of a church or
109 convention or association of churches, or an organization
110 which is operated primarily for religious purposes and
111 which is operated, supervised, controlled, or principally
112 supported by a church or convention or association of
113 churches; or (B) by a duly ordained, commissioned, or
114 licensed minister of a church in the exercise of his or her
115 ministry or by a member of a religious order in the exercise
116 of duties required by the order; or (C) by an individual
117 receiving rehabilitation or remunerative work in a facility
118 conducted for the purpose of carrying out a program of
119 either: (i) Rehabilitation for individuals whose earning
120 capacity is impaired by age or physical or mental deficiency
121 or injury; or (ii) providing remunerative work for
122 individuals who because of their impaired physical or

123 mental capacity cannot be readily absorbed in the
124 competitive labor market: *Provided*, That this exemption
125 does not apply to services performed by individuals if they
126 are not receiving rehabilitation or remunerative work on
127 account of their impaired capacity; or (D) as part of an
128 unemployment work-relief or work-training program
129 assisted or financed, in whole or in part, by any federal
130 agency or an agency of a state or political subdivision
131 thereof, by an individual receiving the work relief or work
132 training; or (E) by an inmate of a custodial or penal
133 institution;

134 (10) Service performed in the employ of a school,
135 college, or university, if the service is performed: (A) By a
136 student who is enrolled and is regularly attending classes at
137 the school, college, or university; or (B) by the spouse of a
138 student, if the spouse is advised, at the time the spouse
139 commences to perform the service, that: (i) The
140 employment of the spouse to perform the service is provided
141 under a program to provide financial assistance to the
142 student by the school, college, or university; and (ii) the
143 employment will not be covered by any program of
144 unemployment insurance;

145 (11) Service performed by an individual who is enrolled
146 at a nonprofit or public educational institution which
147 normally maintains a regular faculty and curriculum and
148 normally has a regularly organized body of students in
149 attendance at the place where its educational activities are
150 carried on as a student in a full-time program, taken for
151 credit at the institution, which combines academic
152 instruction with work experience, if the service is an integral
153 part of the program and the institution has so certified to the
154 employer, except that this subdivision does not apply to
155 service performed in a program established for or on behalf
156 of an employer or group of employers;

157 (12) Service performed in the employ of a hospital, if
158 the service is performed by a patient of the hospital, as
159 defined in this article;

160 (13) Service in the employ of a governmental entity
161 referred to in §21A-1A-16(9) of this code, the definition of
162 “employment”, if the service is performed by an individual
163 in the exercise of duties: (A) As an elected official; (B) as a
164 member of a legislative body, or a member of the judiciary,
165 of a state or political subdivision; (C) as a member of the
166 state National Guard or air National Guard, except as
167 provided in §21A-1A-28 of this code; (D) as an employee
168 serving on a temporary basis in case of fire, storm, snow,
169 earthquake, flood, or similar emergency; (E) in a position
170 which, under or pursuant to the laws of this state, is
171 designated as: (i) A major nontenured policymaking or
172 advisory position; or (ii) a policymaking or advisory
173 position the performance of the duties of which ordinarily
174 does not require more than eight hours per week; or (F) as
175 any election official appointed to serve during any
176 municipal, county, or state election, if the amount of
177 remuneration received by the individual during the calendar
178 year for services as an election official is less than \$1,000;

179 (14) Service performed by a bona fide partner of a
180 partnership for the partnership; and

181 (15) Service performed by a person for his or her own
182 sole proprietorship.

183 Notwithstanding the foregoing exclusions from the
184 definition of “employment”, services, except agricultural
185 labor and domestic service in a private home, are in
186 employment if with respect to the services a tax is required
187 to be paid under any federal law imposing a tax against
188 which credit may be taken for contributions required to be
189 paid into a State Unemployment Compensation Fund, or
190 which as a condition for full tax credit against the tax
191 imposed by the federal Unemployment Tax Act are required
192 to be covered under this chapter.

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CHAPTER 256

**(Com. Sub. for H. B. 2497 - By Delegates Kump,
Pushkin, N. Brown, S. Brown, Lovejoy, Canestraro,
Fluharty, Householder and C. Thompson)**

[Passed February 18, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 28, 2020.]

AN ACT to amend and reenact §6C-1-3, §6C-1-4, and §6C-1-7 of the Code of West Virginia, 1931, as amended, all relating to the whistle-blower law; protecting promotion or increase in compensation; lengthening the statute of limitations; allowing the use of grievance procedure; protecting use of other right or legal action; protecting rights related to political activity; and protecting rights related to membership in organizations of employees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. WHISTLE-BLOWER LAW.

§6C-1-3. Discriminatory and retaliatory actions against whistle-blowers prohibited; promotion, increased compensation protected.

1 (a) No employer may discharge, threaten, or otherwise
2 discriminate or retaliate against an employee by changing
3 the employee's compensation, terms, conditions, location,
4 or privileges of employment because the employee, acting
5 on his or her own volition, or a person acting on behalf of
6 or under the direction of the employee, makes a good faith
7 report, or is about to report, verbally or in writing, to the
8 employer or appropriate authority, an instance of
9 wrongdoing or waste.

10 (b) No employer may discharge, threaten, or otherwise
11 discriminate or retaliate against an employee by changing
12 the employee's compensation, terms, conditions, location,
13 or privileges of employment because the employee is
14 requested or subpoenaed by an appropriate authority to
15 participate in an investigation, hearing, or inquiry held by
16 an appropriate authority or in a court action.

17 (c) No employer may deny a whistle-blower covered by
18 the civil service system, because of his or her status or
19 actions as a whistle-blower, a promotion or other increase
20 in compensation that the whistle-blower otherwise would
21 have received.

**§6C-1-4. Civil action by whistle-blower for violation;
limitation on actions; burden of proof; defense; use of
evidence in civil service proceeding; grievance action
available; other rights and actions not limited.**

1 (a) A person who alleges that he or she is a victim of a
2 violation of this article may bring a civil action in a court of
3 competent jurisdiction for appropriate injunctive relief or
4 damages, or both, within two years after the occurrence of
5 the alleged violation.

6 (b) An employee alleging a violation of this article must
7 show by a preponderance of the evidence that, prior to the
8 alleged reprisal, the employee, or a person acting on behalf
9 of or under the direction of the employee, had reported or
10 was about to report in good faith, verbally or in writing, an
11 instance of wrongdoing or waste to the employer or an
12 appropriate authority.

13 (c) It shall be a defense to an action under this section if
14 the defendant proves by a preponderance of the evidence
15 that the action complained of occurred for separate and
16 legitimate reasons, which are not merely pretexts.

17 (d) An employee covered by the civil service system
18 who contests a civil service action, believing it to be
19 motivated by the employee having made a disclosure of

20 information, may submit as admissible evidence any or all
21 material relating to the action as whistle-blower and to the
22 resulting alleged reprisal.

23 (e) Any employee covered by the civil service system
24 who has suffered a retaliatory action as a result of being a
25 whistle-blower may pursue a grievance under the West
26 Virginia Public Employees Grievance Procedure.

27 (f) Nothing in this article shall impair or limit any other
28 right or legal action of an employee covered by the civil
29 service system.

**§6C-1-7. Limitations on scope of construction; protections
related to political activity and membership in
organization of employee.**

1 (a) The provisions of this article shall not be construed
2 to require an employer to compensate an employee for
3 participation in an investigation, hearing, or inquiry held by
4 an appropriate authority or impair the rights of any
5 employee covered by the civil service system to be a
6 member of an organization of employees or to refrain from
7 being a member of an organization of employees.

8 (b) Except when on duty or acting in an official
9 capacity, and except where otherwise prohibited by state or
10 federal law, no employee covered by the civil service
11 system may be prohibited from engaging in political activity
12 or be denied the right to refrain from engaging in political
13 activity.

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CHAPTER 257

**(Com. Sub. for H. B. 4363 - By Delegates Graves,
Pack, Steele, Ellington, Kessinger, Jennings,
Summers, Waxman, Maynard, Sypolt and Rowan)**

[Passed March 7, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §5-10-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-10D-1 of said code; to amend and reenact §7-14D-5 of said code; to amend and reenact §8-22A-6 of said code; to amend and reenact §16-5V-6 of said code; and to amend said code by adding thereto a new article, designated §20-18-1, §20-18-2, §20-18-3, §20-18-4, §20-18-5, §20-18-6, §20-18-7, §20-18-8, §20-18-9, §20-18-10, §20-18-11, §20-18-12, §20-18-13, §20-18-14, §20-18-15, §20-18-16, §20-18-17, §20-18-18, §20-18-19, §20-18-20, §20-18-21, §20-18-22, §20-18-23, §20-18-24, §20-18-25, §20-18-26, §20-18-27, §20-18-28, §20-18-29, §20-18-30, §20-18-31, §20-18-32, §20-18-33, §20-18-34, §20-18-35 and §20-18-36, all relating to establishing the West Virginia Division of Natural Resources Police Officer Retirement System; providing for additional members of the Consolidated Public Retirement Board; and providing for criminal offense of defrauding the system and penalties therefor.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES
RETIREMENT ACT.****§5-10-17. Retirement system membership.**

1 The membership of the retirement system consists of the
2 following persons:

3 (a) All employees, as defined in §5-10-2 of this code,
4 who are in the employ of a political subdivision the day
5 preceding the date it becomes a participating public
6 employer and who continue in the employ of the
7 participating public employer on and after that date shall
8 become members of the retirement system; and all persons
9 who become employees of a participating public employer
10 on or after that date shall thereupon become members of the
11 system; except as provided in subdivisions (b), (c) and (d)
12 of this section.

13 (b) The membership of the Public Employees
14 Retirement System may not include any person who is an
15 active contributing member of, or who has been retired by,
16 any of the state teachers retirement systems, the Judges
17 Retirement System, any retirement system of the West
18 Virginia State Police, the Deputy Sheriff Retirement
19 System, the Natural Resources Police Officer Retirement
20 System or any municipal retirement system for either, or
21 both, police or firefighter; and the Bureau of Employment
22 Programs, by the Commissioner of the Bureau, may elect
23 whether its employees will accept coverage under this
24 article or be covered under the authorization of a separate
25 enactment: *Provided*, That the exclusions of membership do
26 not apply to any member of the State Legislature, the Clerk
27 of the House of Delegates, the Clerk of the State Senate or
28 to any member of the legislative body of any political
29 subdivision provided he or she once becomes a contributing
30 member of the retirement system: *Provided, however*, That
31 any retired member of the State Police Death, Disability and
32 Retirement Fund, the West Virginia State Police Retirement
33 System, the Deputy Sheriff Retirement System, the Natural

34 Resources Police Officer Retirement System and any retired
35 member of any municipal retirement system for either, or
36 both, police or firefighter may on and after the effective date
37 of this section become a member of the retirement system
38 as provided in this article, without receiving credit for prior
39 service as a municipal police officer or firefighter or as a
40 member of the State Police Death, Disability and
41 Retirement Fund, the West Virginia State Police Retirement
42 System, the Deputy Sheriff Retirement System, or the
43 Natural Resources Police Officer Retirement System:
44 *Provided further*, That any retired member of the State
45 Police Death, Disability and Retirement Fund, the West
46 Virginia State Police Retirement System, the Deputy Sheriff
47 Retirement System, the Natural Resources Police Officer
48 Retirement System and any retired member of any
49 municipal retirement system for either, or both, police or
50 firefighters, who begins participation in the retirement
51 system established in this article on or after July 1, 2005,
52 may not receive a combined retirement benefit in excess of
53 105 percent of the member's highest annual salary earned
54 while either a member of the retirement system established
55 in this article or while a member of the other retirement
56 system or systems from which he or she previously retired
57 when adding the retirement benefit from the retirement
58 system created in this article to the retirement benefit
59 received by that member from the other retirement system
60 or systems set forth herein from which he or she previously
61 retired: *And provided further*, That the membership of the
62 retirement system does not include any person who
63 becomes employed by the Pretera Center for Mental Health
64 Services, Valley Comprehensive Mental Health Center,
65 Westbrook Health Services or Eastern Panhandle Mental
66 Health Center on or after July 1, 1997: *And provided further*,
67 That membership of the retirement system does not include
68 any person who becomes a member of the federal Railroad
69 Retirement Act on or after July 1, 2000.

70 (c) Any member of the State Legislature, the Clerk of
71 the House of Delegates, the Clerk of the State Senate, and

72 any employee of the State Legislature whose employment
73 is otherwise classified as temporary and who is employed to
74 perform services required by the Legislature for its regular
75 sessions or during the interim between regular sessions and
76 who has been or is employed during regular sessions or
77 during the interim between sessions in seven consecutive
78 calendar years, as certified by the Clerk of the House in
79 which the employee served, or any member of the
80 legislative body of any other political subdivision shall
81 become a member of the retirement system provided he or
82 she notifies the retirement system in writing of his or her
83 intention to be a member of the system and files a
84 membership enrollment form as prescribed by the Board of
85 Trustees, and each person, upon filing his or her written
86 notice to participate in the retirement system, shall by that
87 act authorize the Clerk of the House of Delegates or the
88 Clerk of the State Senate or such person or legislative
89 agency as the legislative body of any other political
90 subdivision shall designate to deduct the member's
91 contribution, as provided in §5-10-29(b) of this code, and
92 after the deductions have been made from the member's
93 compensation, the deductions shall be forwarded to the
94 retirement system.

95 (d) Any employee, as defined in §5-10-2 of this code,
96 who has concurrent employment in an additional job or jobs
97 which would require the employee to be a member of the
98 West Virginia Deputy Sheriff Retirement System, the West
99 Virginia Municipal Police Officers and Firefighters
100 Retirement System, the Natural Resources Police Officer
101 Retirement System or the West Virginia Emergency
102 Medical Services Retirement System shall abide by the
103 concurrent employment statutory provisions of said
104 retirement system and shall participate in only one
105 retirement system administered by the board.

106 (e) If question arises regarding the membership status of
107 any employee, the Board of Trustees has the final power to
108 decide the question.

109 (f) Any individual who is a leased employee is not
110 eligible to participate in the system. For the purposes of this
111 article, the term “leased employee” means any individual
112 who performs services as an independent contractor or
113 pursuant to an agreement with an employee leasing
114 organization or other similar organization. If a question
115 arises regarding the status of an individual as a leased
116 employee, the board has final authority to decide the
117 question.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-1. Consolidated Public Retirement Board continued; members; vacancies; investment of plan funds.

1 (a) The Consolidated Public Retirement Board is
2 continued to administer all public retirement plans in this
3 state. It shall administer the Public Employees Retirement
4 System established in §5-10-1 *et seq.* of this code; the
5 Teachers Retirement System established in §18-7A-1 *et seq.*
6 of this code; the Teachers’ Defined Contribution Retirement
7 System created by §18-7B-1 *et seq.* of this code; the West
8 Virginia State Police Death, Disability, and Retirement
9 Fund created by §15-2-1 *et seq.* of this code; the West
10 Virginia State Police Retirement System created by §15-
11 2A-1 *et seq.* of this code; the Deputy Sheriff Death,
12 Disability, and Retirement Fund created by §7-14D-1 *et seq.*
13 of this code; the Judges’ Retirement System created under
14 §51-9-1 *et seq.* of this code; the Emergency Medical
15 Services Retirement System established in §16-5V-1 *et seq.*
16 of this code; and the Municipal Police Officers and
17 Firefighters Retirement System established in §8-22A-1 *et*
18 *seq.* of this code, and the West Virginia Division of Natural
19 Resources Retirement System created by §20-18-1 *et seq.*
20 of this code.

21 (b) The membership of the Consolidated Public
22 Retirement Board consists of:

- 23 (1) The Governor or his or her designee;
- 24 (2) The State Treasurer or his or her designee;
- 25 (3) The State Auditor or his or her designee;
- 26 (4) The Secretary of the Department of Administration
27 or his or her designee;
- 28 (5) Four residents of the state, who are not members,
29 retirants, or beneficiaries of any of the public retirement
30 systems, to be appointed by the Governor, with the advice
31 and consent of the Senate; and
- 32 (6) A member, annuitant, or retirant of the Public
33 Employees Retirement System who is or was a state
34 employee; a member, annuitant, or retirant of the Public
35 Employees Retirement System who is not or was not a state
36 employee; a member, annuitant, or retirant of the Teachers
37 Retirement System; a member, annuitant, or retirant of the
38 West Virginia State Police Death, Disability, and
39 Retirement Fund; a member, annuitant, or retirant of the
40 West Virginia State Police Retirement System; a member,
41 annuitant, or retirant of the Deputy Sheriff Death,
42 Disability, and Retirement Fund; a member, annuitant, or
43 retirant of the Teachers' Defined Contribution Retirement
44 System; a member, annuitant, or retirant of the Emergency
45 Medical Services Retirement System; one person who is a
46 member, annuitant, or retirant of a municipal policemen's
47 or firemen's pension and relief fund or the West Virginia
48 Municipal Police Officers and Firefighters Retirement
49 System, and beginning as soon as practicable after January
50 1, 2022, one person who is a member, annuitant or retirant
51 of the West Virginia Division of Natural Resources Police
52 Officer Retirement System, all to be appointed by the
53 Governor, with the advice and consent of the Senate. The
54 Governor shall choose the member representing the
55 municipal policemen's or firemen's pension and relief fund
56 or the West Virginia Municipal Police Officers and
57 Firefighters Retirement System from two names submitted

58 by the state's largest organization of professional police
59 officers and two names submitted by the state's largest
60 organization of professional firefighters. Representation of
61 the municipal police officers and firefighters shall alternate
62 after each term on the board between persons having police
63 officer and firefighter affiliation so that each professional
64 group is represented on the board every other term.

65 All appointees to the board shall have recognized
66 competence or significant experience in pension
67 management or administration, actuarial analysis,
68 institutional management, or accounting. Those members
69 appointed prior to January 1, 2010, shall be considered to
70 have met these qualifications. One trustee shall be an
71 attorney experienced in finance and pension matters and one
72 trustee shall be a certified public accountant. Each member
73 of the board must complete annual fiduciary training and
74 timely complete any conflict of interest forms required to
75 serve as a trustee.

76 (c) The appointed members of the board shall serve five-
77 year terms. A member appointed pursuant to subdivision
78 (6), subsection (b) of this section ceases to be a member of
79 the board if he or she ceases to be a member of the
80 represented system. If a vacancy occurs in the appointed
81 membership, the Governor, within 60 days, shall fill the
82 vacancy by appointment for the unexpired term. No more
83 than seven appointees may be of the same political party.

84 (d) The Consolidated Public Retirement Board has all
85 the powers, duties, responsibilities, and liabilities of the
86 Public Employees Retirement System established pursuant
87 to §5-10-1 *et seq.* of this code; the Teachers' Retirement
88 System established pursuant to §18-7A-1 *et seq.* of this
89 code; the Teachers' Defined Contribution Retirement
90 System established pursuant to §18-7B-1 *et seq.* of this
91 code; the West Virginia State Police Death, Disability, and
92 Retirement Fund created pursuant to §15-2-1 *et seq.* of this
93 code; the West Virginia State Police Retirement System
94 created by §15-2A-1 *et seq.* of this code; the Deputy Sheriff

95 Death, Disability, and Retirement Fund created pursuant to
96 §7-14D-1 *et seq.* of this code; the Judges' Retirement
97 System created pursuant to §51-9-1 *et seq.* of this code; the
98 Emergency Medical Services Retirement System
99 established in §16-5V-1 *et seq.* of this code; the Municipal
100 Police Officers and Firefighters Retirement System created
101 pursuant to §8-22A-1 *et seq.* of this code, and the West
102 Virginia Division of Natural Resources Police Officers
103 Retirement System created and established pursuant to
104 article §20-18-1 *et seq.* of this code and their appropriate
105 governing boards.

106 (e) The Consolidated Public Retirement Board may
107 propose rules for legislative approval, in accordance with
108 §29A-3-1 *et seq.* of this code, necessary to effectuate its
109 powers, duties, and responsibilities: *Provided*, That the
110 board may adopt any or all of the rules, previously
111 promulgated, of a retirement system which it administers.

112 (f)(1) The Consolidated Public Retirement Board shall
113 continue to transfer all funds received for the benefit of the
114 retirement systems, including, but not limited to, all
115 employer and employee contributions, to the West Virginia
116 Investment Management Board: *Provided*, That the
117 employer and employee contributions of the Teachers'
118 Defined Contribution Retirement System, established in
119 §18-7B-3 of this code, and voluntary deferred compensation
120 funds invested by the West Virginia Consolidated Public
121 Retirement Board pursuant to §5-10B-5 of this code may
122 not be transferred to the West Virginia Investment
123 Management Board.

124 (2) The board may recover from a participating
125 employer that fails to pay any amount due a retirement
126 system in a timely manner the contribution due and an
127 additional amount not to exceed interest or other earnings
128 lost as a result of the untimely payment, or a reasonable
129 minimum fee, whichever is greater, as provided by
130 legislative rule promulgated pursuant to the provisions of
131 §29A-3-1 *et seq.* of this code. Any amounts recovered shall

132 be administered in the same manner in which the amount
133 due is required to be administered.

134 (g) Notwithstanding any provision of this code or any
135 legislative rule to the contrary, all assets of the public
136 retirement plans set forth in subsection (a) of this section
137 shall be held in trust. The Consolidated Public Retirement
138 Board is a trustee for all public retirement plans, except with
139 regard to the investment of funds: *Provided*, That the
140 Consolidated Public Retirement Board is a trustee with
141 regard to the investments of the Teachers' Defined
142 Contribution Retirement System and any other assets of the
143 public retirement plans administered by the Consolidated
144 Public Retirement Board as set forth in subsection (a) of this
145 section for which no trustee has been expressly designated
146 in this code.

147 (h) The board may employ the West Virginia
148 Investment Management Board to provide investment
149 management consulting services for the investment of funds
150 in the Teachers' Defined Contribution Retirement System.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-5. Members.

1 (a) Any deputy sheriff first employed by a county in
2 covered employment after the effective date of this article
3 shall be a member of this retirement system and does not
4 qualify for membership in any other retirement system
5 administered by the board, so long as he or she remains
6 employed in covered employment: *Provided*, That any
7 deputy sheriff who has concurrent employment in an
8 additional job or jobs which would require the deputy
9 sheriff to be a member of the West Virginia Municipal
10 Police Officers and Firefighters Retirement System, the
11 West Virginia Emergency Medical Services Retirement
12 System or the West Virginia Natural Resources Police

13 Officers Retirement System shall participate in only one
14 retirement system administered by the board, and the
15 retirement system applicable to the concurrent employment
16 for which the employee has the earliest date of hire shall
17 prevail. The membership of any person in the plan ceases:
18 (1) Upon the withdrawal of accumulated contributions after
19 the cessation of service; (2) upon retirement; (3) at death; or
20 (4) upon the date, if any, when after the cessation of service,
21 the outstanding balance of any loan obtained by the member
22 pursuant to §7-14D-23 of this code, plus accrued interest,
23 equals or exceeds the accumulated contributions of the
24 member.

25 (b) Any deputy sheriff employed in covered
26 employment on the effective date of this article shall within
27 six months of that effective date notify in writing both the
28 county commission in the county in which he or she is
29 employed and the board, of his or her desire to become a
30 member of the plan: *Provided*, That this time period is
31 extended to January 30, 1999, in accordance with the
32 decision of the Supreme Court of Appeals in West Virginia
33 Deputy Sheriffs' Association, et al v. James L. Sims, et al,
34 No. 25212: *Provided, however*, That any deputy sheriff
35 employed in covered employment on the effective date of
36 this article has an additional time period consisting of the
37 10-day period following the day after which the amended
38 provisions of this section become law to notify in writing
39 both the county commission in the county in which he or
40 she is employed and the board of his or her desire to become
41 a member of the plan. Any deputy sheriff who elects to
42 become a member of the plan ceases to be a member or have
43 any credit for covered employment in any other retirement
44 system administered by the board and shall continue to be
45 ineligible for membership in any other retirement system
46 administered by the board so long as the deputy sheriff
47 remains employed in covered employment in this plan:
48 *Provided further*, That any deputy sheriff who elects during
49 the time period from July 1, 1998 to January 30, 1999 or
50 who so elects during the 10-day time period occurring

51 immediately following the day after the day the
52 amendments made during the 1999 legislative session
53 become law, to transfer from the Public Employees
54 Retirement System to the plan created in this article shall
55 contribute to the plan created in this article at the rate set
56 forth in §7-14D-7 of this code retroactive to July 1, 1998.
57 Any deputy sheriff who does not affirmatively elect to
58 become a member of the plan continues to be eligible for
59 any other retirement system as is from time to time offered
60 to other county employees but is ineligible for this plan
61 regardless of any subsequent termination of employment
62 and rehire.

63 (c) Any deputy sheriff employed in covered
64 employment on the effective date of this article who has
65 timely elected to transfer into this plan as provided in
66 subsection (b) of this section shall be given credited service
67 at the time of transfer for all credited service then standing
68 to the deputy sheriff's service credit in the Public
69 Employees Retirement System regardless of whether the
70 credited service (as that term is defined in §5-10-2 of this
71 code) was earned as a deputy sheriff. All the credited service
72 standing to the transferring deputy sheriff's credit in the
73 Public Employees Retirement Fund System at the time of
74 transfer into this plan shall be transferred into the plan
75 created by this article, and the transferring deputy sheriff
76 shall be given the same credit for the purposes of this article
77 for all service transferred from the Public Employees
78 Retirement System as that transferring deputy sheriff would
79 have received from the Public Employees Retirement
80 System as if the transfer had not occurred. In connection
81 with each transferring deputy sheriff receiving credit for
82 prior employment as provided in this subsection, a transfer
83 from the Public Employees Retirement System to this plan
84 shall be made pursuant to the procedures described in §7-
85 14D-8 of this code: *Provided*, That a member of this plan
86 who has elected to transfer from the Public Employees
87 Retirement System into this plan pursuant to subsection (b)
88 of this section may not, after having transferred into and

89 become an active member of this plan, reinstate to his or her
90 credit in this plan any service credit relating to periods of
91 nondeputy sheriff service which were withdrawn from the
92 Public Employees Retirement System prior to his or her
93 elective transfer into this plan.

94 (d) Any deputy sheriff who was employed as a deputy
95 sheriff prior to the effective date of this article, but was not
96 employed as a deputy sheriff on the effective date of this
97 article, shall become a member upon rehire as a deputy
98 sheriff. For purposes of this subsection, the member's years
99 of service and credited service in the Public Employees
100 Retirement System prior to the effective date of this article
101 shall not be counted for any purposes under this plan unless:
102 (1) The deputy sheriff has not received the return of his or
103 her accumulated contributions in the Public Employees
104 Retirement System pursuant to §5-10-30 of this code; or (2)
105 the accumulated contributions returned to the member from
106 the Public Employees Retirement System have been repaid
107 pursuant to §7-14D-13 of this code. If the conditions of
108 subdivision (1) or (2) of this subsection are met, all years of
109 the deputy sheriff's covered employment shall be counted
110 as years of service for the purposes of this article.

111 (e) Once made, the election provided in this section is
112 irrevocable. All deputy sheriffs first employed after the
113 effective date and deputy sheriffs electing to become
114 members as described in this section shall be members as a
115 condition of employment and shall make the contributions
116 required by §7-14D-7 of this code.

117 (f) Notwithstanding any other provisions of this article,
118 any individual who is a leased employee is not eligible to
119 participate in the plan. For purposes of this plan, a "leased
120 employee" means any individual who performs services as
121 an independent contractor or pursuant to an agreement with
122 an employee leasing organization or similar organization. If
123 a question arises regarding the status of an individual as a
124 leased employee, the board has final power to decide the
125 question.

CHAPTER 8. MUNICIPAL CORPORATIONS.**ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.****§8-22A-6. Members.**

1 (a) A police officer or firefighter hired in covered
2 employment after the effective date of this article by a
3 municipality or municipal subdivision which has
4 established and maintained a policemen's pension and relief
5 fund or a firemen's pension and relief fund pursuant to §8-
6 22-16 of this code and which is a participating employer or
7 which is a participating public employer as authorized by,
8 §8-22A-33 of this code, shall be a member of this retirement
9 plan: *Provided*, That any police officer or firefighter who
10 has concurrent employment in an additional job or jobs
11 which would require the police officer or firefighter to be a
12 member of the West Virginia Deputy Sheriff Retirement
13 System, the West Virginia Emergency Medical Services
14 Retirement System, or the West Virginia Natural Resources
15 Police Officer Retirement System shall participate in only
16 one retirement system administered by the board, and the
17 retirement system applicable to the concurrent employment
18 for which the employee has the earliest date of hire shall
19 prevail.

20 (b) Except as provided in §8-22A-32 of this code, a
21 police officer or firefighter who is a member of the
22 Municipal Police Officers and Firefighters Retirement
23 System may not have credit for covered employment in any
24 other retirement system applied as service credit in the
25 Municipal Police Officers and Firefighters Retirement
26 System.

27 (c) Notwithstanding any other provisions of this article,
28 any individual who is a leased employee is not eligible to
29 participate in the plan. For purposes of this plan, a "leased
30 employee" means any individual who performs services as

31 an independent contractor or pursuant to an agreement with
32 an employee leasing organization or similar organization. If
33 a question arises regarding the status of an individual as a
34 leased employee, the board has final power to decide the
35 question.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-6. Members.

1 (a) Any emergency medical services officer first
2 employed by a county or political subdivision in covered
3 employment after the effective date of this article shall be a
4 member of this retirement plan as a condition of
5 employment and upon membership does not qualify for
6 membership in any other retirement system administered by
7 the board, so long as he or she remains employed in covered
8 employment: *Provided*, That any emergency medical
9 services officer who has concurrent employment in an
10 additional job or jobs which would require the emergency
11 medical services officer to be a member of the West
12 Virginia Deputy Sheriff Retirement System, the West
13 Virginia Municipal Police Officers and Firefighters
14 Retirement System or the West Virginia Natural Resources
15 Police Officer Retirement System shall participate in only
16 one retirement system administered by the board, and the
17 retirement system applicable to the concurrent employment
18 for which the employee has the earliest date of hire shall
19 prevail.

20 (b) Any emergency medical services officer employed
21 in covered employment by an employer which is currently
22 a participating public employer of the Public Employees
23 Retirement System shall notify in writing both the county
24 commission in the county or officials in the political
25 subdivision in which he or she is employed and the board of
26 his or her desire to become a member of the plan by

27 December 31, 2007. Any emergency medical services
28 officer who elects to become a member of the plan ceases
29 to be a member or have any credit for covered employment
30 in any other retirement system administered by the board
31 and shall continue to be ineligible for membership in any
32 other retirement system administered by the board so long
33 as the emergency medical services officer remains
34 employed in covered employment by an employer which is
35 currently a participating public employer of this plan:
36 *Provided*, That any emergency medical services officer who
37 does not affirmatively elect to become a member of the plan
38 continues to be eligible for any other retirement system as
39 is, from time to time, offered to other county employees but
40 is ineligible for this plan regardless of any subsequent
41 termination of employment and rehire.

42 (c) Any emergency medical services officer who was
43 employed as an emergency medical services officer prior to
44 the effective date, but was not employed on the effective
45 date of this article, shall become a member upon rehire as
46 an emergency medical services officer. For purposes of this
47 section, the member's years of service and credited service
48 prior to the effective date shall not be counted for any
49 purposes under this plan unless the emergency medical
50 services officer has not received the return of his or her
51 accumulated contributions in the Public Employees
52 Retirement System pursuant to §5-10-30 of this code. The
53 member may request in writing to have his or her
54 accumulated contributions and employer contributions from
55 covered employment in the Public Employees Retirement
56 System transferred to the plan. If the conditions of this
57 subsection are met, all years of the emergency medical
58 services officer's covered employment shall be counted as
59 years of service for the purposes of this article.

60 (d) Any emergency medical services officer employed
61 in covered employment on the effective date of this article
62 who has timely elected to transfer into this plan as provided
63 in subsection (b) of this section shall be given credited

64 service at the time of transfer for all credited service then
65 standing to the emergency medical services officer's service
66 credit in the Public Employees Retirement System
67 regardless of whether the credited service (as that term is
68 defined in §5-10-2 of this code) was earned as an emergency
69 medical services officer. All credited service standing to the
70 transferring emergency medical services officer's credit in
71 the Public Employees Retirement System at the time of
72 transfer into this plan shall be transferred into the plan
73 created by this article and the transferring emergency
74 medical services officer shall be given the same credit for
75 the purposes of this article for all service transferred from
76 the Public Employees Retirement System as that
77 transferring emergency medical services officer would have
78 received from the Public Employees Retirement System as
79 if the transfer had not occurred. In connection with each
80 transferring emergency medical services officer receiving
81 credit for prior employment as provided in this subsection,
82 a transfer from the Public Employees Retirement System to
83 this plan shall be made pursuant to the procedures described
84 in this article: *Provided*, That any member of this plan who
85 has elected to transfer from the Public Employees
86 Retirement System into this plan pursuant to subsection (b)
87 of this section may not, after having transferred into and
88 becoming an active member of this plan, reinstate to his or
89 her credit in this plan any service credit relating to periods
90 in which the member was not in covered employment as an
91 emergency medical services officer and which service was
92 withdrawn from the Public Employees Retirement System
93 prior to his or her elective transfer into this plan.

94 (e) Once made, the election made under this section is
95 irrevocable. All emergency medical services officers
96 employed by an employer which is a participating public
97 employer of the Public Employees Retirement System after
98 the effective date and emergency medical services officers
99 electing to become members as described in this section
100 shall be members as a condition of employment and shall
101 make the contributions required by this article.

102 (f) Notwithstanding any other provisions of this article,
103 any individual who is a leased employee is not eligible to
104 participate in the plan. For purposes of this plan, a “leased
105 employee” means any individual who performs services as
106 an independent contractor or pursuant to an agreement with
107 an employee leasing organization or similar organization. If
108 a question arises regarding the status of an individual as a
109 leased employee, the board has final power to decide the
110 question.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 18. WEST VIRGINIA DIVISION OF NATURAL RESOURCES POLICE OFFICER RETIREMENT SYSTEM.

§20-18-1. Short title.

1 This article is known and may be cited as the “West
2 Virginia Natural Resources Police Officers Retirement
3 System Act.”

§20-18-2. Definitions.

1 As used in this article, unless a federal law or regulation
2 or the context clearly requires a different meaning:

3 (a) “Accrued benefit” means on behalf of any member
4 two and one-quarter percent of the member’s final average
5 salary multiplied by the member’s years of credited service:
6 *Provided*, That members who retire after July 1, 2025, shall
7 have an accrued benefit of two and one-half percent of the
8 member’s final average salary multiplied by the member’s
9 years of credited service. A member’s accrued benefit may
10 not exceed the limits of Section 415 of the Internal Revenue
11 Code and is subject to the provisions of §20-18-13 of this
12 code.

13 (b) “Accumulated contributions” means the sum of all
14 amounts deducted from the annual compensation of a
15 member or paid on his or her behalf pursuant to §5-10C-1

16 *et seq.* of this code, either pursuant to §20-18-8(a) or §5-10-
17 29 of this code as a result of covered employment together
18 with regular interest on the deducted amounts.

19 (c) “Active member” means a member who is active and
20 contributing to the plan.

21 (d) “Active military duty” means full-time active duty
22 with any branch of the armed forces of the United States,
23 including service with the National Guard or reserve
24 military forces when the member has been called to active
25 full-time duty and has received no compensation during the
26 period of that duty from any board or employer other than
27 the armed forces.

28 (e) “Actuarial equivalent” means a benefit of equal
29 value computed upon the basis of the mortality table and
30 interest rates as set and adopted by the retirement board in
31 accordance with the provisions of this article: *Provided,*
32 That when used in the context of compliance with the
33 federal maximum benefit requirements of Section 415 of the
34 Internal Revenue Code, “actuarial equivalent” shall be
35 computed using the mortality tables and interest rates
36 required to comply with those requirements.

37 (f) “Annual compensation” means the wages paid to the
38 member during covered employment within the meaning of
39 Section 3401(a) of the Internal Revenue Code, but
40 determined without regard to any rules that limit the
41 remuneration included in wages based upon the nature or
42 location of employment or services performed during the
43 plan year plus amounts excluded under Section 414(h)(2) of
44 the Internal Revenue Code and less reimbursements or other
45 expense allowances, cash or noncash fringe benefits or both,
46 deferred compensation, and welfare benefits. Annual
47 compensation for determining benefits during any
48 determination period may not exceed the maximum
49 compensation allowed as adjusted for cost of living in
50 accordance with §5-10D-7 of this code and Section
51 401(a)(17) of the Internal Revenue Code.

52 (g) “Annual leave service” means accrued annual leave.

53 (h) “Annuity starting date” means the first day of the
54 first calendar month following receipt of the retirement
55 application by the board or the required beginning date, if
56 earlier: *Provided*, That the member has ceased covered
57 employment and reached normal retirement age.

58 (i) “Board” means the Consolidated Public Retirement
59 Board created pursuant to §5-10D-1 *et seq.* of this code.

60 (j) “Covered employment” means either: (1)
61 Employment as a Natural Resources Police Officer and the
62 active performance of the duties required of a Natural
63 Resources Police Officer; (2) the period of time which
64 active duties are not performed but disability benefits are
65 received under §20-18-21 or §20-18-22 of this code; or (3)
66 concurrent employment by a Natural Resources Police
67 Officer in a job or jobs in addition to his or her employment
68 as a Natural Resources Police Officer where the secondary
69 employment requires the Natural Resources Police Officer
70 to be a member of another retirement system which is
71 administered by the Consolidated Public Retirement Board
72 pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That
73 the Natural Resources Police Officer contributes to the fund
74 created in §20-18-7 of this code the amount specified as the
75 Natural Resource Police Officer’s contribution in §20-18-8
76 of this code.

77 (k) “Credited service” means the sum of a member’s
78 years of service, active military duty, disability service, and
79 annual leave service.

80 (l) “Dependent child” means either:

81 (1) An unmarried person under age 18 who is:

82 (A) A natural child of the member;

83 (B) A legally adopted child of the member;

84 (C) A child who at the time of the member's death was
85 living with the member while the member was an adopting
86 parent during any period of probation; or

87 (D) A stepchild of the member residing in the member's
88 household at the time of the member's death; or

89 (2) Any unmarried child under age 23:

90 (A) Who is enrolled as a full-time student in an
91 accredited college or university;

92 (B) Who was claimed as a dependent by the member for
93 federal income tax purposes at the time of the member's
94 death; and

95 (C) Whose relationship with the member is described in
96 subparagraph (A), (B), or (C), paragraph (1) of this
97 subdivision.

98 (m) "Dependent parent" means the father or mother of
99 the member who was claimed as a dependent by the member
100 for Federal Income Tax purposes at the time of the
101 member's death.

102 (n) "Director" means Director of the Division of Natural
103 Resources.

104 (o) "Disability service" means service credit received by
105 a member, expressed in whole years, fractions thereof or
106 both, equal to one half of the whole years, fractions thereof,
107 or both, during which time a member receives disability
108 benefits under §20-18-21 or §20-18-22 of this code.

109 (p) "Division of Natural Resources" or "division"
110 means the West Virginia Division of Natural Resources.

111 (q) "Effective date" means January 2, 2021.

112 (r) "Employer error" means an omission,
113 misrepresentation, or violation of relevant provisions of the
114 West Virginia Code or of the West Virginia Code of State

115 Rules or the relevant provisions of both the West Virginia
116 Code and of the West Virginia Code of State Rules by the
117 participating public employer that has resulted in an
118 underpayment or overpayment of contributions required. A
119 deliberate act contrary to the provisions of this section by a
120 participating public employer does not constitute employer
121 error.

122 (s) "Final average salary" means the average of the
123 highest annual compensation received for covered
124 employment by the member during any five consecutive
125 plan years within the member's last 10 years of service. If
126 the member did not have annual compensation for the five
127 full plan years preceding the member's attainment of
128 normal retirement age and during that period the member
129 received disability benefits under §20-18-21 or §20-18-22
130 of this code then "final average salary" means the average
131 of the monthly salary determined paid to the member during
132 that period determined as if the disability first commenced
133 after the effective date of this article with monthly
134 compensation equal to that average monthly compensation
135 which the member was receiving in the plan year prior to
136 the initial disability multiplied by 12.

137 (t) "Fund" means the West Virginia Natural Resources
138 Police Officer Retirement Fund created pursuant to §20-18-
139 7 of this code.

140 (u) "Hour of service" means:

141 (1) Each hour for which a member is paid;

142 (2) Each hour for which a member is paid but where no
143 duties are performed due to vacation, holiday, illness,
144 incapacity including disability, layoff, jury duty, military
145 duty, leave of absence, or any combination thereof, and
146 without regard to whether the employment relationship has
147 terminated. Hours under this paragraph shall be calculated
148 and credited pursuant to West Virginia Division of Labor
149 rules. A member will not be credited with any hours of

150 service for any period of time he or she is receiving benefits
151 under §20-18-21 or §20-18-22 of this code; and

152 (3) Each hour for which back pay is either awarded or
153 agreed to be paid by the Division of Natural Resources,
154 irrespective of mitigation of damages. The same hours of
155 service may not be credited both under this subdivision and
156 subdivision (1) or (2) of this subsection. Hours under this
157 paragraph shall be credited to the member for the plan year
158 or years to which the award or agreement pertains rather
159 than the plan year in which the award, agreement, or
160 payment is made.

161 (v) “Member” means a person first hired as a Natural
162 Resources Police Officer, as defined in subsection (x) of this
163 section, on or after January 2, 2021, or a Natural Resources
164 Police Officer first hired prior to the effective date and who
165 elects to become a member pursuant to §20-18-6 of this
166 code. A member shall remain a member until the benefits to
167 which he or she is entitled under this article are paid or
168 forfeited or until cessation of membership pursuant to §20-
169 18-6 of this code.

170 (w) “Monthly salary” means the portion of a member’s
171 gross annual compensation which is paid to him or her per
172 month.

173 (x) “Natural Resources Police Officer” means any
174 person regularly employed in the service of the division as
175 a law-enforcement officer on or after the effective date of
176 this article, and who is eligible to participate in the fund.
177 The term shall not include Emergency Natural Resources
178 Police Officers as defined in §20-7-1(c) of this code, Special
179 Natural Resources Police Officers as defined in §20-7-1(d)
180 of this code, Forestry Special Natural Resources Police
181 Officers as defined in §20-7-1(e) of this code, or Federal
182 Law Enforcement Officer as defined in §20-7-1b of this
183 code.

184 (y) "Normal form" means a monthly annuity which is
185 1/12 of the amount of the member's accrued benefit which
186 is payable for the member's life. If the member dies before
187 the sum of the payments he or she receives equals his or her
188 accumulated contributions on the annuity starting date, the
189 named beneficiary or beneficiaries shall receive in one lump
190 sum the difference between the accumulated contributions
191 at the annuity starting date and the total of the retirement
192 income payments made to the member.

193 (z) "Normal retirement age" means the first to occur of
194 the following: (1) Attainment of age 55 years and the
195 completion of 15 or more years of service; (2) while still in
196 covered employment, attainment of at least age 55 years,
197 and when the sum of current age plus years of service equals
198 or exceeds 70 years; or (3) attainment of at least age 62
199 years, and completion of 10 years of service: *Provided*, That
200 any member shall in qualifying for retirement pursuant to
201 this article have 10 or more years of service, all of which
202 years shall be actual, contributory ones.

203 (aa) "Partially disabled" means a member's inability to
204 engage in the duties of a Natural Resources Police Officer
205 by reason of any medically determinable physical or mental
206 impairment that can be expected to result in death or that
207 has lasted or can be expected to last for a continuous period
208 of not less than 12 months. A member may be determined
209 partially disabled for the purposes of this article and
210 maintain the ability to engage in other gainful employment
211 which exists within the state but which ability would not
212 enable him or her to earn an amount at least equal to two
213 thirds of the average annual compensation earned by all
214 active members of this plan during the plan year ending as
215 of the most recent June 30, as of which plan data has been
216 assembled and used for the actuarial valuation of the plan.

217 (bb) "Plan" means the West Virginia Natural Resources
218 Police Officers Retirement System established by this
219 article.

220 (cc) “Plan year” means the 12-month period
221 commencing on July 1 of any designated year and ending
222 the following June 30.

223 (dd) “Public Employees Retirement System” means the
224 West Virginia Public Employees Retirement System
225 created by §5-10-1 *et seq.* of this code.

226 (ee) “Qualified public safety employee” means any
227 employee of the division who provides police protection,
228 fire-fighting services, or emergency medical services for
229 any area within the jurisdiction of the state or political
230 subdivision, or such other meaning given to the term by
231 Section 72(t)(10)(B) of the Internal Revenue Code or by
232 Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be
233 amended from time to time.

234 (ff) “Regular interest” means the rate or rates of interest
235 per annum, compounded annually, as the board adopts in
236 accordance with the provisions of this article.

237 (gg) “Required beginning date” means April 1 of the
238 calendar year following the later of: (i) The calendar year in
239 which the member attains age 72; or (ii) the calendar year
240 in which he or she retires or otherwise separates from
241 covered employment.

242 (hh) “Retirant” means any member who commences an
243 annuity payable by the retirement system.

244 (ii) “Retire” or “retirement” means a member’s
245 termination from the employ of a participating public
246 employer and the commencement of an annuity by the plan.

247 (jj) “Retirement income payments” means the annual
248 retirement income payments payable under the plan.

249 (kk) “Spouse” means the person to whom the member
250 is legally married on the annuity starting date.

251 (ll) “Substantial gainful employment” or “gainful
252 employment” means employment is which an individual
253 may earn up to an amount that is determined by the United
254 States Social Security Administration as substantial gainful
255 activity and still receive total disability benefits.

256 (mm) “Surviving spouse” means the person to whom
257 the member was legally married at the time of the member’s
258 death and who survived the member.

259 (nn) “Totally disabled” means a member’s inability to
260 engage in substantial gainful activity by reason of any
261 medically determined physical or mental impairment that
262 can be expected to result in death or that has lasted or can
263 be expected to last for a continuous period of not less than
264 12 months. For purposes of this subdivision:

265 (1) A member is totally disabled only if his or her
266 physical or mental impairment or impairments are so severe
267 that he or she is not only unable to perform his or her
268 previous work as a Natural Resources Police Officer but
269 also cannot, considering his or her age, education, and work
270 experience, engage in any other kind of substantial gainful
271 employment which exists in the state regardless of whether:
272 (A) The work exists in the immediate area in which the
273 member lives; (B) a specific job vacancy exists; or (C) the
274 member would be hired if he or she applied for work.

275 (2) “Physical or mental impairment” is an impairment
276 that results from an anatomical, physiological, or
277 psychological abnormality that is demonstrated by
278 medically accepted clinical and laboratory diagnostic
279 techniques. A member’s receipt of Social Security disability
280 benefits creates a rebuttable presumption that the member is
281 totally disabled for purposes of this plan. Substantial gainful
282 employment rebuts the presumption of total disability.

283 (oo) “Year of service.” A member shall, except in his or
284 her first and last years of covered employment, or within the
285 plan year of the effective date, be credited with year of

286 service credit, based upon the hours of service performed as
287 covered employment and credited to the member during the
288 plan year based upon the following schedule:

289	Hours of Service	Years of Service Credited
290	Less than 500	0
291	500 to 999	1/3
292	1,000 to 1,499	2/3
293	1,500 or more	1

294 During a member's first and last years of covered
295 employment or within the plan year of the effective date, the
296 member shall be credited with 1/12 of a year of service for
297 each month during the plan year in which the member is
298 credited with an hour of service. A member is not entitled
299 to credit for years of service for any time period during
300 which he or she received disability payments under §20-18-
301 21 or §20-18-22 of this code. Except as specifically
302 excluded, years of service include covered employment
303 prior to the effective date. Years of service which are
304 credited to a member prior to his or her receipt of
305 accumulated contributions upon termination of employment
306 pursuant to §20-18-20 or §5-10-30 of this code, shall be
307 disregarded for all purposes under this plan unless the
308 member repays the accumulated contributions with interest
309 pursuant to §20-18-20 of this code or had prior to the
310 effective date made the repayment pursuant to §5-10-18 of
311 this code.

§20-18-3. Meaning of terms.

1 Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States, unless a different meaning is clearly required. Any
4 reference in this article to the Internal Revenue Code means
5 the Internal Revenue Code of 1986, as it has been amended.

§20-18-4. Creation and administration of West Virginia Natural Resources Police Officers Retirement System; specification of actuarial assumptions.

1 There is hereby created the West Virginia Natural
2 Resources Police Officers Retirement System. The purpose
3 of this system is to provide for the orderly retirement of
4 Natural Resources Police Officers who become
5 superannuated because of age or permanent disability and
6 to provide certain survivor death benefits, and it is
7 contemplated that substantially all of the members of the
8 retirement system shall be qualified public safety employees
9 as defined in §20-18-2 of this code. The retirement system
10 shall come into effect January 1, 2021: *Provided*, That if the
11 number of members in the system are fewer than 100 on
12 July 1, 2022, then all of the provisions of this article are void
13 and of no force and effect, and memberships in the plan will
14 be merged into the Public Employees Retirement System
15 created in §5-10-1 *et seq.* of this code. The retirement
16 system constitutes a body corporate. All business of the
17 system shall be transacted in the name of the West Virginia
18 Natural Resources Police Officers Retirement System. The
19 board shall specify and adopt all actuarial assumptions for
20 the plan at its first meeting of every calendar year or as soon
21 thereafter as may be practicable, which assumptions shall
22 become part of the plan.

§20-18-5. Article to be liberally construed; supplements federal social security; federal qualification requirements.

1 (a) The provisions of this article shall be liberally
2 construed to provide a general retirement system for Natural
3 Resources Police Officers eligible to retire under the
4 provisions of this plan. Nothing in this article may be
5 construed to permit the state to substitute this plan for
6 federal social security now in force in West Virginia.

7 (b) The board shall administer the plan in accordance
8 with its terms and may construe the terms and determine all
9 questions arising in connection with the administration,

10 interpretation and application of the plan. The board may
11 sue and be sued, contract and be contracted with and
12 conduct all the business of the system in the name of the
13 plan. The board may employ those persons it considers
14 necessary or desirable to administer the plan. All start-up
15 costs to modify the existing line of business computer
16 system and all personnel salary, including benefits, shall be
17 paid by the board from funds received by the board through
18 gifts and bequests to the fund and any accretions and
19 accumulations which may properly be paid into and become
20 a part of the fund. The board may receive gifts and bequests
21 for purposes of paying start-up costs as set forth in this
22 subsection. The board shall administer the plan for the
23 exclusive benefit of the members and their beneficiaries
24 subject to the specific provisions of the plan.

25 (c) The plan is intended to meet the federal qualification
26 requirements of Section 401(a) and related sections of the
27 Internal Revenue Code as applicable to governmental plans.
28 Notwithstanding any other provision of state law, the board
29 shall administer the plan to fulfill this intent for the
30 exclusive benefit of the members and their beneficiaries.
31 Any provision of this article referencing or relating to these
32 federal qualification requirements shall be effective as of
33 the date required by federal law. The board may promulgate
34 rules and amend or repeal conflicting rules in accordance
35 with the authority granted to the board pursuant to §5-10D-
36 1 of this code to assure compliance with the requirements of
37 this section.

§20-18-6. Members.

1 (a) Any Natural Resources Police Officer first employed
2 in covered employment after the effective date of this article
3 shall be a member of this retirement system and does not
4 qualify for membership in any other retirement system
5 administered by the board, so long as he or she remains
6 employed in covered employment: *Provided*, That any
7 Natural Resources Police Officer who has concurrent
8 employment in an additional job or jobs which would

9 require the Natural Resources Police Officer to be a member
10 of the West Virginia Deputy Sheriff Retirement System,
11 West Virginia Municipal Police Officers and Firefighters
12 Retirement System or the West Virginia Emergency
13 Medical Services Retirement System shall participate in
14 only one retirement system administered by the board, and
15 the retirement system applicable to the concurrent
16 employment for which the employee has the earliest date of
17 hire shall prevail. The membership of any person in the plan
18 ceases: (1) Upon the withdrawal of accumulated
19 contributions after the cessation of service; (2) upon
20 retirement; or (3) at death.

21 (b) Any Natural Resources Police Officer employed in
22 covered employment on July 1, 2020, shall notify in writing
23 both the Division of Natural Resources and the board no
24 later than September 30, 2020, of his or her desire to become
25 a member of the plan beginning January 2, 2021: *Provided*,
26 That any Natural Resources Police Officer hired after July
27 1, 2020, but before January 2, 2021, shall make this required
28 notification to the division and the board no later than 30
29 days from receipt of the notice required by §20-18-11 of this
30 code or September 30, 2020, whichever is later. Any
31 Natural Resources Police Officer who elects to become a
32 member of the plan ceases to be an active member in the
33 Public Employees Retirement System and shall continue to
34 be ineligible for future membership in any other retirement
35 system administered by the board so long as the Natural
36 Resources Police Officer remains employed in covered
37 employment in this plan; any Natural Resources Police
38 Officer who does not affirmatively elect to become a
39 member of the plan continues to be eligible for any other
40 retirement system as is from time to time offered to other
41 state employees but is ineligible for this plan regardless of
42 any subsequent termination of employment and rehire.

43 (c) Any Natural Resources Police Officer employed in
44 covered employment on the effective date of this article,
45 who has timely elected to transfer into this plan as provided
46 in subsection (b) of this section, shall be given credited

47 service at the time of transfer for all credited service then
48 standing to the Natural Resources Police Officer service
49 credit in the Public Employees Retirement System
50 regardless of whether the credited service (as that term is
51 defined in §5-10-2 of this code) was earned as a Natural
52 Resources Police Officer. All the credited service standing
53 to the transferring Natural Resources Police Officer's credit
54 in the Public Employees Retirement Fund System at the
55 time of transfer into this plan shall be transferred into the
56 plan created by this article, and the transferring Natural
57 Resources Police Officer shall be given the same credit for
58 the purposes of this article for all service transferred from
59 the Public Employees Retirement System, as that
60 transferring Natural Resources Police Officer would have
61 received from the Public Employees Retirement System as
62 if the transfer had not occurred. In connection with each
63 transferring Natural Resources Police Officer receiving
64 credit for prior employment as provided in this subsection,
65 a transfer from the Public Employees Retirement System to
66 this plan shall be made pursuant to the procedures described
67 in §20-18-10 of this code: *Provided*, That a member of this
68 plan who has elected to transfer from the Public Employees
69 Retirement System into this plan pursuant to subsection (b)
70 of this section may not, after having transferred into and
71 become an active member of this plan, reinstate to his or her
72 credit in this plan any service credit relating to periods of
73 non-Natural Resources Police Officer service which were
74 withdrawn from the Public Employees Retirement System
75 prior to his or her elective transfer into this plan.

76 (d) Any Natural Resources Police Officer who was
77 employed as a Natural Resources Police Officer prior to the
78 effective date of this article but was not employed as a
79 Natural Resources Police Officer on the effective date of
80 this article and has not commenced retirement under the
81 Public Employees Retirement System, shall become a
82 member upon rehire as a Natural Resources Police Officer.
83 For purposes of this subsection, the member's years of
84 service and credited service prior to the effective date shall

85 not be counted for any purposes under this plan unless the
86 Natural Resources Police Officer has not received the return
87 of his or her accumulated contributions in the Public
88 Employees Retirement System pursuant to §5-10-30 of this
89 code. The member may request in writing within one year
90 of first becoming a member of the plan to have his or her
91 accumulated contributions and employer contributions from
92 covered employment in the Public Employees Retirement
93 System transferred to the plan. If the conditions of the
94 subsection are met, all years of the Natural Resources Police
95 Officer's covered employment shall be counted as years of
96 service for the purposes of this article.

97 (e) Once made, the election provided in this section is
98 irrevocable. All Natural Resources Police Officers first
99 employed after the effective date and Natural Resources
100 Police Officers electing to become members as described in
101 this section shall be members as a condition of employment
102 and shall make the contributions required by §20-18-8 of
103 this code.

104 (f) Notwithstanding any other provisions of this article
105 to the contrary, any individual who is a leased employee is
106 not eligible to participate in the plan. For purposes of this
107 plan, a "leased employee" means any individual who
108 performs services as an independent contractor or pursuant
109 to an agreement with an employee leasing organization or
110 similar organization. If a question arises regarding the status
111 of an individual as a leased employee, the board has final
112 power to decide the question. Additionally, any individual
113 who is an Emergency Natural Resources Police Officer as
114 defined in §20-7-1(c) of this code, Special Natural
115 Resources Police Officer as defined in §20-7-1(d) of this
116 code, Forestry Special Natural Resources Police Officer as
117 defined in §20-7-1(e) of this code, or Federal Law
118 Enforcement Officer as defined in §20-7-1b of this code, is
119 not eligible to participate in the plan.

§20-18-7. Creation of fund; investments.

1 (a) There is hereby created the “West Virginia Natural
2 Resources Police Officer Retirement Fund” for the benefit
3 of the members of the retirement system created pursuant to
4 this article and the dependents of any deceased or retired
5 member of the system.

6 (b) All moneys paid into and accumulated in the fund,
7 except such amounts as are designated by the board for
8 payment of benefits as provided in this article, shall be held
9 in trust and invested in the consolidated pensions fund as
10 administered by the state Investment Management Board as
11 provided by law.

§20-18-8. Members’ contributions; employer contributions.

1 (a) There shall be deducted from the monthly salary of
2 each member and paid into the fund an amount equal to nine
3 and one-half percent of his or her monthly salary.

4 (b) An additional 12 percent of the monthly salary of
5 each member shall be paid to the fund by the employer.

6 (c) If the board finds that the benefits provided by this
7 article can be actuarially funded with a lesser contribution,
8 then the board shall reduce the required member or
9 employer contributions or both. The sums withheld each
10 pay date shall be paid to the fund no later than 15 days
11 following the end of the pay date.

12 (d) Any active member who has concurrent employment
13 in an additional job or jobs and the additional employment
14 requires the Natural Resources Police Officer to be a
15 member of another retirement system which is administered
16 by the Consolidated Public Retirement Board pursuant to
17 §5-10D-1 *et seq.* of this code shall make an additional
18 contribution to the fund of eight and one-half percent of his
19 or her monthly salary earned from any additional
20 employment which requires the Natural Resources Police
21 Officer to be a member of another retirement system which
22 is administered by the Consolidated Public Retirement
23 Board pursuant to §5-10D-1 *et seq.* of this code. An

24 additional employer contribution shall be paid to the fund
25 by the concurrent employer for which the member is
26 employed in an amount equal to 12 percent of his or her
27 monthly salary. If the board finds that the benefits provided
28 by this article can be funded with a lesser contribution, then
29 the board shall reduce the required member, or employer
30 contributions or both. The sums withheld each calendar
31 month shall be paid to the fund no later than 15 days
32 following the end of the calendar month.

§20-18-9. Correction of errors; underpayments; overpayments.

1 (a) General rule: Upon learning of errors, the board shall
2 correct errors in the retirement plan in a timely manner
3 whether the individual, division or board was at fault for the
4 error with the intent of placing the affected individual,
5 division and board in the position each would have been in
6 had the error not occurred.

7 (b) Underpayments to the plan: Any error resulting in
8 an underpayment to the plan may be corrected by the
9 member or retirant remitting the required employee
10 contribution or underpayment and the division remitting the
11 required employer contribution or underpayment. Interest
12 shall accumulate in accordance with the legislative rule 162
13 CSR 7 concerning retirement board refund, reinstatement,
14 retroactive service, loan and correction of error interest
15 factors and any accumulating interest owed on the employee
16 and employer contributions or underpayments resulting
17 from an employer error is the responsibility of the division.
18 The division may remit total payment and the employee
19 reimburse the division through payroll deduction over a
20 period equivalent to the time period during which the
21 employer error occurred. If the correction of an error
22 involving an underpayment to the plan will result in the plan
23 paying a retirant an additional amount, this additional
24 payment may be made only after the board receives full
25 payment of all required employee and employer
26 contributions or underpayments, including interest.

27 (c) Overpayments to the plan by the division: When
28 mistaken or excess employer contributions or other
29 employer overpayments have been made to the plan, the
30 board shall credit the division with an amount equal to the
31 overpayment, to be offset against the employer's future
32 liability for employer contributions to the plan. If the
33 division has no future liability for employer contributions to
34 the retirement system, the board shall refund the erroneous
35 contributions directly to the division. Earnings or interest
36 may not be returned, offset or credited to the division under
37 any of the means used by the board for returning employer
38 overpayments made to the plan.

39 (d) Overpayments to the plan by an employee: When
40 mistaken or excess employee contributions or
41 overpayments have been made to the retirement system, the
42 board has sole authority for determining the means of
43 return, offset or credit to or for the benefit of the individual
44 making the mistaken or excess employee contribution of the
45 amounts, and may use any means authorized or permitted
46 under the provisions of Section 401(a), *et seq.* of the Internal
47 Revenue Code and guidance issued thereunder applicable to
48 governmental plans. Alternatively, the board may require
49 the division to pay the individual the amounts as wages,
50 with the board crediting the division with a corresponding
51 amount to offset against its future contributions to the plan.
52 If the division has no future liability for employer
53 contributions to the plan, the board shall refund said amount
54 directly to the division: *Provided*, That the wages paid to the
55 individual shall not be considered compensation for any
56 purposes of this article. Earnings or interest shall not be
57 returned, offset, or credited under any of the means used by
58 the board for returning employee overpayments.

59 (e) Overpayments from the plan: If any error results in
60 any member, retirant, beneficiary, the division or other
61 individual receiving from the system more than he or she
62 would have been entitled to receive had the error not
63 occurred the board shall correct the error in a timely manner.

64 If correction of the error occurs after annuity payments to a
65 retirant or beneficiary have commenced, the board shall
66 prospectively adjust the payment of the benefit to the correct
67 amount. In addition, the member, retirant, beneficiary, the
68 division or other person who received the overpayment
69 from the plan shall repay the amount of any overpayment to
70 the plan in any manner permitted by the board. Interest shall
71 not accumulate on any corrective payment made to the plan
72 pursuant to this subsection.

73 (f) Underpayments from the plan: If any error results in
74 any member, retirant, beneficiary, the division or other
75 individual receiving from the plan less than he or she would
76 have been entitled to receive had the error not occurred, the
77 board, upon learning of the error, shall correct the error in a
78 timely manner. If correction of the error occurs after annuity
79 payments to a retirant or beneficiary have commenced, the
80 board shall prospectively adjust the payment of the benefit
81 to the correct amount. In addition, the board shall pay the
82 amount of such underpayment to the member, retirant,
83 beneficiary or other individual in a lump sum. Interest shall
84 not be paid on any corrective payment made by the plan
85 pursuant to this subsection.

86 (g) Eligibility errors: If the board finds that an individual
87 is not eligible to participate, the board shall notify the
88 individual and the division of the determination and
89 terminate his or her participation in the plan. Any erroneous
90 payments to the retirement system shall be returned to the
91 division and individual in accordance with the methods
92 described in subsections (c) and (d) of this section and any
93 erroneous payments from the plan to such individual shall
94 be returned to the plan in accordance with the methods
95 described in subsection (e) of this section. Any erroneous
96 service credited to the individual shall be removed. If the
97 board determines that an individual has not been
98 participating in the plan, but was eligible to and required to
99 be participating in the plan, the board shall as soon as
100 practicable notify the individual and the division of the

101 determination, and the individual shall prospectively
102 commence participation in the plan as soon as practicable.
103 Service credit for service prior to the date on which the
104 individual prospectively commences participation in the
105 plan shall be granted only if the board receives the required
106 employer and employee contributions for such service, in
107 accordance with subsection (b) of this section, including
108 interest.

109 (h) Correction of errors occurring prior to transfer from
110 Public Employee Retirement System. — If any errors
111 requiring correction occurred prior to establishment of the
112 plan created pursuant to this article or prior to the transfer
113 of funds from the Public Employee Retirement System, into
114 the plan, or both, the employer and member contributions,
115 if any, required to be calculated in order to effect correction
116 shall be based on the rates in effect for the retirement system
117 under which such employer or member contributions would
118 have been made had the error not occurred. For purposes of
119 this subsection, “retirement system” means either the Public
120 Employees Retirement System or the plan. The board shall
121 have full discretion when applying this subsection (h),
122 consistent with the general principles of subsection (a) of
123 this section. The intent of any correction is to place the
124 affected individual, division and board in the position in
125 which each would have been had the error not occurred.

§20-18-10. Transfer from Public Employees Retirement System.

1 (a) The Consolidated Public Retirement Board shall,
2 within 90 days of the effective date transfer assets from the
3 Public Employees Retirement System trust fund into the
4 West Virginia Natural Resources Police Officers
5 Retirement trust fund.

6 (b) The amount of assets to be transferred for each
7 transferring Natural Resources Police Officer shall be
8 computed as of January 1, 2021, using the actuarial
9 valuation assumptions in effect for July 1, 2020, actuarial

10 valuation of Public Employees Retirement System, and
11 updated with seven and one-half percent annual interest to
12 the date of the actual asset transfer. The market value of the
13 assets of the transferring Natural Resources Police Officer
14 in the Public Employees Retirement System shall be
15 determined as of the end of the month preceding the actual
16 transfer. To determine the computation of the asset share to
17 be transferred the board shall:

18 (1) Compute the market value of the Public Employees
19 Retirement System assets;

20 (2) Compute the accrued liability for all Public
21 Employees Retirement System retirees, beneficiaries,
22 disabled retirees and terminated inactive members;

23 (3) Reduce the market value of Public Employees
24 Retirement System assets by the accrued liability
25 determined in subdivision (2) of this subsection;

26 (4) Compute the entry age method accrued liability for
27 all active Public Employees Retirement System members;

28 (5) Compute the share of accrued liability as determined
29 pursuant to subdivision (4) of this subsection, that is
30 attributable to those Natural Resources Police Officers in
31 Public Employees Retirement System who have elected to
32 transfer to the plan;

33 (6) Compute the percentage of active's accrued liability
34 computed to the Natural Resources Police Officers by
35 dividing subdivision (5) by subdivision (4) of this
36 subsection;

37 (7) Determine the asset share to be transferred from
38 Public Employees Retirement System to the plan by
39 multiplying subdivision (3) times subdivision (6) of this
40 subsection.

41 (c) Once a Natural Resources Police Officer has elected
42 to transfer from the Public Employees Retirement System,

43 transfer of that amount as calculated in accordance with the
44 provisions of subsection (b) of this section by the Public
45 Employees Retirement System shall operate as a complete
46 bar to any further liability to the Natural Resource Police
47 Officer transferring from the Public Employees Retirement
48 System, and constitutes an agreement whereby the
49 transferring Natural Resources Police Officer forever
50 indemnifies and holds harmless the Public Employees
51 Retirement System from providing him or her any form of
52 retirement benefit whatsoever until such time as that Natural
53 Resources Police Officer obtains other employment which
54 would make him or her eligible to reenter the Public
55 Employees Retirement System with no credit whatsoever
56 for the amounts transferred to the Natural Resources Police
57 Officer retirement system.

§20-18-11. Notice requirements.

1 (a) The Division of Natural Resources shall prepare a
2 written notice no later than August 1, 2020, to be delivered
3 to each Natural Resources Police Officer actively employed
4 by the division: *Provided*, That the division shall also
5 deliver this notice on the first day of employment to any
6 Natural Resources Police Officer hired after July 1, 2020,
7 but before January 2, 2021. This notice shall clearly and
8 accurately explain the benefits, financial implications and
9 consequences to a Natural Resources Police Officer of
10 electing to participate in the retirement plan created in this
11 article, including the consequences and financial
12 implications in regard to the benefits under the public
13 employees insurance plan as set forth in §5-16-1 *et seq.* of
14 this code. This notice shall be distributed to each Natural
15 Resources Police Officer and the West Virginia Division of
16 Natural Resources shall obtain a signed receipt from each
17 Natural Resources Police Officer acknowledging that the
18 Natural Resources Police Officer was provided a copy of
19 the notice required in this subsection. If a Natural Resources
20 Police Officer makes the election provided for in §20-18-6
21 of this code, he or she shall be considered to have made a

22 voluntary, informed decision in regard to the election to
23 participate in the retirement system created in this article.

24 (b) Nothing in this section may be construed to alter,
25 affect or change any of the rights and benefits of any Natural
26 Resources Police Officer who has insurance coverage under
27 §5-16-1 *et seq.* of this code as a result of being a spouse or
28 dependent of a participant who is the primary insured under
29 §5-16-1 *et seq.* of this code.

30 (c) Nothing contained in this section may be construed
31 to affect or pertain to any life insurance coverage under §5-
32 16-1 *et seq.* of this code.

§20-18-12. Retirement; commencement of benefits.

1 A member may retire and commence to receive
2 retirement income payments on the first day of the calendar
3 month following the board's receipt of the member's
4 voluntary written application for retirement or the required
5 beginning date, if earlier. Before receiving retirement
6 income payments, the member shall have ceased covered
7 employment and reached normal retirement age. The
8 retirement income payments shall be in an amount as
9 provided under §20-18-18 of this code: *Provided*, That
10 retirement income payments under this plan shall be subject
11 to the provisions of this article. Upon receipt of a request for
12 estimation of benefits, the board shall promptly provide the
13 member with an explanation of his or her optional forms of
14 retirement benefits and the estimated gross monthly
15 annuity. Upon receipt of properly executed retirement
16 application forms from the member, the board shall process
17 the member's request and commence payments as soon as
18 administratively feasible.

§20-18-13. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the retirement system
3 in compliance with the limitations of Section 415 of the
4 Internal Revenue Code and regulations under that section,

5 to the extent applicable to governmental plans (hereafter
6 sometimes referred to as the “415 limitation(s)” or “415
7 dollar limitation(s)”), so that the annual benefit payable
8 under this system to a member may not exceed those
9 limitations. Any annual benefit payable under this system
10 shall be reduced or limited, if necessary, to an amount which
11 does not exceed those limitations. The extent to which any
12 annuity or other annual benefit payable under this
13 retirement system shall be reduced, as compared to the
14 extent to which an annuity, contributions or other benefits
15 under any other defined benefit plans or defined
16 contribution plans required to be taken into consideration
17 under Section 415 of the Internal Revenue Code shall be
18 reduced, shall be proportional on a percentage basis to the
19 reductions made in such other plans administered by the
20 board and required to be so taken into consideration under
21 Section 415, unless a disproportionate reduction is
22 determined by the board to maximize the aggregate benefits
23 payable to the member. If the reduction is under this
24 retirement system, the board shall advise affected members
25 of any additional limitation on the annuities or other annual
26 benefit required by this section. For purposes of the 415
27 limitations, the “limitation year” shall be the calendar year.
28 The 415 limitations are incorporated herein by reference,
29 except to the extent the following provisions may modify
30 the default provisions thereunder:

31 (a) The annual adjustment to the 415 dollar limitations
32 made by Section 415(d) of the Internal Revenue Code and
33 the regulations thereunder shall apply for each limitation
34 year. The annual adjustments to the dollar limitations under
35 Section 415(d) of the Internal Revenue Code which become
36 effective: (i) After a retirant’s severance from employment
37 with the employer; or (ii) after the annuity starting date in
38 the case of a retirant who has already commenced receiving
39 benefits, shall apply with respect to a retirant’s annual
40 benefit in any limitation year. A retirant’s annual benefit
41 payable in any limitation year from this retirement system
42 may not be greater than the limit applicable at the annuity

43 starting date, as increased in subsequent years pursuant to
44 Section 415(d) of the Internal Revenue Code and the
45 regulations thereunder.

46 (b) For purposes of this section, the “annual benefit”
47 means a benefit that is payable annually in the form of a
48 straight life annuity. Except as provided below, where a
49 benefit is payable in a form other than a straight life annuity,
50 the benefit shall be adjusted to an actuarially equivalent
51 straight life annuity that begins at the same time as such
52 other form of benefit, using factors prescribed in the 415
53 limitation regulations, before applying the 415 limitations.
54 No actuarial adjustment to the benefit shall be made for: (1)
55 Survivor benefits payable to a surviving spouse under a
56 qualified joint and survivor annuity to the extent such
57 benefits would not be payable if the member’s benefit were
58 paid in another form; (2) benefits that are not directly related
59 to retirement benefits (such as a qualified disability benefit,
60 preretirement incidental death benefits, and post-retirement
61 medical benefits); or (3) the inclusion in the form of benefit
62 of an automatic benefit increase feature, provided the form
63 of benefit is not subject to Section 417(e)(3) of the Internal
64 Revenue Code and would otherwise satisfy the limitations
65 of this article, and the plan provides that the amount payable
66 under the form of benefit in any limitation year shall not
67 exceed the limits of this article applicable at the annuity
68 starting date, as increased in subsequent years pursuant to
69 Section 415(d) of the Internal Revenue Code. For this
70 purpose, an automatic benefit increase feature is included in
71 a form of benefit if the form of benefit provides for
72 automatic, periodic increases to the benefits paid in that
73 form.

74 (c) Adjustment for benefit forms not subject to Section
75 417(e)(3). — The straight life annuity that is actuarially
76 equivalent to the member’s form of benefit shall be
77 determined under this subsection if the form of the
78 member’s benefit is either: (1) A nondecreasing annuity
79 (other than a straight life annuity) payable for a period of

80 not less than the life of the member (or, in the case of a
81 qualified preretirement survivor annuity, the life of the
82 surviving spouse); or (2) an annuity that decreases during
83 the life of the member merely because of: (i) The death of
84 the survivor annuitant (but only if the reduction is not below
85 50 percent of the benefit payable before the death of the
86 survivor annuitant); or (ii) the cessation or reduction of
87 Social Security supplements or qualified disability
88 payments (as defined in Section 411(a)(9) of the Internal
89 Revenue Code). The actuarially equivalent straight life
90 annuity is equal to the greater of: (I) The annual amount of
91 the straight life annuity (if any) payable to the member
92 under the plan commencing at the same annuity starting date
93 as the member's form of benefit; and (II) the annual amount
94 of the straight life annuity commencing at the same annuity
95 starting date that has the same actuarial present value as the
96 member's form of benefit, computed using a five percent
97 interest rate assumption and the applicable mortality table
98 defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue
99 Ruling 2001-62 or any subsequent Revenue Ruling
100 modifying the applicable provisions of Revenue Ruling
101 2001-62) for that annuity starting date.

102 (d) Adjustment for benefit forms subject to Section
103 417(e)(3). — The straight life annuity that is actuarially
104 equivalent to the member's form of benefit shall be
105 determined under this subsection if the form of the
106 member's benefit is other than a benefit form described in
107 subdivision (c) of this section. The actuarially equivalent
108 straight life annuity shall be determined as follows: The
109 actuarially equivalent straight life annuity is equal to the
110 greatest of: (1) The annual amount of the straight life
111 annuity commencing at the same annuity starting date that
112 has the same actuarial present value as the member's form
113 of benefit, computed using the interest rate specified in this
114 retirement system and the mortality table (or other tabular
115 factor) specified in this retirement system for adjusting
116 benefits in the same form; (2) the annual amount of the
117 straight life annuity commencing at the same annuity

118 starting date that has the same actuarial present value as the
119 member's form of benefit, computed using a five and a half
120 percent interest rate assumption and the applicable mortality
121 table defined in Treasury Regulation §1.417(e)-1(d)(2)
122 (Revenue Ruling 2001-62 or any subsequent Revenue
123 Ruling modifying the applicable provisions of Revenue
124 Ruling 2001-62) for that annuity starting date; and (3) the
125 annual amount of the straight life annuity commencing at
126 the same annuity starting date that has the same actuarial
127 present value as the member's form of benefit, computed
128 using the applicable interest rate defined in Treasury
129 Regulation §1.417(e)-1(d)(3) and the applicable mortality
130 table defined in Treasury Regulation §1.417(e)-1(d)(2) (the
131 mortality table specified in Revenue Ruling 2001-62 or any
132 subsequent Revenue Ruling modifying the applicable
133 provisions of Revenue Ruling 2001-62), divided by 1.05.

134 (e) Benefits payable prior to age 62:

135 (1) Except as provided in paragraphs (2) and (3) of this
136 subdivision, if the member's retirement benefits become
137 payable before age 62, the 415 dollar limitation prescribed
138 by this section shall be reduced in accordance with
139 regulations issued by the Secretary of the Treasury pursuant
140 to the provisions of Section 415(b) of the Internal Revenue
141 Code, so that the limitation (as so reduced) equals an annual
142 straight life benefit (when the retirement income benefit
143 begins) which is equivalent to an annual benefit in the
144 amount of the applicable dollar limitation of Section
145 415(b)(1)(A) of the Internal Revenue Code (as adjusted
146 pursuant to Section 415(d) of the Internal Revenue Code)
147 beginning at age 62.

148 (2) The limitation reduction provided in paragraph (1)
149 of this subdivision may not apply if the member
150 commencing retirement benefits before age 62 is a qualified
151 participant. A qualified participant for this purpose is a
152 participant in a defined benefit plan maintained by a state,
153 or any political subdivision of a state, with respect to whom
154 the service taken into account in determining the amount of

155 the benefit under the defined benefit plan includes at least
156 15 years of service: (i) As a full-time employee of any police
157 or fire department organized and operated by the state or
158 political subdivision maintaining the defined benefit plan to
159 provide police protection, fire-fighting services or
160 emergency medical services for any area within the
161 jurisdiction of such state or political subdivision; or (ii) as a
162 member of the armed forces of the United States.

163 (3) The limitation reduction provided in paragraph (1)
164 of this subdivision is not applicable to preretirement
165 disability benefits or preretirement death benefits.

166 (4) For purposes of adjusting the 415 dollar limitation
167 for benefit commencement before age 62 or after age 65 (if
168 the plan provides for such adjustment), no adjustment is
169 made to reflect the probability of a member's death: (i) After
170 the annuity starting date and before age 62; or (ii) after age
171 65 and before the annuity starting date.

172 (f) Adjustment when member has less than 10 years of
173 participation. — If a member has less than 10 years of
174 participation in the retirement system (within the meaning
175 of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the 415
176 dollar limitation (as adjusted pursuant to Section 415(d) of
177 the Internal Revenue Code and subdivision (e) of this
178 section) shall be reduced by multiplying the otherwise
179 applicable limitation by a fraction, the numerator of which
180 is the number of years of participation in the plan (or one, if
181 greater), and the denominator of which is 10. This
182 adjustment is not applicable to preretirement disability
183 benefits or preretirement death benefits.

184 (g) The application of the provisions of this section may
185 not cause the maximum annual benefit provided to a
186 member to be less than the member's accrued benefit as of
187 December 31, 2008 (the end of the limitation year that is
188 immediately prior to the effective date of the final
189 regulations for this retirement system as defined in Treasury
190 Regulation §1.415(a)-1(g)(2)), under provisions of the

191 retirement system that were both adopted and in effect
192 before April 5, 2007, provided that these provisions
193 satisfied the applicable requirements of statutory provisions,
194 regulations, and other published guidance relating to
195 Section 415 of the Internal Revenue Code in effect as of
196 December 31, 2008, as described in Treasury Regulation
197 §1.415(a)-1(g)(4). If additional benefits are accrued for a
198 member under this retirement system after January 1, 2009,
199 then the sum of the benefits described under the first
200 sentence of this subsection and benefits accrued for a
201 member after January 1, 2009, shall satisfy the requirements
202 of Section 415, taking into account all applicable
203 requirements of the final 415 Treasury Regulations.

§20-18-14. Federal law minimum required distributions.

1 The requirements of this section apply to any
2 distribution of a member's or beneficiary's interest and take
3 precedence over any inconsistent provisions of this plan.
4 This section applies to plan years beginning after December
5 31, 1986. Notwithstanding anything in the plan to the
6 contrary, the payment of benefits under this article shall be
7 determined and made in accordance with Section 401(a)(9)
8 of the Internal Revenue Code and the federal regulations
9 promulgated thereunder as applicable to governmental
10 plans. Any term used in this article has the same meaning as
11 when used in a comparable context in Section 401(a)(9) of
12 the Internal Revenue Code and the federal regulations
13 promulgated thereunder unless a different meaning is
14 clearly required by the context or definition in this article.
15 The following provisions apply to payments of benefits
16 required under this article:

17 (a) The payment of benefits under the plan to any
18 member shall be distributed to him or her not later than the
19 required beginning date, or be distributed to him or her
20 commencing not later than the required beginning date, in
21 accordance with regulations prescribed under Section
22 401(a)(9) of the Internal Revenue Code, over the life of the
23 member or over the lives of the member and his or her

24 beneficiary or over a period not extending beyond the life
25 expectancy of the member and his or her beneficiary:
26 *Provided*, That the requirements of this section may not be
27 construed to grant a right to a form of benefit which is not
28 otherwise available to a particular member under this
29 retirement system. Benefit payments under this section may
30 not be delayed pending, or contingent upon, receipt of an
31 application for retirement from the member.

32 (b) If a member dies after distribution to him or her has
33 commenced pursuant to this section but before his or her
34 entire interest in the plan has been distributed, then the
35 remaining portion of that interest shall be distributed at least
36 as rapidly as under the method of distribution being used at
37 the date of his or her death.

38 (c) If a member dies before distribution to him or her
39 has commenced, then his or her entire interest in the
40 retirement system is to be distributed by December 31 of the
41 calendar year containing the fifth anniversary of the
42 member's death, unless the provisions of subsection (d) of
43 this section apply.

44 (d) If a member dies before distribution to him or her
45 has commenced, and the member's interest is eligible to be
46 paid in the form of a survivor annuity to a designated
47 beneficiary, distributions are to be made over the life of that
48 beneficiary or over a period certain not greater than the life
49 expectancy of that beneficiary, commencing on or before
50 the following:

51 (1) December 31 of the calendar year immediately
52 following the calendar year in which the member died; or

53 (2) If the member's sole designated beneficiary is either
54 the surviving spouse or a former spouse who, as an alternate
55 payee under a Qualified Domestic Relations Order, is
56 receiving 100 percent of the survivor benefit, distributions
57 are to commence on or before the later of:

58 (A) December 31 of the calendar year in which the
59 member would have attained age 72; or

60 (B) December 31 of the calendar year immediately
61 following the calendar year in which the member died.

62 (e) If a member dies before distribution to him or her
63 has commenced and the survivor annuity provisions of
64 subsection (d) of this section are not applicable, any
65 designated beneficiary who is eligible to receive a
66 distribution pursuant to the provisions of subsection (c) of
67 this section may elect to have life expectancy treatment
68 apply to the distribution for purposes of determining
69 whether any portion of the distribution is an eligible rollover
70 distribution: *Provided*, That any such election may not delay
71 the required distribution of the deceased member's entire
72 interest in the retirement system beyond December 31 of the
73 calendar year containing the fifth anniversary of the
74 member's death as required by subsection (c) of this section:
75 *Provided, however*, That the election is timely made in a
76 form acceptable to the board on or before the following:

77 (1) December 31 of the calendar year immediately
78 following the calendar year in which the member died; or

79 (2) If the member's sole designated beneficiary is either
80 the surviving spouse or a former spouse who, as an alternate
81 payee under a Qualified Domestic Relations Order, is
82 receiving 100 percent of the survivor benefit, election of life
83 expectancy treatment must be made on or before the earlier
84 of (A) or (B) below:

85 (A) The later of: (i) December 31 of the calendar year
86 immediately following the calendar year in which the
87 member died; or (ii) December 31 of the calendar year in
88 which the member would have attained age 72; or

89 (B) October 31 of the calendar year containing the fifth
90 anniversary of the member's death.

§20-18-15. Direct rollovers.

1 Except where otherwise stated, this section applies to
2 distributions made on or after January 1, 1993.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise limit a distributee's election under this
5 plan, a distributee may elect, at the time and in the manner
6 prescribed by the board, to have any portion of an eligible
7 rollover distribution paid directly to an eligible retirement
8 plan specified by the distributee in a direct rollover. For
9 purposes of this section, the following definitions apply:

10 (1) "Eligible rollover distribution" means any
11 distribution of all or any portion of the balance to the credit
12 of the distributee, except that an eligible rollover
13 distribution does not include any of the following: (A) Any
14 distribution that is one of a series of substantially equal
15 periodic payments not less frequently than annually made
16 for the life or life expectancy of the distributee or the joint
17 lives or the joint life expectancies of the distributee and the
18 distributee's designated beneficiary, or for a specified
19 period of 10 years or more; (B) any distribution to the extent
20 the distribution is required under Section 401(a)(9) of the
21 Internal Revenue Code; (C) the portion of any distribution
22 that is not includable in gross income determined without
23 regard to the exclusion for net unrealized appreciation with
24 respect to employer securities; (D) any hardship distribution
25 described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code. For distributions after December 31, 2001,
27 a portion of a distribution may not fail to be an eligible
28 rollover distribution merely because the portion consists of
29 after-tax employee contributions which are not includable
30 in gross income. However, this portion may be paid only to
31 an individual retirement account or annuity described in
32 Section 408(a) or (b) of the Internal Revenue Code, or (for
33 taxable years beginning before January 1, 2007) to a
34 qualified trust which is part of a defined contribution plan
35 described in Section 401(a) or (for taxable years beginning
36 after December 31, 2006) to a qualified trust or to an annuity
37 contract described in Section 403(a) or (b) of the Internal

38 Revenue Code that agrees to separately account for amounts
39 transferred (including interest or earnings thereon),
40 including separately accounting for the portion of the
41 distribution which is includable in gross income and the
42 portion of the distribution which is not so includable, or (for
43 taxable years beginning after December 31, 2007) to a Roth
44 IRA described in Section 408A of the Internal Revenue
45 Code.

46 (2) "Eligible retirement plan" means an individual
47 retirement account described in Section 408(a) of the
48 Internal Revenue Code, an individual retirement annuity
49 described in Section 408(b) of the Internal Revenue Code,
50 an annuity plan described in Section 403(a) of the Internal
51 Revenue Code or a qualified plan described in Section
52 401(a) of the Internal Revenue Code that accepts the
53 distributee's eligible rollover distribution: *Provided*, That in
54 the case of an eligible rollover distribution prior to January
55 1, 2002, to the surviving spouse, an eligible retirement plan
56 is limited to an individual retirement account or individual
57 retirement annuity. For distributions after December 31,
58 2001, an eligible retirement plan also means an annuity
59 contract described in Section 403(b) of the Internal Revenue
60 Code and an eligible plan under Section 457(b) of the
61 Internal Revenue Code which is maintained by a state,
62 political subdivision of a state, or any agency or
63 instrumentality of a state or political subdivision of a state
64 and which agrees to separately account for amounts
65 transferred into the plan from this system. For distributions
66 after December 31, 2007, an eligible retirement plan also
67 means a Roth IRA described in Section 408A of the Internal
68 Revenue Code: *Provided*, That in the case of an eligible
69 rollover distribution after December 31, 2007, to a
70 designated beneficiary (other than a surviving spouse) as
71 that term is defined in Section 402(c)(11) of the Internal
72 Revenue Code, an eligible retirement plan is limited to an
73 individual retirement account or individual retirement
74 annuity which meets the conditions of Section 402(c)(11) of
75 the Internal Revenue Code.

76 (3) “Distributee” means an employee or former
77 employee. In addition, the employee’s or former
78 employee’s surviving spouse and the employee’s or former
79 employee’s spouse or former spouse who is the alternate
80 payee under a qualified domestic relations order, as defined
81 in Section 414(p) of the Internal Revenue Code with respect
82 to governmental plans, are distributees with regard to the
83 interest of the spouse or former spouse. For distributions
84 after December 31, 2007, “distributee” also includes a
85 designated beneficiary (other than a surviving spouse) as
86 such term is defined in Section 402(c)(11) of the Internal
87 Revenue Code.

88 (4) “Direct rollover” means a payment by the plan to the
89 eligible retirement plan.

**§20-18-16. Rollovers and transfers to purchase service credit
or repay withdrawn contributions.**

1 (a) This section applies to rollovers and transfers as
2 specified in this section made on or after January 1, 2002.
3 Notwithstanding any provision of this article to the contrary
4 that would otherwise prohibit or limit rollovers and plan
5 transfers to this system, the retirement system shall accept
6 the following rollovers and plan transfers on behalf of a
7 member solely for the purpose of purchasing permissive
8 service credit, in whole or in part, as otherwise provided in
9 this article or for the repayment of withdrawn or refunded
10 contributions, in whole and in part, with respect to a
11 previous forfeiture of service credit as otherwise provided
12 in this article: (i) One or more rollovers within the meaning
13 of Section 408(d)(3) of the Internal Revenue Code from an
14 individual retirement account described in Section 408(a) of
15 the Internal Revenue Code or from an individual retirement
16 annuity described in Section 408(b) of the Internal Revenue
17 Code; (ii) one or more rollovers described in Section 402(c)
18 of the Internal Revenue Code from a retirement plan that is
19 qualified under Section 401(a) of the Internal Revenue Code
20 or from a plan described in Section 403(b) of the Internal
21 Revenue Code; (iii) one or more rollovers described in

22 Section 457(e)(16) of the Internal Revenue Code from a
23 governmental plan described in Section 457 of the Internal
24 Revenue Code; or (iv) direct trustee-to-trustee transfers or
25 rollovers from a plan that is qualified under Section 401(a)
26 of the Internal Revenue Code, from a plan described in
27 Section 403(b) of the Internal Revenue Code or from a
28 governmental plan described in Section 457 of the Internal
29 Revenue Code: *Provided*, That any rollovers or transfers
30 pursuant to this section shall be accepted by the system only
31 if made in cash or other asset permitted by the board and
32 only in accordance with such policies, practices and
33 procedures established by the board from time to time. For
34 purposes of this article, the following definitions and
35 limitations apply:

36 (1) “Permissive service credit” means service credit
37 which is permitted to be purchased under the terms of the
38 retirement system by voluntary contributions in an amount
39 which does not exceed the amount necessary to fund the
40 benefit attributable to the period of service for which the
41 service credit is being purchased, all as defined in Section
42 415(n)(3)(A) of the Internal Revenue Code: *Provided*, That
43 no more than five years of “nonqualified service credit”, as
44 defined in Section 415(n)(3)(C) of the Internal Revenue
45 Code, may be included in the permissive service credit
46 allowed to be purchased (other than by means of a rollover
47 or plan transfer), and no nonqualified service credit may be
48 included in any such purchase (other than by means of a
49 rollover or plan transfer) before the member has at least five
50 years of participation in the retirement system.

51 (2) “Repayment of withdrawn or refunded
52 contributions” means the payment into the retirement
53 system of the funds required pursuant to this article for the
54 reinstatement of service credit previously forfeited on
55 account of any refund or withdrawal of contributions
56 permitted in this article, as set forth in Section 415(k)(3) of
57 the Internal Revenue Code.

58 (3) Any contribution (other than by means of a rollover
59 or plan transfer) to purchase permissive service credit under
60 any provision of this article must satisfy the special
61 limitation rules described in Section 415(n) of the Internal
62 Revenue Code, and shall be automatically reduced, limited,
63 or required to be paid over multiple years if, necessary, to
64 ensure such compliance. To the extent any such purchased
65 permissive service credit is qualified military service within
66 the meaning of Section 414(u) of the Internal Revenue
67 Code, the limitations of Section 415 of the Internal Revenue
68 Code shall be applied to such purchase as described in
69 Section 414(u)(1)(B) of the Internal Revenue Code.

70 (4) For purposes of Section 415(b) of the Internal
71 Revenue Code, the annual benefit attributable to any
72 rollover contribution accepted pursuant to this section shall
73 be determined in accordance with Treasury Regulation
74 §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity
75 payments attributable to any rollover contribution provided
76 under the retirement system over the annual benefit so
77 determined shall be taken into account when applying the
78 accrued benefit limitations of Section 415(b) of the Internal
79 Revenue Code and §20-18-13 of this code.

80 (b) This section does not permit rollovers or transfers
81 into this system or any other system administered by the
82 retirement board other than as specified in this section and
83 no rollover or transfer may be accepted into the system in
84 an amount greater than the amount required for the purchase
85 of permissive service credit or repayment of withdrawn or
86 refunded contributions.

87 (c) This section does not permit the purchase of service
88 credit or repayment of withdrawn or refunded contributions
89 except as otherwise permitted in this article.

**§20-18-17. Conversion of annual and sick leave authorized for
health or retirement benefits.**

1 (a) Any member, who was a member of the Public
2 Employee Retirement System prior to July 1, 2015, and who
3 elected to become a member of this plan pursuant to §20-
4 18-6 of this code and who has accrued annual leave or sick
5 leave days with the division may elect to use the days at the
6 time of retirement to acquire additional credited service in
7 this retirement system. The accrued days shall be applied on
8 the basis of two workdays credit granted for each one day
9 of such accrued annual or sick leave days, with each month
10 of retirement service credit to equal 20 workdays and with
11 any remainder of 10 workdays or more to constitute a full
12 month of additional credit and any remainder of less than 10
13 workdays to be dropped and not used. Additional service
14 credited pursuant to the provisions of this section shall be
15 allowed and not deemed to controvert the requirement of no
16 more than 12 months credited service in any year's period.

17 (b) Nothing in this article may be construed to change a
18 member's eligibility to use accrued annual or sick leave
19 days for extended insurance coverage as authorized
20 pursuant to the provisions of §5-16-13 of this code. Any use
21 of accrued annual or sick leave days for extended insurance
22 coverage shall be as authorized by the provisions of §5-16-
23 13 of this code.

§20-18-18. Retirement benefits.

1 This section provides for a member's accrued benefit
2 payable starting at the member's annuity starting date which
3 follows the completion of a written application for the
4 commencement of benefits. The member shall receive the
5 accrued retirement benefit in the normal form or in an
6 actuarial equivalent amount in an optional form as provided
7 under §20-18-19 of this code, subject to reduction, if
8 necessary to comply with the maximum benefit provisions
9 of Section 415 of the Internal Revenue Code and §20-18-13
10 of this code. The first day of the calendar month following
11 the calendar month of birth shall be used in lieu of any birth
12 date that does not fall on the first day of a calendar month.

13 (a) *Normal retirement.* — A member whose annuity
14 starting date is the date the member attains normal
15 retirement age or later is entitled to his or her accrued
16 retirement benefit based on years of service and final
17 average salary at termination of employment.

18 (b) Retirement benefits shall be paid monthly in an
19 amount equal to one twelfth of the retirement income
20 payments elected and at those times established by the
21 board.

§20-18-19. Annuity options.

1 (a) Prior to the effective date of retirement, but not
2 thereafter, except as provided in subsection (c) of this
3 section, a member may elect to receive retirement income
4 payments in the normal form, or the actuarial equivalent of
5 the normal form from the following options:

6 (1) *Joint and Survivor Annuity.* — A life annuity
7 payable during the joint lifetime of the retirant and his or her
8 beneficiary who is a natural person with an insurable
9 interest in the retirant's life. Upon the death of the retirant,
10 the benefit shall continue as a life annuity to the survivor in
11 an amount equal to 50 percent, 66 and two-thirds percent,
12 75 percent, or 100 percent of the amount paid while both
13 were living as selected by the member. If the beneficiary
14 dies first, the monthly amount of benefits may not be
15 reduced, but shall be paid at the amount that was in effect
16 before the death of the beneficiary. If the retiring member is
17 married, the spouse shall sign a waiver of benefit rights if
18 the beneficiary is to be other than the spouse.

19 (2) *Ten Years Certain and Life Annuity.* — A life
20 annuity payable during the retirant's lifetime but in any
21 event for a minimum of 10 years. If the retirant's dies before
22 the expiration of 10 years, the remaining payments shall be
23 made to a designated beneficiary, if any, or otherwise to the
24 member's estate.

25 (3) *Level Income Annuity*. — A life annuity payable
26 monthly in an increased amount “A” from the time of
27 retirement until the member is Social Security retirement
28 age, and then a lesser amount “B” payable for the retirant’s
29 lifetime thereafter, with these amounts computed actuarially
30 to satisfy the following two conditions:

31 (A) *Actuarial equivalence*. — The actuarial present
32 value at the date of retirement of the retirant’s annuity if
33 taken in the normal form must equal the actuarial present
34 value of the term life annuity in amount “A” plus the actual
35 present value of the deferred life annuity in amount “B”; and

36 (B) *Level income*. — The amount “A” equals the amount
37 “B” plus the amount of the retirant’s estimated monthly
38 Social Security primary insurance amount that would
39 commence at the date amount “B” becomes payable. For
40 this calculation, the primary insurance amount is estimated
41 when the member applies for retirement, using Social
42 Security law then in effect, using assumptions established
43 by the board.

44 (b) If a retirant who has elected the options set forth in
45 subdivision (1), subsection (a) of this section, whose
46 beneficiary dies prior to the retirant’s death, the retirant may
47 name an alternative beneficiary. If an alternative beneficiary
48 is named within 18 months following the death of the prior
49 beneficiary, the benefit shall be adjusted to be the actuarial
50 equivalent of the benefit the retirant is receiving just after
51 the death of the retirant’s named beneficiary. If the election
52 is not made until 18 months after the death of the prior
53 beneficiary, the amount shall be reduced so that it is only 90
54 percent of the actuarial equivalent of the benefit the retirant
55 is receiving just after the death of the retirant’s named
56 beneficiary.

57 (c) (1) If a retirant who has elected an option set forth in
58 subdivision (1), subsection (a) of this section, designated
59 his or her spouse as beneficiary, upon divorce or annulment,
60 the retirant may elect to change the retirement benefit

61 options offered by those subdivisions to a life annuity in an
62 amount adjusted on a fair basis to be of equal actuarial value
63 of the annuity prospectively in effect relative to the retirant
64 at the time the option is elected: *Provided*, That the retirant
65 furnishes to the board satisfactory proof of entry of a final
66 decree of divorce or annulment: *Provided, however*, That
67 the retirant certifies under penalty of perjury that no
68 qualified domestic relations order, final decree of divorce or
69 other court order that would restrict the election is in effect:
70 *Provided further*, That no cause of action against the board
71 arises or may be maintained on the basis of having permitted
72 the retirant to change the retirement benefit option pursuant
73 to the provisions of this subdivision.

74 (2) Upon remarriage, a retirant may name the new
75 spouse as an annuitant for any of the retirement benefit
76 options offered by subdivision (1), subsection (a) of this
77 section: *Provided*, That the retirant shall furnish to the board
78 proof of marriage: *Provided, however*, That the retirant
79 certifies under penalty of perjury that no qualified domestic
80 relations order, final decree of divorce or other court order
81 that would restrict the designation is in effect: *Provided*
82 *further*, That no cause of action against the board arises or
83 may be maintained on the basis of having permitted the
84 retirant to name a new spouse as annuitant for any of the
85 survivorship retirement benefit options. The value of the
86 new survivorship annuity shall be the actuarial equivalent
87 of the retirant's benefit prospectively in effect at the time
88 the new annuity is elected.

§20-18-20. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

1 (a) Any member who terminates covered employment
2 and is not eligible to receive disability or retirement income
3 benefits under this article is, by written request filed with
4 the board, entitled to receive from the fund the member's
5 accumulated contributions. Except as provided in
6 subsection (b) of this section, upon withdrawal the member

7 shall forfeit his or her accrued benefit and cease to be a
8 member.

9 (b) Any member of this plan who ceases employment in
10 covered employment and active participation in this plan,
11 and who thereafter becomes reemployed in covered
12 employment may not receive any credited service for any
13 prior withdrawn accumulated contributions from either this
14 plan or the Public Employees Retirement System relating to
15 the prior covered employment unless following his or her
16 return to covered employment and active participation in
17 this plan, the member redeposits in this plan the amount of
18 the withdrawn accumulated contributions submitted on
19 salary earned while a Natural Resources Police Officer,
20 together with interest on the accumulated contributions at
21 the rate determined by the board from the date of withdrawal
22 to the date of redeposit. Upon repayment he or she shall
23 receive the same credit on account of his or her former
24 service in covered employment as if no refund had been
25 made. The repayment authorized by this subsection shall be
26 made in a lump sum within 60 months of the Natural
27 Resources Police Officer's reemployment in covered
28 employment or if later, within 60 months of the effective
29 date of this article.

30 (c) A member of this plan who has elected to transfer
31 from the Public Employees Retirement System into this
32 plan pursuant to §20-18-6(b) of this code may not, after
33 having transferred into and become an active member of this
34 plan, reinstate to his or her credit in this plan any service
35 credit relating to periods of non-Natural Resources Police
36 Officer service which were withdrawn from the Public
37 Employees Retirement System plan prior to his or her
38 elective transfer into this plan.

39 (d) Any member of this plan who: (1) Was employed as
40 a Natural Resource Police Officer prior to the effective date
41 of this article; and (2) was not employed as a Natural
42 Resource Police Officer on the effective date of this article;
43 and (3) thereafter becomes reemployed in covered

44 employment, may not receive any credited service for any
45 previously withdrawn accumulated contributions from
46 either this plan or the Public Employees Retirement System
47 relating to the prior covered employment unless, following
48 his or her return to covered employment and active
49 participation in this plan, the member redeposits in this plan
50 the amount of the withdrawn accumulated contributions
51 submitted on salary earned while a Natural Resources
52 Police Officer, together with interest on the accumulated
53 contributions at the rate determined by the board from the
54 date of withdrawal to the date of redeposit. Upon repayment
55 he or she shall receive the same credit for his or her former
56 service in covered employment as if no refund had been
57 made. The repayment required by this subsection shall be
58 made in a lump sum within 60 months of the Natural
59 Resource Police Officers reemployment in covered
60 employment.

61 (e) Every member who completes 120 months of
62 covered employment is eligible, upon cessation of covered
63 employment, to either withdraw his or her accumulated
64 contributions in accordance with subsection (a) of this
65 section, or to choose not to withdraw his or her accumulated
66 contribution and to receive retirement income payments
67 upon attaining normal retirement age.

68 (f) Notwithstanding any other provision of this article,
69 forfeitures under the plan may not be applied to increase the
70 benefits any member would otherwise receive under the
71 plan.

§20-18-21. Awards and benefits for disability — Duty related.

1 (a) Any member who after the effective date of this
2 article and during covered employment: (1) Has been or
3 becomes either totally or partially disabled by injury, illness
4 or disease; and (2) the disability is a result of an
5 occupational risk or hazard inherent in or peculiar to the
6 services required of members; or (3) the disability was
7 incurred while performing law-enforcement functions

8 during either scheduled work hours or at any other time; and
9 (4) in the opinion of two physicians, one of whom shall be
10 named by the board and one by the member, the member is
11 by reason of the disability unable to perform adequately the
12 duties required of a Natural Resources Police Officer, is
13 entitled to receive and shall be paid from the fund in
14 monthly installments the compensation under either
15 subsection (b) or (c) of this section.

16 (b) If the member is totally disabled, the member shall
17 receive 90 percent of his or her average full monthly
18 compensation for the 12-month contributory period
19 preceding the member's disability award, or the shorter
20 period if the member has not worked 12 months.

21 (c) If the member is partially disabled, the member shall
22 receive 45 percent of his or her average full monthly
23 compensation for the 12-month contributory period
24 preceding the member's disability award, or the shorter
25 period if the member has not worked 12 months.

26 (d) If the member remains partially disabled until
27 attaining 60 years of age, the member shall then receive the
28 retirement benefit provided in §20-18-18 and §20-18-19 of
29 this code with the accrued benefit being computed with the
30 multiplier in effect as of his or her effective date of
31 retirement.

32 (e) The disability benefit payments will begin the first
33 day of the month following termination of employment and
34 receipt of the disability retirement application by the
35 Consolidated Public Retirement Board.

§20-18-22. Awards and benefits for disability — Due to other causes.

1 (a) Any member with ten or more years of contributing
2 service and who after the effective date of this article and
3 during covered employment: (1) Has been or becomes
4 totally or partially disabled from any cause other than those

5 set forth in §20-18-21 of this code and not due to vicious
6 habits, intemperance, or willful misconduct on his or her
7 part; and (2) in the opinion of two physicians, one of whom
8 shall be named by the board and one by the member, he or
9 she is by reason of the disability unable to perform
10 adequately the duties required of a Natural Resources Police
11 Officer, is entitled to receive and shall be paid from the fund
12 in monthly installments the compensation set forth in either
13 subsection (b) or (c) of this section.

14 (b) If the member is totally disabled, he or she shall
15 receive 66 and two-thirds percent of his or her average full
16 monthly compensation for the 12-month contributory
17 period preceding the disability award, or the shorter period,
18 if the member has not worked 12 months.

19 (c) If the member is partially disabled, he or she shall
20 receive 33 and one-third percent of his or her average full
21 monthly compensation for the 12-month contributory
22 period preceding the disability award, or the shorter period,
23 if the member has not worked 12 months.

24 (d) If the member remains disabled until attaining 60
25 years of age, then the member shall receive the retirement
26 benefit provided in §20-18-18 and §20-18-19 of this code
27 with the accrued benefit being computed with the multiplier
28 in effect as of his or her effective date of retirement.

29 (e) The board shall propose legislative rules for
30 promulgation in accordance with the provisions of §29A-3-
31 1 *et seq.* of this code concerning member disability
32 payments so as to ensure that the payments do not exceed
33 100 percent of the average current salary for the position last
34 held by the member.

35 (f) The disability benefit payments will begin the first
36 day of the month following termination of employment and
37 receipt of the disability retirement application by the
38 Consolidated Public Retirement Board.

§20-18-23. Awards and benefits for disability — Physical examinations; termination of disability.

1 (a) The board may require any member who has applied
2 for or any retirant who is receiving disability benefits under
3 this article to submit to a physical examination, mental
4 examination or both, by a physician or physicians selected
5 or approved by the board and may cause all costs incident
6 to the examination and approved by the board to be paid
7 from the fund. The costs may include hospital, laboratory,
8 X ray, medical, and physicians' fees. A report of the
9 findings of any physician shall be submitted in writing to
10 the board for its consideration. If, from the report,
11 independent information, or from the report and any hearing
12 on the report, the board is of the opinion and finds that: (1)
13 The member has become reemployed as a law-enforcement
14 officer; (2) two physicians who have examined the member
15 have found that considering the opportunities for law
16 enforcement in West Virginia, the member could be so
17 employed as a Natural Resources Police Officer; or (3) other
18 facts exist to demonstrate that the member is no longer
19 totally disabled or partially disabled as the case may be, then
20 the disability benefits shall cease. If the member was totally
21 disabled and is found to have recovered, the board shall
22 determine whether the member continues to be partially
23 disabled. If the board finds that the member is no longer
24 totally disabled but is partially disabled, then the member
25 shall continue to receive partial disability benefits in
26 accordance with this article. Benefits shall cease once the
27 member has been found to be no longer either totally or
28 partially disabled: *Provided*, That the board shall require
29 recertification for each partial or total disability at regular
30 intervals.

31 (b) If from the report, or from the report and hearing on
32 the report, the board is of the opinion and finds that the
33 disabled retirant has recovered from the disability to the
34 extent that he or she is able to perform adequately the duties
35 of a law-enforcement officer, the board shall within five
36 working days provide written notice of the finding to the

37 Director of the Division of Natural Resources, who shall
38 reinstate the retirant to active duty as a member of the
39 department at his or her rank or classification and assigned
40 to his or her area of assignment prior to the disability
41 retirement within 45 days of the finding, unless the retirant
42 declines to be reinstated.

43 (c) A disability retirant who is returned to active duty as
44 a Natural Resources Police Officer for the West Virginia
45 Division of Natural Resources shall again become a
46 member of the retirement system in which he or she was
47 enrolled and the retirant's credited service in force at the
48 time of retirement shall be restored.

49 (d) If a retirant refuses to submit to a medical
50 examination or submit a statement by his or her physician
51 certifying continued disability in any period, his or her
52 disability annuity may be discontinued by the board until
53 the retirant complies. If the refusal continues for one year,
54 all the retirant's rights in and to the annuity may be revoked
55 by the board.

§20-18-24. Prior disability.

1 Any Natural Resources Police Officer who became
2 totally disabled as a result of illness or injury incurred in the
3 line of duty prior to the effective date of this article may not
4 be a member of the Natural Resources Police Officer
5 Retirement System.

§20-18-25. Awards and benefits to surviving spouse — When member dies in performance of duty, etc.

1 (a) The surviving spouse of any member who, after the
2 effective date of this article while in covered employment,
3 has died or dies by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of members, while the
6 member was or is engaged in the performance of his or her
7 duties as a Natural Resources Police Officer, or the survivor
8 spouse of a member who dies from any cause while

9 receiving benefits pursuant to §20-18-21 of this code, is
10 entitled to receive and shall be paid from the fund benefits
11 as follows: To the surviving spouse annually, in equal
12 monthly installments during his or her lifetime an amount
13 equal to the greater of: (i) Two thirds of the annual
14 compensation received in the preceding 12-month period by
15 the deceased member; or (ii) if the member dies after his or
16 her normal retirement age, the monthly amount which the
17 spouse would have received had the member retired the day
18 before his or her death, elected a 100 percent joint and
19 survivor annuity with the spouse as the joint annuitant, and
20 then died.

21 (b) Benefits for a surviving spouse received under this
22 section, §20-18-27 and §20-18-28 of this code, are in lieu of
23 receipt of any other benefits under this article for the spouse,
24 or any other person, or under the provisions of any other
25 state retirement system based upon the member's covered
26 employment.

§20-18-26. Awards and benefits to surviving spouse — When member dies from nonservice-connected causes.

1 (a) In any case where a member who has been a member
2 for at least 10 years, while in covered employment after the
3 effective date of this article, has died or dies from any cause
4 other than those specified in §20-18-25 of this code, and not
5 due to vicious habits, intemperance, or willful misconduct
6 on his or her part, the fund shall pay annually in equal
7 monthly installments to the surviving spouse during his or
8 her lifetime, a sum equal to the greater of: (i) One half of the
9 annual compensation received in the preceding 12-month
10 employment period by the deceased member; or (ii) if the
11 member dies after his or her early or normal retirement age,
12 the monthly amount which the spouse would have received
13 had the member retired the day before his or her death,
14 elected a 100 percent joint and survivor annuity with the
15 spouse as the joint annuitant, and then died.

16 (b) Benefits for a surviving spouse received under §20-
17 18-27 and §20-18-28 of this code, are in lieu of receipt of
18 any other benefits under this article for the spouse or any
19 other person or under the provisions of any other state
20 retirement system based upon the member's covered
21 employment.

**§20-18-27. Additional death benefits and scholarships -
Dependent children.**

1 (a) In addition to the spouse death benefits in §20-18-25
2 and §20-18-26 of this code, the surviving spouse is entitled
3 to receive and there shall be paid to the spouse \$100
4 monthly for each dependent child.

5 (b) If the surviving spouse dies or if there is no surviving
6 spouse, the fund shall pay monthly to each dependent child
7 a sum equal to one fourth of the surviving spouse's
8 entitlement under either §20-7-25 or §20-18-26 of this code.
9 If there is neither a surviving spouse nor a dependent child,
10 the fund shall pay in equal monthly installments to the
11 dependent parents of the deceased member during their joint
12 lifetimes a sum equal to the amount which a surviving
13 spouse, without children, would have received: *Provided*,
14 That when there is only one dependent parent surviving, that
15 parent is entitled to receive during his or her lifetime one-
16 half the amount which both parents, if living, would have
17 been entitled to receive: *Provided, however*, That if there is
18 no surviving spouse, dependent child nor dependent parent
19 of the deceased member the accumulated contributions shall
20 be paid to a named beneficiary or beneficiaries: *Provided*
21 *further*, That if there is no surviving spouse, dependent
22 child, nor dependent parent of the deceased member, nor
23 any named beneficiary or beneficiaries then the
24 accumulated contributions shall be paid to the estate of the
25 deceased member.

26 (c) Any person qualifying as a dependent child under
27 this section, in addition to any other benefits due under this
28 or other sections of this article, is entitled to receive a

29 scholarship to be applied to the career development
30 education of that person. This sum, up to but not exceeding
31 \$7,500 per year, shall be paid from the fund to any higher
32 education institution in this state, career-technical education
33 provider in this state, or other entity in this state approved
34 by the board, to offset the expenses of tuition, room and
35 board, books, fees or other costs incurred in a course of
36 study at any of these institutions so long as the recipient
37 makes application to the board on an approved form and
38 under such rules as the board may provide, and maintains
39 scholastic eligibility as defined by the institution or the
40 board. The board may propose legislative rules for
41 promulgation in accordance with §29A-3-1 *et seq.* of this
42 code which define age requirements, physical and mental
43 requirements, scholastic eligibility, disbursement methods,
44 institutional qualifications and other requirements as
45 necessary and not inconsistent with this section. Scholarship
46 benefits awarded pursuant to this subsection are not subject
47 to division or payable to an alternate payee by any Qualified
48 Domestic Relations Order.

§20-18-28. Burial benefit.

1 Any member who dies as a result of any service related
2 illness or injury after the effective date is entitled to a lump
3 sum burial benefit of \$5,000. If the member is married, the
4 burial benefit shall be paid to the member's spouse. If the
5 member is not married, the burial benefit shall be paid to the
6 member's estate for the purposes of paying burial expenses,
7 settling the member's final affairs, or both. Any unspent
8 balance shall be distributed as a part of the member's estate.
9 Burial benefits awarded pursuant to this section are not
10 subject to division or payable to an alternate payee by any
11 Qualified Domestic Relations Order.

§20-18-29. Double death benefits prohibited.

1 A surviving spouse is not entitled to receive
2 simultaneous death benefits under this article as a result of
3 the death of two or more members to whom the spouse was

4 married. Any spouse who becomes eligible for a subsequent
5 death benefit under this article while receiving a death
6 benefit under this article shall receive the higher benefit, but
7 not both.

§20-18-30. Return to covered employment by retired member.

1 The annuity of any member who retires under the
2 provisions of this article and who resumes service in
3 covered employment shall be suspended while the member
4 continues in covered employment. The monthly annuity
5 payment for the month in which the service resumes shall
6 be prorated to the date of commencement of service, and the
7 member shall again become a contributing member during
8 resumption of service. At the conclusion of resumed service
9 in covered employment the member shall have his or her
10 annuity recalculated to take into account the entirety of
11 service in covered employment.

**§20-18-31. Exemption from garnishment and other process;
exception for certain qualified domestic relations orders.**

1 The moneys in the fund and the right of a member,
2 spouse or other beneficiary to benefits under this article, to
3 the return of contributions, or to any retirement, death, or
4 disability payments under the provisions of this article are
5 not subject to execution, garnishment, attachment, or any
6 other process whatsoever with the exception that the
7 benefits or contributions under the system shall be subject
8 to “qualified domestic relations orders” as that term is
9 defined in Section 414(p) of the Internal Revenue Code with
10 respect to governmental plans, and are unassignable except
11 as is provided in this article.

§20-18-32. Fraud; penalties; and repayment.

1 Any person who knowingly makes any false statement
2 or who falsifies or permits to be falsified any record of the
3 retirement system in any attempt to defraud that system is
4 guilty of a misdemeanor and, upon conviction, shall be fined
5 not to exceed \$1,000 or confined in jail not to exceed one

6 year, or both fined and confined. Any increased benefit
7 received by any person as a result of the falsification or
8 fraud shall be returned to the fund upon demand by the
9 board.

**§20-18-33. Credit toward retirement for member's prior
military service; credit toward retirement when member
has joined armed forces in time of armed conflict;
qualified military service.**

1 (a) Any member who has previously served on active
2 military duty is entitled to receive additional years of service
3 for the purpose of determining his or her years of credited
4 service for a period equal to the active military duty not to
5 exceed five years, subject to the following:

6 (1) That he or she has been honorably discharged from
7 the armed forces;

8 (2) That he or she substantiates by appropriate
9 documentation or evidence his or her period of active
10 military duty; and

11 (3) That he or she is receiving no benefits from any other
12 retirement system for his or her active military duty.

13 (b) In addition, any member who while in covered
14 employment was commissioned, enlisted or inducted into
15 the armed forces of the United States or, being a member of
16 the reserve officers' corps, was called to active duty in the
17 armed forces between September 1, 1940, and the close of
18 hostilities in World War II, or between the June 27, 1950,
19 and the close of the armed conflict in Korea on July 27,
20 1953, between August 1, 1964, and the close of the armed
21 conflict in Vietnam, or during any other period of armed
22 conflict by the United States whether sanctioned by a
23 declaration of war by Congress or by executive or other
24 order of the President, is entitled to and shall receive
25 credited service, for a period equal to the full time that he or
26 she has or, pursuant to that commission, enlistment,

27 induction or call, shall have served with the armed forces
28 subject to the following:

29 (1) That he or she has been honorably discharged from
30 the armed forces;

31 (2) That within 90 days after honorable discharge from
32 the armed forces, he or she presented himself or herself to
33 the West Virginia Division of Natural Resources and
34 offered to resume service as a Natural Resources Police
35 Officer; and

36 (3) That he or she has made no voluntary act, whether
37 by reenlistment, waiver of discharge, acceptance of
38 commission or otherwise, to extend or participate in
39 extension of the period of service with the armed forces
40 beyond the period of service for which he or she was
41 originally commissioned, enlisted, inducted or called.

42 (c) The total amount of service allowable under
43 subsections (a) and (b) of this section may not exceed five
44 years.

45 (d) Any service credit allowed under this section may
46 be credited one time only for each Natural Resources Police
47 Officer, regardless of any changes in job title or
48 responsibilities.

49 (e) Notwithstanding the preceding provisions of this
50 section, contributions, benefits, and service credit with
51 respect to qualified military service shall be provided in
52 accordance with Section 414(u) of the Internal Revenue
53 Code. For purposes of this section, "qualified military
54 service" has the same meaning as in Section 414(u) of the
55 Internal Revenue Code. The retirement board is authorized
56 to determine all questions and make all decisions relating to
57 this section and, pursuant to the authority granted to the
58 retirement board in §5-10D-1 of this code, may promulgate
59 rules relating to contributions, benefits and service credit to
60 comply with Section 414(u) of the Internal Revenue Code.

§20-18-34. Pro rata reduction of annuities.

1 Any provision in this article to the contrary
2 notwithstanding, if at the end of any fiscal year the total of
3 the annuities paid from the retirement fund during the said
4 fiscal year is more than 10 percent of the sum of the balances
5 in the fund at the end of the said fiscal year, the said
6 annuities payable in the next ensuing fiscal year shall be
7 reduced, pro rata, so that the sum of the annuities so reduced
8 shall not exceed 10 percent of the sum of the said balances
9 in the fund. The said pro rata reduction shall be applied to
10 all annuities payable in the said ensuing fiscal year.

§20-18-35. Liability of participating public employer for delinquent retirement contributions; liability of participating public employer's successor for delinquent retirement contributions; lien for delinquent contributions; collection by suit.

1 The requirements for this section shall be the same as
2 the requirements of §5-10D-11 of this code.

§20-18-36. Benefits not forfeited if system terminates.

1 If the retirement system is terminated or contributions
2 are completely discontinued, the rights of all members to
3 benefits accrued or contributions made to the date of such
4 termination or discontinuance, to the extent then funded, are
5 not forfeited.

●

CHAPTER 258

**(Com. Sub. for S. B. 240 - By Senators Jeffries,
Hamilton, Lindsay and Cline)**

[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 §16-6-22b; and to amend and reenact §16-6-23 of said code, all relating to requiring hotels and restaurants to secure manhole covers of certain grease traps by a certain date; providing methods for securing the manhole covers; authorizing the commissioner to specify the method of limiting access to the manhole; authorizing the promulgation of emergency rules; and increasing the civil penalty for noncompliance with the requirements of the article.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. HOTELS AND RESTAURANTS.

§16-6-22b. Hotels and restaurants to secure covers of grease traps.

1 (a) This section applies to hotels and restaurants that use
2 grease traps that are outdoors or are in areas that are
3 accessible to members of the general public.

4 (b)(1) Grease traps with manhole covers shall be
5 designed to withstand expected loads and prevent access by
6 children.

7 (A) The manhole cover shall be secured by a bolt or
8 locking mechanism and be constructed of round cast iron or

9 similar construction with sufficient weight to prevent
10 unauthorized access.

11 (B) The commissioner may specify either method of
12 limiting access to the manhole, if the method conforms to
13 paragraph (A) of this subdivision and prevents unauthorized
14 access.

15 (2) A hotel or restaurant shall ensure that a grease trap
16 manhole is closed and secured or locked, if applicable, at all
17 times.

18 (c) The secretary shall propose emergency rules for
19 promulgation in accordance with §29A-3-1 *et seq.* of this
20 code for the implementation and administration of this
21 section.

22 (d) All hotels and restaurants using grease traps shall
23 comply with subsection (b) of this section no later than
24 October 1, 2020.

§16-6-23. Offenses.

1 Any person, firm, or corporation operating a hotel or a
2 restaurant in this state, or who shall let a building to be used
3 for such purposes, without first having complied with the
4 provisions of this article, is guilty of a misdemeanor and,
5 upon conviction thereof, shall be fined \$50 for each day the
6 failure to comply continues.

●

CHAPTER 259

**(Com. Sub. for S. B. 269 - By Senators Stollings,
Rucker, Roberts, Cline and Jeffries)**

[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 †§16-5CC-1, †§16-5CC-2, †§16-5CC-3, †§16-5CC-4, †§16-5CC-5, and †§16-5CC-6, all relating to establishing an Advisory Council on Rare Diseases; creating the advisory council; providing for its composition; setting terms of members; defining terms; defining duties, subject to the availability of resources; defining powers of the advisory council; setting out particular discretionary duties of the Secretary of the Department of Health and Human Resources; terminating the council; and establishing a special revenue account.

Be it enacted by the Legislature of West Virginia:

**†ARTICLE 5CC. WEST VIRGINIA ADVISORY COUNCIL
ON RARE DISEASES.**

**†§16-5CC-1. Establishment and composition of the West
Virginia Council on Rare Diseases.**

1 (a) There is hereby established the West Virginia
2 Advisory Council on Rare Diseases to advise state agencies
3 on research, diagnosis, treatment, and education relating to
4 rare diseases.

5 (b) The council shall consist of 12 voting members,
6 constituted as follows:

† Redesignated

7 (1) The Secretary of the Department of Health and
8 Human Resources or his or her designee; and

9 (2) Eleven members who shall be appointed by the
10 Governor as follows:

11 (A) Three physicians licensed and practicing in the state
12 with experience researching, diagnosing, or treating rare
13 diseases;

14 (B) Three persons over the age of 18 who either have a
15 rare disease or are a family member of a person with a rare
16 disease;

17 (C) A registered nurse or advanced practice registered
18 nurse licensed and practicing in the state with experience
19 treating rare disease;

20 (D) A person with an advanced degree in public health
21 or other health-related field; and

22 (E) Three representatives from a patient-based
23 organization or advocacy group for rare disease, with
24 preference given to organizations based in West Virginia.

25 Appointments to the advisory council are for terms of
26 three years.

27 (c) The chairperson and vice-chairperson of the council
28 shall be elected from the council's membership by a simple
29 majority vote of the total membership of the council.

30 (d) Members serve without compensation. Travel
31 expenses may only be reimbursed if travel is related to
32 activities provided for under a grant or private donation.

†§16-5CC-2. **Definitions.**

1 As used in this article:

2 "Department" means the West Virginia Department of
3 Health and Human Resources;

4 “Rare disease” means any disease which affects fewer
5 than 200,000 people in the United States and is known to be
6 substantially under-diagnosed and unrecognized as a result
7 of lack of adequate diagnostic and research information,
8 including diseases known as “orphan diseases” for research
9 purposes; and

10 “Secretary” means the Secretary of the West Virginia
11 Department of Health and Human Resources.

†§16-5CC-3. Duties of the advisory council.

1 The advisory council shall exercise the following duties
2 to the degree that resources are available, including, but not
3 limited to:

4 (1) Coordinate statewide efforts for the study of the
5 incidence of rare disease within the state;

6 (2) Act as the advisory board to the secretary and the
7 West Virginia Legislature on research, treatment, and
8 education relating to rare diseases;

9 (3) Research and identify priorities relating to the
10 quality of, and access to, treatment and services provided to
11 persons with rare diseases in the state;

12 (4) Develop, in conjunction and cooperation with the
13 state’s medical schools, policy recommendations relating to
14 the quality of, and access to, treatment and services
15 provided to persons with rare diseases in the state;

16 (5) Advise, consult, and cooperate with other offices of
17 the department, other agencies of state government, and
18 patient-based organizations in the development of
19 information and programs of benefit to the public and the
20 health care community relating to the diagnosis, treatment,
21 and awareness of rare diseases;

22 (6) Identify best practices for rare disease care as
23 implemented in other states and at the national level that will
24 improve rare disease care in the state;

25 (7) Develop recommendations for effective strategies to
26 raise public awareness of rare diseases in the state;

27 (8) Develop recommendations for best practices for
28 ensuring that health care providers are sufficiently informed
29 of the most effective strategies for recognizing and treating
30 rare disease; and

31 (9) Report to the Governor, secretary, and West Virginia
32 Legislature not later than January 1, 2021, and annually
33 thereafter on the activities of the advisory council and its
34 findings and recommendations regarding rare disease
35 research and care in West Virginia, including any
36 recommendations for statutory changes and amendments to
37 the structure, organization, and powers and duties of the
38 advisory council. The advisory council shall terminate on
39 January 1, 2023.

†§16-5CC-4. Powers of the advisory council.

1 In order to carry out the duties described in this article,
2 the advisory council has the following powers:

3 (1) To pursue and accept gifts, grants, and bequests of
4 funds from individuals, foundations, corporations, federal
5 government, government agencies, and other organizations
6 or institutions to fund the activities of the advisory council;

7 (2) To schedule and conduct meetings;

8 (3) To the degree that funds are available, publish
9 findings, recommendations, and reports on diagnosis,
10 treatment, research, and education for rare diseases for the
11 use and benefit of the department, other agencies of the
12 state, the medical community, general public, and
13 organizations representing the patients affected.

†§16-5CC-5. Duties and powers of the secretary.

1 The secretary at his or her discretion may provide the
2 advisory council with administrative support reasonably
3 necessary for the advisory council to carry out its duties. In
4 addition, the secretary may make and sign any agreements
5 and may do and perform any acts that are necessary to
6 receive, accept, or secure gifts, grants, and bequests of funds
7 in the name of the advisory council.

†§16-5CC-6. Rare Disease Advisory Council Fund.

1 There is hereby created a special revenue account in the
2 State Treasury to be known as the Rare Disease Advisory
3 Council Information Fund into which gifts, grants, and
4 bequests may be received for the use of the advisory council
5 to carry out its duties as specified in §16-5AA-3 of this code.
6 The advisory council has the discretion to expend such
7 moneys in this fund from collections as may be reasonable
8 to carry out the duties of the advisory council as are
9 consistent with the terms of the gifts, grants, or bequests
10 providing those moneys. The presence of funds in this
11 special revenue account does not preclude the Legislature
12 from appropriating such funds as it may deem necessary for
13 the use and mission of the advisory council.



CHAPTER 260

(Com. Sub. for S. B. 288 - 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 §16-2B-1 of the Code of West Virginia, 1931, as amended, relating to family planning; extending family planning resources provided by Bureau for

Public Health to other entities; providing that Bureau for Medical Services shall not require multiple office visits for women who select long-acting reversible contraceptive methods unless medically necessary; requiring Bureau for Medical Services to provide payments; requiring Bureau for Medical Services to update managed care contract; authorizing Bureau for Public Health to make long-acting reversible contraceptive products available in practitioner offices without upfront practitioner costs; requiring Bureau for Public Health to develop statewide plan; providing requirements for plan; and requiring an annual report by Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. FAMILY PLANNING AND CHILD SPACING.

§16-2B-1. Family planning and child spacing; authorized functions; funds.

1 (a) The Bureau for Public Health may provide printed
2 material, guidance, advice, financial assistance, appliances,
3 devices, drugs, approved methods, and medicines to local
4 boards of health and other entities requesting the same for
5 use in the operation of family planning and child spacing
6 clinics to the extent of funds appropriated by the Legislature
7 and any federal funds made available for such purpose.

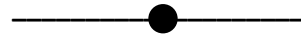
8 (b) The Bureau for Medical Services shall not require
9 multiple office visits or prior authorization for a woman
10 who selects long-acting reversible contraceptive (LARC)
11 methods unless medically necessary. The bureau shall
12 provide payment for LARC devices and their insertion,
13 maintenance, removal, and replacement. The Bureau for
14 Medical Services shall update the managed care contract to
15 include language that the contracted managed care company
16 may not present barriers that delay or prevent access, such
17 as prior authorizations or step-therapy failure requirements;

18 and should receive patient-centered education and
19 counseling on all FDA-approved birth control methods.

20 (c) The Bureau for Public Health may make LARC
21 products available in practitioner offices without upfront
22 practitioner costs.

23 (d) The Bureau for Public Health shall develop a
24 statewide plan with the goal of reducing exposure of a fetus
25 to illicit substances by increasing the number of clients
26 served and enabling access to LARC and other family
27 planning methods. The plan shall include strategies for
28 increasing LARC accessibility and training of health care
29 providers, and shall provide a fiscal analysis of plan
30 implementation and potential impact.

31 (e) The Department of Health and Human Resources
32 shall report annually to the Legislative Oversight
33 Commission on Health and Human Resources
34 Accountability. The report shall include, at a minimum, the
35 number of LARC treatments provided and the number of
36 children born with intrauterine substance exposure and
37 neonatal abstinence syndrome in West Virginia during the
38 past three years.



CHAPTER 261

**(Com. Sub. for S. B. 560 - By Senators Takubo,
Maroney, Cline, Rucker and Roberts)**

[Passed February 18, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 5, 2020.]

AN ACT to repeal §30-7D-1, §30-7D-2, §30-7D-3, §30-7D-4,
§30-7D-5, §30-7D-6, §30-7D-7, §30-7D-8, §30-7D-9, §30-
7D-10, §30-7D-11, §30-7D-12, and §30-7D-13 of the Code of

West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §16-5AA-1, §16-5AA-2, §16-5AA-3, §16-5AA-4, §16-5AA-5, §16-5AA-6, §16-5AA-7, §16-5AA-8, §16-5AA-9, and §16-5AA-10, all relating to permitting a nursing home to use trained individuals to administer medication under the direction of a registered professional nurse; defining terms; authorizing approved medication assistive personnel (AMAP) to administer medication in nursing homes; providing certain exemptions from chapter 30 licensing requirements; establishing requirements for training curricula and national Medication Aide Certification Examination procedures; establishing eligibility criteria; establishing requirements for AMAP to administer medication; requiring compliance with legislative rules promulgated by the authorizing agency; requiring nursing homes using AMAP to establish an administrative monitoring system; permitting a registered professional nurse to withdraw authorization for AMAP to administer medications in certain circumstances; allowing certain fees to be collected; providing limits on administration of medication by AMAP; providing that use of AMAP in nursing homes is permissive; and repealing a pilot program designed to monitor the practice of unlicensed personnel administering medication in a nursing home setting.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5AA. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL IN NURSING HOMES.

§16-5AA-1. Definitions.

- 1 For the purposes of this article:
- 2 “Administration of medication” means assisting a
- 3 person in the ingestion, application, or inhalation of
- 4 medications, or the supervision of or the providing of
- 5 assistance with self-administered medication, both
- 6 according to the legibly written or printed directions of the

7 health care professional, or as written on the prescription
8 label. “Administration” does not include judgment,
9 evaluation, assessments, or injections of medication.

10 “Approved medication assistive personnel (AMAP)”
11 means a staff member who meets eligibility requirements,
12 has successfully completed a nationally recognized model
13 curriculum for certified medication assistants, has passed a
14 national medication aide certification examination
15 approved by the National Council of State Boards of
16 Nursing, and is considered competent by the authorized
17 registered professional nurse to administer medications to
18 residents of the nursing home in accordance with this
19 article.

20 “Authorized practitioner” means a physician actively
21 licensed under the provisions of §30-3-1 *et seq.* or §30-14-
22 1 *et seq.* of this code, an advanced practice registered nurse
23 with prescriptive authority actively licensed under the
24 provisions of §30-7-1 *et seq.* of this code, a physician’s
25 assistant actively licensed under the provisions of §30-3E-1
26 *et seq.* of this code, an optometrist actively licensed under
27 the provisions of §30-8-1 *et seq.* of this code, or a dentist
28 actively licensed under the provisions of §30-4-1 *et seq.* of
29 this code.

30 “Authorized registered professional nurse” means a
31 person who is actively licensed pursuant to §30-7-1 *et*
32 *seq.* of this code and meets the requirements to train and
33 supervise approved medication assistive personnel pursuant
34 to this article, and has completed and passed the facility
35 trainer/instructor course developed by the authorizing
36 agency.

37 “Authorizing agency” means the Office of Health
38 Facility Licensure and Certification.

39 “Delegation” means transferring to a competent
40 individual, as determined by the authorized registered

41 professional nurse, the authority to administer medications
42 or perform a health maintenance task.

43 “Health care professional” means an allopathic
44 physician, osteopathic physician, registered professional
45 nurse, advanced practice registered nurse, physician’s
46 assistant, dentist, optometrist, or respiratory therapist
47 licensed pursuant to the provisions of chapter 30 of this
48 code.

49 “Health maintenance tasks” means: Administering
50 glucometer tests; administering gastrostomy tube feedings;
51 administering enemas; and performing tracheostomy and
52 ventilator care for residents.

53 “Medication” means a drug, as defined in §60A-1-
54 101 of this code, which has been prescribed by a health care
55 professional to be ingested through the mouth, inhaled
56 through the nose or mouth using an inhaler or nebulizer,
57 applied to the outer skin, eye, or ear, or applied through nose
58 drops, or applied through vaginal or rectal suppositories.
59 Medication does not mean a controlled substance listed in
60 Schedule I as provided in §60A-2-204 of this code,
61 Schedule II as provided in §60A-2-206 of this code,
62 buprenorphine, or benzodiazepines.

63 “Medication reconciliation” means the process of
64 creating an accurate list of all medications a resident is
65 taking, including drug name, dosage, frequency, and route,
66 so correct medications are being provided to the resident.

67 “Nursing home” means the same as it is defined in §16-
68 5C-2 of this code.

69 “Prescribing practitioner” means an individual who has
70 prescriptive authority as provided in chapter 30 of this code.

71 “Registered professional nurse” means a person who is
72 actively licensed pursuant to §30-7-1 *et seq.* of this code.

73 “Resident” means a person living in a nursing home
74 who is in stable condition.

75 “Self-administration of medication” means the act of a
76 resident, who is independently capable of reading and
77 understanding the labels of medication ordered by an
78 authorized practitioner, opening and accessing prepackaged
79 drug containers, and accurately identifying and taking the
80 correct dosage of the drugs as ordered by the health care
81 professional at the correct time and under the correct
82 circumstances.

83 “Self-administration of medication with assistance”
84 means assisting residents who are otherwise able to self-
85 administer their own medications, except their physical
86 disabilities prevent them from completing one or more steps
87 in the process.

88 “Stable” means the resident’s health condition is
89 predictable and consistent as determined by the registered
90 professional nurse, and the resident’s medications have
91 been reconciled.

92 “Staff member” means an individual employed by a
93 nursing home but does not include a health care professional
94 acting within his or her scope of practice.

95 “Supervision of self-administration of medication”
96 means a personal service which includes reminding
97 residents to take medications, opening medication
98 containers for residents, reading the medication label to
99 residents, observing residents while they take medication,
100 checking the self-administered dosage against the label on
101 the container, and reassuring residents that they have
102 obtained and are taking the dosage as prescribed.

§16-5AA-2. Administration of medications.

- 1 (a) The authorizing agency shall create a program for
2 the administration of medications in nursing homes.

3 (b) Administration of medication shall be performed by
4 an approved medication assistive personnel (AMAP) who
5 has been trained and retrained every two years, passed a
6 national medication aide certification examination, and who
7 is subject to the supervision of, and approval by, an
8 authorized registered professional nurse.

9 (c) After assessing the health status of a resident, a
10 registered professional nurse, in collaboration with the
11 resident's prescriber, may allow an AMAP to administer
12 medication.

13 (d) Nothing in this article prohibits a staff member from
14 administering medications or performing health
15 maintenance tasks or providing any other prudent
16 emergency assistance to aid any person who is in acute
17 physical distress or requires emergency assistance.

§16-5AA-3. Exemption from licensure; statutory construction.

1 (a) A staff member who is not authorized by law to
2 administer medication may do so in a nursing home if he or
3 she meets the requirements of this article.

4 (b) An approved medication assistive personnel is
5 exempt from the licensing requirements of chapter 30 of this
6 code.

7 (c) A health care professional remains subject to his or
8 her respective licensing laws.

9 (d) This article shall not be construed to violate or
10 conflict with chapter 30 of this code.

§16-5AA-4. Instruction and training.

1 (a) The authorizing agency's training curricula shall be
2 based on a nationally recognized model curriculum for
3 certified medication assistants. The authorizing agency shall
4 consult with the West Virginia Board of Respiratory Care

5 Practitioners in developing the training curricula relating to
6 the use of an inhaler or nebulizer. The certification
7 examination must be a national Medication Aide
8 Certification Examination.

9 (b) The program developed by the authorizing agency
10 shall require that a person who applies to act as an approved
11 medication assistive personnel shall:

12 (1) Hold a high school diploma or its equivalent;

13 (2) Be a nurse aide with at least one year of full-time
14 experience;

15 (3) Be certified in cardiopulmonary resuscitation and
16 first aid;

17 (4) Participate in the initial training program as set forth
18 in §16-5AA-1 of this code;

19 (5) Pass a national certification examination as set forth
20 in §16-5AA-1 of this code;

21 (6) Not have a statement on the stated administered
22 nurse aide registry indicating that the staff member has been
23 the subject of finding of abuse or neglect of a long-term care
24 nursing home resident or convicted of the misappropriation
25 of a resident's property; and

26 (7) Participate in a retraining program every two years.

27 (c) A nursing home may offer the training program
28 developed by the authorizing agency to its staff members.
29 The training shall be provided by the nursing home through
30 a registered professional nurse.

31 (d) A registered professional nurse who is authorized to
32 train staff members to administer medications in nursing
33 homes shall:

34 (1) Possess a current active license as set forth in §30-
35 7-1 *et seq.* of this code to practice as a registered
36 professional nurse;

37 (2) Have practiced as a registered professional nurse in
38 a position or capacity requiring knowledge of medications
39 for the immediate two years prior to being authorized to
40 train staff members;

41 (3) Be familiar with the nursing care needs of the
42 residents as described in this article; and

43 (4) Have completed and passed the nursing home
44 trainer/instructor course developed by the authorizing
45 agency.

§16-5AA-5. Eligibility requirements of nursing home staff.

1 In order to administer medication, an approved
2 medication assistive personnel (AMAP) shall:

3 (1) Determine the medication to be administered is in its
4 original container in which it was dispensed by a pharmacist
5 or the physician;

6 (2) Make a written record of assistance of medication
7 with regard to each medication administered, including the
8 time, route, and amount taken;

9 (3) Display the title Approved Medication Assistive
10 Personnel; and

11 (4) Comply with the legislative rules promulgated by
12 the authorizing agency pursuant to §29A-3-1 *et seq.* of this
13 code relating to the provisions of this article, which shall
14 address, at a minimum, the supervision provided by the
15 registered professional nurse to the AMAP.

§16-5AA-6. Oversight of approved medication assistive personnel.

1 A nursing home using an approved medication assistive
2 personnel shall establish an administrative monitoring

3 system and shall comply with the applicable provisions of
4 the legislative rules promulgated pursuant to §16-5O-11 of
5 this code.

§16-5AA-7. Withdrawal of authorization.

1 (a) The registered professional nurse who supervises an
2 approved medication assistive personnel (AMAP) may
3 withdraw authorization for an AMAP to administer
4 medications if the nurse determines that the AMAP is not
5 performing the function in accordance with the training and
6 written instructions.

7 (b) The withdrawal of the authorization shall be
8 documented and relayed to the nursing home and the
9 authorizing agency. The agency shall remove the AMAP
10 from the list of authorized individuals. The department shall
11 maintain a list of the names of persons whose authorization
12 has been withdrawn and the reasons for withdrawal of
13 authorization. The list may be accessed by registered
14 professional nurses and administrative personnel of nursing
15 homes.

§16-5AA-8. Fees.

1 The authorizing agency may set and collect any
2 appropriate fees necessary for the implementation of the
3 provisions of this article pursuant to the legislative rules
4 authorized by this article.

§16-5AA-9. Limitations on medication administration.

1 (a) An approved medication assistive personnel
2 (AMAP) may not:

3 (1) Administer the first dose of a medication;

4 (2) Perform an injection;

5 (3) Administer irrigations or debriding agents to treat a
6 skin condition or minor abrasions;

7 (4) Act upon verbal medication orders;

8 (5) Transcribe medication orders;

9 (6) Convert or calculate drug dosages;

10 (7) Administer medications to be given “as needed” as
11 ordered by the health care professional, unless the
12 supervising nurse has first performed and documented a
13 bedside assessment, and then the AMAP may administer the
14 medication based on the written order with specific
15 parameters which preclude independent judgment; or

16 (8) Perform health maintenance tasks.

17 (b) An AMAP may not be assigned to both medication
18 administration duty and typical nurse aide duties related to
19 resident care and assistance with activities of daily living
20 simultaneously. When assigned to medication
21 administration, the AMAP’s responsibility shall be to
22 administer medication and tasks related to the
23 administration of medication. An AMAP may be assigned
24 to other resident care and assistance with activities of daily
25 living during such times that the AMAP is not engaged in,
26 or scheduled to be engaged in, the administration of
27 medication.

§16-5AA-10. Permissive participation.

1 The provisions of this article are not mandatory upon
2 any nursing home or nursing home employee. A nursing
3 home may not, as a condition of employment, require a
4 nurse aide to become an approved medication assistive
5 personnel (AMAP) or require its health care professionals
6 to use AMAPs.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 7D. MEDICATION ASSISTIVE PERSONS.

§30-7D-1. Pilot program.

1 [Repealed.]

§30-7D-2. Definitions.

1 [Repealed.]

§30-7D-3. Certificate required.

1 [Repealed.]

§30-7D-4. Designated facilities.

1 [Repealed.]

§30-7D-5. Qualifications.

1 [Repealed.]

§30-7D-6. Scope of work.

1 [Repealed.]

§30-7D-7. Renewal of certifications.

1 [Repealed.]

§30-7D-8. Disciplinary actions.

1 [Repealed.]

§30-7D-9. Offenses and penalties.

1 [Repealed.]

§30-7D-10. Injunction.

1 [Repealed.]

§30-7D-11. Medication Assistive Person Advisory Committee.

1 [Repealed.]

§30-7D-12. Applicability of article.

1 [Repealed.]

§30-7D-13. Rulemaking authority.

1 [Repealed.]

**CHAPTER 262**

**(S. B. 647 - By Senators Takubo, Mann, 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 and reenact §16-30C-6 of the Code of West Virginia, 1931, as amended, relating to permitting physician's assistants and advanced practice registered nurses to issue do-not-resuscitate orders.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30C. DO NOT RESUSCITATE ACT.**§16-30C-6. Issuance of a do-not-resuscitate order; order to be written by a physician, a physician's assistant, or an advanced practice registered nurse.**

1 (a) An attending physician, a physician's assistant, or an
2 advanced practice registered nurse may issue a do-not-
3 resuscitate order for persons who are present in or residing
4 at home or in a health care facility if the person,
5 representative, or surrogate has consented to the order. A
6 do-not-resuscitate order shall be issued in writing in the
7 form as described in this section for a person not present or
8 residing in a health care facility. For persons present in

9 health care facilities, a do-not-resuscitate order shall be
10 issued in accordance with the policies and procedures of the
11 health care facility or in accordance with the provisions of
12 this article.

13 (b) Persons may request their physicians, physician's
14 assistants, or advanced practice registered nurses to issue
15 do-not-resuscitate orders for them.

16 (c) The representative or surrogate decisionmaker may
17 consent to a do-not-resuscitate order for a person with
18 incapacity. A do-not-resuscitate order written by a
19 physician, a physician's assistant, or an advanced practice
20 registered nurse for a person with incapacity with the
21 consent of the representative or surrogate decisionmaker is
22 valid and shall be respected by health care providers.

23 (d) A parent may consent to a do-not-resuscitate order
24 for his or her minor child, provided that a second physician,
25 physician's assistant, or advanced practice registered nurse
26 who has examined the child concurs with the opinion of the
27 attending physician, physician's assistant, or advanced
28 practice registered nurse that the provision of
29 cardiopulmonary resuscitation would be contrary to
30 accepted medical standards. If the minor is between the ages
31 of 16 and 18 and, in the opinion of the attending physician,
32 physician's assistant, or advanced practice registered nurse
33 the minor is of sufficient maturity to understand the nature
34 and effect of a do-not-resuscitate order, then no such order
35 shall be valid without the consent of such minor. In the event
36 of a conflict between the wishes of the parents or guardians
37 and the wishes of the mature minor, the wishes of the mature
38 minor shall prevail. For purposes of this section, no minor
39 less than 16 years of age shall be considered mature.
40 Nothing in this article shall be interpreted to conflict with
41 the provisions of the Child Abuse Prevention and Treatment
42 Act and implementing regulations at 45 CFR 1340. In the
43 event conflict is unavoidable, federal law and regulation
44 shall govern.

45 (e) If a surrogate decisionmaker is not reasonably
46 available or capable of making a decision regarding a do-
47 not-resuscitate order, an attending physician, physician's
48 assistant, or advance practice registered nurse may issue a
49 do-not-resuscitate order for a person with incapacity in a
50 health care facility: *Provided*, That a second physician who
51 has personally examined the person concurs in the opinion
52 of the attending physician, physician's assistant, or
53 advanced practice registered nurse that the provision of
54 cardiopulmonary resuscitation would be contrary to
55 accepted medical standards.

56 (f) For persons not present or residing in a health care
57 facility, the do-not-resuscitate order shall be noted on a
58 physician, physician's assistant, or advanced practice
59 registered nurse orders for scope of treatment form or in the
60 following form on a card suitable for carrying on the person:

61 Do-Not-Resuscitate Order

62 "As treating physician, physician's assistant, or
63 advanced practice registered nurse of
64 _____ and a licensed
65 physician, physician's assistant, or advanced practice
66 registered nurse, I order that this person SHALL NOT BE
67 RESUSCITATED in the event of cardiac or respiratory
68 arrest. This order has been discussed with
69 _____ or his/her
70 representative _____ or his/her
71 surrogate decisionmaker _____
72 who has given consent as evidenced by his/her signature
73 below.

74 Provider Name _____

75 Provider Signature _____

76 Address _____

77 Person Signature _____

78 Address _____

79 Surrogate Decision Maker Signature _____

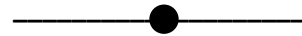
80 Address _____”.

81 (g) For persons residing in a health care facility, the do-
82 not-resuscitate order shall be reflected in at least one of the
83 following forms:

84 (1) Forms required by the policies and procedures of the
85 health care facility;

86 (2) The do-not-resuscitate card as set forth in subsection
87 (f) of this section; or

88 (3) The physician, physician’s assistant, or advanced
89 practice registered nurse orders for scope of treatment form.



CHAPTER 263

(S. B. 664 - By Senators Takubo and Maroney)

[Passed March 6, 2020; in effect ninety days from passage.]

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

AN ACT to amend and reenact §16-30-7 of the Code of West Virginia, 1931, as amended, relating to adding a physician’s assistant to the list of medical professionals able to determine an individual lacks capacity; updating terminology related to advanced practice registered nurses; removing terminology related to physicians; and permitting a psychologist, physician’s assistant, or advanced practice registered nurse to inform a person, if conscious, that he or she has been determined to be incapacitated.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.**§16-30-7. Determination of incapacity.**

1 (a) For the purposes of this article, a person may not be
2 presumed to be incapacitated merely by reason of advanced
3 age or disability. With respect to a person who has a
4 diagnosis of mental illness or intellectual disability, such a
5 diagnosis is not a presumption that the person is
6 incapacitated. A determination that a person is incapacitated
7 shall be made by the attending physician, a physician, a
8 qualified psychologist, a physician's assistant, or an
9 advanced practice registered nurse who has personally
10 examined the person.

11 (b) The determination of incapacity shall be recorded
12 contemporaneously in the person's medical record by the
13 attending physician, a physician, a physician's assistant, an
14 advanced practice registered nurse or a qualified
15 psychologist. The recording shall state the basis for the
16 determination of incapacity, including the cause, nature, and
17 expected duration of the person's incapacity, if these are
18 known.

19 (c) If the person is conscious, the attending physician,
20 psychologist, physician's assistant, or advanced practice
21 registered nurse shall inform the person that he or she has
22 been determined to be incapacitated and that a medical
23 power of attorney representative or surrogate decision-
24 maker may be making decisions regarding life-prolonging
25 intervention or mental health treatment for the person.

●

CHAPTER 264

**(Com. Sub. for S. B. 746 - By Senators Maroney,
Stollings, Takubo and Palumbo)**

[Passed March 5, 2020; in effect ninety days from passage.]

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

AN ACT to amend and reenact §16-4E-6 of the Code of West Virginia, 1931, as amended, relating to providing that contracted managed care companies with the Bureau for Medical Services may be provided data from the uniform maternal screening tool regarding their own covered members; providing that the Bureau for Medical Services may be provided data from the screening tool regarding their own covered members; and requiring confidentiality must be maintained.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4E. UNIFORM MATERNAL SCREENING ACT.

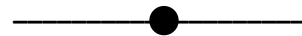
§16-4E-6. Confidentiality of screening tool.

1 (a) The uniform maternal screening tool shall be
2 confidential and shall not be released or disclosed to
3 anyone, including any state or federal agency for any reason
4 other than data analysis of high-risk and at-risk pregnancies
5 for planning purposes by public health officials: *Provided*,
6 That managed care organizations, with respect to their
7 Medicaid or CHIP plans or contracts, which are reviewed
8 and approved by the Department of Health and Human
9 Resources' Bureau for Medical Services, and the
10 Department of Health and Human Resources' Bureau for
11 Medical Services may be provided data from the screening
12 tool regarding their own covered members. The contracted

13 managed care companies and the Bureau for Medical
14 Services must maintain the confidentiality of the data
15 received.

16 (b) Proceedings, records, and opinions of the advisory
17 council are confidential and are not subject to discovery,
18 subpoena, or introduction into evidence in any civil or
19 criminal proceeding. Nothing in this subsection is to be
20 construed to limit or restrict the right to discover, or use in
21 any civil or criminal proceeding anything that is available
22 from another source and entirely independent of the
23 proceedings of the advisory council.

24 (c) Members of the advisory council may not be
25 questioned in any civil or criminal proceeding regarding
26 information presented in, or opinions formed as a result of,
27 a meeting of the panel. Nothing in this subsection may be
28 construed to prevent a member of the advisory council from
29 testifying to information obtained independently of the
30 panel or which is public information.



CHAPTER 265

**(S. B. 747 - By Senators Maroney, Takubo, Cline,
Prezioso, Romano, Plymale and Stollings)**

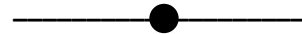
[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated †§16-1-21,
relating to requiring the Bureau for Public Health to develop
a Diabetes Action Plan.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**†§16-1-21. Creation of Diabetes Action Plan.**

1 The Bureau for Public Health shall create a Diabetes
2 Action Plan. The action plan shall include the following: (a)
3 Convening a diabetes task force consisting of a cross-sector
4 of stakeholders to develop the scope of the plan; (b)
5 conducting necessary data and infrastructure/gap analyses;
6 (c) drafting a plan to include long and short term goals, high
7 impact and outcome driven strategies for prevention,
8 disease management and treatment, and evaluation
9 strategies to be published for public comment; (d) produce
10 briefing documents in support of and promoting the use of
11 strategies outlined in the plan for distribution to
12 stakeholders; (e) finalize and share the completed plan; (f)
13 track and trend relevant statistics regarding diabetes; and (g)
14 implement strategies identified in the plan to decrease the
15 prevalence of diabetes in West Virginia. The plan shall be
16 completed and presented to the Legislative Oversight
17 Commission on Health and Human Resources
18 Accountability by January 1, 2021.

**CHAPTER 266**

**(S. B. 748 - By Senators Maroney, Takubo, Cline,
Prezioso, Romano, Plymale and Stollings)**

[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 †§16-61-1, †§16-
61-2, and †§16-61-3, all relating to increasing awareness of
palliative care services; defining terms; and requiring the State

Advisory Coalition on Palliative Care, in conjunction with the Bureau for Public Health to develop education materials.

Be it enacted by the Legislature of West Virginia:

†**ARTICLE 61. PALLIATIVE CARE.**

†**§16-61-1. Purpose and findings.**

1 (a) The purpose of this article is to increase awareness
2 regarding the palliative care services in West Virginia.

3 (b) The Legislature finds that palliative care access
4 remains a challenge across the state and increasing
5 awareness of the availability of this service will align with
6 many of the state's goals to improve patients' health care
7 experience and care quality.

†**§16-61-2. Definitions.**

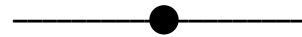
1 As used in this article:

2 "Palliative care" means an interdisciplinary team-based
3 model of care process designed to relieve suffering and
4 improve quality of life for patients and families facing
5 serious, though not necessarily terminal, illness. The care
6 should be available at any stage of illness from birth to
7 advanced age and may be offered simultaneously with
8 disease modifying interventions, including attempts for cure
9 or remission.

10 "Interdisciplinary team" means a care team comprised
11 of medical and nonmedical disciplines with specialty
12 training or certification in palliative care and may include
13 volunteers and lay workers. This team includes, at a
14 minimum, the following: (1) A physician; (2) an advanced
15 practice registered nurse or a registered nurse; (3) a social
16 worker; and may include (4) a member of the clergy; (5) a
17 counselor; and (6) a consulting pharmacist.

†§16-61-3. Development of educational materials and database.

1 (a) The State Advisory Coalition on Palliative Care,
2 working in conjunction with the Bureau for Public Health,
3 shall develop a work group to create the content of
4 educational materials regarding palliative care for
5 distribution to providers and to the general public. These
6 materials should at a minimum provide an overview of the
7 different models of palliative care services offered
8 throughout the continuum of care and a description of the
9 interdisciplinary team.

**CHAPTER 267**

**(Com. Sub. for S. B. 749 - By Senators Maroney,
Stollings, Takubo, Prezioso, Romano 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 §61-12A-2 and §61-12A-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-12A-5, all relating to requiring the Bureau for Public Health to submit its maternal mortality data to the Centers for Disease Control and Prevention for data aggregation; permitting peer review report to be made to birth hospital; requiring Infant and Mortality Review Panel to annually analyze factors impacting maternal and infant mortality and prepare report; and requiring the Bureau for Public Health to perform multi-year analysis to recommend system change to reduce maternal and infant deaths.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12A. FATALITY AND MORTALITY REVIEW TEAM.

§61-12A-2. Responsibilities of the Fatality and Mortality Review Team and advisory panels.

1 (a) The Fatality and Mortality Review Team shall
2 establish the following advisory panels to carry out the
3 purposes of this article, including:

4 (1) An unintentional pharmaceutical drug overdose
5 fatality review panel to examine, analyze, and review deaths
6 resulting from unintentional prescription or pharmaceutical
7 drug overdose;

8 (2) A child fatality review panel to examine, analyze,
9 and review deaths of children under the age of 18 years;

10 (3) A domestic violence fatality review panel to
11 examine, analyze, and review deaths resulting from
12 suspected domestic violence; and

13 (4) An infant and maternal mortality review panel to
14 examine, analyze, and review the deaths of infants and
15 women who die during pregnancy, at the time of birth, or
16 within one year of the birth of a child.

17 (b) The members of the Fatality and Mortality Review
18 Team shall serve as members of each of the advisory panels
19 established pursuant to this article.

20 (c) The Commissioner of the Bureau for Public Health,
21 in consultation with the Fatality and Mortality Review
22 Team, shall propose rules for legislative approval in
23 accordance with §29A-3-1 *et seq.* of this code that the
24 advisory panels shall follow. Those rules shall include, at a
25 minimum:

26 (1) The representatives that shall be included on each
27 advisory panel;

28 (2) The responsibilities of each of the advisory panels,
29 including but not limited to, each advisory panel's
30 responsibility to:

31 (A) Review and analyze all deaths as required by this
32 article;

33 (B) Ascertain and document the trends, patterns, and
34 risk factors; and

35 (C) Provide statistical information and analysis
36 regarding the causes of certain fatalities;

37 (3) The standard procedures for the conduct of the
38 advisory panels;

39 (4) The processes and protocols for the review and
40 analysis of fatalities and mortalities of those who were not
41 suffering from mortal diseases shortly before death;

42 (5) The processes and protocols to ensure
43 confidentiality of records obtained by the advisory panel;

44 (6) That the advisory panels must submit a report to the
45 Fatality and Mortality Review Team annually, the date the
46 annual report must be submitted, and the contents of the
47 annual report;

48 (7) That the advisory panel may include any additional
49 persons with expertise or knowledge in a particular field that
50 it determines are needed in the review and consideration of
51 a particular case as a result of a death in §61-12A-1(a) of
52 this code;

53 (8) That the advisory panel may provide training for
54 state agencies and local multidisciplinary teams on the
55 matters examined, reviewed, and analyzed by the advisory
56 panel;

57 (9) The advisory panel's responsibility to promote
58 public awareness on the matters examined, reviewed, and
59 analyzed by the advisory panel;

60 (10) Actions the advisory panel may not take or engage
61 in, including:

62 (A) Call witnesses or take testimony from individuals
63 involved in the investigation of a fatality;

64 (B) Contact a family member of the deceased;

65 (C) Enforce any public health standard or criminal law
66 or otherwise participate in any legal proceeding; or

67 (D) Otherwise take any action which, in the
68 determination of a prosecuting attorney or his or her
69 assistants, impairs the ability of the prosecuting attorney, his
70 or her assistants or any law-enforcement officer to perform
71 his or her statutory duties; and

72 (11) Other rules as may be deemed necessary to
73 effectuate the purposes of this article.

74 (d) The Fatality and Mortality Review Team shall
75 submit an annual report to the Governor and to the
76 Legislative Oversight Commission on Health and Human
77 Resources Accountability concerning its activities within
78 the state and the activities of the advisory panels. The report
79 is due annually on December 1. The report is to include
80 statistical information concerning cases reviewed during the
81 year, trends and patterns concerning these cases and the
82 team's recommendations to reduce the number of fatalities
83 and mortalities that occur in the state.

84 (e) The Fatality and Mortality Review Team may
85 provide reporting to birth facilities to inform internal peer
86 review activities. Such information shall be deemed
87 confidential and shall be used only for peer review
88 purposes.

§61-12A-4. Confidentiality.

1 (a) Proceedings, records, and opinions of the Fatality
2 and Mortality Review Team and the advisory panels
3 established by the team pursuant to this article are

4 confidential and are not subject to discovery, subpoena, or
5 introduction into evidence in any civil or criminal
6 proceeding. This section does not limit or restrict the right
7 to discover or use in any civil or criminal proceeding
8 anything that is available from another credible source and
9 entirely independent of the proceedings of the team or
10 advisory panels.

11 (b) Members of the Fatality and Mortality Review Team
12 and members of the advisory panels established by the team
13 may not be questioned in any civil or criminal proceeding
14 regarding information presented in or opinions formed as a
15 result of a meeting of the team. This subsection does not
16 prevent a member of the team or an advisory panel from
17 testifying to information obtained independently of the team
18 or advisory panel which is public information.

19 (c) Proceedings, records, and opinions of the Fatality
20 and Mortality Review Team and the advisory panels
21 established by the team are exempt from disclosure under
22 the Freedom of Information Act as provided in chapter 29B
23 of this code.

24 (d) Notwithstanding any other provisions to the
25 contrary, the Fatality and Mortality Review Team may
26 prepare a data compilation to be shared, on an annual basis
27 or more often as needed, with the Centers for Disease
28 Control and Prevention to study maternal mortality in an
29 effort to reduce mortality rates. No individually identifiable
30 records may be produced.

§61-12A-5. Required reporting and analysis.

1 (a) The infant and mortality review panel shall annually
2 analyze data to identify themes, underlying risk factors, and
3 gaps in care, to understand factors related to deaths during
4 pregnancy, delivery, and the postpartum period. This
5 analysis is required to follow the Centers for Disease
6 Control and Prevention's best practices for maternal
7 mortality review and infant mortality review, and include

8 health care and clinical factors as well as social
9 determinants of health. Using data gathered, the panel may
10 provide recommendations and develop strategies to prevent
11 problems that arise during the prenatal and postpartum
12 period.

13 (b) The following variables should be routinely
14 analyzed to describe pregnancy-associated deaths:

15 (1) Age at death;

16 (2) Race and ethnicity;

17 (3) Education;

18 (4) Insurance status;

19 (5) Marital status;

20 (6) County type (urban or rural) of maternal residence;

21 (7) Timing of death in relation to pregnancy; and

22 (8) Causes of death.

23 (c) Reports of aggregated nonindividually identifiable
24 data shall be compiled on a routine basis for distribution in
25 an effort to further study the causes and problems associated
26 with maternal and infant deaths.

27 (d) Reports shall be distributed to the Commission on
28 Legislative Oversight Commission on Health and Human
29 Resources Accountability, a member of the infant and
30 maternal mortality review panel, health care providers, key
31 government agencies, and others as identified to reduce the
32 maternal and infant mortality rate.

33 (e) The Bureau for Public Health, working in
34 conjunction with the infant and mortality review panel, shall
35 perform a multiyear detailed analysis, utilizing data from
36 vital records, the infant and mortality review panel, and
37 other sources as necessary and, in partnership with other

38 providers, including the perinatal collaborative, make
39 recommendations for systems change to reduce maternal
40 and infant mortality. Such report shall be made available to
41 the Legislative Oversight Commission on Health and
42 Human Resources Accountability by December 31, 2020.

CHAPTER 268

(S. B. 767 - By Senators Maroney, Tarr and Roberts)

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

AN ACT to repeal §16-5B-6a of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-5B-5a of said code, relating to the licensure of hospitals; allowing hospitals to use other accrediting organizations which have been approved by the Centers for Medicare and Medicaid Services; and eliminating hospital board composition requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-5a. Accreditation reports accepted for periodic license inspections.

1 Notwithstanding any other provision of this article, a
2 periodic license inspection shall not be conducted by the
3 Department of Health and Human Resources for a hospital
4 if the hospital has applied for and received an exemption
5 from that requirement: *Provided*, That no exemption
6 granted diminishes the right of the Department of Health
7 and Human Resources to conduct complaint inspections.

8 The Department of Health and Human Resources shall
9 grant an exemption from a periodic license inspection

10 during the year following accreditation if a hospital applies
11 by submitting evidence of its accreditation by the Joint
12 Commission on Accreditation of Health Care Organizations
13 or the American Osteopathic Association, or any
14 accrediting organization approved by the Centers for
15 Medicare and Medicaid Services, and submits a complete
16 copy of the accrediting organization's accreditation report.

17 If the accreditation of a hospital is for a period longer
18 than one year, the Department of Health and Human
19 Resources may conduct at least one license inspection of the
20 hospital after the first year of accreditation and before the
21 accreditation has expired and may conduct additional
22 license inspections if needed. Hospitals receiving a three-
23 year accreditation shall conduct annual self-evaluations
24 using the current year accreditation manual for hospitals
25 unless the Department of Health and Human Resources
26 informs the hospital that the hospital will be inspected by
27 the Department of Health and Human Resources. Hospitals
28 are not required to conduct self-evaluations for any calendar
29 year during which they are inspected by the Department of
30 Health and Human Resources. These self-evaluations shall
31 be completed and placed on file in the hospital by March 31
32 of each year. Hospitals shall make the results of the self-
33 evaluation available to the Department of Health and
34 Human Resources if requested.

35 Accreditation reports filed with the Department of
36 Health and Human Resources shall be treated as
37 confidential in accordance with §16-5B-10 of this code.

§16-5B-6a. Consumer majorities on hospital boards of directors.

1 [Repealed.]

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CHAPTER 269

**(Com. Sub. for S. B. 797 - By Senators Takubo, Cline
and Stollings)**

[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 §16-5B-19; to amend and reenact §17C-1-6 of said code; and to amend and reenact §30-29-1, §30-29-5, and §30-29-8 of said code, all relating generally to law-enforcement officers; authorization by governing boards of public and private hospitals to appoint and employ hospital police officers; providing for the qualifications, training, authority, compensation, and removal of hospital police officers; providing for training and examinations of law-enforcement officers; providing for the assistance of local law-enforcement agencies upon request; and providing limitations on liability of hospital police officers.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-19. Hospital police departments; appointment of hospital police officers; qualifications; authority; compensation and removal; law-enforcement grants; limitations on liability.

- 1 (a) The governing board of a hospital licensed under
- 2 §16-5B-2 of this code may establish a hospital police
- 3 department and appoint qualified individuals to serve as
- 4 hospital police officers upon any premises owned or leased

5 by the hospital and under the jurisdiction of the governing
6 board, subject to the conditions and restrictions established
7 in this section.

8 (1) A person who fulfills the certification requirements
9 for law-enforcement officers under §30-29-5 of this code is
10 considered qualified for appointment as a hospital police
11 officer.

12 (2) A retired police officer may qualify for appointment
13 as a hospital police officer if he or she meets the certification
14 requirements under §30-29-5 of this code.

15 (3) Before performing duties as a hospital police officer
16 in any county, a person shall qualify as is required of county
17 police officers by:

18 (A) Taking and filing an oath of office as required by
19 §6-1-1 *et seq.* of this code; and

20 (B) Posting an official bond as required by §6-2-1 *et seq.*
21 of this code.

22 (b) A hospital police officer may carry a gun and any
23 other dangerous weapon while on duty if the officer fulfills
24 the certification requirement for law-enforcement officers
25 under §30-29-5 of this code.

26 (c) It is the duty of a hospital police officer to preserve
27 law and order:

28 (1) On the premises under the jurisdiction of the
29 governing board and its affiliated properties; and

30 (2) On any street, road, or thoroughfare, except
31 controlled access highways, immediately adjacent to or
32 passing through the premises under the jurisdiction of the
33 governing board, to which the officer is assigned by the
34 chief executive officer or his or her designee: *Provided,*
35 That a hospital police officer may only enforce the

36 provisions of §17C-1-1 *et seq.* of this code upon request of
37 a local law-enforcement agency.

38 (A) For the purposes of this subdivision, the hospital
39 police officer is a law-enforcement officer pursuant to the
40 provisions of §30-29-1 *et seq.* of this code;

41 (B) The hospital police officer has and may exercise all
42 the powers and authority of a law-enforcement officer as to
43 offenses committed within the area assigned;

44 (C) The hospital police officer is subject to all the
45 requirements and responsibilities of a law-enforcement
46 officer;

47 (D) Authority assigned pursuant to this subdivision does
48 not supersede in any way the authority or duty of other law-
49 enforcement officers to preserve law and order on such
50 hospital premises;

51 (E) Hospital police officers may assist a local law-
52 enforcement agency on public highways. The assistance
53 may be provided to control traffic in and around premises
54 owned by the state or political subdivision when:

55 (i) Traffic is generated as a result of activities or events
56 conducted or sponsored by the hospital; and

57 (ii) The assistance has been requested by the local law-
58 enforcement agency;

59 (F) Hospital police officers may assist a local law-
60 enforcement agency in any location under the agency's
61 jurisdiction at the specific request of the agency; and

62 (G) Hospital police officers shall enforce the general
63 policies and procedures of the hospital as established by the
64 chief executive officer or his or her designee.

65 (d) The salary of a hospital police officer is paid by the
66 employing hospital's governing board. The hospital shall

67 furnish each hospital police officer with a firearm and an
68 official uniform to be worn while on duty. The hospital shall
69 furnish, and require each officer while on duty to wear, a
70 shield with the appropriate inscription and to carry
71 credentials certifying the person's identity and authority as
72 a hospital police officer.

73 (e) The governing board of the employing hospital may
74 at its pleasure revoke the authority of any hospital police
75 officer and such officers serve at the will and pleasure of the
76 governing board. The chief executive officer of the hospital
77 or his or her designee shall report the termination of
78 employment of a hospital police officer by filing a notice to
79 that effect in the office of the clerk of each county in which
80 the hospital police officer's oath of office was filed.

81 (f) For the purpose of hospital police officers appointed
82 and established in this section, the civil service provisions
83 of §8-14-1 *et seq.* of this code and the investigation and
84 interrogation provisions of §8-14A-1 *et seq.* of this code
85 shall not apply.

86 (g) A hospital police officer shall not be subject to civil
87 or criminal liability unless one of the following applies:

88 (1) His or her acts or omissions were manifestly outside
89 the scope of employment or official responsibilities;

90 (2) His or her acts or omissions were with malicious
91 purpose, in bad faith, or in a wanton or reckless manner; or

92 (3) Liability is expressly imposed upon the hospital
93 police officer by any other provision of this code.

94 (h) A hospital police officer shall be trained in crisis de-
95 escalation techniques consistent with the goals and
96 objectives of this section: *Provided*, That within 180 days
97 of beginning work as a hospital police officer, the
98 employing hospital shall provide crisis management
99 training to a hospital police officer through a program

100 approved by the Law-Enforcement Professional Standards
101 Subcommittee established by §30-29-2 of this code.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-6. Authorized emergency vehicle.

1 “Authorized emergency vehicle” means vehicles of a
2 fire department, duly chartered rescue squad, police
3 department, ambulance service, hospital police department,
4 state, county, or municipal agency, and such privately
5 owned ambulances, tow trucks, wreckers, flag car services,
6 vehicles providing road service to disabled vehicles, service
7 vehicles of a public service corporation, postal service
8 vehicles, snow removal equipment, Class A vehicles of
9 firefighters, Class A vehicles of members of ambulance
10 services, and Class A vehicles of members of duly chartered
11 rescue squads, and all other emergency vehicles as are
12 designated by the agency responsible for the operation and
13 control of these persons or organizations. Class A vehicles
14 are as defined by §17A-10-1 of this code. Agency
15 authorization and emergency equipment are provided in
16 §17C-15-26 of this code. Agencies responsible for issuing
17 authorization for emergency vehicle permits may
18 promulgate such regulations that are necessary for the
19 issuance of permits for emergency vehicles.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

1 For the purposes of this article, unless a different
2 meaning clearly appears in the context:

3 (1) “Approved law-enforcement training academy”
4 means any training facility which is approved and

5 authorized to conduct law-enforcement training as provided
6 in this article;

7 (2) “Chief executive” means the Superintendent of the
8 State Police; the chief Natural Resources police officer of
9 the Division of Natural Resources; the sheriff of any West
10 Virginia county; any administrative deputy appointed by the
11 chief Natural Resources police officer of the Division of
12 Natural Resources; or the chief of any West Virginia
13 municipal law-enforcement agency;

14 (3) “County” means the 55 major political subdivisions
15 of the state;

16 (4) “Exempt rank” means any noncommissioned or
17 commissioned rank of sergeant or above;

18 (5) “Governor’s Committee on Crime, Delinquency,
19 and Correction” or “Governor’s committee” means the
20 Governor’s Committee on Crime, Delinquency, and
21 Correction established as a state planning agency pursuant
22 to §15-9-1 of this code;

23 (6) “Law-enforcement officer” means any duly
24 authorized member of a law-enforcement agency who is
25 authorized to maintain public peace and order, prevent and
26 detect crime, make arrests, and enforce the laws of the state
27 or any county or municipality thereof, other than parking
28 ordinances, and includes those persons employed as campus
29 police officers at state institutions of higher education in
30 accordance with the provisions of §18B-4-5 of this code,
31 persons employed as hospital police officers in accordance
32 with the provisions of §16-5B-19 of this code, and persons
33 employed by the Public Service Commission as motor
34 carrier inspectors and weight-enforcement officers charged
35 with enforcing commercial motor vehicle safety and weight
36 restriction laws, although those institutions and agencies
37 may not be considered law-enforcement agencies. The term
38 also includes those persons employed as county litter
39 control officers charged with enforcing litter laws:

40 *Provided*, That those persons have been trained and certified
41 as law-enforcement officers and that certification is
42 currently active. The term also includes those persons
43 employed as rangers by resort area districts in accordance
44 with the provisions of §7-25-23 of this code, although no
45 resort area district may be considered a law-enforcement
46 agency: *Provided, however*, That the subject rangers shall pay
47 the tuition and costs of training. As used in this article, the term
48 “law-enforcement officer” does not apply to the chief
49 executive of any West Virginia law-enforcement agency or
50 any watchman or special Natural Resources police officer;

51 (7) “Law-enforcement official” means the duly
52 appointed chief administrator of a designated law-
53 enforcement agency or a duly authorized designee;

54 (8) “Municipality” means any incorporated town or city
55 whose boundaries lie within the geographic boundaries of
56 the state;

57 (9) “Subcommittee” or “law-enforcement professional
58 standards subcommittee” means the subcommittee of the
59 Governor’s Committee on Crime, Delinquency, and
60 Correction created by §30-29-2 of this code; and

61 (10) “West Virginia law-enforcement agency” means
62 any duly authorized state, county, or municipal organization
63 employing one or more persons whose responsibility is the
64 enforcement of laws of the state or any county or
65 municipality thereof: *Provided*, That neither the Public
66 Service Commission nor any state institution of higher
67 education nor any hospital nor any resort area district is a
68 law-enforcement agency.

***§30-29-5. Certification requirements and power to decertify
or reinstate.**

1 (a) Except as provided in subsections (b) and (e) of this
2 section, a person may not be employed as a law-

*NOTE: This section was also amended by S. B. 706 (Chapter 242),
which passed prior to this act.

3 enforcement officer by any West Virginia law-enforcement
4 agency or by any state institution of higher education or by
5 a hospital or by the Public Service Commission of West
6 Virginia on or after the effective date of this article unless
7 the person is certified, or is certifiable in the manner
8 specified in subsection (c) of this section, by the
9 subcommittee as having met the minimum entry level law-
10 enforcement qualification and training program
11 requirements promulgated pursuant to this article: *Provided*,
12 That the provisions of this section do not apply to persons
13 hired by the Public Service Commission as motor carrier
14 inspectors and weight enforcement officers before July 1,
15 2007.

16 (b) Except as provided in subsection (e) of this section,
17 a person who is not certified, or certifiable in the manner
18 specified in subsection (c) of this section, may be
19 conditionally employed as a law-enforcement officer until
20 certified: *Provided*, That within 90 calendar days of the
21 commencement of employment or the effective date of this
22 article, if the person is already employed on the effective
23 date, he or she makes a written application to attend an
24 approved law-enforcement training academy and that the
25 person satisfactorily completes the approved law-
26 enforcement training academy within 18 consecutive
27 months of the commencement of his or her employment:
28 *Provided, however*, That the subcommittee may grant an
29 extension, one-time only, not to exceed six months, based
30 upon a written request from the person justifying the need
31 for such an extension: *Provided further*, That the
32 subcommittee, in its sole discretion, may grant an additional
33 extension upon demonstration of a hardship warranting it.
34 The person's employer shall provide notice, in writing, of
35 the 90-day deadline to file a written application to the
36 academy within 30 calendar days of that person's
37 commencement of employment. The employer shall
38 provide full disclosure as to the consequences of failing to
39 file a timely written application. The academy shall notify
40 the applicant in writing of the receipt of the application and

41 of the tentative date of the applicant's enrollment. Any
42 applicant who, as the result of extenuating circumstances
43 acceptable to his or her employing law-enforcement
44 official, is unable to attend the scheduled training program
45 to which he or she was admitted may reapply and shall be
46 admitted to the next regularly scheduled training program.
47 One year after the effective date of this section, certification
48 as a law-enforcement officer within this state of persons
49 who are not certifiable as provided in subsection (c) of this
50 section shall, in addition to graduation from an established
51 academy in the state, be based on: Current employment as
52 a sworn law-enforcement officer by any West Virginia law-
53 enforcement agency or any state institution of higher
54 education or the Public Service Commission; and the
55 person's successful completion of an approved entry level
56 law-enforcement examination established by legislative
57 rule of the subcommittee, which shall include, at a
58 minimum, written testing requirements, medical standards,
59 physical standards, and good moral character standards
60 conducted in accordance with such rule. The production of
61 a record of successful passage of the approved entry level
62 law-enforcement examination shall indicate the applicant as
63 qualified under the law-enforcement training and
64 certification standards within this state. An applicant who
65 satisfactorily completes the program and successfully
66 passes the approved entry level law-enforcement
67 examination shall, within 30 days of completion, make
68 written application to the subcommittee requesting
69 certification as having met the minimum entry level law-
70 enforcement qualification and training program
71 requirements. Upon determining that an applicant has met
72 the requirements for certification as set forth in this section,
73 the subcommittee shall forward to the applicant
74 documentation of certification. An applicant who fails to
75 complete the training program to which he or she is first
76 admitted, or was admitted upon reapplication, or who fails
77 to pass the approved entry level law-enforcement
78 examination, may not be certified by the subcommittee:
79 *And provided further,* That an applicant who has completed

80 the minimum training and examination required by the
81 subcommittee may be certified as a law-enforcement
82 officer, notwithstanding the applicant's failure to complete
83 additional training hours required in the training program to
84 which he or she originally applied. If more than 24 months
85 but less than 60 months have passed since the applicant for
86 certification has successfully completed the approved entry
87 level law-enforcement examination, the person may be
88 certified but must complete the additional training set forth
89 in legislative rules promulgated by the subcommittee
90 addressing the recertification requirements of certified
91 officers. If more than 60 months have passed since the
92 applicant for certification has successfully completed the
93 approved entry level law-enforcement examination, the
94 person must then attend a subcommittee-approved training
95 program and successfully complete a separate
96 subcommittee entry level law-enforcement examination.

97 (c) Any person who begins employment on or after the
98 effective date of this article as a law-enforcement officer is
99 certifiable as having met the minimum entry level law-
100 enforcement training program requirements and is exempt
101 from attending a law-enforcement training academy if the
102 person has satisfactorily completed a course of instruction
103 in law enforcement equivalent to or exceeding the minimum
104 applicable law-enforcement training curricula promulgated
105 by the subcommittee. To receive certification, the person
106 shall make written application within 90 calendar days
107 following the commencement of employment to the
108 subcommittee requesting certification. The application shall
109 include a notarized statement of the applicant's satisfactory
110 completion of the course of instruction in law enforcement,
111 a notarized transcript of the applicant's relevant scholastic
112 records, and a notarized copy of the curriculum of the
113 completed course of instruction. The subcommittee shall
114 review the application and, if it finds the applicant has met
115 the requirements for certification, shall forward to the
116 applicant documentation of certification. The subcommittee
117 may set the standards for required records to be provided by

118 or on behalf of the applicant officer to verify his or her
119 training, status, or certification as a law-enforcement
120 officer. The subcommittee may allow an applicant officer to
121 participate in the approved equivalent certification program
122 to gain certification as a law-enforcement officer in this
123 state.

124 (d) Except as provided in subdivisions (1) through (3),
125 inclusive, of this subsection, any person who is employed as
126 a law-enforcement officer on or after the effective date of
127 this article and fails to be certified shall be automatically
128 terminated and no further emoluments shall be paid to such
129 officer by his or her employer. Any person terminated shall
130 be entitled to reapply, as a private citizen, to the
131 subcommittee for training and certification, and upon being
132 certified may again be employed as a law-enforcement
133 officer in this state: *Provided*, That if a person is terminated
134 under this subsection because an application was not timely
135 filed to the academy, and the person's employer failed to
136 provide notice or disclosure to that person as set forth in
137 subsection (b) of this section, the employer shall pay the full
138 cost of attending the academy if the person's application to
139 the subcommittee as a private citizen is subsequently
140 approved.

141 (1) Any person who is employed as a law-enforcement
142 officer on or after the effective date of this article and fails
143 to be certified as a result of hardship and/or circumstance
144 beyond his or her control may apply to the director of a
145 training academy for reentry to the next available academy.

146 (2) Any person who is employed as a law-enforcement
147 officer on or after the effective date of this article and fails
148 to be certified as a result of voluntary separation from an
149 academy program shall be automatically terminated and no
150 further emoluments may be paid to such officer by his or her
151 employer. Any person terminated as a result of voluntary
152 separation from an academy program may not be
153 conditionally employed as a law-enforcement officer for a
154 period of two years from the date of voluntary separation.

155 (3) Any person who is employed as a law-enforcement
156 officer on or after the effective date of this article and fails
157 to be certified as a result of dismissal from an academy
158 program shall be automatically terminated and no further
159 emoluments may be paid to such officer by his or her
160 employer. Any person terminated as a result of dismissal
161 from an academy program may not be conditionally
162 employed as a law-enforcement officer for a period of five
163 years from the date of dismissal and receiving approval
164 from the subcommittee.

165 (e) Nothing in this article may be construed as
166 prohibiting any governing body, Civil Service Commission,
167 or chief executive of any West Virginia law-enforcement
168 agency from requiring their law-enforcement officers to
169 meet qualifications and satisfactorily complete a course of
170 law-enforcement instruction which exceeds the minimum
171 entry level law-enforcement qualification and training
172 curricula promulgated by the subcommittee.

173 (f) The subcommittee, or its designee, may decertify or
174 reactivate a law-enforcement officer pursuant to the
175 procedure contained in this article and legislative rules
176 promulgated by the subcommittee.

177 (g) Any person aggrieved by a decision of the
178 subcommittee made pursuant to this article may contest the
179 decision in accordance with the provisions of §29A-5-1 *et*
180 *seq.* of this code.

181 (h) The subcommittee may issue subpoenas for the
182 attendance of witnesses and the production of necessary
183 evidence or documents in any proceeding, review, or
184 investigation relating to certification or hearing before the
185 subcommittee.

§30-29-8. Compensation for employees attending law-enforcement training academy; limitations; agreements to reimburse employers for wages and expenses of employees trained but not continuing employment.

1 (a) A West Virginia law-enforcement agency shall, and
2 a governing board may, pay compensation to employees,
3 including wages, salaries, benefits, tuition, and expenses,
4 for the employees' attendance at a law-enforcement training
5 academy. The compensation paid to the employees for such
6 attendance may not include overtime compensation under
7 the provisions of §21-5C-3 of this code and shall be at the
8 regular rate to which each employee would be entitled for a
9 workweek of 40 hours in regular employment with the
10 employer.

11 (b) In consideration for such compensation, the
12 governing board, hospital, county commission, or municipal
13 government may require each employee to enter into a
14 written agreement in advance of such attendance that
15 obligates the employee to repay the employer if he or she
16 voluntarily discontinues employment within one year
17 immediately following completion of the training
18 curriculum. The amount of repayment shall be a pro rata
19 portion of the total compensation which is equal to the
20 portion of the year which the employee chose not to remain
21 employed.

22 (c) As used in this section, "governing board" has the
23 meaning ascribed in §18B-1-2 of this code.

●

CHAPTER 270

**(S. B. 846 - By Senators Maroney, Tarr, Takubo,
Weld, Azinger, Rucker, Maynard, Roberts, Stollings,
Unger, Plymale and Palumbo)**

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

AN ACT to amend and reenact §16-5B-16 of the Code of West Virginia, 1931, as amended, relating to requiring a hospital to publish notification prior to facility closure regarding patient medical records, including films; requiring publication to take place upon closure; requiring publication to take place upon change in location of patient medical records; providing time frame to respond to patient request for medical records; providing penalty; and providing effective date.

Be it enacted by the Legislature of West Virginia:

§16-5B-16. Public notice regarding the closure of a licensed health care facility or hospital.

1 (a) Any hospital, extended care facility operated in
2 connection with a hospital, ambulatory health care facility,
3 or ambulatory surgical facility freestanding or operated in
4 connection with a hospital licensed in the State of West
5 Virginia under this article that intends to terminate
6 operations shall provide at least three weeks' notice of such
7 intent to the public prior to the actual termination of
8 operations. Pursuant to the provisions of §59-3-1 *et seq.* of
9 this code, the hospital or facility shall cause a Class III legal
10 advertisement to be published in all qualified newspapers of
11 general circulation where the hospital or facility is
12 geographically located and a notice shall be published on
13 the facility's web page within the same time frame. The first

14 publication of the Class III legal advertisement shall occur
15 at least three weeks prior to the date the hospital or facility
16 intends to terminate operations. The Class III legal
17 advertisement shall include, but is not limited to, a
18 statement, along with the specific or proximate date, that the
19 hospital, extended care facility operated in connection with
20 a hospital, ambulatory health care facility, or ambulatory
21 surgical facility freestanding or operated in connection with
22 a hospital, intends to terminate operations, and where
23 medical records, including, but not limited to, all imaging
24 studies may be obtained.

25 (b) Upon closure, the hospital or facility shall cause a
26 Class III legal advertisement to be published in all qualified
27 newspapers of general circulation where the hospital or
28 facility is geographically located informing the public
29 where medical records, including, but not limited to, all
30 imaging studies may be obtained. This notice shall include
31 contact information. A notice shall also be placed on the
32 facility web page.

33 (c) The hospital or facility shall respond to requests for
34 medical records made pursuant to the publication
35 requirements in this section within 30 days.

36 (d) A notification of any change in location of the
37 patients' medical records shall be published in a newspaper
38 of general circulation as set forth in subsection (a) of this
39 section. The confidentiality of the medical records shall be
40 maintained during storage.

41 (e) If the facility fails to produce the requested records
42 within 30 days, a penalty of \$25 per day may be assessed by
43 a court with jurisdiction.

44 (f) This section is effective retroactively to September
45 1, 2019, and continues in effect thereafter. The applicable
46 penalties are only effective for requests for medical records
47 made after the effective date of passage of this section.

CHAPTER 271

**(Com. Sub. for H. B. 2961 - By Delegates Fast, C.
Martin, Foster, Mandt and Butler)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §16-1-9 and §16-1-9a of the Code of West Virginia, 1931, as amended, all relating generally to public health and sanitation of water; providing that the Commissioner of the Bureau of Public Health may require a water supply system to be equipped with a backflow prevention assembly in certain circumstances; establishing procedures for determining whether installation of a backflow prevention assembly is required; setting forth the process by which a customer may seek a waiver to backflow prevention assembly requirements and challenge a determination by the commissioner; requiring documentation of certain activities related to backflow prevention assembly; and requiring reporting and communication of boiled water advisories and lifting of advisories by certain means.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-9. Duties and powers of the commissioner; supervision over local sanitation; violations; jurisdiction; penalties.

1 No person, firm, company, corporation, institution or
2 association, whether public or private, county or municipal,
3 may install or establish any system or method of drainage,
4 water supply, or sewage or excreta disposal without first
5 obtaining a written permit to install or establish the system
6 or method from the commissioner or his or her authorized

7 representative. All systems or methods shall be installed or
8 established in accordance with plans, specifications and
9 instructions issued by the commissioner or which have been
10 approved in writing by the commissioner or his or her
11 authorized representative.

12 Whenever the commissioner or his or her authorized
13 representative finds, upon investigation, that any system or
14 method of drainage, water supply, or sewage or excreta
15 disposal, whether publicly or privately owned, has not been
16 installed in accordance with plans, specifications and
17 instructions issued by the commissioner or approved in
18 writing by the commissioner or his or her authorized
19 representative, the commissioner or his or her authorized
20 representative shall issue an order requiring the owner of the
21 system or method to make alterations necessary to correct
22 the improper condition. The alterations shall be made within
23 a reasonable time, which shall not exceed 30 days, unless a
24 time extension is authorized by the commissioner or his or
25 her authorized representative.

26 The commissioner or his or her designee may
27 determine, upon conducting a risk assessment, that any
28 water supply system must be equipped with a backflow
29 prevention assembly to protect the health and sanitation of
30 water, whether publicly or privately owned: *Provided*, That
31 water supply systems shall not require a backflow
32 prevention assembly unless any of the following are met:

33 (i) it cross-connects with a sprinkler or fire suppression
34 system;

35 (ii) it cross-connects with an active auxiliary water
36 source or water well;

37 (iii) it cross-connects with any fluid storage tank, tub,
38 pool or cistern 85 gallons or larger with a public water inlet
39 that can be below the water level;

40 (iv) it cross-connects with a boiler system;

41 (v) it cross-connects with any land irrigation system; or

42 (vi) the property serviced by the public water supply is
43 a funeral home or mortuary, restaurant, dry cleaner, medical
44 facility, beauty and nail salon, car wash, multi-tenant retail
45 space, commercial building three stories or taller, or
46 commercial space with a dedicated fire service
47 line/sprinkler system, industrial facility, salvage and/or
48 wastewater facility, food processing facility, recycling
49 facility where cross-connected to the public water supply,
50 correctional facility, or any other customer using chemicals
51 harmful to human health that are cross-connected to the
52 public water supply.

53 Prior to requiring installation of a backflow prevention
54 assembly to a water supply system, a risk assessment is
55 required and may be performed based upon the known type
56 of water activity and usage involving the use of the public
57 water supply, by written responses to a written
58 questionnaire presented by the commissioner or his or her
59 designee to the owner or occupier of the water use facility,
60 building or dwelling, or by personal inspection made by the
61 commissioner or his or her designee if the owner or occupier
62 of the premises allows entrance.

63 *Provided however,* That any customer deemed required
64 to install a backflow prevention assembly may appeal the
65 determination and seek a waiver by the water utility, and if
66 not satisfied, may appeal further to the Public Service
67 Commission pursuant to §24-1-1 *et seq.*, §24-2-1 *et seq.*
68 and §29A-1-1 *et seq.* of this code: *And provided further,*
69 That the customer shall have the freedom to choose the
70 brand of any required backflow prevention assembly that
71 otherwise meets the required specifications of the
72 commissioner or his or her designee.

73 The presence of sewage or excreta being disposed of in
74 a manner not approved by the commissioner or his or her
75 authorized representative constitutes prima facie evidence
76 of the existence of a condition endangering public health.

77 The personnel of the Bureau for Public Health shall be
78 available to consult and advise with any person, firm,
79 company, corporation, institution or association, whether
80 publicly or privately owned, county or municipal, or public
81 service authority, as to the most appropriate design, method
82 of operation or alteration of any system or method.

83 Any person, firm, company, corporation, institution or
84 association, whether public or private, county or municipal,
85 violating any provision of this section is guilty of a
86 misdemeanor and, upon conviction thereof, shall be
87 punished by a fine of not less than \$50 nor more than \$500.
88 Any continuing failure or refusal of the convicted person,
89 firm, company, corporation, institution or association,
90 whether public or private, county or municipal, to make the
91 alterations necessary to protect the public health required by
92 the commissioner or his or her authorized representative is
93 a separate, distinct and additional offense for each 24 hour
94 period of failure or refusal, and, upon conviction thereof, the
95 violator shall be fined not less than \$50 nor more than \$500
96 for each conviction: *Provided*, That none of the provisions
97 contained in this section apply to those commercial or
98 industrial wastes that are subject to the regulatory control of
99 the West Virginia Department of Environmental Protection.

100 Magistrates have concurrent jurisdiction with the circuit
101 courts of this state for violations of any provisions of this
102 section.

§16-1-9a. Regulation of public water systems.

1 (a) The commissioner shall regulate public water
2 systems as prescribed in this section.

3 (b) The commissioner shall establish by legislative rule,
4 in accordance with §29A-3-1 *et seq.* of this code:

5 (1) The maximum contaminant levels to which all
6 public water systems shall conform in order to prevent
7 adverse effects on the health of individuals;

8 (2) Treatment techniques that reduce the contaminant or
9 contaminants to a level which will not adversely affect the
10 health of the consumer;

11 (3) Provisions to protect and prevent contamination of
12 wellheads and well fields used by public water supplies so
13 that contaminants do not reach a level that would adversely
14 affect the health of the consumer;

15 (4) Minimum requirements for:

16 (A) Sampling and testing;

17 (B) System operation;

18 (C) Public notification by a public water system on
19 being granted a variance or exemption or upon failure to
20 comply with specific requirements of this section and
21 regulations promulgated under this section;

22 (D) Recordkeeping;

23 (E) Laboratory certification; and

24 (F) Procedures and conditions for granting variances
25 and exemptions to public water systems from state public
26 water systems' regulations;

27 (5) Requirements covering the production and
28 distribution of bottled drinking water;

29 (6) Requirements governing the taste, odor, appearance
30 and other consumer acceptability parameters of drinking
31 water;

32 (7) Any requirement for any water supply system the
33 commissioner determines is necessary to be equipped with
34 a backflow prevention assembly, all maintenance activities
35 must be documented and provided to the commissioner
36 upon request; and

37 (8) Any other requirement the commissioner finds
38 necessary to effectuate the provisions of this article.

39 (c) The commissioner or his or her authorized
40 representatives or designees may enter any part of a public
41 water system, whether or not the system is in violation of a
42 legal requirement, for the purpose of inspecting, sampling
43 or testing and shall be furnished records or information
44 reasonably required for a complete inspection.

45 (d) The commissioner, his or her authorized
46 representative or designee may conduct an evaluation
47 necessary to assure the public water system meets federal
48 safe drinking water requirements. The public water system
49 shall provide a written response to the commissioner within
50 30 days of receipt of the evaluation by the public water
51 system, addressing corrective actions to be taken as a result
52 of the evaluation.

53 (e)(1) Any individual or entity who violates any
54 provision of this article, or any of the rules or orders issued
55 pursuant to this article, is liable for a civil penalty not less
56 than \$1,000 nor more than \$5,000. Each day's violation
57 shall constitute a separate offense.

58 (2) For a willful violation of a provision of this article,
59 or of any of the rules or orders issued under this article, an
60 individual or entity shall be subject to a civil penalty of not
61 more than \$10,000 and each day's violation shall be
62 grounds for a separate penalty.

63 (3) Civil penalties are payable to the commissioner. All
64 moneys collected under this section shall be deposited into
65 a restricted account known as the Safe Drinking Water
66 Fund. All moneys deposited into the fund shall be used by
67 the commissioner to provide technical assistance to public
68 water systems.

69 (f) The commissioner, or his or her authorized
70 representative, may also seek injunctive relief in the circuit

71 court of the county in which all or part of the public water
72 system is located for threatened or continuing violations.

73 (g) By July 1, 2020, a public water system supplying
74 water to the public within the state shall immediately, but in
75 no instance later than six hours, report the occurrence and
76 the lifting of each advisory to local departments of health
77 and to local office of emergency management 911
78 answering point.

79 (h) By July 1, 2021, a public water system shall make
80 available to interested customers boiled water advisories
81 promptly through a text and a voice alert mass notification
82 system.



CHAPTER 272

**(H. B. 4007 - By Delegates Rowan, D. Jeffries, Pack,
Maynard, Porterfield, Foster, Waxman, Bibby,
Hanna, Barnhart and Kump)**

[Passed February 19, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 2, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-2P-1, relating to creating the Born-Alive Abortion Survivors Protection Act generally; defining terms requiring medical practitioners to use the same degree of reasonable medical judgment to preserve the life of a fetus which is born alive as would be used in a live non-abortion birth of the same gestational age; making the failure to exercise such judgment a crime; establishing penalties; and making failure to exercise such judgment a violation of medical licensure standards.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2P. BORN-ALIVE ABORTION SURVIVORS PROTECTION ACT.**§16-2P-1. Born-Alive Abortion Survivors Protection Act.**

1 (a) *Definitions.* — For purposes of this section:

2 (1) “Abortion” has the same meaning as that set forth in
3 §16-2F-2 of this code.

4 (2) “Attempt to perform an abortion” has the same
5 meaning as that set forth in §16-2M-2 of this code.

6 (3) “Born alive” means the complete expulsion or
7 extraction from its mother of the fetus, at any stage of
8 development, who after such expulsion or extraction
9 breathes or has a beating heart, pulsation of the umbilical
10 cord, or definite movement of voluntary muscles, regardless
11 of whether the umbilical cord has been cut, and regardless
12 of whether the expulsion or extraction occurs as a result of
13 natural or induced labor, cesarean section, or induced
14 abortion.

15 (4) “Fetus” has the same meaning as that set forth in
16 §16-2M-2 of this code.

17 (5) “Licensed Medical Professional” means a person
18 licensed under Chapter 30 of this code practicing within his
19 or her scope of practice.

20 (6) “Physician” has the same meaning as set forth in
21 §16-2M-2 of this code.

22 (7) “Reasonable medical judgment” has the same
23 meaning as set forth in §16-2M-2 of this code.

24 (b) *Prohibition.* —

25 (1) If a physician performs or attempts to perform an
26 abortion that results in a child being born alive the physician
27 shall:

28 (A) Exercise the same degree of reasonable medical
29 judgment to preserve the life and health of the child as a
30 physician would render to any other child born alive at the
31 same gestational age; and

32 (B) Ensure that the child born alive is immediately
33 transported and admitted to a hospital.

34 (2) A person who has knowledge of a failure to comply
35 with the requirements of this subsection shall report the
36 failure to the applicable licensing board.

37 (c) *Enforcement.* —

38 (1) Any physician or other licensed medical
39 professional who knowingly and willingly violates
40 subsection (b) of this section is considered to have breached
41 the standard of care owed to patients, and is subject to
42 discipline from the applicable licensure board for that
43 conduct, including, but not limited to, loss of professional
44 license to practice.

45 (2) Any person, not subject to subdivision (1) of this
46 subsection, who knowingly and willfully violates
47 subsection (b) of this section is guilty of the unauthorized
48 practice of medicine in violation of §30-3-13 of this code,
49 and, upon conviction thereof, is subject to the penalties
50 contained in that section.

51 (3) In addition to the penalties set forth in this section, a
52 patient may seek any remedy otherwise available to the
53 patient by applicable law.

54 (4) No penalty may be assessed against any patient upon
55 whom an abortion is performed or attempted to be
56 performed.



CHAPTER 273

**(Com. Sub. for H. B. 4009 - By Delegates Westfall,
Higginbotham, Mandt, Atkinson, Toney, Pack,
Linville and Rohrbach)**

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

AN ACT to amend and reenact §27-1-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §27-5-2a; to amend and reenact §27-5-1, §27-5-2, §27-5-3, §27-5-4, and §27-5-10 of said code; and to amend said code by adding thereto a new section, designated §27-6A-12, all relating to involuntary hospitalization and competency and criminal responsibility of persons charged with or convicted of a crime; defining terms; updating outdated language in the code; requiring the development of an orientation program for mental hygiene commissioners and magistrates who preside over involuntary hospitalization hearings; establishing criteria and time frames for the involuntary admission to and discharge of individuals from a mental health facility or state hospital; addressing the transportation of persons to a state hospital; relating to competency and criminal responsibility of persons charged with criminal offenses generally; requiring persons be committed to least restrictive setting; permitting an authorized staff physician, after examination, to order the involuntary hospitalization of an individual whom the physician believes is addicted or mentally ill and likely to cause serious harm to himself or herself or other individuals; setting forth a procedure; providing for payment for services; limiting liability; requesting the Supreme Court of Appeals to generate a statement for the attesting physician; providing the attesting physician statement be provided to the patient; requesting the

Supreme Court of Appeals to produce information to hospitals regarding contact information for mental hygiene commissioners, county magistrates, and circuit judges; and establishing that if a mental hygiene commissioner, county magistrate, or circuit judge does not respond to the request within 24 hours, a report shall be filed to the Supreme Court of Appeals; requiring release when staff physicians determine after three days that individual does not meet criteria for continued commitment; requiring specific finding that inpatient hospital treatment is required; directing the Secretary of the Department of Health and Human Resources in collaboration with representatives of the judiciary, representatives of the prosecuting attorneys, the criminal defense bar, and advocates for the disability community to develop legislation to update and modify statutory provisions related to competence and criminal responsibility to ensure protection of constitutional rights and public safety; and requiring that proposed legislation be submitted 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:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-11. Addiction.

1 (a) As used in this chapter, “addiction” or substance use
2 disorder means a maladaptive pattern of substance use
3 leading to clinically significant impairment or distress as
4 manifested by one or more of the following occurring within
5 30 days prior to the filing of the petition:

6 (1) Recurrent substance use resulting in a failure to
7 fulfill major role obligations at work, school, or home,
8 including, but not limited to, repeated absences or poor
9 work performance related to substance use; substance-
10 related absences, suspensions, or expulsions from school; or
11 neglect of children or household;

12 (2) Recurrent use in situations in which it is physically
13 hazardous, including, but not limited to, driving while
14 intoxicated or operating a machine when impaired by
15 substance use;

16 (3) Recurrent substance-related legal problems; or

17 (4) Continued use despite knowledge or having
18 persistent or recurrent social or interpersonal problems
19 caused or exacerbated by the effects of the substance.

20 (b) As used in this section, “substance” means alcohol,
21 controlled substances as defined in sections §60A-2-204,
22 §60A-2-206, §60A-2-208, and §60A-2-210 of this code, or
23 anything consumed for its psychoactive effect whether or
24 not designed for human consumption.

ARTICLE 5. INVOLUNTARY HOSITALIZATION.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff; duties of Supreme Court of Appeals; use of certified municipal law-enforcement officers.

1 (a) *Appointment of mental hygiene commissioners.* —
2 The chief judge in each judicial circuit of this state shall
3 appoint a competent attorney and may, if necessary, appoint
4 additional attorneys to serve as mental hygiene
5 commissioners to preside over involuntary hospitalization
6 hearings. Mental hygiene commissioners shall be persons of
7 good moral character and of standing in their profession and
8 they shall, before assuming the duties of a commissioner,
9 take the oath required of other special commissioners as
10 provided in §6-1-1 *et seq.* of this code.

11 Prior to presiding over an involuntary hospitalization
12 hearing, each newly appointed person to serve as a mental
13 hygiene commissioner and all magistrates shall attend and
14 complete an orientation course that consists of training
15 provided annually by the Supreme Court of Appeals and

16 complete an orientation program to be developed by the
17 Secretary of the Department of Health and Human
18 Resources. In addition, existing mental hygiene
19 commissioners and all magistrates trained to hold probable
20 cause and emergency detention hearings involving
21 involuntary hospitalization shall attend and complete a
22 course provided by the Supreme Court of Appeals and
23 complete an orientation program to be developed by the
24 Secretary of the Department of Health and Human
25 Resources. Persons attending the courses outside the county
26 of their residence shall be reimbursed out of the budget of
27 the Supreme Court—General Judicial for reasonable
28 expenses incurred. The Supreme Court of Appeals shall
29 establish curricula and rules for the courses, including rules
30 providing for the reimbursement of reasonable expenses as
31 authorized in this section. The Secretary of the Department
32 of Health and Human Resources shall consult with the
33 Supreme Court of Appeals regarding the development of the
34 orientation program.

35 (b) *Duties of mental hygiene commissioners.* —

36 (1) Mental hygiene commissioners may sign and issue
37 summonses for the attendance, at any hearing held pursuant
38 to §27-5-4 of this code, of the individual sought to be
39 committed; may sign and issue subpoenas for witnesses,
40 including subpoenas duces tecum; may place any witness
41 under oath; may elicit testimony from applicants,
42 respondents, and witnesses regarding factual issues raised
43 in the petition; and may make findings of fact on evidence
44 and may make conclusions of law, but the findings and
45 conclusions are not binding on the circuit court. All mental
46 hygiene commissioners shall be reasonably compensated at
47 a uniform rate determined by the Supreme Court of
48 Appeals. Mental hygiene commissioners shall submit all
49 requests for compensation to the administrative director of
50 the courts for payment. Mental hygiene commissioners shall
51 discharge their duties and hold their offices at the pleasure
52 of the chief judge of the judicial circuit in which he or she

53 is appointed and may be removed at any time by the chief
54 judge. A mental hygiene commissioner shall conduct
55 orderly inquiries into the mental health of the individual
56 sought to be committed concerning the advisability of
57 committing the individual to a mental health facility. The
58 mental hygiene commissioner shall safeguard, at all times,
59 the rights and interests of the individual as well as the
60 interests of the state. The mental hygiene commissioner
61 shall make a written report of his or her findings to the
62 circuit court. In any proceedings before any court of record
63 as set forth in this article, the court of record shall appoint
64 an interpreter for any individual who is deaf or cannot
65 speak, or who speaks a foreign language, and who may be
66 subject to involuntary commitment to a mental health
67 facility.

68 (2) A mental hygiene commissioner appointed by the
69 circuit court of one county or multiple county circuits may
70 serve in that capacity in a jurisdiction other than that of his
71 or her original appointment if it is agreed upon by the terms
72 of a cooperative agreement between the circuit courts and
73 county commissions of two or more counties entered into to
74 provide prompt resolution of mental hygiene matters during
75 hours when the courthouse is closed or on nonjudicial days.

76 (c) *Duties of prosecuting attorney.* —The prosecuting
77 attorney or one of his or her assistants shall represent the
78 applicants in all final commitment proceedings filed
79 pursuant to the provisions of this article. The prosecuting
80 attorney may appear in any proceeding held pursuant to the
81 provisions of this article if he or she determines it to be in
82 the public interest.

83 (d) *Duties of sheriff.* — Upon written order of the circuit
84 court, mental hygiene commissioner, or magistrate in the
85 county where the individual formally accused of being
86 mentally ill or having a substance use disorder is a resident
87 or is found, the sheriff of that county shall take the
88 individual into custody and transport him or her to and from
89 the place of hearing and the mental health facility. The

90 sheriff shall also maintain custody and control of the
91 accused individual during the period of time in which the
92 individual is waiting for the involuntary commitment
93 hearing to be convened and while the hearing is being
94 conducted: *Provided*, That an individual who is a resident
95 of a state other than West Virginia shall, upon a finding of
96 probable cause, be transferred to his or her state of residence
97 for treatment pursuant to §27-5-4(p) of this code: *Provided*,
98 *however*, That where an individual is a resident of West
99 Virginia but not a resident of the county in which he or she
100 is found and there is a finding of probable cause, the county
101 in which the hearing is held may seek reimbursement from
102 the county of residence for reasonable costs incurred by the
103 county attendant to the mental hygiene proceeding.
104 Notwithstanding any provision of this code to the contrary,
105 sheriffs may enter into cooperative agreements with sheriffs
106 of one or more other counties, with the concurrence of their
107 respective circuit courts and county commissions, by which
108 transportation and security responsibilities for hearings held
109 pursuant to the provisions of this article during hours when
110 the courthouse is closed or on nonjudicial days may be
111 shared in order to facilitate prompt hearings and to
112 effectuate transportation of persons found in need of
113 treatment. In the event an individual requires transportation
114 to a state hospital as defined by §27-1-6 of this code, the
115 sheriff shall contact the state hospital in advance of the
116 transportation to determine if the state hospital has available
117 suitable bed capacity to place the individual.

118 (e) *Duty of sheriff upon presentment to mental health*
119 *care facility.* — When a person is brought to a mental health
120 care facility for purposes of evaluation for commitment
121 under this article, if he or she is violent or combative, the
122 sheriff or his or her designee shall maintain custody of the
123 person in the facility until the evaluation is completed, or
124 the county commission shall reimburse the mental health
125 care facility at a reasonable rate for security services
126 provided by the mental health care facility for the period of

127 time the person is at the hospital prior to the determination
128 of mental competence or incompetence.

129 (f) *Duties of Supreme Court of Appeals.* — The Supreme
130 Court of Appeals shall provide uniform petition, procedure,
131 and order forms which shall be used in all involuntary
132 hospitalization proceedings brought in this state.

133 (g) *Duties of the Department of Health and Human*
134 *Resources.* — The secretary shall develop an orientation
135 program as provided in subsection (a) of this section. The
136 orientation program shall include, but not be limited to,
137 instruction regarding the nature and treatment of mental
138 illness and substance use disorder; the goal and purpose of
139 commitment; community-based treatment options; and less
140 restrictive alternatives to inpatient commitment.

**§27-5-2. Institution of proceedings for involuntary custody for
examination; custody; probable cause hearing;
examination of individual.**

1 (a) Any adult person may make an application for
2 involuntary hospitalization for examination of an individual
3 when the person making the application has reason to
4 believe that the individual to be examined has a substance
5 use disorder as defined by the most recent edition of the
6 American Psychiatric Association in the Diagnostic and
7 Statistical Manual of Mental Disorders, inclusive of
8 substance use withdrawal, or is mentally ill and, because of
9 his or her substance use disorder or mental illness, the
10 individual is likely to cause serious harm to himself, herself,
11 or to others if allowed to remain at liberty while awaiting an
12 examination and certification by a physician, psychologist,
13 licensed professional counselor, licensed independent social
14 worker, an advanced nurse practitioner, or physician
15 assistant as provided in subsection (e) of this section:
16 *Provided,* That a diagnosis of dementia alone may not serve
17 as a basis for involuntary commitment.

18 Notwithstanding any language in this subsection to the
19 contrary, if the individual to be examined under the
20 provisions of this section is incarcerated in a jail, prison, or
21 other correctional facility, then only the chief administrative
22 officer of the facility holding the individual may file the
23 application, and the application must include the additional
24 statement that the correctional facility itself cannot
25 reasonably provide treatment and other services for the
26 individual's mental illness or substance use disorder.

27 (b) The person making the application shall make the
28 application under oath.

29 (c) Application for involuntary custody for examination
30 may be made to the circuit court, magistrate court, or a
31 mental hygiene commissioner of the county in which the
32 individual resides or of the county in which he or she may
33 be found. A magistrate before whom an application or
34 matter is pending may, upon the availability of a mental
35 hygiene commissioner or circuit court judge for immediate
36 presentation of an application or pending matter, transfer the
37 pending matter or application to the mental hygiene
38 commissioner or circuit court judge for further proceedings
39 unless otherwise ordered by the chief judge of the judicial
40 circuit.

41 (d) The person making the application shall give
42 information and state facts in the application required by the
43 form provided for this purpose by the Supreme Court of
44 Appeals.

45 (e) The circuit court, mental hygiene commissioner, or
46 magistrate may enter an order for the individual named in
47 the application to be detained and taken into custody for the
48 purpose of holding a probable cause hearing as provided in
49 §27-5-2(g) of this code for the purpose of an examination of
50 the individual by a physician, psychologist, a licensed
51 professional counselor practicing in compliance with §30-
52 31-1 *et seq.* of this code, a licensed independent clinical
53 social worker practicing in compliance with §30-30-1 *et*

54 *seq.* of this code, an advanced nurse practitioner with
55 psychiatric certification practicing in compliance with §30-
56 7-1 *et seq.* of this code, a physician's assistant practicing in
57 compliance with §30-3-1 *et seq.* of this code, or a
58 physician's assistant practicing in compliance with §30-3E-
59 1 *et seq.* of this code: *Provided*, That a licensed professional
60 counselor, a licensed independent clinical social worker, a
61 physician's assistant, or an advanced nurse practitioner with
62 psychiatric certification may only perform the examination
63 if he or she has previously been authorized by an order of
64 the circuit court to do so, the order having found that the
65 licensed professional counselor, the licensed independent
66 clinical social worker, physician's assistant, or advanced
67 nurse practitioner with psychiatric certification has
68 particularized expertise in the areas of mental health and
69 mental hygiene or substance use disorder sufficient to make
70 the determinations required by the provisions of this section.
71 The examination is to be provided or arranged by a
72 community mental health center designated by the Secretary
73 of the Department of Health and Human Resources to serve
74 the county in which the action takes place. The order is to
75 specify that the hearing be held immediately and is to
76 provide for the appointment of counsel for the individual:
77 *Provided, however*, That the order may allow the hearing to
78 be held up to 24 hours after the person to be examined is
79 taken into custody rather than immediately if the circuit
80 court of the county in which the person is found has
81 previously entered a standing order which establishes within
82 that jurisdiction a program for placement of persons
83 awaiting a hearing which assures the safety and humane
84 treatment of persons: *Provided further*, That the time
85 requirements set forth in this subsection only apply to
86 persons who are not in need of medical care for a physical
87 condition or disease for which the need for treatment
88 precludes the ability to comply with the time requirements.
89 During periods of holding and detention authorized by this
90 subsection, upon consent of the individual or in the event of
91 a medical or psychiatric emergency, the individual may
92 receive treatment. The medical provider shall exercise due

93 diligence in determining the individual's existing medical
94 needs and provide treatment the individual requires,
95 including previously prescribed medications. As used in this
96 section, "psychiatric emergency" means an incident during
97 which an individual loses control and behaves in a manner
98 that poses substantial likelihood of physical harm to
99 himself, herself, or others. Where a physician, psychologist,
100 licensed professional counselor, licensed independent
101 clinical social worker, physician's assistant, or advanced
102 nurse practitioner with psychiatric certification has, within
103 the preceding 72 hours, performed the examination required
104 by the provisions of this subsection, the community mental
105 health center may waive the duty to perform or arrange
106 another examination upon approving the previously
107 performed examination. Notwithstanding the provisions of
108 this subsection, §27-5-4(r) of this code applies regarding
109 payment by the county commission for examinations at
110 hearings. If the examination reveals that the individual is not
111 mentally ill or has no substance use disorder, or is
112 determined to be mentally ill or has a substance use disorder
113 but not likely to cause harm to himself, herself, or others,
114 the individual shall be immediately released without the
115 need for a probable cause hearing and the examiner is not
116 civilly liable for the rendering of the opinion absent a
117 finding of professional negligence. The examiner shall
118 immediately provide the mental hygiene commissioner,
119 circuit court, or magistrate before whom the matter is
120 pending the results of the examination on the form provided
121 for this purpose by the Supreme Court of Appeals for entry
122 of an order reflecting the lack of probable cause.

123 (f) A probable cause hearing is to be held before a
124 magistrate, the mental hygiene commissioner, or circuit
125 judge of the county of which the individual is a resident or
126 where he or she was found. If requested by the individual or
127 his or her counsel, the hearing may be postponed for a
128 period not to exceed 48 hours.

129 The individual must be present at the hearing and has
130 the right to present evidence, confront all witnesses and
131 other evidence against him or her, and examine testimony
132 offered, including testimony by representatives of the
133 community mental health center serving the area. Expert
134 testimony at the hearing may be taken telephonically or via
135 videoconferencing. The individual has the right to remain
136 silent and to be proceeded against in accordance with the
137 Rules of Evidence of the Supreme Court of Appeals, except
138 as provided in §27-1-12 of this code. At the conclusion of
139 the hearing, the magistrate, mental hygiene commissioner,
140 or circuit court judge shall find and enter an order stating
141 whether or not it is likely that deterioration will occur
142 without clinically necessary treatment, or there is probable
143 cause to believe that the individual, as a result of mental
144 illness or substance use disorder, is likely to cause serious
145 harm to himself or herself or to others.

146 (g) Probable cause hearings may occur in the county
147 where a person is hospitalized. The judicial hearing officer
148 may: Use videoconferencing and telephonic technology;
149 permit persons hospitalized for substance use disorder to be
150 involuntarily hospitalized only until detoxification is
151 accomplished; and specify other alternative or modified
152 procedures that are consistent with the purposes and
153 provisions of this article. The alternative or modified
154 procedures shall fully and effectively guarantee to the
155 person who is the subject of the involuntary commitment
156 proceeding and other interested parties due process of the
157 law and access to the least restrictive available treatment
158 needed to prevent serious harm to self or others.

159 (h) If the magistrate, mental hygiene commissioner, or
160 circuit court judge at a probable cause hearing or a mental
161 hygiene commissioner or circuit judge at a final
162 commitment hearing held pursuant to the provisions of §27-
163 5-4 of this code finds that the individual, as a result of
164 mental illness or substance use disorder, is likely to cause
165 serious harm to himself, herself, or others and because of

166 mental illness or a substance use disorder requires
167 treatment, the magistrate, mental hygiene commissioner, or
168 circuit court judge may consider evidence on the question
169 of whether the individual's circumstances make him or her
170 amenable to outpatient treatment in a nonresidential or
171 nonhospital setting pursuant to a voluntary treatment
172 agreement. At the conclusion of the hearing, the magistrate,
173 mental hygiene commissioner, or circuit court judge shall
174 find and enter an order stating whether or not it is likely that
175 deterioration will occur without clinically necessary
176 treatment, or there is probable cause to believe that the
177 individual, as a result of mental illness or substance use
178 disorder, is likely to cause serious harm to himself or herself
179 or others. The agreement is to be in writing and approved
180 by the individual, his or her counsel, and the magistrate,
181 mental hygiene commissioner, or circuit court judge. If the
182 magistrate, mental hygiene commissioner, or circuit court
183 judge determines that appropriate outpatient treatment is
184 available in a nonresidential or nonhospital setting, the
185 individual may be released to outpatient treatment upon the
186 terms and conditions of the voluntary treatment agreement.
187 The failure of an individual released to outpatient treatment
188 pursuant to a voluntary treatment agreement to comply with
189 the terms of the voluntary treatment agreement constitutes
190 evidence that outpatient treatment is insufficient and, after
191 a hearing before a magistrate, mental hygiene
192 commissioner, or circuit judge on the issue of whether or
193 not the individual failed or refused to comply with the terms
194 and conditions of the voluntary treatment agreement and
195 whether the individual as a result of mental illness or
196 substance use disorder remains likely to cause serious harm
197 to himself, herself, or others, the entry of an order requiring
198 admission under involuntary hospitalization pursuant to the
199 provisions of §27-5-3 of this code may be entered. Nothing
200 in the provisions of this article regarding release pursuant to
201 a voluntary treatment agreement or convalescent status may
202 be construed as creating a right to receive outpatient mental
203 health services or treatment, or as obligating any person or
204 agency to provide outpatient services or treatment. Time

205 limitations set forth in this article relating to periods of
206 involuntary commitment to a mental health facility for
207 hospitalization do not apply to release pursuant to the terms
208 of a voluntary treatment agreement: *Provided*, That release
209 pursuant to a voluntary treatment agreement may not be for
210 a period of more than six months if the individual has not
211 been found to be involuntarily committed during the
212 previous two years and for a period of no more than two
213 years if the individual has been involuntarily committed
214 during the preceding two years. If in any proceeding held
215 pursuant to this article the individual objects to the issuance
216 or conditions and terms of an order adopting a voluntary
217 treatment agreement, then the circuit judge, magistrate, or
218 mental hygiene commissioner may not enter an order
219 directing treatment pursuant to a voluntary treatment
220 agreement. If involuntary commitment with release
221 pursuant to a voluntary treatment agreement is ordered, the
222 individual subject to the order may, upon request during the
223 period the order is in effect, have a hearing before a mental
224 hygiene commissioner or circuit judge where the individual
225 may seek to have the order canceled or modified. Nothing
226 in this section affects the appellate and habeas corpus rights
227 of any individual subject to any commitment order.

228 Notwithstanding anything in this article to the contrary,
229 the commitment of any individual as provided in this article
230 shall be in the least restrictive setting and in an outpatient
231 community-based treatment program to the extent resources
232 and programs are available, unless the clear and convincing
233 evidence of the certifying professional under subsection (e)
234 of this section, who is acting in a manner consistent with the
235 standard of care, establishes that the commitment or
236 treatment of that individual requires an inpatient hospital
237 placement. Outpatient treatment will be based upon a plan
238 jointly prepared by the department and the comprehensive
239 community mental health center or licensed behavioral
240 health provider.

241 (i) If the certifying professional determines that an
242 individual requires involuntary hospitalization for a
243 substance use disorder which, due to the degree of the
244 disorder, creates a reasonable likelihood that withdrawal or
245 detoxification will cause significant medical complications,
246 the person certifying the individual shall recommend that
247 the individual be closely monitored for possible medical
248 complications. If the magistrate, mental hygiene
249 commissioner, or circuit court judge presiding orders
250 involuntary hospitalization, he or she shall include a
251 recommendation that the individual be closely monitored in
252 the order of commitment.

253 (j) The Supreme Court of Appeals and the Secretary of
254 the Department of Health and Human Resources shall
255 specifically develop and propose a statewide system for
256 evaluation and adjudication of mental hygiene petitions
257 which shall include payment schedules and
258 recommendations regarding funding sources. Additionally,
259 the Secretary of the Department of Health and Human
260 Resources shall also immediately seek reciprocal
261 agreements with officials in contiguous states to develop
262 interstate/intergovernmental agreements to provide efficient
263 and efficacious services to out-of-state residents found in
264 West Virginia and who are in need of mental hygiene
265 services.

§27-5-2a. Process for involuntary hospitalization.

1 (a) As used in this section:

2 (1) “Addiction” has the same meaning as the term is
3 defined in §27-1-11 of this code.

4 (2) “Authorized staff physician” means a physician,
5 authorized pursuant to the provisions of §30-3-1 *et seq.* or
6 §30-14-1 *et seq.* of this code, who is a bona fide member of
7 the hospital’s medical staff.

8 (3) “Hospital” means a facility licensed pursuant to the
9 provisions of §16-5b-1 *et seq.* of this code, and any acute

10 care facility operated by the state government that primarily
11 provides inpatient diagnostic, treatment, or rehabilitative
12 services to injured, disabled, or sick individuals under the
13 supervision of physicians.

14 (4) “Psychiatric emergency” means an incident during
15 which an individual loses control and behaves in a manner
16 that poses substantial likelihood of physical harm to
17 himself, herself, or others.

18 (b)(1) If a mental hygiene commissioner, magistrate,
19 and circuit judge are unavailable or unable to be
20 immediately contacted, an authorized staff physician may
21 order the involuntary hospitalization of an individual who is
22 present at, or presented at, a hospital emergency department
23 in need of treatment, if the authorized staff physician
24 believes, following an examination of the individual, that
25 the individual is addicted or is mentally ill and, because of
26 his or her addiction or mental illness, is likely to cause
27 serious harm to himself, herself or to others if allowed to
28 remain at liberty. The authorized staff physician shall sign a
29 statement attesting to his or her decision that the patient
30 presents a harm to himself, herself or others and needs to be
31 held involuntarily for up to 72 hours. The West Virginia
32 Supreme Court of Appeals is requested to generate a form
33 for the statement to be signed by the authorized staff
34 physician or other person authorized by the hospital and
35 provided to the individual.

36 (2) Immediately upon admission, or as soon as
37 practicable thereafter, but in no event later than 24 hours
38 after an involuntary hospitalization pursuant to this section,
39 the authorized staff physician or designated employee shall
40 file a mental hygiene petition in which the authorized staff
41 physician certifies that the individual for whom the
42 involuntary hospitalization is sought is addicted or is
43 mentally ill and, because of his or her addiction or mental
44 illness, is likely to cause serious harm to himself, herself, or
45 to other individuals if allowed to remain at liberty. The
46 authorized staff physician shall also certify the same in the

47 individual's health records. Upon receipt of this filing, the
48 mental hygiene commissioner, a magistrate, or circuit judge
49 shall conduct a hearing pursuant to §27-5-2 of this code.

50 (3) An individual who is involuntarily hospitalized
51 pursuant to this section shall be released from the hospital
52 within 72 hours, unless further detained under the applicable
53 provisions of this article.

54 (c) During a period of involuntary hospitalization
55 authorized by this section, upon consent of the individual,
56 or in the event of a medical or psychiatric emergency, the
57 individual may receive treatment. The hospital or
58 authorized staff physician shall exercise due diligence in
59 determining the individual's existing medical needs and
60 provide treatment the individual requires, including
61 previously prescribed medications.

62 (d) Each hospital or authorized staff physician which
63 provides services under this section shall be paid for the
64 services at the same rate the hospital or authorized staff
65 physician negotiates with the patient's insurer. If the patient
66 is uninsured, the hospital or authorized staff physician may
67 file a claim for payment with the West Virginia Legislative
68 Claims Commission in accordance with §14-2-1 *et seq.* of
69 this code.

70 (e) Authorized staff physicians and hospitals and their
71 employees carrying out duties or rendering professional
72 opinions as provided in this section shall be free from
73 liability for their actions, if the actions are performed in
74 good faith and within the scope of their professional duties
75 and in a manner consistent with the standard of care.

76 (f) The West Virginia Supreme Court of Appeals is
77 requested, by no later than July 1, 2020, to provide each
78 hospital with a list of names and contact information of the
79 mental hygiene commissioners, magistrates, and circuit
80 judges to address mental hygiene petitions in the county
81 where the hospital is located. The West Virginia Supreme

82 Court of Appeals is requested to update this list regularly
83 and the list shall reflect on-call information. If a mental
84 hygiene commissioner, county magistrate, or circuit judge
85 does not respond to the request within 24 hours, a report
86 shall be filed to the West Virginia Supreme Court of
87 Appeals.

88 (g) An action taken against an individual pursuant to this
89 section may not be construed to be an adjudication of the
90 individual, nor shall any action taken pursuant to this
91 section be construed to satisfy the requirements of §61-7-
92 7(a)(4) of this code.

**§27-5-3. Admission under involuntary hospitalization for
examination; hearing; release.**

1 (a) *Admission to a mental health facility for*
2 *examination.* — Any individual may be admitted to a mental
3 health facility for examination and treatment upon entry of
4 an order finding probable cause as provided in §27-5-2 of
5 this code upon a finding by a licensed physician that the
6 individual is medically stable, and upon certification by a
7 physician, psychologist, licensed professional counselor,
8 licensed independent clinical social worker practicing in
9 compliance with the provisions of §30-30-1 *et seq.* of this
10 code, an advanced nurse practitioner with psychiatric
11 certification practicing in compliance with §30-7-1 *et seq.*
12 of this code, or a physician's assistant practicing in
13 compliance with §30-3E-1 *et seq.* of this code with
14 advanced duties in psychiatric medicine that he or she has
15 examined the individual and is of the opinion that the
16 individual is mentally ill or has a substance use disorder and,
17 because of the mental illness or substance use disorder, is
18 likely to cause serious harm to himself, herself, or to others
19 if not immediately restrained: *Provided,* That the opinions
20 offered by an independent clinical social worker, an
21 advanced nurse practitioner with psychiatric certification, or
22 a physician's assistant with advanced duties in psychiatric
23 medicine must be within his or her particular areas of

24 expertise, as recognized by the order of the authorizing
25 court.

26 (b) *Three-day time limitation on examination.* — If the
27 examination does not take place within three days from the
28 date the individual is taken into custody, the individual shall
29 be released. If the examination reveals that the individual is
30 not mentally ill or has a substance use disorder, the
31 individual shall be released.

32 (c) *Three-day time limitation on certification.* — The
33 certification required in §27-5-3(a) of this code is valid for
34 three days. Any individual with respect to whom the
35 certification has been issued may not be admitted on the
36 basis of the certification at any time after the expiration of
37 three days from the date of the examination.

38 (d) *Findings and conclusions required for certification.*
39 — A certification under this section must include findings
40 and conclusions of the mental examination, the date, time,
41 and place of the examination, and the facts upon which the
42 conclusion that involuntary commitment is necessary is
43 based.

44 (e) *Notice requirements.* — When an individual is
45 admitted to a mental health facility or a state hospital
46 pursuant to the provisions of this section, the chief medical
47 officer of the facility shall immediately give notice of the
48 individual's admission to the individual's spouse, if any,
49 and one of the individual's parents or guardians or if there
50 is no spouse and are no parents or guardians, to one of the
51 individual's adult next of kin if the next of kin is not the
52 applicant. Notice shall also be given to the community
53 mental health facility, if any, having jurisdiction in the
54 county of the individual's residence. The notices other than
55 to the community mental health facility shall be in writing
56 and shall be transmitted to the person or persons at his, her,
57 or their last known address by certified mail, return receipt
58 requested.

59 (f) *Three-day time limitation for examination and*
60 *certification at mental health facility or state hospital.* —
61 After the individual's admission to a mental health facility
62 or state hospital, he or she may not be detained more than
63 three days, excluding Sundays and holidays, unless, within
64 the period, the individual is examined by a staff physician
65 and the physician certifies that in his or her opinion the
66 patient is mentally ill or has a substance use disorder and is
67 likely to injure himself, herself, or others if allowed to be at
68 liberty. In the event the staff physician determines that the
69 individual does not meet the criteria for continued
70 commitment, that the individual can be treated in an
71 available outpatient community-based treatment program
72 and poses no present danger to himself, herself or others, or
73 that the individual has an underlying medical issue or issues
74 that resulted in a determination that the individual should
75 not have been committed, the staff physician shall release
76 and discharge the individual as appropriate as soon as
77 practicable.

78 (g) *Ten-day time limitation for institution of final*
79 *commitment proceedings.* — If, in the opinion of the
80 examining physician, the patient is mentally ill or has a
81 substance use disorder and because of the mental illness or
82 substance use disorder is likely to injure himself, herself, or
83 others if allowed to be at liberty, the chief medical officer
84 shall, within 10 days from the date of admission, institute
85 final commitment proceedings as provided in §27-5-4 of
86 this code. If the proceedings are not instituted within the 10-
87 day period, the individual shall be immediately released.
88 After the request for hearing is filed, the hearing may not be
89 canceled on the basis that the individual has become a
90 voluntary patient unless the mental hygiene commissioner
91 concurs in the motion for cancellation of the hearing.

92 (h) *Twenty-day time limitation for conclusion of all*
93 *proceedings.* — If all proceedings as provided in §27-3-1 *et*
94 *seq.* and §27-4-1 *et seq.* of this code are not completed

95 within 20 days from the date of institution of the
96 proceedings, the individual shall be immediately released.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

1 (a) Involuntary commitment. — Except as provided in
2 §27-5-3 of this code, no individual may be involuntarily
3 committed to a mental health facility or state hospital except
4 by order entered of record at any time by the circuit court of
5 the county in which the person resides or was found, or if
6 the individual is hospitalized in a mental health facility or
7 state hospital located in a county other than where he or she
8 resides or was found, in the county of the mental health
9 facility and then only after a full hearing on issues relating
10 to the necessity of committing an individual to a mental
11 health facility or state hospital. If the individual objects to
12 the hearing being held in the county where the mental health
13 facility is located, the hearing shall be conducted in the
14 county of the individual's residence.

15 (b) How final commitment proceedings are
16 commenced. — Final commitment proceedings for an
17 individual may be commenced by the filing of a written
18 application under oath by an adult person having personal
19 knowledge of the facts of the case. The certificate or
20 affidavit is filed with the clerk of the circuit court or mental
21 hygiene commissioner of the county where the individual is
22 a resident or where he or she may be found, or the county of
23 a mental health facility if he or she is hospitalized in a
24 mental health facility or state hospital located in a county
25 other than where he or she resides or may be found.

26 (c) Oath; contents of application; who may inspect
27 application; when application cannot be filed. —

28 (1) The person making the application shall do so under
29 oath.

30 (2) The application shall contain statements by the
31 applicant that the individual is likely to cause serious harm

32 to self or others due to what the applicant believes are
33 symptoms of mental illness or substance use disorder. The
34 applicant shall state in detail the recent overt acts upon
35 which the belief is based.

36 (3) The written application, certificate, affidavit, and
37 any warrants issued pursuant thereto, including any related
38 documents, filed with a circuit court, mental hygiene
39 commissioner, or magistrate for the involuntary
40 hospitalization of an individual are not open to inspection
41 by any person other than the individual, unless authorized
42 by the individual or his or her legal representative or by
43 order of the circuit court. The records may not be published
44 unless authorized by the individual or his or her legal
45 representative. Disclosure of these records may, however,
46 be made by the clerk, circuit court, mental hygiene
47 commissioner, or magistrate to provide notice to the Federal
48 National Instant Criminal Background Check System
49 established pursuant to section 103(d) of the Brady
50 Handgun Violence Prevention Act, 18 U.S.C. §922, and the
51 central state mental health registry, in accordance with §61-
52 7A-1 *et seq.* of this code. Disclosure may also be made to
53 the prosecuting attorney and reviewing court in an action
54 brought by the individual pursuant to §61-7A-5 of this code
55 to regain firearm and ammunition rights.

56 (4) Applications may not be accepted for individuals
57 who only have epilepsy, dementia, or an intellectual or
58 developmental disability.

59 (d) Certificate filed with application; contents of
60 certificate; affidavit by applicant in place of certificate. —

61 (1) The applicant shall file with his or her application
62 the certificate of a physician or a psychologist stating that in
63 his or her opinion the individual is mentally ill or has a
64 substance use disorder and that because of the mental illness
65 or substance use disorder, the individual is likely to cause
66 serious harm to self or others if allowed to remain at liberty
67 and, therefore, should be hospitalized. The certificate shall

68 state in detail the recent overt acts on which the conclusion
69 is based.

70 (2) A certificate is not necessary when an affidavit is
71 filed by the applicant showing facts and the individual has
72 refused to submit to examination by a physician or a
73 psychologist.

74 (e) Notice requirements; eight days' notice required. —
75 Upon receipt of an application, the mental hygiene
76 commissioner or circuit court shall review the application,
77 and if it is determined that the facts alleged, if any, are
78 sufficient to warrant involuntary hospitalization,
79 immediately fix a date for and have the clerk of the circuit
80 court give notice of the hearing:

81 (1) To the individual;

82 (2) To the applicant or applicants;

83 (3) To the individual's spouse, one of the parents or
84 guardians, or, if the individual does not have a spouse,
85 parents or parent or guardian, to one of the individual's adult
86 next of kin if the next of kin is not the applicant;

87 (4) To the mental health authorities serving the area;

88 (5) To the circuit court in the county of the individual's
89 residence if the hearing is to be held in a county other than
90 that of the individual's residence; and

91 (6) To the prosecuting attorney of the county in which
92 the hearing is to be held.

93 (f) The notice shall be served on the individual by
94 personal service of process not less than eight days prior to
95 the date of the hearing and shall specify:

96 (1) The nature of the charges against the individual;

97 (2) The facts underlying and supporting the application
98 of involuntary commitment;

99 (3) The right to have counsel appointed;

100 (4) The right to consult with and be represented by
101 counsel at every stage of the proceedings; and

102 (5) The time and place of the hearing.

103 The notice to the individual's spouse, parents or parent
104 or guardian, the individual's adult next of kin or to the
105 circuit court in the county of the individual's residence may
106 be by personal service of process or by certified or
107 registered mail, return receipt requested, and shall state the
108 time and place of the hearing.

109 (g) Examination of individual by court-appointed
110 physician, psychologist, advanced nurse practitioner, or
111 physician's assistant; custody for examination; dismissal of
112 proceedings. —

113 (1) Except as provided in subdivision (3) of this
114 subsection, within a reasonable time after notice of the
115 commencement of final commitment proceedings is given,
116 the circuit court or mental hygiene commissioner shall
117 appoint a physician, psychologist, an advanced nurse
118 practitioner with psychiatric certification, or a physician's
119 assistant with advanced duties in psychiatric medicine to
120 examine the individual and report to the circuit court or
121 mental hygiene commissioner his or her findings as to the
122 mental condition or substance use disorder of the individual
123 and the likelihood of causing serious harm to self or others.

124 (2) If the designated physician, psychologist, advanced
125 nurse practitioner, or physician assistant reports to the
126 circuit court or mental hygiene commissioner that the
127 individual has refused to submit to an examination, the
128 circuit court or mental hygiene commissioner shall order
129 him or her to submit to the examination. The circuit court or
130 mental hygiene commissioner may direct that the individual
131 be detained or taken into custody for the purpose of an
132 immediate examination by the designated physician,

133 psychologist, nurse practitioner, or physician's assistant. All
134 orders shall be directed to the sheriff of the county or other
135 appropriate law-enforcement officer. After the examination
136 has been completed, the individual shall be released from
137 custody unless proceedings are instituted pursuant to §27-5-
138 3 of this code.

139 (3) If the reports of the appointed physician,
140 psychologist, nurse practitioner, or physician's assistant do
141 not confirm that the individual is mentally ill or has a
142 substance use disorder and might be harmful to self or
143 others, then the proceedings for involuntary hospitalization
144 shall be dismissed.

145 (h) Rights of the individual at the final commitment
146 hearing; seven days' notice to counsel required. —

147 (1) The individual shall be present at the final
148 commitment hearing, and he or she, the applicant and all
149 persons entitled to notice of the hearing shall be afforded an
150 opportunity to testify and to present and cross-examine
151 witnesses.

152 (2) In the event the individual has not retained counsel,
153 the court or mental hygiene commissioner, at least six days
154 prior to hearing, shall appoint a competent attorney and
155 shall inform the individual of the name, address, and
156 telephone number of his or her appointed counsel.

157 (3) The individual has the right to have an examination
158 by an independent expert of his or her choice and to present
159 testimony from the expert as a medical witness on his or her
160 behalf. The cost of the independent expert is paid by the
161 individual unless he or she is indigent.

162 (4) The individual may not be compelled to be a witness
163 against himself or herself.

164 (i) Duties of counsel representing individual; payment
165 of counsel representing indigent. —

166 (1) Counsel representing an individual shall conduct a
167 timely interview, make investigation, and secure
168 appropriate witnesses, be present at the hearing, and protect
169 the interests of the individual.

170 (2) Counsel representing an individual is entitled to
171 copies of all medical reports, psychiatric or otherwise.

172 (3) The circuit court, by order of record, may allow the
173 attorney a reasonable fee not to exceed the amount allowed
174 for attorneys in defense of needy persons as provided in
175 §29-21-1 *et seq.* of this code.

176 (j) Conduct of hearing; receipt of evidence; no
177 evidentiary privilege; record of hearing. —

178 (1) The circuit court or mental hygiene commissioner
179 shall hear evidence from all interested parties in chamber,
180 including testimony from representatives of the community
181 mental health facility.

182 (2) The circuit court or mental hygiene commissioner
183 shall receive all relevant and material evidence which may
184 be offered.

185 (3) The circuit court or mental hygiene commissioner is
186 bound by the rules of evidence promulgated by the Supreme
187 Court of Appeals except that statements made to health care
188 professionals appointed under subsection (g) of this section
189 by the individual may be admitted into evidence by the
190 health care professional's testimony, notwithstanding
191 failure to inform the individual that this statement may be
192 used against him or her. A health care professional
193 testifying shall bring all records pertaining to the individual
194 to the hearing. The medical evidence obtained pursuant to
195 an examination under this section, or §27-5-2 or §27-5-3 of
196 this code, is not privileged information for purposes of a
197 hearing pursuant to this section.

198 (4) All final commitment proceedings shall be reported
199 or recorded, whether before the circuit court or mental

200 hygiene commissioner, and a transcript made available to
201 the individual, his or her counsel or the prosecuting attorney
202 within 30 days if requested for the purpose of further
203 proceedings. In any case where an indigent person intends
204 to pursue further proceedings, the circuit court shall, by
205 order entered of record, authorize and direct the court
206 reporter to furnish a transcript of the hearings.

207 (k) Requisite findings by the court. —

208 (1) Upon completion of the final commitment hearing
209 and the evidence presented in the hearing, the circuit court
210 or mental hygiene commissioner shall make findings as to
211 the following:

212 (A) Whether the individual is mentally ill or has a
213 substance use disorder;

214 (B) Whether, because of illness or substance use
215 disorder, the individual is likely to cause serious harm to self
216 or others if allowed to remain at liberty;

217 (C) Whether the individual is a resident of the county in
218 which the hearing is held or currently is a patient at a mental
219 health facility in the county; and

220 (D) Whether there is a less restrictive alternative than
221 commitment appropriate for the individual. The burden of
222 proof of the lack of a less restrictive alternative than
223 commitment is on the person or persons seeking the
224 commitment of the individual: *Provided*, That for any
225 commitment to a state hospital as defined by §27-1-6 of this
226 code, a specific finding shall be made that the commitment
227 of, or treatment for, the individual requires inpatient
228 hospital placement and that no suitable outpatient
229 community-based treatment program exists in the
230 individual's area.

231 (2) The findings of fact shall be incorporated into the
232 order entered by the circuit court and must be based upon
233 clear, cogent, and convincing proof.

234 (l) Orders issued pursuant to final commitment hearing;
235 entry of order; change in order of court; expiration of order. —

236 (1) Upon the requisite findings, the circuit court may
237 order the individual to a mental health facility or state
238 hospital for a period not to exceed 90 days except as
239 otherwise provided in this subdivision. During that period
240 and solely for individuals who are committed under §27-
241 6A-1 *et seq.* of this code, the chief medical officer of the
242 mental health facility or state hospital shall conduct a
243 clinical assessment of the individual at least every 30 days
244 to determine if the individual requires continued placement
245 at the mental health facility or state hospital and whether the
246 individual is suitable to receive any necessary treatment at
247 an outpatient community-based treatment program. If at any
248 time the chief medical officer, acting in good faith and in a
249 manner consistent with the standard of care, determines
250 that: (i) The individual is suitable for receiving outpatient
251 community-based treatment; (ii) necessary outpatient
252 community-based treatment is available in the individual's
253 area as evidenced by a discharge and treatment plan jointly
254 developed by the department and the comprehensive
255 community mental health center or licensed behavioral
256 health provider; and (iii) the individual's clinical
257 presentation no longer requires inpatient commitment, the
258 chief medical officer shall provide written notice to the
259 court of record and prosecuting attorney as provided in
260 subdivision (2) of this section that the individual is suitable
261 for discharge. The chief medical officer may discharge the
262 patient 30 days after the notice unless the court of record
263 stays the discharge of the individual. In the event the court
264 stays the discharge of the individual, the court shall conduct
265 a hearing within 45 days of the stay, and the individual shall
266 be thereafter discharged unless the court finds by clear and
267 convincing evidence that the individual is a significant and
268 present danger to self or others, and that continued
269 placement at the mental health facility or state hospital is
270 required.

271 If the chief medical officer determines that the
272 individual requires commitment at the mental health facility
273 or state hospital at any time for a period longer than 90 days,
274 then the individual shall remain at the mental health facility
275 or state hospital until the chief medical officer of the mental
276 health facility or state hospital determines that the
277 individual's clinical presentation no longer requires further
278 commitment. The chief medical officer shall provide notice
279 to the court and the prosecuting attorney that the individual
280 requires commitment for a period in excess of 90 days and,
281 in the notice, the chief medical officer shall describe the
282 reasons for ongoing commitment. In its discretion, the court
283 or prosecuting attorney may request any information from
284 the chief medical officer that the court or prosecuting
285 attorney considers appropriate to justify the need for the
286 individual's ongoing commitment.

287 (2) Notice to the court of record and prosecuting
288 attorney shall be provided by personal service or certified
289 mail, return receipt requested. The chief medical officer
290 shall make the following findings:

291 (A) Whether the individual has a mental illness or
292 substance use disorder that does not require inpatient
293 treatment, and the mental illness or serious emotional
294 disturbance is in remission;

295 (B) Whether the individual's condition resulting from
296 mental illness or substance use disorder is likely to
297 deteriorate to the point that the individual will pose a
298 likelihood of serious harm to self or others unless treatment
299 is continued;

300 (C) Whether the individual is likely to participate in
301 outpatient treatment with a legal obligation to do so;

302 (D) Whether the individual is not likely to participate in
303 outpatient treatment unless legally obligated to do so;

304 (E) Whether the individual is not a danger to self or
305 others; and

306 (F) Whether mandatory outpatient treatment is a
307 suitable, less restrictive alternative to ongoing commitment.

308 (3) The individual may not be detained in a mental
309 health facility or state hospital for a period in excess of 10
310 days after a final commitment hearing pursuant to this
311 section unless an order has been entered and received by the
312 facility.

313 (4) An individual committed pursuant to §27-6A-3 of
314 this code may be committed for the period he or she is
315 determined by the court to remain an imminent danger to
316 self or others.

317 (5) In the event the commitment of the individual as
318 provided under subdivision (1) of this subsection exceeds
319 two years, the individual or his or her counsel may request
320 a hearing and a hearing shall be held by the mental hygiene
321 commissioner or by the circuit court of the county as
322 provided in subsection (a) of this section.

323 (m) Dismissal of proceedings. — In the event the
324 individual is discharged as provided in subsection (l) of this
325 section, the circuit court or mental hygiene commissioner
326 shall dismiss the proceedings.

327 (n) Immediate notification of order of hospitalization.
328 — The clerk of the circuit court in which an order directing
329 hospitalization is entered, if not in the county of the
330 individual's residence, shall immediately upon entry of the
331 order forward a certified copy of the order to the clerk of the
332 circuit court of the county of which the individual is a
333 resident.

334 (o) Consideration of transcript by circuit court of county
335 of individual's residence; order of hospitalization;
336 execution of order. —

337 (1) If the circuit court or mental hygiene commissioner
338 is satisfied that hospitalization should be ordered but finds
339 that the individual is not a resident of the county in which
340 the hearing is held and the individual is not currently a
341 resident of a mental health facility or state hospital, a
342 transcript of the evidence adduced at the final commitment
343 hearing of the individual, certified by the clerk of the circuit
344 court, shall immediately be forwarded to the clerk of the
345 circuit court of the county of which the individual is a
346 resident. The clerk shall immediately present the transcript
347 to the circuit court or mental hygiene commissioner of the
348 county.

349 (2) If the circuit court or mental hygiene commissioner
350 of the county of the residence of the individual is satisfied
351 from the evidence contained in the transcript that the
352 individual should be hospitalized as determined by the
353 standard set forth in subdivision one of this subsection, the
354 circuit court shall order the appropriate hospitalization as
355 though the individual had been brought before the circuit
356 court or its mental hygiene commissioner in the first
357 instance.

358 (3) This order shall be transmitted immediately to the
359 clerk of the circuit court of the county in which the hearing
360 was held who shall execute the order promptly.

361 (p) Order of custody to responsible person. — In lieu of
362 ordering the individual to a mental health facility or state
363 hospital, the circuit court may order the individual delivered
364 to some responsible person who will agree to take care of
365 the individual and the circuit court may take from the
366 responsible person a bond in an amount to be determined by
367 the circuit court with condition to restrain and take proper
368 care of the individual until further order of the court.

369 (q) Individual not a resident of this state. — If the
370 individual is found to be mentally ill or to have a substance
371 use disorder by the circuit court or mental hygiene
372 commissioner is a resident of another state, this information

373 shall be immediately given to the Secretary of the
374 Department of Health and Human Resources, or to his or
375 her designee, who shall make appropriate arrangements for
376 transfer of the individual to the state of his or her residence
377 conditioned on the agreement of the individual, except as
378 qualified by the interstate compact on mental health.

379 (r) Report to the Secretary of the Department of Health
380 and Human Resources. —

381 (1) The chief medical officer of a mental health facility
382 or state hospital admitting a patient pursuant to proceedings
383 under this section shall immediately make a report of the
384 admission to the Secretary of the Department of Health and
385 Human Resources or to his or her designee.

386 (2) Whenever an individual is released from custody
387 due to the failure of an employee of a mental health facility
388 or state hospital to comply with the time requirements of
389 this article, the chief medical officer of the mental health or
390 state hospital facility shall immediately, after the release of
391 the individual, make a report to the Secretary of the
392 Department of Health and Human Resources or to his or her
393 designee of the failure to comply.

394 (s) Payment of some expenses by the state; mental
395 hygiene fund established; expenses paid by the county
396 commission. —

397 (1) The state shall pay the commissioner's fee and the
398 court reporter fees that are not paid and reimbursed under
399 §29-21-1 *et seq.* of this code out of a special fund to be
400 established within the Supreme Court of Appeals to be
401 known as the Mental Hygiene Fund.

402 (2) The county commission shall pay out of the county
403 treasury all other expenses incurred in the hearings
404 conducted under the provisions of this article whether or not
405 hospitalization is ordered, including any fee allowed by the
406 circuit court by order entered of record for any physician,

407 psychologist, and witness called by the indigent individual.
408 The copying and mailing costs associated with providing
409 notice of the final commitment hearing and issuance of the
410 final order shall be paid by the county where the involuntary
411 commitment petition was initially filed.

§27-5-10. Transportation for the mentally ill or persons with substance use disorder.

1 (a) Whenever transportation of an individual is required
2 under the provisions of §27-4-1 *et seq.* and §27-5-1 *et seq.*
3 of this code, the sheriff shall provide immediate
4 transportation to or from the appropriate mental health
5 facility or state hospital: *Provided, That,* where
6 hospitalization occurs pursuant to §27-4-1 *et seq.* of this
7 code, the sheriff may permit, upon the written request of a
8 person having proper interest in the individual's
9 hospitalization, for the interested person to arrange for the
10 individual's transportation to the mental health facility or
11 state hospital if the sheriff determines that those means are
12 suitable given the individual's condition.

13 (b) Upon written agreement between the county
14 commission on behalf of the sheriff and the directors of the
15 local community mental health center and emergency
16 medical services, an alternative transportation program may
17 be arranged. The agreement shall clearly define the
18 responsibilities of each of the parties, the requirements for
19 program participation, and the persons bearing ultimate
20 responsibility for the individual's safety and well-being.

21 (c) Use of certified municipal law-enforcement officers.
22 — Sheriffs and municipal governments may enter into
23 written agreements by which certified municipal law-
24 enforcement officers may perform the duties of the sheriff
25 as described in this article. The agreement shall determine
26 jurisdiction, responsibility of costs, and all other necessary
27 requirements, including training related to the performance
28 of these duties, and shall be approved by the county
29 commission and circuit court of the county in which the

30 agreement is made. For purposes of this subsection,
31 “certified municipal law-enforcement officer” means any
32 duly authorized member of a municipal law-enforcement
33 agency who is empowered to maintain public peace and
34 order, make arrests, and enforce the laws of this state or any
35 political subdivision thereof, other than parking ordinances,
36 and who is currently certified as a law-enforcement officer
37 pursuant to §30-29-1 *et seq.* of this code.

38 (d) In the event an individual requires transportation to
39 a state hospital as defined by §27-1-6 of this code, the sheriff
40 or certified municipal law-enforcement officer shall contact
41 the state hospital in advance of the transportation to
42 determine if the state hospital has suitable bed capacity to
43 place the individual.

44 (e) Nothing in this section is intended to alter security
45 responsibilities for the patient by the sheriff unless mutually
46 agreed upon as provided in subsection (c) of this section.

ARTICLE 6A. COMPETENCY AND CRIMINAL RESPONSIBILITY OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-12. Study of adult criminal competency and responsibility issues; requiring and requesting report and proposed legislation; submission to legislature.

1 (a) The Secretary of the Department of Health and
2 Human Resources shall, in collaboration with designees of
3 the Supreme Court of Appeals, the Prosecuting Attorney’s
4 Institute, Prosecuting Attorney’s Association, the Public
5 Defender Services, Behavioral Health Providers
6 Association, Disability Rights of West Virginia, and
7 designees of the Board of Medicine, Board of Osteopathy,
8 and the Board Examiners of Psychologists with experience
9 in issues of competence and criminal responsibility,
10 undertake an evaluation of the provisions of this article in
11 the context of current constitutional requirements related to
12 competency and responsibility issues, best medical

13 practices, and pharmacological developments and draft
14 proposed legislation to update the provisions of this article.

15 (b) The legislation required by the provisions of
16 subsection (a) of this section shall be submitted to the
17 President of the Senate and the Speaker of the House of
18 Delegates on or before July 31, 2020.



CHAPTER 274

**(Com. Sub. for H. B. 4102 - By Delegates Rohrbach,
Kessinger, Robinson, Walker, Bartlett, Ellington,
Hanna, Hornbuckle, D. Kelly, Mandt and Pushkin)**

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §16-46-3 and §16-46-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60A-9-4 of said code, all relating to opioid antagonists; prescribing an opioid antagonist; possessing an opioid antagonist; dispensing an opioid antagonist; providing an opioid antagonist; collecting data related to an opioid antagonist; requiring certain reporting of an opioid antagonist; providing immunity; making technical changes.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 46. ACCESS TO OPIOID ANTAGONISTS ACT.

§16-46-3. Licensed health care providers may prescribe opioid antagonists to initial responders and certain individuals; required educational materials; limited liability.

1 (a) The following individuals may prescribe an opioid
2 antagonist in the manner prescribed by this subsection:

3 (1) A licensed health care provider acting in good faith
4 and exercising good reasonable care may directly or by
5 standing order prescribe an opioid antagonist to:

6 (A) A person at risk of experiencing an opioid-related
7 overdose; or

8 (B) A family member, friend, or other person in a
9 position to assist a person at risk of experiencing an opioid-
10 related overdose.

11 (2) A licensed health care provider acting in good faith
12 and exercising reasonable care may directly or by standing
13 order prescribe an opioid antagonist to any governmental or
14 non-governmental organization, including a local health
15 department, a law enforcement agency, or an organization
16 that promotes scientifically proven ways of mitigating
17 health risks associated with substance use disorders and
18 other high risk behaviors, for the purpose of distributing,
19 through its agents, the opioid antagonist, to:

20 (A) A person at risk of experiencing an opioid-related
21 overdose or

22 (B) A family member, friend, or other person in a
23 position to assist a person at risk of experiencing an opioid-
24 related overdose.

25 (b) A pharmacist may dispense an opioid antagonist to
26 a person or organization pursuant to a prescription issued in
27 accordance with subsection (a) of this section.

28 (c)(1) A governmental or non-governmental
29 organization, including a local health department, a law
30 enforcement agency, or organization that promotes
31 scientifically proven ways to mitigate health risks
32 associated with substance use disorders and other high-risk
33 behaviors may, through its trained agents, distribute an

34 opioid antagonist obtained pursuant to a prescription issued
35 in accordance with this section to:

36 (A) A person at risk of experiencing an opioid-related
37 overdose or

38 (B) A family member, friend, or other person in a
39 position to assist a person at risk of experiencing an opioid-
40 related overdose.

41 (2) An organization, through its trained agents, shall
42 include with any distribution of an opioid antagonist
43 pursuant to this subsection required education including
44 opioid-related overdose prevention and treatment programs
45 and instruction on how to administer the opioid antagonist.

46 (d) A person who receives an opioid antagonist that was
47 prescribed pursuant to subsection (a) or distributed pursuant
48 to subsection (c) may administer an opioid antagonist to
49 another person if:

50 (1) The person has a good faith belief that the other
51 person is experiencing a drug-related overdose; and

52 (2) The person exercises reasonable care in
53 administering the drug to another person.

54 (e) A person and organization acting in good faith under
55 the provisions of this section are immune from civil or
56 criminal liability.

57 (f) A person and organization may possess an opioid
58 antagonist, regardless of whether the person or organization
59 holds a prescription for the opioid antagonist.

**§16-46-6. Data collection and reporting requirements;
training.**

1 (a) Beginning March 1, 2016, and annually after that the
2 following reports shall be compiled:

3 (1) The Office of Emergency Medical Services shall
4 collect data regarding each administration of an opioid
5 antagonist by an initial responder. The Office of Emergency
6 Medical Services shall report this information to the
7 Legislative Oversight Commission on Health and Human
8 Resources Accountability, Joint Committee on Health and
9 the West Virginia Bureau for Behavioral Health and Health
10 Facilities. The data collected and reported shall include:

11 (A) The number of training programs operating in an
12 Office of Emergency Medical Services-designated training
13 center;

14 (B) The number of individuals who received training to
15 administer an opioid antagonist;

16 (C) The number of individuals who received an opioid
17 antagonist administered by an initial responder;

18 (2) The distribution of an opioid antagonist by a
19 governmental or non-governmental entity, granting
20 institution, medical provider, or pharmacy whose software
21 cannot automatically report to the West Virginia Controlled
22 Substance Monitoring Program database must report to the
23 West Virginia Office of Drug Control Policy on a monthly
24 basis. Report must be generated and submitted by the 10th
25 day of each month for the opioid antagonists dispensed or
26 distributed in the previous month. The following
27 information must be reported:

28 (A) The name and address of the entity dispensing or
29 distributing the opioid antagonist;

30 (B) The name and national drug code for each
31 formulation of opioid antagonist dispensed or distributed;

32 (C) The total quantity of each formulation of opioid
33 antagonist dispensed or distributed.

34 (3) The West Virginia Board of Pharmacy shall query
35 the West Virginia Controlled Substances Monitoring

36 Program database to compile all data related to the
37 dispensing of opioid antagonists and combine that data with
38 any additional data maintained by the Board of Pharmacy
39 related to prescriptions for and distribution of opioid
40 antagonists. The aggregate data shall be reported to the
41 West Virginia Office of Drug Control Policy by the 10th
42 day of each month. By February 1 and annually thereafter,
43 the West Virginia Office of Drug Control Policy shall
44 provide a report of this information, excluding any
45 personally identifiable information, to the Legislative
46 Oversight Commission on Health and Human Resources
47 Accountability, Joint Committee on Health and the West
48 Virginia Bureau for Behavioral Health and Health
49 Facilities.

50 (b) To implement the provisions of this article,
51 including establishing the standards for certification and
52 approval of opioid overdose prevention and treatment
53 training programs and protocols regarding a refusal to
54 transport, the Office of Emergency Medical Services may
55 promulgate emergency rules pursuant to the provisions of
56 section fifteen, article three, chapter twenty-nine-a of this
57 code and shall propose rules for legislative approval in
58 accordance with the provisions of said article.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-4. Required information.

1 (a) The following individuals shall report the required
2 information to the Controlled Substances Monitoring
3 Program Database when:

4 (1) A medical services provider dispenses a controlled
5 substance listed in Schedule II, III, IV, or V;

6 (2) A prescription for the controlled substance or opioid
7 antagonist is filled by:

8 (A) A pharmacist or pharmacy in this state;

9 (B) A hospital, or other health care facility, for
10 outpatient use; or

11 (C) A pharmacy or pharmacist licensed by the Board of
12 Pharmacy, but situated outside this state for delivery to a
13 person residing in this state; and

14 (3) A pharmacist or pharmacy sells an opioid antagonist.

15 (b) The above individuals shall in a manner prescribed
16 by rules promulgated by the Board of Pharmacy pursuant to
17 this article, report the following information, as applicable:

18 (1) The name, address, pharmacy prescription number,
19 and Drug Enforcement Administration controlled substance
20 registration number of the dispensing pharmacy or the
21 dispensing physician or dentist;

22 (2) The full legal name, address, and birth date of the
23 person for whom the prescription is written;

24 (3) The name, address, and Drug Enforcement
25 Administration controlled substances registration number
26 of the practitioner writing the prescription;

27 (4) The name and national drug code number of the
28 Schedule II, III, IV, and V controlled substance or opioid
29 antagonist dispensed;

30 (5) The quantity and dosage of the Schedule II, III, IV,
31 and V controlled substance or opioid antagonist dispensed;

32 (6) The date the prescription was written and the date
33 filled;

34 (7) The number of refills, if any, authorized by the
35 prescription;

36 (8) If the prescription being dispensed is being picked
37 up by someone other than the patient on behalf of the

38 patient, information about the person picking up the
39 prescription as set forth on the person's government-issued
40 photo identification card shall be retained in either print or
41 electronic form until such time as otherwise directed by rule
42 promulgated by the Board of Pharmacy; and

43 (9) The source of payment for the controlled substance
44 dispensed.

45 (c) Whenever a medical services provider treats a
46 patient for an overdose that has occurred as a result of illicit
47 or prescribed medication, the medical service provider shall
48 report the full legal name, address, and birth date of the
49 person who is being treated, including any known ancillary
50 evidence of the overdose. The Board of Pharmacy shall
51 coordinate with the Division of Justice and Community
52 Services and the Office of Drug Control Policy regarding
53 the collection of overdose data.

54 (d) The Board of Pharmacy may prescribe by rule
55 promulgated pursuant to this article the form to be used in
56 prescribing a Schedule II, III, IV, and V substance or opioid
57 antagonist if, in the determination of the Board of
58 Pharmacy, the administration of the requirements of this
59 section would be facilitated.

60 (e) Products regulated by the provisions of §60A-10-1
61 *et seq.* of this code shall be subject to reporting pursuant to
62 the provisions of this article to the extent set forth in said
63 article.

64 (f) Reporting required by this section is not required for
65 a drug administered directly to a patient by a practitioner.
66 Reporting is, however, required by this section for a drug
67 dispensed to a patient by a practitioner. The quantity
68 dispensed by a prescribing practitioner to his or her own
69 patient may not exceed an amount adequate to treat the
70 patient for a maximum of 72 hours with no greater than two
71 72-hour cycles dispensed in any 15-day period of time.

72 (g) The Board of Pharmacy shall notify a physician
73 prescribing buprenorphine or buprenorphine/naloxone
74 within 60 days of the availability of an abuse deterrent or a
75 practitioner-administered form of buprenorphine or
76 buprenorphine/naloxone if approved by the Food and Drug
77 Administration as provided in FDA Guidance to Industry.
78 Upon receipt of the notice, a physician may switch his or
79 her patients using buprenorphine or buprenorphine/naloxone
80 to the abuse deterrent or a practitioner-administered form of
81 the drug

CHAPTER 275

**(H. B. 4103 - By Delegates Rohrbach, Kessinger,
Robinson, Walker, Bartlett, Ellington, Hanna,
Hornbuckle, D. Kelly, Mandt and Pushkin)**

[Passed February 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 14, 2020.]

AN ACT to amend and reenact §16-5T-2 of the Code of West Virginia, 1931, as amended, relating to office of drug control policy.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5T. OFFICE OF DRUG CONTROL POLICY.

§16-5T-2. Office of Drug Control Policy.

1 (a) The Office of Drug Control Policy is continued
2 within the Department of Health and Human Resources
3 under the direction and supervision of the secretary and with
4 the assistance of the State Health Officer.

5 (b) The Office of Drug Control Policy shall create a
6 state drug control policy in coordination with the bureaus of

7 the department and other state agencies. This policy shall
8 include all programs which are related to the prevention,
9 treatment, and reduction of substance abuse use disorder.

10 (c) The Office of Drug Control Policy shall:

11 (1) Develop a strategic plan to reduce the prevalence of
12 drug and alcohol abuse and smoking by at least 10 percent
13 by July 1, 2018;

14 (2) Monitor, coordinate, and oversee the collection of
15 data and issues related to drug, alcohol, and tobacco access,
16 substance use disorder policies, and smoking cessation and
17 prevention, and their impact on state and local programs;

18 (3) Make policy recommendations to executive branch
19 agencies that work with alcohol and substance use disorder
20 issues, and smoking cessation and prevention, to ensure the
21 greatest efficiency and consistency in practices will be
22 applied to all efforts undertaken by the administration;

23 (4) Identify existing resources and prevention activities
24 in each community that advocate or implement emerging
25 best practice and evidence-based programs for the full
26 substance use disorder continuum of drug and alcohol abuse
27 education and prevention, including smoking cessation or
28 prevention, early intervention, treatment, and recovery;

29 (5) Encourage coordination among public and private,
30 state and local agencies, organizations, and service
31 providers, and monitor related programs;

32 (6) Act as the referral source of information, using
33 existing information clearinghouse resources within the
34 Department of Health and Human Resources, relating to
35 emerging best practice and evidence-based substance use
36 disorder prevention, cessation, treatment and recovery
37 programs, and youth tobacco access, smoking cessation and
38 prevention. The Office of Drug Control Policy will identify
39 gaps in information referral sources;

- 40 (7) Apply for grant opportunities for existing programs;
- 41 (8) Observe programs in other states;
- 42 (9) Make recommendations and provide training,
43 technical assistance, and consultation to local service
44 providers;
- 45 (10) Review existing research on programs related to
46 substance use disorder prevention and treatment and
47 smoking cessation and prevention, and provide for an
48 examination of the prescribing and treatment history,
49 including court-ordered treatment, or treatment within the
50 criminal justice system, of persons in the state who suffered
51 fatal or nonfatal opiate overdoses;
- 52 (11) Establish a mechanism to coordinate the
53 distribution of funds to support any local prevention,
54 treatment, and education program based on the strategic
55 plan that could encourage smoking cessation and prevention
56 through efficient, effective, and research-based strategies;
- 57 (12) Establish a mechanism to coordinate the
58 distribution of funds to support a local program based on the
59 strategic plan that could encourage substance use
60 prevention, early intervention, treatment, and recovery
61 through efficient, effective and research-based strategies;
- 62 (13) Oversee a school-based initiative that links schools
63 with community-based agencies and health departments to
64 implement school-based anti-drug and anti-tobacco
65 programs;
- 66 (14) Coordinate media campaigns designed to
67 demonstrate the negative impact of substance use disorder,
68 smoking and the increased risk of tobacco addiction and the
69 development of other diseases;
- 70 (15) Review Drug Enforcement Agency and the West
71 Virginia scheduling of controlled substances and

72 recommend changes that should be made based on data
73 analysis;

74 (16) Develop recommendations to improve
75 communication between health care providers and their
76 patients about the risks and benefits of opioid therapy for
77 acute pain, improve the safety and effectiveness of pain
78 treatment, and reduce the risks associated with long-term
79 opioid therapy, including opioid use disorder and overdose;

80 (17) Develop and implement a program, in accordance
81 with the provisions of §16-5T-3 of this code, to collect data
82 on fatal and nonfatal drug overdoses caused by abuse and
83 misuse of prescription and illicit drugs, from law
84 enforcement agencies, emergency medical services, health
85 care facilities and the Office of the Chief Medical Examiner;

86 (18) Develop and implement a program that requires the
87 collection of data on the dispensing and use of an opioid
88 antagonist from law enforcement agencies, emergency
89 medical services, health care facilities, the Office of the
90 Chief Medical Examiner and other entities as required by
91 the office;

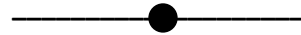
92 (19) Develop a program that provides assessment of
93 persons who have been administered an opioid antagonist;
94 and

95 (20) Report semi-annually to the Joint Committee on
96 Health on the status of the Office of Drug Control Policy.

97 (d) Notwithstanding any other provision of this code to
98 the contrary, and to facilitate the collection of data and
99 issues, the Office of Drug Control Policy may exchange
100 necessary data and information with the bureaus within the
101 department, the Department of Military Affairs and Public
102 Safety, the Department of Administration, the
103 Administrator of Courts, the Poison Control Center, and the
104 Board of Pharmacy. The data and information may include,
105 but is not limited to: data from the Controlled Substance

106 Monitoring Program; the all-payer claims database; the
107 criminal offender record information database; and the court
108 activity record information;

109 (e) Prior to July 1, 2018, the office shall develop a plan
110 to expand the number of treatment beds in locations
111 throughout the state which the office determines to be the
112 highest priority for serving the needs of the citizens of the
113 state.



CHAPTER 276

**(Com. Sub. for H. B. 4108 - By Delegates Summers,
Waxman, Porterfield, Fast, Householder, Jennings
and Ellington)**

[Passed March 6, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §16-2D-11 of the Code of West Virginia, 1931, as amended; relating to the process for certificate of need exemptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-11. Exemptions from Certificate of Need which require the submission of information to the authority.

1 (a) To obtain an exemption under this section a person
2 shall:

3 (1) File an exemption application; and

4 (2) Provide a statement detailing which exemption
5 applies and the circumstances justifying the exemption.

6 (b) Notwithstanding section eight and ten and except as
7 provided in section nine of this article, the Legislature finds
8 that a need exists and these health services are exempt from
9 the certificate of need process:

10 (1) The acquisition and utilization of one computed
11 tomography scanner with a purchase price up to \$750,000
12 that is installed in a private office practice where at
13 minimum seventy-five percent of the scans are performed
14 on the patients of the practice. The private office practice
15 shall obtain and maintain accreditation from the American
16 College of Radiology prior to, and at all times during, the
17 offering of this service. The authority may at any time
18 request from the private office practice information relating
19 to the number of patients who have been provided scans and
20 proof of active and continuous accreditation from the
21 American College of Radiology. If a physician owns or
22 operates a private office practice in more than one location,
23 this exemption shall only apply to the physician's primary
24 place of business and if a physician wants to expand the
25 offering of this service to include more than one computed
26 topography scanner, he or she shall be required to obtain a
27 certificate of need prior to expanding this service. All
28 current certificates of need issued for computed tomography
29 services, with a required percentage threshold of scans to be
30 performed on patients of the practice in excess of seventy-
31 five percent, shall be reduced to seventy-five percent:
32 *Provided*, That these limitations on the exemption for a
33 private office practice with more than one location shall not
34 apply to a private office practice with more than twenty
35 locations in the state on April 8, 2017.

36 (2) (A) A birthing center established by a nonprofit
37 primary care center that has a community board and
38 provides primary care services to people in their community
39 without regard to ability to pay; or

40 (B) A birthing center established by a nonprofit hospital
41 with less than one hundred licensed acute care beds.

42 (i) To qualify for this exemption, an applicant shall be
43 located in an area that is underserved with respect to low-
44 risk obstetrical services; and

45 (ii) Provide a proposed health service area.

46 (3) (A) A health care facility acquiring major medical
47 equipment, adding health services or obligating a capital
48 expenditure to be used solely for research;

49 (B) To qualify for this exemption, the health care
50 facility shall show that the acquisition, offering or
51 obligation will not:

52 (i) Affect the charges of the facility for the provision of
53 medical or other patient care services other than the services
54 which are included in the research;

55 (ii) Result in a substantial change to the bed capacity of
56 the facility; or

57 (iii) Result in a substantial change to the health services
58 of the facility.

59 (C) For purposes of this subdivision, the term “solely
60 for research” includes patient care provided on an
61 occasional and irregular basis and not as part of a research
62 program;

63 (4) The obligation of a capital expenditure to acquire,
64 either by purchase, lease or comparable arrangement, the
65 real property, equipment or operations of a skilled nursing
66 facility: *Provided*, That a skilled nursing facility developed
67 pursuant to subdivision (17) of this section and
68 subsequently acquired pursuant to this subdivision may not
69 transfer or sell any of the skilled nursing home beds of the
70 acquired skilled nursing facility until the skilled nursing
71 facility has been in operation for at least ten years.

72 (5) Shared health services between two or more
73 hospitals licensed in West Virginia providing health

74 services made available through existing technology that
75 can reasonably be mobile. This exemption does not include
76 providing mobile cardiac catheterization;

77 (6) The acquisition, development or establishment of a
78 certified interoperable electronic health record or electronic
79 medical record system;

80 (7) The addition of forensic beds in a health care
81 facility;

82 (8) A behavioral health service selected by the
83 Department of Health and Human Resources in response to
84 its request for application for services intended to return
85 children currently placed in out-of-state facilities to the state
86 or to prevent placement of children in out-of-state facilities
87 is not subject to a certificate of need;

88 (9) The replacement of major medical equipment with
89 like equipment, only if the replacement major medical
90 equipment cost is more than the expenditure minimum;

91 (10) Renovations within a hospital, only if the
92 renovation cost is more than the expenditure minimum. The
93 renovations may not expand the health care facility's
94 current square footage, incur a substantial change to the
95 health services, or a substantial change to the bed capacity;

96 (11) Renovations to a skilled nursing facility;

97 (12) The donation of major medical equipment to
98 replace like equipment for which a certificate of need has
99 been issued and the replacement does not result in a
100 substantial change to health services. This exemption does
101 not include the donation of major medical equipment made
102 to a health care facility by a related organization;

103 (13) A person providing specialized foster care personal
104 care services to one individual and those services are
105 delivered in the provider's home;

106 (14) A hospital converting the use of beds except a
107 hospital may not convert a bed to a skilled nursing home bed
108 and conversion of beds may not result in a substantial
109 change to health services provided by the hospital;

110 (15) The construction, renovation, maintenance or
111 operation of a state owned veterans skilled nursing facilities
112 established pursuant to the provisions of article one-b of this
113 chapter;

114 (16) To develop and operate a skilled nursing facility
115 with no more than thirty-six beds in a county that currently
116 is without a skilled nursing facility;

117 (17) A critical access hospital, designated by the state as
118 a critical access hospital, after meeting all federal eligibility
119 criteria, previously licensed as a hospital and subsequently
120 closed, if it reopens within ten years of its closure;

121 (18) The establishing of a health care facility or offering
122 of health services for children under one year of age
123 suffering from Neonatal Abstinence Syndrome;

124 (19) The construction, development, acquisition or
125 other establishment of community mental health and
126 intellectual disability facility;

127 (20) Providing behavioral health facilities and services;

128 (21) The construction, development, acquisition or
129 other establishment of kidney disease treatment centers,
130 including freestanding hemodialysis units but only to a
131 medically underserved population;

132 (22) The transfer, purchase or sale of intermediate care
133 or skilled nursing beds from a skilled nursing facility or a
134 skilled nursing unit of an acute care hospital to a skilled
135 nursing facility providing intermediate care and skilled
136 nursing services. The Department of Health and Human
137 Resources may not create a policy which limits the transfer,
138 purchase or sale of intermediate care or skilled nursing beds

139 from a skilled nursing facility or a skilled nursing unit of an
140 acute care hospital. The transferred beds shall retain the
141 same certification status that existed at the nursing home or
142 hospital skilled nursing unit from which they were acquired.
143 If construction is required to place the transferred beds into
144 the acquiring nursing home, the acquiring nursing home has
145 one year from the date of purchase to commence
146 construction;

147 (23) The construction, development, acquisition or
148 other establishment by a health care facility of a nonhealth
149 related project, only if the nonhealth related project cost is
150 more than the expenditure minimum;

151 (24) The construction, development, acquisition or
152 other establishment of an alcohol or drug treatment facility
153 and drug and alcohol treatment services unless the
154 construction, development, acquisition or other
155 establishment is an opioid treatment facility or programs as
156 set forth in subdivision (4) of section nine of this article;

157 (25) Assisted living facilities and services;

158 (26) The creation, construction, acquisition or
159 expansion of a community-based nonprofit organization
160 with a community board that provides or will provide
161 primary care services to people without regard to ability to
162 pay and receives approval from the Health Resources and
163 Services Administration; and

164 (27) The acquisition and utilization of one computed
165 tomography scanner and/or one magnetic resonance
166 imaging scanner with a purchase price of up to \$750,000 by
167 a hospital.

●

CHAPTER 277

(H. B. 4161 - By Delegates Worrell, Summers and Atkinson)

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

AN ACT to amend and reenact §16-38-1 and §16-38-3 of the Code of West Virginia, 1931, as amended, all relating to tattoos; making it illegal to scleral tattoo a person; defining the term “scleral tattoo;” and reordering definitions so they will be in alphabetical order.

Be it enacted by the Legislature of West Virginia:

ARTICLE 38. TATTOO STUDIO BUSINESS.

§16-38-1. Definitions.

1 For purposes of this article:

2 “Adequate ventilation” means a free and unrestricted
3 circulation of fresh air throughout the tattoo studio and the
4 expulsion of foul or stagnant air.

5 “Antibacterial solution” means any solution used to
6 retard the growth of bacteria approved for application to
7 human skin and includes all products so labeled.

8 “Germicidal solution” means any solution which
9 destroys germs and is so labeled.

10 “Minor” means any person under the age of 18 years.

11 “Scleral tattooing” means the practice of producing an
12 indelible mark or figure on the human eye by scarring or
13 inserting a pigment on, in, or under the fornix conjunctiva,

14 bulbar conjunctiva, ocular conjunctiva, or other ocular
15 surface using needles, scalpels or other related equipment.

16 “Sterilization” means holding in an autoclave for 25
17 minutes at 15 pounds pressure at a temperature of 250
18 degrees Fahrenheit or 121 degrees Celsius.

19 “Tattoo” means to mark or color the skin by pricking in
20 coloring matter so as to form indelible marks or figures or
21 by the production of scars.

22 “Tattoo studio” means any room or space where
23 tattooing is practiced or where the business of tattooing or
24 any part thereof is conducted.

§16-38-3. Operation standards.

1 (a) *Records.* —

2 (1) Proper records of tattoos administered shall be
3 maintained for each patron by the holder of the studio
4 registration;

5 (2) A record shall be prepared for each patron prior to
6 any procedure being performed and shall include the
7 patron’s name and signature, address, age, date tattooed,
8 design of the tattoo, location of the tattoo on the patron’s
9 body and the name of the tattoo artist who performed the
10 work;

11 (3) Record entries shall be in ink or indelible pencil and
12 shall be available for examination by the inspecting
13 authorities provided in §16-38-6 of this code;

14 (4) Before tattoo administration, the owner or tattoo
15 artist shall discuss with the patron the risks involved in the
16 tattoo requested, including the potential that a tattoo may
17 interfere with the clinical reading of a magnetic resonance
18 imaging study, should the patron intending to be tattooed
19 ever encounter a medical need for such a study. The owner
20 shall provide the patron with written information regarding

21 the possible complications that may arise from receiving a
22 tattoo. The written information shall be prepared by the
23 Department of Health and Human Resources. Receipt of the
24 information shall be acknowledged in writing by the patron.
25 The owner or tattoo artist shall also keep and maintain the
26 acknowledgment as part of the patron's record pursuant to
27 the provisions of subdivision (5) of this subsection.

28 (5) All records required by this section shall be kept on
29 file for five years by the holder of the studio registration for
30 the studio in which the tattoo was performed.

31 (b) *Consent.* —

32 (1) Prior written consent for tattooing of minors shall be
33 obtained from one parent or guardian;

34 (2) All written consents shall be kept on file for five
35 years by the holder of the studio registration for the tattoo
36 studio in which the tattoo was performed;

37 (3) The person receiving the tattoo shall attest to the fact
38 that he or she is not intoxicated or under the influence of
39 drugs or alcohol.

40 (c) *Tattooing procedures.* —

41 (1) Printed instructions on the care of the skin after
42 tattooing shall be given to each patron as a precaution to
43 prevent infection;

44 (2) A copy of the printed instructions shall be posted in
45 a conspicuous place, clearly visible to the person being
46 tattooed;

47 (3) Each tattoo artist shall wear a clean outer garment,
48 i.e., apron, smock, T-shirt, etc.;

49 (4) Tattoo artists who are experiencing diarrhea,
50 vomiting, fever, rash, productive cough, jaundice, draining
51 or open skin infections such as boils which could be

52 indicative of more serious conditions such as, but not
53 limited to, impetigo, scabies, hepatitis-b, HIV or AIDS shall
54 refrain from tattooing activities until such time as they are
55 no longer experiencing or exhibiting the aforementioned
56 symptoms;

57 (5) Before working on each patron, the fingernails and
58 hands of the tattoo artist shall be thoroughly washed and
59 scrubbed with hot running water, antibacterial soap and an
60 individual hand brush that is clean and in good repair;

61 (6) The tattoo artist's hands shall be air blown dried or
62 dried by a single-use towel. In addition, disposable latex
63 examination gloves shall be worn during the tattoo process.
64 The gloves shall be changed each time there is an
65 interruption in the tattoo application, the gloves become torn
66 or punctured or whenever their ability to function as a
67 barrier is compromised;

68 (7) Only sterilized or single-use, disposable razors shall
69 be used to shave the area to be tattooed;

70 (8) Immediately prior to beginning the tattoo procedure,
71 the affected skin area shall be treated with an antibacterial
72 solution;

73 (9) If an acetate stencil is used by a tattoo artist for
74 transferring the design to the skin, the acetate stencil shall
75 be thoroughly cleaned and rinsed in a germicidal solution
76 for at least 20 minutes and then dried with sterile gauze or
77 dried in the air on a sanitized surface after each use;

78 (10) If a paper stencil is used by a tattoo artist for
79 transferring the design to the skin, the paper stencil shall be
80 single-use and disposable;

81 (11) If the design is drawn directly onto the skin, the
82 design shall be applied with a single-use article only.

83 (d) *Dyes or pigments.* —

84 (1) Only nontoxic sterile dyes or pigments shall be used
85 and shall be prepared in sterilized or disposable single-use
86 containers for each patron;

87 (2) After tattooing, the unused dye or pigment in the
88 single-use containers shall be discarded along with the
89 container;

90 (3) All dyes or pigments used in tattooing shall be from
91 professional suppliers specifically providing dyes or
92 pigments for the tattooing of human skin.

93 (e) *Sterilization of needles.* —

94 (1) A set of individual, sterilized needles shall be used
95 for each patron;

96 (2) No less than 24 sets of sterilized needles and tubes
97 shall be on hand for the entire day or night operation.
98 Unused sterilized instruments shall be re-sterilized at
99 intervals of no more than six months from the date of the
100 last sterilization;

101 (3) Used, nondisposable instruments shall be kept in a
102 separate, puncture resistant container until brush scrubbed
103 in hot water and soap and then sterilized by autoclaving;

104 (4) If used instruments are ultrasonically cleaned prior
105 to being placed in the used instrument container, they shall
106 be ultrasonically cleaned and then rinsed under running hot
107 water prior to being placed in the used instrument container;

108 (5) The ultrasonic unit shall be sanitized daily with a
109 germicidal solution;

110 (6) If used instruments are not ultrasonically cleaned
111 prior to being placed in the used instrument container, they
112 shall be kept in a germicidal or soap solution until brush
113 scrubbed in hot water and soap and then sterilized by
114 autoclaving;

115 (7) All nondisposable instruments, including the needle
116 tubes, shall be sterilized and shall be handled and stored in
117 such a manner as to prevent contamination. Instruments to
118 be sterilized shall be sealed in bags made specifically for the
119 purpose of autoclave sterilization and shall include the date
120 of sterilization. If nontransparent sterilization bags are
121 utilized, the bag shall also list the contents;

122 (8) Autoclave sterilization bags, with a color code
123 indicator which changes color upon proper steam
124 sterilization, shall be utilized during the autoclave
125 sterilization process;

126 (9) Instruments shall be placed in the autoclave in such
127 a manner as to allow live steam to circulate around them;

128 (10) No rusty, defective or faulty instruments shall be
129 kept in the studio.

130 (f) *Aftercare of tattoo.* —

131 The completed tattoo shall be washed with a single-use
132 towel saturated with an antibacterial solution.

133 (g) It is unlawful for any person to perform or offer to
134 perform scleral tattooing upon a person.

●

CHAPTER 278

**(H. B. 4179 - By Delegates Maynard, Jennings, Bibby,
Campbell, J. Jeffries, Lovejoy, Miller, Pack, Sypolt
and Worrell)**

[Passed February 17, 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 article, designated †§16-60-1, †§16-60-2, †§16-60-3, †§16-60-4, †§16-60-5, †§16-60-6, †§16-60-7, †§16-60-8, †§16-60-9, †§16-60-10, †§16-60-11, †§16-60-12, †§16-60-13, †§16-60-14, and †§16-60-15, all relating to enacting the Recognition of Emergency Medical Services Personnel Licensure Interstate Compact; entering into the Compact with all jurisdictions also enacting the Compact; stating purpose of Compact; defining terms; identifying member states as home states; retaining authority of member state to require license under circumstances not covered by Compact; setting conditions for home state's license to authorize practice in a remote state under the Compact; requiring member states to recognize licenses issued by another member state under certain conditions; setting requirements for individuals to exercise privilege to practice; setting scope of practice; making individuals practicing in remote states subject to that state's laws; authorizing remote states to take action against individual's privilege to practice within that state under certain circumstances; providing effect of restrictions on license on Compact privileges; setting conditions of practicing in remote state under Compact terms; defining relationship of Compact with Emergency Management Assistance Compact; setting terms and requirements for certification of veterans, certain service members, and their spouses; recognizing exclusive power of

† Redesignated

home states to impose adverse action against license issued by home state; providing consequences for Compact participation if individual's license is subject to adverse action by home state; requiring member states to report adverse actions against licenses; authorizing states to take action against individual's privilege to practice within that state; requiring home state EMS authority investigate and take appropriate action based on reported conduct in remote state; authorizing alternative programs in lieu of adverse action; authorizing member state's EMS authority to issue subpoenas; authorizing member state's EMS authority to issue certain cease and desist orders; establishing Interstate Commission for EMS Personnel Practice; providing venue; maintaining state sovereign immunity; providing for membership; providing for voting; requiring annual meetings; requiring meetings to be public; providing exceptions; authorizing Commission prescribe bylaws and/or rules to govern conduct; granting certain powers to Commission; providing for financing for the Commission; making validity of annual assessment against state contingent upon funds being appropriated by the Legislature or otherwise being made available; providing for qualified immunity of certain persons; requiring Commission defend certain persons for actions arising out of actions occurring within the scope of duties related to the Commission; requiring Commission indemnify and hold harmless certain persons under certain circumstances; providing for development and maintenance of coordinated database and reporting system; requiring member states provide certain information to coordinated database; requiring notification by coordinated database administrator of adverse action taken against individual in member state; authorizing member state to designate information not to be shared with the public without express permission of contributing state; providing for removal of information from database when required to be expunged; authorizing rulemaking Commission; providing scope of rulemaking; providing procedures for rulemaking; authorizing emergency rulemaking by the Commission; providing that Commission rules are not binding on the State

of West Virginia until they have been authorized as legislative rules; providing timeline and procedure for proposing legislative rules; authorizing emergency rulemaking; directing state government to enforce Compact and take necessary actions to effectuate its purposes and intent; directing courts take judicial notice of Compact and rules promulgated pursuant to Compact; providing procedures for the Commission to follow if member state has defaulted; authorizing member state be terminated from the Compact under certain conditions; setting terms of termination; authorizing appeal; authorizing mediation and binding dispute resolution between Commission and member state; authorizing enforcement of the Compact by the Commission; authorizing legal action; establishing venue; providing for venue in West Virginia; providing implementation date for the Compact; making any state joining after implementation subject to rules as they exist when the Compact is adopted; authorizing member state withdraw from the Compact; maintaining member state authority to enter into licensure or cooperative agreements with nonmember state; authorizing amendment of the Compact; providing for liberal construction; providing for severability of the Compact if it is found to violate constitution of member state; directing Emergency Medical Services Advisory Council review decisions of the Commission; and authorizing Emergency Medical Services Advisory Council make recommendation to Legislature for withdrawal from the Compact.

Be it enacted by the Legislature of West Virginia:

†ARTICLE 60. RECOGNITION OF EMERGENCY MEDICAL SERVICES PERSONNEL LICENSURE INTERSTATE COMPACT.

†§16-60-1. Recognition of Emergency Medical Services Personnel Licensure Interstate Compact; purpose.

- 1 (a) The Recognition of Emergency Medical Services
- 2 Personnel Licensure Interstate Compact is hereby enacted

† Redesignated

3 into law and entered into with all jurisdictions legally
4 joining therein.

5 (b) This Compact is intended to facilitate the day-to-day
6 movement of EMS personnel across state boundaries in the
7 performance of their EMS duties as assigned by an
8 appropriate authority and authorize state EMS offices to
9 afford immediate legal recognition to EMS personnel
10 licensed in a member state. The Compact recognizes that
11 states have a vested interest in protecting the public's health
12 and safety through their licensing and regulation of EMS
13 personnel and that such state regulation shared among the
14 member states will best protect public health and safety. The
15 Compact is designed to achieve the following purposes and
16 objectives:

17 (1) Increase public access to EMS personnel;

18 (2) Enhance the state's ability to protect the public's
19 health and safety, especially patient safety;

20 (3) Encourage the cooperation of member states in the
21 areas of EMS licensure and regulation;

22 (4) Support licensing of military members who are
23 separating from an active duty tour and licensing of their
24 spouses;

25 (5) Facilitate the exchange of information between
26 member states regarding EMS personnel licensure, adverse
27 action, and significant investigatory information;

28 (6) Promote compliance with the laws governing EMS
29 personnel practice in each member state; and

30 (7) Invest all member states with the authority to hold
31 EMS personnel accountable through the mutual recognition
32 of member state licenses.

†§16-60-2. Definitions.

1 "Advanced Emergency Medical Technician (AEMT)"
2 means an individual licensed with cognitive knowledge and

3 a scope of practice that corresponds to that level in the
4 National EMS Education Standards and National EMS
5 Scope of Practice Model.

6 “Adverse action” means any administrative, civil,
7 equitable, or criminal action permitted by a state’s laws
8 which may be imposed against licensed EMS personnel by
9 a state EMS authority or state court, including, but not
10 limited to, actions against an individual’s license such as
11 revocation, suspension, probation, consent agreement,
12 monitoring, or other limitation or encumbrance on the
13 individual’s practice, letters of reprimand or admonition,
14 fines, criminal convictions, and state court judgments
15 enforcing adverse actions by the state EMS authority.

16 “Alternative program” means a voluntary,
17 nondisciplinary substance abuse recovery program
18 approved by a state EMS authority.

19 “Certification” means the successful verification of
20 entry-level cognitive and psychomotor competency using a
21 reliable, validated, and legally defensible examination.

22 “Commission” means the national administrative body
23 of which all states that have enacted the Compact are
24 members.

25 “Emergency medical technician (EMT)” means an
26 individual licensed with cognitive knowledge and a scope
27 of practice that corresponds to that level in the National
28 EMS Education Standards and National EMS Scope of
29 Practice Model.

30 “Home state” means a member state where an
31 individual is licensed to practice emergency medical
32 services.

33 “License” means the authorization by a state for an
34 individual to practice as an EMT, AEMT, or paramedic or
35 at a level in between EMT and paramedic.

36 “Medical director” means a physician licensed in a
37 member state who is accountable for the care delivered by
38 EMS personnel.

39 “Member state” means a state that has enacted this
40 Compact.

41 “Privilege to practice” means an individual’s authority
42 to deliver emergency medical services in remote states as
43 authorized under this Compact.

44 “Paramedic” means an individual licensed with
45 cognitive knowledge and a scope of practice that
46 corresponds to that level in the National EMS Education
47 Standards and National EMS Scope of Practice Model.

48 “Remote state” means a member state in which an
49 individual is not licensed.

50 “Restricted” means the outcome of an adverse action
51 that limits a license or the privilege to practice.

52 “Rule” means a written statement by the interstate
53 Commission promulgated pursuant to §16-60-12 of this
54 code that is of general applicability; implements, interprets,
55 or prescribes a policy or provision of the Compact; or is an
56 organizational, procedural, or practice requirement of the
57 Commission.

58 “Scope of practice” means defined parameters of
59 various duties or services that may be provided by an
60 individual with specific credentials. Whether regulated by
61 rule, statute, or court decision, it tends to represent the limits
62 of services an individual may perform.

63 “Significant investigatory information” means:

64 (1) Investigative information that a state EMS authority,
65 after a preliminary inquiry that includes notification and an
66 opportunity to respond if required by state law, has reason

67 to believe, if proved true, would result in the imposition of
68 an adverse action on a license or privilege to practice; or

69 (2) Investigative information that indicates that the
70 individual represents an immediate threat to public health
71 and safety regardless of whether the individual has been
72 notified and had an opportunity to respond.

73 “State” means any state, commonwealth, district, or
74 territory of the United States.

75 “State EMS authority” means the board, office, or other
76 agency with the legislative mandate to license EMS
77 personnel.

†§16-60-3. Home state licensure.

1 (a) Any member state in which an individual holds a
2 current license shall be considered a home state for purposes
3 of this Compact.

4 (b) Any member state may require an individual to
5 obtain and retain a license to be authorized to practice in the
6 member state under circumstances not authorized by the
7 privilege to practice under the terms of this Compact.

8 (c) A home state’s license authorizes an individual to
9 practice in a remote state under the privilege to practice only
10 if the home state:

11 (1) Currently requires the use of the National Registry
12 of Emergency Medical Technicians (NREMT) examination
13 as a condition of issuing initial licenses at the EMT and
14 paramedic levels;

15 (2) Has a mechanism in place for receiving and
16 investigating complaints about individuals;

17 (3) Notifies the Commission, in compliance with the
18 terms herein, of any adverse action or significant
19 investigatory information regarding an individual;

20 (4) No later than five years after activation of the
21 Compact, requires a criminal background check of all
22 applicants for initial licensure, including the use of the
23 results of fingerprint or other biometric data checks
24 compliant with the requirements of the Federal Bureau of
25 Investigation with the exception of federal employees who
26 have suitability determination in accordance with 5 C.F.R.
27 §731.202 and submit documentation of such as promulgated
28 in the rules of the Commission; and

29 (5) Complies with the rules of the Commission.

†§16-60-4. Compact privilege to practice.

1 (a) Member states shall recognize the privilege to
2 practice of an individual licensed in another member state
3 that is in conformance with §16-59-3 of this code.

4 (b) To exercise the privilege to practice under the terms
5 and provisions of this Compact, an individual must:

6 (1) Be at least 18 years of age;

7 (2) Possess a current unrestricted license in a member
8 state as an EMT, AEMT, paramedic, or state-recognized
9 and licensed level with a scope of practice and authority
10 between EMT and paramedic; and

11 (3) Practice under the supervision of a medical director.

12 (c) An individual providing patient care in a remote state
13 under the privilege to practice shall function within the
14 scope of practice authorized by the home state unless and
15 until modified by an appropriate authority in the remote
16 state as may be defined in the rules of the Commission.

17 (d) Except as provided in subsection (c) of this section,
18 an individual practicing in a remote state is subject to the
19 remote state's authority and laws. A remote state may, in
20 accordance with due process and that state's laws, restrict,
21 suspend, or revoke an individual's privilege to practice in

22 the remote state and may take any other necessary actions
23 to protect the health and safety of its citizens. If a remote
24 state takes action, it shall promptly notify the home state and
25 the Commission.

26 (e) If an individual's license in any home state is
27 restricted or suspended, the individual may not be eligible
28 to practice in a remote state under the privilege to practice
29 until the individual's home state license is restored.

30 (f) If an individual's privilege to practice in any remote
31 state is restricted, suspended, or revoked, the individual may
32 not be eligible to practice in any remote state until the
33 individual's privilege to practice is restored.

†§16-60-5. Conditions of practice in a remote state.

1 An individual may practice in a remote state under a
2 privilege to practice only in the performance of the
3 individual's EMS duties as assigned by an appropriate
4 authority, as defined in the rules of the Commission, and
5 under the following circumstances:

6 (1) The individual originates a patient transport in a
7 home state and transports the patient to a remote state;

8 (2) The individual originates in the home state and
9 enters a remote state to pick up a patient and provide care
10 and transport of the patient to the home state;

11 (3) The individual enters a remote state to provide
12 patient care and/or transport within that remote state;

13 (4) The individual enters a remote state to pick up a
14 patient and provide care and transport to a third member
15 state; and

16 (5) Other conditions as determined by rules
17 promulgated by the Commission.

†§16-60-6. Relationship to Emergency Management Assistance Compact.

1 Upon a member state's governor's declaration of a state
2 of emergency or disaster that activates the Emergency
3 Management Assistance Compact (EMAC), all relevant
4 terms and provisions of EMAC apply, and to the extent any
5 terms or provisions of this Compact conflict with EMAC,
6 the terms of EMAC shall prevail with respect to any
7 individual practicing in the remote state in response to such
8 declaration.

†§16-60-7. Veterans, service members separating from active duty military, and their spouses.

1 (a) Member states shall consider a veteran, active
2 military service member, and member of the National Guard
3 and Reserves separating from an active duty tour, and a
4 spouse thereof, who holds a current valid and unrestricted
5 NREMT certification at or above the level of the state
6 license being sought as satisfying the minimum training and
7 examination requirements for the licensure.

8 (b) Member states shall expedite the processing of
9 licensure applications submitted by veterans, active military
10 service members, and members of the National Guard and
11 Reserves separating from an active duty tour, and their
12 spouses.

13 (c) All individuals functioning with a privilege to
14 practice under this section remain subject to §16-59-8 of this
15 code.

†§16-60-8. Adverse actions.

1 (a) A home state has exclusive power to impose adverse
2 action against an individual's license issued by the home
3 state.

4 (b) If an individual's license in any home state is
5 restricted or suspended, the individual may not be eligible

6 to practice in a remote state under the privilege to practice
7 until the individual's home state license is restored.

8 (1) All home state adverse action orders shall include a
9 statement that the individual's Compact privileges are
10 inactive. The order may allow the individual to practice in
11 remote states with prior written authorization from both the
12 home state and remote state's EMS authority.

13 (2) An individual currently subject to adverse action in
14 the home state may not practice in any remote state without
15 prior written authorization from both the home state and
16 remote state's EMS authority.

17 (c) A member state shall report adverse actions and any
18 occurrences where the individual's Compact privileges are
19 restricted, suspended, or revoked to the Commission in
20 accordance with the rules of the Commission.

21 (d) A remote state may take adverse action on an
22 individual's privilege to practice within that state.

23 (e) Any member state may take adverse action against
24 an individual's privilege to practice in that state based on
25 the factual findings of another member state, so long as each
26 state follows its own procedures for imposing such adverse
27 action.

28 (f) A home state's EMS authority shall investigate and
29 take such appropriate action with respect to reported
30 conduct in a remote state as it would if such conduct had
31 occurred within the home state. In such cases, the home
32 state's law shall control in determining the appropriate
33 adverse action.

34 (g) Nothing in this Compact may override a member
35 state's decision that participation in an alternative program
36 may be used in lieu of adverse action and that such
37 participation shall remain nonpublic if required by the
38 member state's laws. Member states must require
39 individuals who enter any alternative programs to agree not

40 to practice in any other member state during the term of the
41 alternative program without prior authorization from such
42 other member state.

†§16-60-9. **Additional powers vested in a member state's EMS authority.**

1 A member state's EMS authority, in addition to any
2 other powers granted under state law, is authorized under
3 this Compact to:

4 (1) Issue subpoenas for both hearings and investigations
5 that require the attendance and testimony of witnesses and
6 the production of evidence. Subpoenas issued by a member
7 state's EMS authority for the attendance and testimony of
8 witnesses, and/or the production of evidence from another
9 member state, shall be enforced in the remote state by any
10 court of competent jurisdiction, according to that court's
11 practice and procedure in considering subpoenas issued in
12 its own proceedings. The issuing state's EMS authority shall
13 pay any witness fees, travel expenses, mileage, and other
14 fees required by the service statutes of the state where the
15 witnesses and/or evidence are located; and

16 (2) Issue cease and desist orders to restrict, suspend, or
17 revoke an individual's privilege to practice in the state.

†§16-60-10. **Establishment of the Interstate Commission for EMS Personnel Practice.**

1 (a) General. — The Compact states hereby create and
2 establish a joint public agency known as the Interstate
3 Commission for EMS Personnel Practice.

4 (1) The Commission is a body politic and an
5 instrumentality of the Compact states.

6 (2) Venue is proper and judicial proceedings by or
7 against the Commission shall be brought solely and
8 exclusively in a court of competent jurisdiction where the
9 principal office of the Commission is located: *Provided*,

10 That pursuant to article VI, section 35 of the Constitution of
11 West Virginia, neither the State of West Virginia nor any
12 officer or agency thereof may be named as a defendant in an
13 any court of law or equity except in the State of West
14 Virginia. The Commission may waive venue and
15 jurisdictional defenses to the extent it adopts or consents to
16 participate in alternative dispute resolution proceedings.

17 (3) Nothing in this Compact may be construed to be a
18 waiver of sovereign immunity.

19 (b) Membership, voting, and meetings. —

20 (1) Each member state shall have and be limited to one
21 delegate. The responsible official of the state EMS authority
22 or his designee shall be the delegate to this Compact for
23 each member state. Any delegate may be removed or
24 suspended from office as provided by the law of the state
25 from which the delegate is appointed. Any vacancy
26 occurring in the Commission shall be filled in accordance
27 with the laws of the member state in which the vacancy
28 exists. In the event that more than one board, office, or other
29 agency with the legislative mandate to license EMS
30 personnel at and above the level of EMT exists, the
31 governor of the state will determine which entity will be
32 responsible for assigning the delegate.

33 (2) Each delegate is entitled to one vote with regard to
34 the promulgation of rules and creation of bylaws and shall
35 otherwise have an opportunity to participate in the business
36 and affairs of the Commission. A delegate shall vote in
37 person or by such other means as provided in the bylaws.
38 The bylaws may provide for delegates' participation in
39 meetings by telephone or other means of communication.

40 (3) The Commission shall meet at least once during each
41 calendar year. Additional meetings shall be held as set forth
42 in the bylaws.

43 (4) All meetings shall be open to the public, and public
44 notice of meetings shall be given in the same manner as
45 required under the rulemaking provisions in §16-59-12 of
46 this code.

47 (5) The Commission may convene in a closed,
48 nonpublic meeting if the Commission must discuss:

49 (A) Noncompliance of a member state with its
50 obligations under the Compact;

51 (B) The employment, compensation, discipline, or other
52 personnel matters, practices, or procedures related to
53 specific employees or other matters related to the
54 Commission's internal personnel practices and procedures;

55 (C) Current, threatened, or reasonably anticipated
56 litigation;

57 (D) Negotiation of contracts for the purchase or sale of
58 goods, services, or real estate;

59 (E) Accusing any person of a crime or formally
60 censuring any person;

61 (F) Disclosure of trade secrets or commercial or
62 financial information that is privileged or confidential;

63 (G) Disclosure of information of a personal nature
64 where disclosure would constitute a clearly unwarranted
65 invasion of personal privacy;

66 (H) Disclosure of investigatory records compiled for
67 law-enforcement purposes;

68 (I) Disclosure of information related to any
69 investigatory reports prepared by, on behalf of, or for use of
70 the Commission or other committee charged with
71 responsibility of investigation or determination of
72 compliance issues pursuant to the Compact; or

73 (J) Matters specifically exempted from disclosure by
74 federal or member state statute.

75 (6) If a meeting, or portion of a meeting, is closed
76 pursuant to this provision, the Commission's legal counsel
77 or designee shall certify that the meeting may be closed and
78 shall reference each relevant exempting provision. The
79 Commission shall keep minutes that fully and clearly
80 describe all matters discussed in a meeting and shall provide
81 a full and accurate summary of actions taken, and the
82 reasons therefor, including a description of the views
83 expressed. All documents considered in connection with an
84 action shall be identified in such minutes. All minutes and
85 documents of a closed meeting shall remain under seal,
86 subject to release by a majority vote of the Commission or
87 order of a court of competent jurisdiction.

88 (c) Conduct of Commission proceedings. — The
89 Commission shall, by a majority vote of the delegates,
90 prescribe bylaws and/or rules to govern its conduct as may
91 be necessary or appropriate to carry out the purposes and
92 exercise the powers of the Compact, including, but not
93 limited to:

94 (1) Establishing the fiscal year of the Commission;

95 (2) Providing reasonable standards and procedures:

96 (A) For the establishment and meetings of other
97 committees; and

98 (B) Governing any general or specific delegation of any
99 authority or function of the Commission;

100 (3) Providing reasonable procedures for calling and
101 conducting meetings of the Commission, ensuring
102 reasonable advance notice of all meetings, and providing an
103 opportunity for attendance of such meetings by interested
104 parties, with enumerated exceptions designed to protect the
105 public's interest, the privacy of individuals, and proprietary
106 information, including trade secrets. The Commission may

107 meet in closed session only after a majority of the
108 membership votes to close a meeting, in whole or in part.
109 As soon as practicable, the Commission must make public
110 a copy of the vote to close the meeting revealing the vote of
111 each member with no proxy votes allowed;

112 (4) Establishing the titles, duties, and authority, and
113 reasonable procedures for the election of the officers of the
114 Commission;

115 (5) Providing reasonable standards and procedures for
116 the establishment of the personnel policies and programs of
117 the Commission. Notwithstanding any civil service or other
118 similar laws of any member state, the bylaws shall
119 exclusively govern the personnel policies and programs of
120 the Commission;

121 (6) Promulgating a code of ethics to address permissible
122 and prohibited activities of Commission members and
123 employees;

124 (7) Providing a mechanism for concluding the
125 operations of the Commission and the equitable disposition
126 of any surplus funds that may exist after the termination of
127 the Compact after the payment and/or reserving of all of its
128 debts and obligations;

129 (8) Publishing its bylaws and filing a copy thereof, and
130 a copy of any amendment thereto, with the appropriate
131 agency or officer in each of the member states, if any;

132 (9) Maintaining its financial records in accordance with
133 the bylaws; and

134 (10) Meeting and taking such actions as are consistent
135 with the provisions of this Compact and the bylaws.

136 (d) Powers of the Commission. — The Commission
137 may:

138 (1) Promulgate uniform rules to facilitate and coordinate
139 implementation and administration of this Compact. The
140 rules shall have the force and effect of law and shall be
141 binding in all member states once authorized by the
142 Legislature pursuant to the provisions of §29A-3-1 *et seq.*
143 of this code;

144 (2) Bring and prosecute legal proceedings or actions in
145 the name of the Commission: *Provided*, That the standing
146 of any state EMS authority or other regulatory body
147 responsible for EMS personnel licensure to sue or be sued
148 under applicable law shall not be affected;

149 (3) Purchase and maintain insurance and bonds;

150 (4) Borrow, accept, or contract for services of personnel,
151 including, but not limited to, employees of a member state;

152 (5) Hire employees, elect or appoint officers, fix
153 compensation, define duties, grant such individuals
154 appropriate authority to carry out the purposes of the
155 Compact, and to establish the Commission's personnel
156 policies and programs relating to conflicts of interest,
157 qualifications of personnel, and other related personnel
158 matters;

159 (6) Accept any and all appropriate donations and grants
160 of money, equipment, supplies, materials, and services and
161 to receive, utilize, and dispose of the same, provided that at
162 all times the Commission shall strive to avoid any
163 appearance of impropriety and/or conflict of interest;

164 (7) Lease, purchase, accept appropriate gifts or
165 donations of, or otherwise own, hold, improve, or use any
166 property, real, personal, or mixed: *Provided*, That all times
167 the Commission shall strive to avoid any appearance of
168 impropriety;

169 (8) Sell, convey, mortgage, pledge, lease, exchange,
170 abandon, or otherwise dispose of any property, real,
171 personal, or mixed;

- 172 (9) Establish a budget and make expenditures;
- 173 (10) Borrow money;
- 174 (11) Appoint committees, including advisory
175 committees composed of members, state regulators, state
176 legislators or their representatives, consumer
177 representatives, and such other interested persons as may be
178 designated in this Compact and the bylaws;
- 179 (12) Provide and receive information from, and
180 cooperate with, law-enforcement agencies;
- 181 (13) Adopt and use an official seal; and
- 182 (14) Perform such other functions as may be necessary
183 or appropriate to achieve the purposes of this Compact
184 consistent with the state regulation of EMS personnel
185 licensure and practice.
- 186 (e) Financing of the Commission. —
- 187 (1) The Commission shall pay, or provide for the
188 payment of, the reasonable expenses of its establishment,
189 organization, and ongoing activities.
- 190 (2) The Commission may accept any and all appropriate
191 revenue sources, donations, and grants of money,
192 equipment, supplies, materials, and services.
- 193 (3) The Commission may levy on and collect an annual
194 assessment from each member state or impose fees on other
195 parties to cover the cost of the operations and activities of
196 the Commission and its staff, which must be in a total
197 amount sufficient to cover its annual budget as approved
198 each year for which revenue is not provided by other
199 sources. The aggregate annual assessment amount shall be
200 allocated based upon a formula to be determined by the
201 Commission, which shall promulgate a rule binding upon
202 all member states: *Provided*, That no assessment may be
203 binding upon the State of West Virginia unless the rule

204 setting forth the formula for determining the aggregate
205 annual assessment has been authorized by the Legislature
206 pursuant to the legislative rule-making procedures in §29A-
207 3-1 *et seq.* of this code: *Provided, however,* That the validity
208 of any annual assessment levied on the State of West
209 Virginia shall be contingent upon funds being appropriated
210 by the Legislature or otherwise being made available.

211 (4) The Commission may not incur obligations of any
212 kind prior to securing the funds adequate to meet the same;
213 nor may the Commission pledge the credit of any of the
214 member states, except by and with the authority of the
215 member state.

216 (5) The Commission shall keep accurate accounts of all
217 receipts and disbursements. The receipts and disbursements
218 of the Commission shall be subject to the audit and
219 accounting procedures established under its bylaws;
220 however, all receipts and disbursements of funds handled by
221 the Commission shall be audited yearly by a certified or
222 licensed public accountant, and the report of the audit shall
223 be included in and become part of the annual report of the
224 Commission.

225 (f) Qualified immunity, defense, and indemnification. —

226 (1) The members, officers, executive director,
227 employees, and representatives of the Commission shall be
228 immune from suit and liability, either personally or in their
229 official capacity, for any claim for damage to or loss of
230 property, or personal injury, or other civil liability caused
231 by or arising out of any actual or alleged act, error, or
232 omission that occurred, or that the person against whom the
233 claim is made had a reasonable basis for believing occurred,
234 within the scope of Commission employment, duties, or
235 responsibilities, provided that nothing in this paragraph
236 shall be construed to protect any such person from suit
237 and/or liability for any damage, loss, injury, or liability

238 caused by the intentional, willful, or wanton misconduct of
239 that person.

240 (2) The Commission shall defend any member, officer,
241 executive director, employee, or representative of the
242 Commission in any civil action seeking to impose liability
243 arising out of any actual or alleged act, error, or omission
244 that occurred within the scope of Commission employment,
245 duties, or responsibilities or that the person against whom
246 the claim is made had a reasonable basis for believing it
247 occurred within the scope of Commission employment,
248 duties, or responsibilities: *Provided*, That nothing herein
249 may be construed to prohibit that person from retaining his
250 or her own counsel, and that the actual or alleged act, error,
251 or omission did not result from that person's intentional or
252 willful or wanton misconduct.

253 (3) The Commission shall indemnify and hold harmless
254 any member, officer, executive director, employee, or
255 representative of the Commission for the amount of any
256 settlement or judgment obtained against that person arising
257 out of any actual or alleged act, error, or omission that
258 occurred within the scope of Commission employment,
259 duties, or responsibilities or that such person had a
260 reasonable basis for believing occurred within the scope of
261 Commission employment, duties, or responsibilities,
262 provided that the actual or alleged act, error, or omission did
263 not result from the intentional or willful or wanton
264 misconduct of that person.

†§16-60-11. Coordinated database.

1 (a) The Commission shall provide for the development
2 and maintenance of a coordinated database and reporting
3 system containing licensure, adverse action, and significant
4 investigatory information on all licensed individuals in
5 member states.

6 (b) Notwithstanding any other provision of state law to
7 the contrary, a member state shall submit a uniform data set

8 to the coordinated database on all individuals to whom this
9 Compact is applicable as required by the rules of the
10 Commission, including:

11 (1) Identifying information;

12 (2) Licensure data;

13 (3) Significant investigatory information;

14 (4) Adverse actions against an individual's license;

15 (5) An indicator that an individual's privilege to practice
16 is restricted, suspended, or revoked;

17 (6) Nonconfidential information related to alternative
18 program participation;

19 (7) Any denial of application for licensure and the
20 reason(s) for such denial; and

21 (8) Other information that may facilitate the
22 administration of this Compact, as determined by the rules
23 of the Commission.

24 (c) The coordinated database administrator shall
25 promptly notify all member states of any adverse action
26 taken against, or significant investigative information on,
27 any individual in a member state.

28 (d) Member states contributing information to the
29 coordinated database may designate information that may
30 not be shared with the public without the express permission
31 of the contributing state.

32 (e) Any information submitted to the coordinated
33 database that is subsequently required to be expunged by the
34 laws of the member state contributing the information shall
35 be removed from the coordinated database.

†§16-60-12. Rulemaking.

1 (a) The Commission shall exercise its rulemaking
2 powers pursuant to the criteria set forth in this section and
3 the rules adopted thereunder. Rules and amendments shall
4 become binding as of the date specified in each rule or
5 amendment: *Provided*, That no rule may become binding on
6 the State of West Virginia as law until it has been authorized
7 by the Legislature pursuant to the provisions of §29A-3-1 *et*
8 *seq.* of this code.

9 (b) If a majority of the legislatures of the member states
10 rejects a rule, by enactment of a statute or resolution in the
11 same manner used to adopt the Compact, then such rule
12 shall have no further force and effect in any member state.

13 (c) Rules or amendments to the rules shall be adopted at
14 a regular or special meeting of the Commission.

15 (d) Prior to promulgation and adoption of a final rule or
16 rules by the Commission, and at least 60 days in advance of
17 the meeting at which the rule will be considered and voted
18 upon, the Commission shall file a Notice of Proposed
19 Rulemaking:

20 (1) On the website of the Commission; and

21 (2) On the website of each member state EMS authority
22 or the publication in which each state would otherwise
23 publish proposed rules.

24 (e) The Notice of Proposed Rulemaking shall include:

25 (1) The proposed time, date, and location of the meeting
26 in which the rule will be considered and voted upon;

27 (2) The text of the proposed rule or amendment and the
28 reason for the proposed rule;

29 (3) A request for comments on the proposed rule from
30 any interested person; and

31 (4) The manner in which interested persons may submit
32 notice to the Commission of their intention to attend the
33 public hearing and any written comments.

34 (f) Prior to adoption of a proposed rule, the Commission
35 shall allow persons to submit written data, facts, opinions,
36 and arguments, which shall be made available to the public.

37 (g) The Commission shall grant an opportunity for a
38 public hearing before it adopts a rule or amendment if a
39 hearing is requested by:

40 (1) At least 25 persons;

41 (2) A governmental subdivision or agency; or

42 (3) An association having at least 25 members.

43 (h) If a hearing is held on the proposed rule or
44 amendment, the Commission shall publish the place, time,
45 and date of the scheduled public hearing.

46 (1) All persons wishing to be heard at the hearing shall
47 notify the executive director of the Commission or other
48 designated member in writing of their desire to appear and
49 testify at the hearing not less than five business days before
50 the scheduled date of the hearing.

51 (2) Hearings shall be conducted in a manner providing
52 each person who wishes to comment a fair and reasonable
53 opportunity to comment orally or in writing.

54 (3) No transcript of the hearing is required, unless a
55 written request for a transcript is made, in which case the
56 person requesting the transcript shall bear the cost of
57 producing the transcript. A recording may be made in lieu
58 of a transcript under the same terms and conditions as a
59 transcript. This subsection shall not preclude the
60 Commission from making a transcript or recording of the
61 hearing if it so chooses.

62 (4) Nothing in this section may be construed as
63 requiring a separate hearing on each rule. Rules may be
64 grouped for the convenience of the Commission at hearings
65 required by this section.

66 (i) Following the scheduled hearing date, or by the close
67 of business on the scheduled hearing date if the hearing was
68 not held, the Commission shall consider all written and oral
69 comments received.

70 (j) The Commission shall, by majority vote of all
71 members, take final action on the proposed rule and shall
72 determine the effective date of the rule, if any, based on the
73 rule-making record and the full text of the rule.

74 (k) If no written notice of intent to attend the public
75 hearing by interested parties is received, the Commission
76 may proceed with promulgation of the proposed rule
77 without a public hearing.

78 (l) Upon determination that an emergency exists, the
79 Commission may consider and adopt an emergency rule
80 without prior notice, opportunity for comment, or hearing,
81 provided that the usual rule-making procedures provided in
82 the Compact and in this section shall be retroactively
83 applied to the rule as soon as reasonably possible, in no
84 event later than 90 days after the effective date of the rule.
85 For the purposes of this provision, an emergency rule is one
86 that shall be adopted immediately in order to:

87 (1) Meet an imminent threat to public health, safety, or
88 welfare;

89 (2) Prevent a loss of Commission or member state
90 funds;

91 (3) Meet a deadline for the promulgation of an
92 administrative rule that is established by federal law or rule;
93 or

94 (4) Protect public health and safety.

95 (m) The Commission or an authorized committee of the
96 Commission may direct revisions to a previously adopted
97 rule or amendment for purposes of correcting typographical
98 errors, errors in format, errors in consistency, or
99 grammatical errors. Public notice of any revisions shall be
100 posted on the website of the Commission. The revision shall
101 be subject to challenge by any person for a period of 30 days
102 after posting. The revision may be challenged only on
103 grounds that the revision results in a material change to a
104 rule. A challenge shall be made in writing and delivered to
105 the chair of the Commission prior to the end of the notice
106 period. If no challenge is made, the revision will take effect
107 without further action. If the revision is challenged, the
108 revision may not take effect without the approval of the
109 Commission.

110 (n) Applicability of West Virginia Administrative
111 Procedures Act. —

112 (1) Notwithstanding any provision of this Compact to
113 the contrary, no rule proposed or promulgated by the
114 Commission may become binding on the State of West
115 Virginia as law until it has been authorized by the
116 Legislature pursuant to the provisions of §29A-3-1 *et seq.*
117 of this code.

118 (2) Within 30 days of a rule or operating procedure that
119 affects the regulation of emergency medical services in the
120 State of West Virginia is promulgated by the Commission,
121 the Commissioner of the Bureau for Public Health shall
122 propose the rule for legislative approval in accordance with
123 the provisions of §29A-3-1 *et seq.* of this code.

124 (3) The Commissioner has emergency rule-making
125 authority. For purposes of this section, the Legislature finds
126 that the promulgation of a rule or operating procedure by the
127 Commission that affects the regulation of emergency
128 medical services in the State of West Virginia constitutes an
129 emergency for the purposes of filing an emergency rule
130 pursuant to §29A-3-15 of this code.

131 (4) A rejection of a legislative rule proposed pursuant to
132 this subsection shall have the effect of making that rule not
133 binding on the State of West Virginia, notwithstanding any
134 emergency rule previously promulgated pursuant thereto,
135 and notwithstanding the failure of a majority of states to take
136 action to invalidate the rule pursuant to the provisions of
137 subsection (b) of this section.

†§16-60-13. Oversight, dispute resolution, and enforcement.

1 (a) Oversight. —

2 (1) The executive, legislative, and judicial branches of
3 state government in each member state shall enforce this
4 Compact and take all actions necessary and appropriate to
5 effectuate the Compact's purposes and intent. The
6 provisions of this Compact and the rules promulgated
7 hereunder shall have standing as statutory law once
8 authorized by the Legislature pursuant to the provisions of
9 §29A-3-1, *et seq.* of this code.

10 (2) All courts shall take judicial notice of the Compact
11 and the rules in any judicial or administrative proceeding in
12 a member state pertaining to the subject matter of this
13 Compact which may affect the powers, responsibilities, or
14 actions of the Commission.

15 (3) The Commission shall be entitled to receive service
16 of process in any such proceeding and shall have standing
17 to intervene in such a proceeding for all purposes. Failure to
18 provide service of process to the Commission shall render a
19 judgment or order void as to the Commission, this Compact,
20 or promulgated rules.

21 (b) Default, technical assistance, and termination. —

22 (1) If the Commission determines that a member state
23 has defaulted in the performance of its obligations or
24 responsibilities under this Compact or the promulgated
25 rules, the Commission shall:

26 (A) Provide written notice to the defaulting state and
27 other member states of the nature of the default, the
28 proposed means of curing the default, and/or any other
29 action to be taken by the Commission; and

30 (B) Provide remedial training and specific technical
31 assistance regarding the default.

32 (2) If a state in default fails to cure the default, the
33 defaulting state may be terminated from the Compact upon
34 an affirmative vote of a majority of the member states, and
35 all rights, privileges, and benefits conferred by this Compact
36 may be terminated on the effective date of termination. A
37 cure of the default does not relieve the offending state of
38 obligations or liabilities incurred during the period of
39 default.

40 (3) Termination of membership in the Compact shall be
41 imposed only after all other means of securing compliance
42 have been exhausted. Notice of intent to suspend or
43 terminate shall be given by the Commission to the
44 Governor, the majority and minority leaders of the
45 defaulting state's Legislature, and each of the member
46 states.

47 (4) A state that has been terminated from the Compact
48 is responsible for all assessments, obligations, and liabilities
49 incurred through the effective date of termination, including
50 obligations that extend beyond the effective date of
51 termination.

52 (5) The Commission may not bear any costs related to a
53 state that is found to be in default or that has been terminated
54 from the Compact, unless agreed upon in writing between
55 the Commission and the defaulting state.

56 (6) The defaulting state may appeal the action of the
57 Commission by petitioning the U.S. District Court for the
58 District of Columbia or the federal district where the
59 Commission has its principal offices. The prevailing

60 member shall be awarded all costs of such litigation,
61 including reasonable attorney fees.

62 (c) Dispute Resolution. —

63 (1) Upon request by a member state, the Commission
64 shall attempt to resolve disputes related to the Compact that
65 arise among member states and between member and
66 nonmember states.

67 (2) The Commission shall promulgate a rule providing
68 for both mediation and binding dispute resolution for
69 disputes as appropriate, subject to the provisions of §16-59-
70 12(n) of this code.

71 (d) Enforcement. —

72 (1) The Commission, in the reasonable exercise of its
73 discretion, shall enforce the provisions and rules of this
74 Compact.

75 (2) By majority vote, the Commission may initiate legal
76 action in the United States District Court for the District of
77 Columbia or the federal district where the Commission has
78 its principal offices, against a member state in default to
79 enforce compliance with the provisions of the Compact and
80 its promulgated rules and bylaws: *Provided*, That pursuant
81 to article VI, section 35 of the Constitution of West Virginia,
82 neither the State of West Virginia nor any officer or agency
83 thereof shall be named as a defendant in any court of law or
84 equity except in the State of West Virginia. The relief
85 sought may include both injunctive relief and damages. In
86 the event judicial enforcement is necessary, the prevailing
87 member shall be awarded all costs of such litigation,
88 including reasonable attorney fees.

89 (3) The remedies herein shall not be the exclusive
90 remedies of the Commission. The Commission may pursue
91 any other remedies available under federal or state law.

†§16-60-14. Date of implementation of the Interstate Commission for EMS Personnel Practice and associated rules; withdrawal; amendment.

1 (a) The Compact shall come into effect on the date on
2 which the Compact statute is enacted into law in the tenth
3 member state. The provisions, which become effective at
4 that time, shall be limited to the powers granted to the
5 Commission relating to assembly and the promulgation of
6 rules. Thereafter, the Commission shall meet and exercise
7 rulemaking powers necessary to the implementation and
8 administration of the Compact.

9 (b) Any state that joins the Compact subsequent to the
10 Commission's initial adoption of the rules shall be subject
11 to the rules as they exist on the date on which the Compact
12 becomes law in that state. Any rule that has been previously
13 adopted by the Commission shall have the full force and
14 effect of law on the day the Compact becomes law in that
15 state.

16 (c) Any member state may withdraw from this Compact
17 by enacting a statute repealing the same. Withdrawal shall
18 not affect the continuing requirement of the withdrawing
19 state's EMS authority to comply with the investigative and
20 adverse action reporting requirements of this act prior to the
21 effective date of withdrawal.

22 (d) Nothing contained in this Compact shall be
23 construed to invalidate or prevent any EMS personnel
24 licensure agreement or other cooperative arrangement
25 between a member state and a nonmember state that does
26 not conflict with the provisions of this Compact.

27 (e) This Compact may be amended by the member
28 states. No amendment to this Compact may become
29 effective and binding upon any member state until it is
30 enacted into the laws of all member states.

† Redesignated

†§16-60-15. **Construction and severability.**

1 (a) This Compact shall be liberally construed so as to
 2 effectuate the purposes thereof. If this Compact shall be
 3 held contrary to the constitution of any member state
 4 thereto, the Compact shall remain in full force and effect as
 5 to the remaining member states. Nothing in this Compact
 6 supersedes state law or rules related to licensure of EMS
 7 agencies.

8 (b) The Emergency Medical Services Advisory Council
 9 shall review decisions of the Interstate Commission for
 10 Emergency Medical Services Personnel Practice
 11 established pursuant to this Compact and, upon approval by
 12 the Interstate Commission for Emergency Medical Services
 13 Personnel Practice of any action that will have the result of
 14 increasing the cost to the state of membership in the
 15 Compact, may recommend to the Legislature that the state
 16 withdraw from the Compact.

CHAPTER 279

**(Com. Sub. for H. B. 4414 - By Delegates Rowan,
 Campbell, Rohrbach, Estep-Burton, Pyles, C. Martin,
 Boggs, Toney, Mandt, Lovejoy and Hanna)**

[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 §16-1-20, relating
 to authorizing certain modes of communication as a means for
 acquiring language for children from birth to five years of age;
 making implementation subject to appropriation by the
 Legislature; requiring reporting of measures specific to
 language and literacy for children age three to five to advisory

† Redesignated

committee; requiring the West Virginia Department of Health and Human Resources and the West Virginia Department of Education to jointly select language developmental milestones from existing standardized norms, to develop a family resource for use by families and service providers to understand and monitor deaf and hard-of-hearing children's receptive and expressive language acquisition and progress toward English literacy development; requiring the West Virginia Department of Health and Human Resources and the West Virginia Department of Education to prepare a list of valid and reliable existing tools for assessments for service providers that can be used periodically to determine the receptive and expressive language and literacy development of deaf and hard-of-hearing children; requiring dissemination of the family resource and the educator tools and assessments, as well as the provision of informational materials on the use of the resources, tools, and assessments; imposing certain requirements on the child's individualized family service plan team and individual education program team if a deaf or hard-of-hearing child does not demonstrate progress in receptive and expressive language skills; requiring the West Virginia Department of Health and Human Resources and the West Virginia Department of Education to establish an advisory committee to solicit input from certain stakeholders on the selection of language developmental milestones for children who are deaf or hard-of-hearing that are equivalent to those for children who are not deaf or hard-of-hearing for inclusion in the family resource; setting forth membership of advisory committee; requiring the West Virginia Department of Education to annually produce an aggregated report that is specific to language and literacy development of children whose primary exceptionality is deaf and hard-of-hearing from birth to five years of age; and requiring that all of certain activities be consistent with federal law regarding the education of children with disabilities and federal law regarding the privacy of student information.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-20. Definitions and purpose.

1 (a) For the purpose of this code:

2 “English” means and includes spoken English, written
3 English, or English with the use of visual supplements;

4 “Language developmental milestones” means
5 milestones of development aligned with the existing state
6 instrument used to meet the requirements of federal law for
7 the assessment of children from birth to five years of age,
8 inclusive; and

9 “Language” includes American Sign Language (ASL)
10 and English.

11 (b) For the purposes of developing and using language
12 for a child who is deaf or hard-of-hearing, the following
13 modes of communication may be used as a means for
14 acquiring language: American Sign Language (ASL)
15 services, spoken language services, dual language services,
16 cued speech and tactile, or a combination thereof.

17 (c) This section shall apply only to children from birth
18 to five years of age, inclusive.

19 (d) Implementation of this code is subject to an
20 appropriation by the legislature.

21 (e) Federal regulations for children age birth through
22 two do not require reporting of measures specific to
23 language and literacy. However, this data is reported for
24 children age three to five and the West Virginia Department
25 of Health and Human Resources and the West Virginia
26 Department of Education shall make this report available to
27 the advisory committee, and available to others upon
28 request.

29 (f) The West Virginia Department of Health and Human
30 Resources and the West Virginia Department of Education
31 through their agencies that serve children ages birth to five
32 and their families shall jointly select language
33 developmental milestones from existing standardized
34 norms, to develop a family resource for use by families,
35 providers, early interventionists, speech pathologists,
36 educators, and other service providers to understand and
37 monitor deaf and hard-of-hearing children's receptive and
38 expressive language acquisition and progress toward
39 English literacy development. This family resource shall
40 include:

41 (1) Language that provides comprehensive and neutral,
42 unbiased information regarding different modes used to
43 learn and access language (e.g., English, American Sign
44 Language (ASL), or both) and services and programs
45 designed to meet the needs of children who are deaf or hard-
46 of-hearing;

47 (2) Language developmental milestones selected
48 pursuant to the process specified in this section;

49 (3) Language appropriate for use, in both content and
50 administration, with deaf and hard-of-hearing children from
51 birth to five years of age, inclusive, who use both or one of
52 the languages of American Sign Language (ASL) or
53 English;

54 (4) Developmental milestones in terms of typical
55 development of all children, by age range;

56 (5) Language written for clarity and ease of use by
57 families;

58 (6) Language that is aligned with the West Virginia
59 Department of Health and Human Resources' and the West
60 Virginia Department of Education's existing infant, toddler,
61 and preschool guidelines, the existing instrument used to
62 assess the development of children with disabilities

63 pursuant to federal law, and state standards in language and
64 literacy;

65 (7) Clarification that the parent(s) have the right to
66 select which language (American Sign Language (ASL),
67 English, or both) for their child's language(s) acquisition
68 and developmental milestones;

69 (8) Clarification that the family resource is not a formal
70 assessment of language and literacy development, and that
71 a family's observations of their children may differ from
72 formal assessment data presented at an individualized
73 family service plan (IFSP) or individual education program
74 (IEP) meeting; and

75 (9) Clarification that the family resource may be used
76 during an individualized family service plan (IFSP) or
77 individual education program (IEP) meeting for purposes of
78 sharing the family's observations about their child's
79 development.

80 (g) The West Virginia Department of Health and
81 Human Resources and the West Virginia Department of
82 Education shall also prepare a list of valid and reliable
83 existing tools or assessments for providers, early
84 interventionists, speech pathologists, educators, and other
85 service providers that can be used periodically to determine
86 the receptive and expressive language and literacy
87 development of deaf and hard-of-hearing children. These
88 educator tools and assessments:

89 (1) Shall be in a format that shows stages of language
90 development;

91 (2) Shall be used by providers, early interventionists,
92 speech pathologists, educators, and other service providers
93 to determine the progressing development of deaf and hard-
94 of-hearing children's receptive and expressive language
95 acquisition and developmental stages toward English
96 literacy;

97 (3) Shall be selected from existing instruments or
98 assessments used to assess the development of all deaf and
99 hard-of-hearing children from birth to five years of age,
100 inclusive;

101 (4) Shall be appropriate, in both content and
102 administration, for use with children who are deaf and hard-
103 of-hearing;

104 (5) May be used, in addition to the assessment required
105 by federal law, by the individualized family service plan
106 (IFSP) team and individual education program (IEP) team,
107 as applicable, to track deaf and hard-of-hearing children's
108 progress, and to establish or modify individualized family
109 service plans (IFSPs) and individual education programs
110 (IEPs); and

111 (6) May reflect the recommendations of the advisory
112 committee established pursuant to §16-1-20(e) of this code.

113 (h) To promote the intent of this code, the West Virginia
114 Department of Health and Human Resources and the West
115 Virginia Department of Education shall:

116 (1) Disseminate the family resource developed to
117 families of deaf and hard-of-hearing children, as well as
118 providers, early interventionists, speech pathologists,
119 educators, and related service personnel; and

120 (2) Disseminate the educator tools and assessments
121 selected to local educational agencies for use in the
122 development and modification of individualized family
123 service plans (IFSPs) and individual education programs
124 (IEPs);

125 (3) Provide informational materials on the use of the
126 resources, tools, and assessments to assist deaf and hard-of-
127 hearing children in becoming linguistically ready for formal
128 school entry (either itinerant services, West Virginia
129 Universal PreK/PreK Special Needs, or Kindergarten) using

130 the mode(s) of communication and language(s) chosen by
131 the parents.

132 (i) If a deaf or hard-of-hearing child does not
133 demonstrate progress in receptive and expressive language
134 skills, as measured by one of the educator tools or
135 assessments, or by the existing instrument used to assess the
136 development of children with disabilities pursuant to federal
137 law, as applicable, the child's individualized family service
138 plan (IFSP) team and individual education program (IEP)
139 team shall, as part of the process required by federal law,
140 explain in detail the reasons why the child is not meeting the
141 language developmental milestones or progressing towards
142 them, and shall recommend specific strategies, services, and
143 programs that shall be provided to assist the child's success
144 toward English literacy development.

145 (j) The West Virginia Department of Health and Human
146 Resources and the West Virginia Department of Education
147 shall establish an advisory committee to solicit input from
148 stakeholders identified herein on the selection of language
149 developmental milestones for children who are deaf or hard-
150 of-hearing that are equivalent to those for children who are
151 not deaf or hard-of-hearing, for inclusion in the family
152 resource developed pursuant to this section.

153 (k) The advisory committee shall be comprised of
154 volunteer individuals representing all known modes of
155 communication, specifically including the following:

156 (1) One parent of a child who is hard-of-hearing who
157 uses the dual languages of American Sign Language (ASL)
158 and English;

159 (2) One parent of a child who is deaf or hard-of-hearing
160 who uses assistive technology to communicate with spoken
161 English;

162 (3) Two or three credentialed providers, early
163 interventionists, speech pathologists, educators, or other

164 service providers of deaf or hard-of-hearing children who
165 are knowledgeable in the use of the dual languages of
166 English and American Sign Language (ASL);

167 (4) Two or three credentialed providers, early
168 interventionists, speech pathologists, educators, or other
169 service provider of deaf or hard-of-hearing children who are
170 knowledgeable in the use of assistive technology to
171 communicate with spoken English;

172 (5) One expert who researches or is knowledgeable in
173 the research regarding language outcomes for deaf and
174 hard-of-hearing children using American Sign Language
175 (ASL) or English;

176 (6) One expert who researches or is knowledgeable in
177 the research regarding language outcomes for deaf and
178 hard-of-hearing children using assistive technology to
179 communicate with spoken English;

180 (7) One credentialed educator of deaf and hard-of-
181 hearing children whose expertise is in curriculum and
182 instruction in American Sign Language (ASL) and English;

183 (8) One credentialed educator of deaf and hard-of-
184 hearing children whose expertise is in curriculum and
185 instruction in assistive technology to communicate with
186 spoken English;

187 (9) One advocate for the teaching and use of the dual
188 languages of American Sign Language (ASL) and English;

189 (10) One advocate for the teaching and use of
190 instruction in assistive technology to communicate with
191 spoken English; and,

192 (11) One educational audiologist who can address the
193 issues of aural habilitation and assistive technology to
194 advocate for children using spoken language in mainstream
195 environments.

196 (l) The advisory committee may also advise the West
197 Virginia Department of Health and Human Resources and
198 the West Virginia Department of Education on the content
199 and administration of the existing instrument used to assess
200 the development of children with disabilities pursuant to
201 federal law, as used to assess deaf and hard-of-hearing
202 children's language and literacy development to ensure the
203 appropriate use of that instrument with those children, and
204 make recommendations regarding future research to
205 improve the measurement of progress of deaf and hard-of-
206 hearing children in language and literacy.

207 (m) The West Virginia Department of Health and
208 Human Resources and the West Virginia Department of
209 Education shall provide the advisory committee with a list
210 of existing language developmental milestones from
211 existing standardized norms, along with any relevant
212 information held by the departments regarding those
213 language developmental milestones for possible inclusion
214 in the family resource developed pursuant to this section.

215 (n) After reviewing, the advisory committee shall
216 recommend to the West Virginia Department of Health and
217 Human Resources and the West Virginia Department of
218 Education language developmental milestones for selection.

219 (o) Commencing on or before July 31, 2021, and on or
220 before each July 31 thereafter, the West Virginia
221 Department of Education shall annually produce an
222 aggregated report, using existing data reported in
223 compliance with the federally required state performance
224 plan on children with disabilities, that is specific to language
225 and literacy development of children whose primary
226 exceptionality is deaf and hard-of-hearing from birth to five
227 years of age, inclusive, including those who are deaf or
228 hard-of-hearing and have other disabilities, relative to their
229 peers who are not deaf or hard-of-hearing. The departments
230 shall make this report available to the advisory committee,
231 the Legislative Oversight Commission on Education
232 Accountability, the Legislative Oversight Commission on

233 Health and Human Resources Accountability, and available
234 to others upon request.

235 (p) All activities of the West Virginia Department of
236 Health and Human Resources and the West Virginia
237 Department of Education in implementing this code shall be
238 consistent with federal law regarding the education of
239 children with disabilities and federal law regarding the
240 privacy of student information.

CHAPTER 280

**(Com. Sub. for H. B. 4422 - By Delegates Boggs,
Rohrbach, Ellington, Staggers, Westfall, Lovejoy, N.
Brown, Hartman, Shott, Evans and Mandt)**

[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 †§16-62-1, †§16-62-2, and †§16-62-3, all relating to prohibiting patient brokering; defining terms; prohibiting causing or participating in acts that are intended to derive any benefit or profit from referral of a patient to a health care provider or health care facility; prohibiting patient brokering related to a recovery residence; establishing criminal penalties for persons and business entities engaged in unlawful patient brokering; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

†ARTICLE 62. THE PATIENT BROKERING ACT.

†§16-62-1. Definitions.

1 For the purposes of this article:

† Redesignated

2 “Health care provider or health care facility” means any
3 person or entity licensed or certified or authorized by law to
4 provide professional health care service in this state to a
5 patient during that patient’s medical, remedial or behavioral
6 health care, treatment, or confinement.

7 “Health care provider network entity” means a
8 corporation, partnership, or limited liability company
9 owned or operated by two or more health care providers,
10 and organized for the purpose of entering into agreements
11 with health insurers, health care purchasing groups, or the
12 Medicare or Medicaid program.

13 “Health insurer” means any insurance company
14 authorized to transact health insurance in the state, any
15 insurance company authorized to transact health insurance
16 or casualty insurance in the state that is offering a minimum
17 premium plan or stop-loss coverage for any person or entity
18 providing health care benefits, any self-insurance plan, any
19 health maintenance organization, any prepaid health clinic,
20 any prepaid limited health service organization, any
21 multiple-employer welfare arrangement, or any fraternal
22 benefit society providing health benefits to its members.

†§16-62-2. **Patient brokering prohibited.**

1 (a) It is unlawful for any person, including any health
2 care provider or health care facility, to:

3 (1) Offer or pay a commission, benefit, bonus, rebate,
4 kickback, or bribe, directly or indirectly, in cash or in kind,
5 or engage in any split-fee arrangement, in any form
6 whatsoever, to induce the referral of a patient or patronage
7 to or from a health care provider or health care facility;

8 (2) Solicit or receive a commission, benefit, bonus,
9 rebate, kickback, or bribe, directly or indirectly, in cash or
10 in kind, or engage in any split-fee arrangement, in any form
11 whatsoever, in return for referring a patient or patronage to
12 or from a health care provider or health care facility;

13 (3) Solicit or receive a commission, benefit, bonus,
14 rebate, kickback, or bribe, directly or indirectly, in cash or
15 in kind, or engage in any split-fee arrangement, in any form
16 whatsoever, in return for the acceptance or acknowledgment
17 of treatment from a health care provider or health care
18 facility;

19 (4) Aid, abet, advise, or otherwise participate in the
20 conduct prohibited under this subsection; or

21 (5) Engage in any of the unlawful acts provided for in
22 this subsection in regard to a recovery residence as defined
23 in §16-59-1 of this code.

24 (b) *Penalties.* –

25 (1) Any person who violates the provisions of
26 subsection (a) of this section is guilty of a felony and, upon
27 conviction thereof, shall be fined not more than \$50,000, or
28 imprisoned in a state correctional facility for not less than
29 one year nor more than five years, or both fined and
30 imprisoned.

31 (2) Notwithstanding the provisions of subdivision (1) of
32 this section, any person who violates subsection (a) of this
33 section, where the prohibited conduct involves 10 or more
34 patients, is guilty of a felony and, upon conviction, shall be
35 fined not more than \$100,000, or imprisoned in a state
36 correctional facility not less than two years nor more than
37 five years, or both fined and imprisoned.

†§16-62-3. Exceptions.

1 This article does not apply to the following payment
2 practices:

3 (1) Any discount, payment, waiver of payment, or
4 payment practice expressly authorized by 42 U.S.C.
5 §1320a-7b(b)(3) or regulations adopted thereunder;

- 6 (2) Any payment, compensation, or financial
7 arrangement within a group practice provided the payment,
8 compensation, or arrangement is not to or from persons who
9 are not members of the group practice;
- 10 (3) Payments to a health care provider or health care
11 facility for professional consultation services;
- 12 (4) Commissions, fees, or other remuneration lawfully
13 paid to insurance agents;
- 14 (5) Payments by a health insurer who reimburses,
15 provides, offers to provide, or administers health, mental
16 health, or substance abuse goods or services under a health
17 benefit plan;
- 18 (6) Payments to or by a health care provider or health
19 care facility, or a health care provider network entity, that
20 has contracted with a health insurer, a health care
21 purchasing group, or the Medicare or Medicaid program to
22 provide health, mental health, or substance abuse goods or
23 services under a health benefit plan when the payments are
24 for goods or services under the plan;
- 25 (7) Insurance advertising and promotional gifts;
- 26 (8) Commissions or fees paid to a person or entity
27 providing a referral service to nurses which provide health
28 care services;
- 29 (9) Payments by a health care provider or health care
30 facility to a health, mental health, or substance abuse
31 information service that provides information upon request
32 and without charge to consumers about providers of health
33 care goods or services to enable consumers to select
34 appropriate providers or facilities, provided that the
35 information service:
- 36 (A) Does not attempt through its standard questions for
37 solicitation of consumer criteria or through any other means

38 to steer or lead a consumer to select or consider selection of
39 a particular health care provider or health care facility;

40 (B) Does not provide or represent itself as providing
41 diagnostic or counseling services or assessments of illness
42 or injury and does not make any promises of cure or
43 guarantees of treatment;

44 (C) Does not provide or arrange for transportation of a
45 consumer to or from the location of a health care provider
46 or health care facility; and

47 (D) Charges and collects fees from a health care
48 provider or health care facility participating in its services
49 that are set in advance, are consistent with the fair market
50 value for those information services, and are not based on
51 the potential value of a patient or patients to a health care
52 provider or health care facility or of the goods or services
53 provided by the health care provider or health care facility.

54 (10) Payments made by an assisted living facility to an
55 individual employed by the assisted living facility, or with
56 whom the facility contracts to provide marketing services
57 for the facility, if the individual clearly indicates that he or
58 she works with or for the facility; and

59 (11) Payments made to a resident of an assisted living
60 facility who refers a friend, family members, or other
61 individuals with whom the resident has a personal
62 relationship to the assisted living facility, in which case the
63 assisted living facility may provide a monetary reward to
64 the resident for making the referral.

CHAPTER 281

**(Com. Sub. for H. B. 4434 - By Delegates Summers,
Hill, Pack, Cowles, Foster, Rowan, Worrell, Barrett,
Diserio, Swartzmiller and Angelucci)**

[Passed March 3, 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 †§5B-1-10, relating to the study of the health care workforce; defining terms; directing the Department of Commerce to issue a report; setting forth the contents of the report; requiring certain entities to report information; and deeming any information received by the department for the purpose of creating the report to be confidential trade secrets which are exempt from disclosure.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF COMMERCE.

†§5B-1-10. West Virginia Health Care Workforce Sustainability Study.

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

3 (1) “Continuum of Care” means the following health
4 care providers or facilities, singularly or consecutively, that
5 provide care for an individual:

6 (A) Assisted Living residence, as regulated and defined
7 by §16-5D-1 *et seq.* of this code;

† Redesignated

- 8 (B) Behavioral Health service, as defined by §16-2D-
9 2(7) of this code;
- 10 (C) Hospice, as regulated and defined by §16-5I-1 *et*
11 *seq.* of this code;
- 12 (D) Hospitals, as regulated and defined by §16-5B-1 *et*
13 *seq.* of this code;
- 14 (E) Home Health agency, as regulated and defined by
15 §16-2C-1 *et seq.* of this code;
- 16 (F) Skilled Nursing Facility/Nursing Home, as
17 regulated and defined by §16-5C-1 *et seq.* of this code; and
- 18 (G) Emergency Medical Service Agency, as defined by
19 §16-4C-1 *et seq.* of this code.
- 20 (2) “Department” means the Department of Commerce,
21 including any and all agencies 11 within the Department of
22 Commerce.
- 23 (3) “Direct-care status” means health care providers that
24 for the majority of time deliver care or services to
25 individuals in such a manner that the provider could be
26 personally identifiable by the recipient of services.
- 27 (4) “Entity” means an individual, partnership,
28 corporation, or other legal entity that employs or plans to
29 employ skilled workers.
- 30 (5) “Government agency” means any state, county,
31 municipal, or local public agency, board, committee, or
32 division, including educational, vocational, and technical
33 schools.
- 34 (6) “Health care facility” means a publicly or privately
35 owned facility, agency, or entity that offers or provides
36 health services, whether a for-profit or nonprofit entity and
37 whether or not licensed, or required to be licensed, in whole
38 or in part.

39 (7) “Health care provider” means a person authorized
40 by law to provide professional health services in this state
41 to an individual.

42 (8) “Health services” means clinically related
43 preventive, diagnostic, treatment, or rehabilitative services.

44 (9) “Indirect-care status” means health care providers
45 that for the majority of time perform managerial or
46 administrative functions and are not in direct contact with
47 consumers of care.

48 (10) “New graduate employee” means a health care
49 provider within 18 months of graduation from a program
50 qualifying the individual as a health care provider.

51 (11) “Private third-party” means an individual,
52 partnership, corporation, or other legal entity that employs
53 or plans to employ skilled workers in the workforce or that
54 teaches, trains, certifies, or provides licensure for
55 individuals in the workforce.

56 (12) “Report” means the report required to be completed
57 and issued by the Secretary pursuant to this article.

58 (13) “Secretary” means the Secretary of the Department
59 of Commerce.

60 (14) “Separations” means the number of full-time or
61 part-time employees leaving an entity voluntarily or
62 involuntarily excluding per diem, contract, agency, or
63 traveling health care professionals.

64 (15) “Workforce” means an individual employed by an
65 entity within the continuum of care.

66 (b) On or before February 1, 2021, the Secretary shall
67 research, survey, study, and issue a public report on the
68 existing workforce in the continuum of care, as well as the
69 anticipated future workforce needs over the next 15 years.

70 (c) In addition to being made publicly available, the
71 completed report shall be provided to the Legislative
72 Oversight Commission on Health and Human Resources
73 Accountability (LOCHHRA), created pursuant to §16-29E-
74 1 *et seq.* of this code.

75 (d) In order to create the report required in this section
76 in the most cost-effective and efficient manner, the
77 Secretary may seek or obtain grants to facilitate the
78 research, survey, and study; may enter into agreements with
79 other governmental agencies, committees, research
80 divisions, including educational institutions, for the
81 collection and analysis of information; and may contract
82 with private persons or companies: *Provided*, That any and
83 all agreements, grants, or contracts for the assistance or
84 sharing of information shall include confidentiality
85 provisions consistent with the provisions of this section.

86 (e) The findings in the report shall summarize the data
87 collected utilizing the categories and professions contained
88 in this section. In presenting the findings, the report shall
89 also break down its summaries on a statewide, regional, and
90 county basis.

91 (f) The report, or any other disclosure of collected data,
92 shall not identify specific entities, providers, or facilities,
93 nor make specific correlation between an entity, provider,
94 or facility and the workforce numbers at that entity,
95 provider, or facility.

96 (g) To facilitate the timely collection and accuracy of
97 data, the department is expressly authorized to seek, and
98 specifically request, information from any entity,
99 government agency, health care provider, health care
100 facility, or private third-party: *Provided*, That the
101 department shall only request information reasonably
102 designed to elicit the information that is sought by this
103 section, and in a manner intended to minimize obstruction
104 to the requested entities providing necessary health
105 services. Any entity, government agency, health care

106 provider, health care facility, or private third-party in
107 receipt of a survey or request for information from the
108 department shall comply with the request and provide any
109 and all requested information pertinent to the research,
110 survey, and study.

111 (h) The department shall research, survey, and study the
112 following aspects of the continuum of care workforce:

113 (1) The number of individuals employed;

114 (2) The number of full-time and part-time individuals so
115 employed;

116 (3) The number of contract, agency, or traveling nurse
117 or specialists utilized;

118 (4) The number of vacancies;

119 (5) The number of employee separations;

120 (6) The number of new graduate employee separations;

121 (7) The average number of patients/residents treated at
122 each entity;

123 (8) The overall number of individuals licensed,
124 certified, or registered by the state to work in the health care
125 continuum;

126 (9) The current rate of licensure, certification, or
127 registration by the state to work in the health care
128 continuum;

129 (10) The anticipated growth in the number of
130 individuals that will be licensed, certified, or registered in
131 the state to work in the continuum of care over the next 15
132 years;

133 (11) The availability of classes or courses offered by
134 secondary, vocational, technical, community, and higher
135 education schools or institutions to train those necessitating

136 licensure, certification, or registration to work in the health
137 care continuum; and

138 (12) The average number of graduates per year in those
139 classes or courses offered to train those necessitating
140 licensure, certification, or registration to work in the health
141 care continuum.

142 (i) In collecting and reporting the data, the department
143 shall utilize, at a minimum, the following categories and
144 professions within the continuum of care:

145 (1) Categories of entities:

146 (i) Assisted Living;

147 (ii) Behavioral Health;

148 (iii) Hospice;

149 (iv) Hospital;

150 (v) Home Health;

151 (vi) Skilled Nursing Facility/Nursing Home; and

152 (vii) Emergency Medical Service Agency.

153 (2) Job Professions delineated by direct-care or indirect-
154 care status:

155 (i) Physician (M.D./D.O.) by specialty;

156 (ii) Physician Assistant;

157 (iii) Advanced Practice Registered Nurse by role and
158 certification;

159 (iv) Registered Nurse;

160 (v) Licensed Professional Nurse;

161 (vi) Nurse Aide;

- 162 (vii) Medical Assistant;
 - 163 (viii) Dietician;
 - 164 (ix) Social Worker;
 - 165 (x) Physical Therapist;
 - 166 (xi) Physical Therapy Assistant;
 - 167 (xii) Occupational Therapist;
 - 168 (xiii) Occupational Therapy Assistant;
 - 169 (xiv) Speech Therapist;
 - 170 (xv) Respiratory Therapist;
 - 171 (xvi) Psychologist;
 - 172 (xvii) MDS/coding specialist;
 - 173 (xviii) Pharmacist;
 - 174 (xix) Pharmacy Technician;
 - 175 (xx) Radiologic Technologist; and
 - 176 (xxi) Emergency Medical Service Personnel.
- 177 (j) Any material, data, or other writing made or received
178 by the department for the purpose of conducting the
179 research, survey, study, or report, is deemed to be
180 confidential trade secrets which are exempt from disclosure
181 under the provisions of §29B-1-4 of this code.

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CHAPTER 282

**(H. B. 4447 - By Delegates Lavender-Bowe, Lovejoy,
Campbell, Pack, Evans, Zukoff, Boggs, Walker,
Graves, Paynter and Estep-Burton)**

[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 §16-5S-9a, relating to creation of the shared table initiative for senior citizens who suffer from food insecurity; stating findings; acknowledging the success of a similar initiative in public schools; stating the purpose of the bill; granting rule-making authority with certain minimum contents; stating certain requirements for guidelines and guidance policies; stating certain requirements regarding health guidelines, compliance, and coverage; authorizing certain collaboration; and authorizing the Bureau for Senior Services to make certain requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5S. OLDER WEST VIRGINIANS ACT.

§16-5S-9a. Shared table initiative for senior citizens.

- 1 (a) The Legislature finds and determines that:
- 2 (1) The enactment of §18-5D-5 of this code, creating the
- 3 shared table initiative in West Virginia Schools has been a
- 4 major success;
- 5 (2) Shared table initiatives can be successful in other
- 6 settings;

7 (3) Senior citizens are often some of our most
8 vulnerable citizens; and

9 (4) There is no reason for food already produced by
10 senior centers and other services aiding seniors to be wasted
11 when that could help improve the living conditions of senior
12 citizens in need.

13 (b) Therefore, the purpose of this section is to establish
14 a statewide initiative to facilitate shared tables at senior
15 centers and similar facilities where congregate meals are
16 provided to seniors in need. The Bureau for Senior Services
17 shall promulgate a rule in accordance with §29A-3B-1, *et*
18 *seq.* of this code that provides guidelines to senior centers
19 and other locations where congregate meals are provided to
20 senior citizens on the management and distribution of
21 excess food consistent with state and county health
22 department and United States Food and Drug
23 Administration requirements and guidelines for the
24 distribution of excess food. The guidance policy at a
25 minimum shall provide a list of food products and
26 methodologies for distribution that include, but are not
27 limited to:

28 (1) The types of foods that may be distributed;

29 (2) Methods of distribution to make excess food
30 available;

31 (3) Methods of distributing excess food to persons or
32 organizations providing food to seniors suffering from food
33 insecurity; and

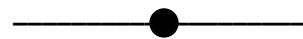
34 (4) Methods to otherwise donate excess food to persons
35 or organizations providing food to persons or families
36 suffering from food insecurity.

37 (c) The preparation, safety, and donation of food made
38 available to senior citizens during a congregate meal and
39 donated to a food bank or any other nonprofit charitable
40 organization for distribution shall comply with and be

41 thereby covered by the Good Samaritan Food Donation Act,
42 §55-7D-1 *et seq.* of this code.

43 (d) The methods of distributing excess food to senior
44 citizens may include a sharing table where food service
45 staff, senior citizens, and volunteers may return appropriate
46 food items consistent with the promulgated rule to make
47 those food items available to senior citizens during the day.

48 (e) The Bureau for Senior Services may coordinate with
49 the State Department of Education to obtain best practices
50 advice on implementation and the rules promulgated by the
51 Bureau for Senior Services may require some or all
52 locations where congregate meals are served to senior
53 citizens to participate in the shared table initiative.



CHAPTER 283

**(Com. Sub. for H. B. 4494 - By Delegates Bates,
Cowles, Lavender-Bowe, Pack, Rohrbach, Shott,
Ellington, Boggs, Hill, Espinosa and Skaff)**

[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 as §16-9G-1 and §16-9G-2, all relating to expanding tobacco use reduction and cessation initiatives; creating a task force to undertake studies and monitor and advise the Division of Tobacco Prevention and recommend policies to the Legislature; setting forth duties of the Division of Tobacco Prevention; and authorizing the Division of Tobacco Prevention to apply and administer private grants and donations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9G. TOBACCO CESSATION INITIATIVE.**§16-9G-1. Tobacco Use Prevention and Cessation Task Force.**

1 (a) The West Virginia Tobacco Use Prevention and
2 Cessation Task Force is created for the purpose of
3 recommending and monitoring the establishment and
4 management of programs that are found to be effective in
5 the reduction of tobacco, tobacco products, alternative
6 nicotine products, and vapor products use by all state
7 citizens, with a strong focus on the prevention of children
8 and young adults use of tobacco, tobacco products,
9 alternative nicotine products, and vapor products.

10 (b) The task force shall have the following members:

11 (1) The Commissioner of the Bureau for Public Health
12 or his or her designee, who shall serve as chair;

13 (2) The Superintendent of the Department of Education
14 or his or her designee;

15 (3) Ten members to be appointed by the Governor:

16 (A) A representative of a nationwide nonprofit
17 organization dedicated to the elimination of cancer;

18 (B) A representative of a nonprofit national organization
19 that funds cardiovascular medical research;

20 (C) A dentist, licensed pursuant to §30-4-1 *et seq.*, with
21 an expertise in oral health;

22 (D) A physician, licensed pursuant to either §30-3-1 *et*
23 *seq.* or §30-14-1 *et seq.* with expertise in health impacts
24 associated with tobacco, tobacco products, alternative
25 nicotine products, or vapor products consumption;

26 (E) A representative of a national voluntary health
27 organization whose mission is to save lives by improving
28 lung health and preventing lung disease through education,
29 advocacy, and research;

30 (F) A representative who is certified from one of the
31 programs accredited by the Council for Tobacco Treatment
32 Training Programs or has received a National Certificate in
33 Tobacco Treatment Practice, who has advanced education
34 in evidence-based tobacco treatment competencies, skills,
35 and practices;

36 (G) A representative from a national youth tobacco,
37 tobacco products, alternative nicotine products, or vapor
38 products prevention organization;

39 (H) A representative from the West Virginia Prevention
40 First Network within the West Virginia Bureau for
41 Behavioral Health; and

42 (I) Two citizen members that through professional or
43 medical experience or advocacy are committed to work and
44 advocate for cessation of tobacco, tobacco products,
45 alternative nicotine products, and vapor products
46 consumption in all forms in the state.

47 (c) The task force shall meet quarterly at the call of the
48 chair to study, monitor, and recommend funding and
49 initiation of programs that reduce tobacco, tobacco
50 products, alternative nicotine products, and vapor products
51 consumption in West Virginia, and to initiate studies and
52 processes to provide the most efficient and effective use of
53 the funds dedicated for this purpose. The task force shall
54 include a variety of persons in the health care field,
55 including individuals certified from one of the programs
56 accredited by the Council for Tobacco Treatment Training
57 Programs or received a National Certificate in Tobacco
58 Treatment Practice, advocates, and citizens, with the
59 intention of the Legislature to create a dynamic and
60 innovative group to focus, monitor, and facilitate state
61 resources towards this goal.

62 (d) The Director of the Division of Tobacco Prevention
63 shall attend each task force meeting and shall provide staff
64 support services for the task force. The task force shall

65 monitor the Division of Tobacco Prevention's programs and
66 make recommendations to the division on expenditures and
67 programs which are being administered by that office. The
68 task force shall report annually to the Legislative Oversight
69 Committee on Health and Human Resources Accountability
70 by December 1st, which shall include at a minimum, the
71 following:

72 (1) An assessment of each program administered by the
73 Division of Tobacco Prevention towards reducing tobacco,
74 tobacco products, alternative nicotine products, and vapor
75 products consumption and include an overview of its budget
76 for the prior year and how state moneys and any other
77 funding or grants received by the office are being expended
78 that year;

79 (2) Review and analysis the types of tobacco, tobacco
80 products, alternative nicotine products, and vapor products
81 consumption practices in the state and identify emerging
82 trends related to tobacco, tobacco products, alternative
83 nicotine products, or vapor products delivery devices and
84 related activities impacting tobacco, tobacco products,
85 alternative nicotine products, and vapor products use, with
86 particular emphasis on youth consumption trends and
87 practices; and,

88 (3) Recommend for legislation or implementation of
89 legislation, public policies; and funding of programs that
90 can further facilitate a reduction in tobacco, tobacco
91 products, alternative nicotine products, or vapor products
92 usage in our state.

§16-9G-2. Division of Tobacco Prevention.

1 In addition to administering and coordinating the
2 program on tobacco, tobacco products, alternative nicotine
3 products, and vapor products cessation, the Division of
4 Tobacco Prevention may apply for and administer federal
5 and private grants and donations made for the purpose of
6 reducing and eliminating tobacco, tobacco products,
7 alternative nicotine products, and vapor products
8 consumption in this state.

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CHAPTER 284

**(Com. Sub. for H. B. 4557 - By Delegate Hill)
[By Request of the 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 §27-9-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §27-17-3 of said code, all relating to behavioral health centers and group residential facilities; to include the ability to impose civil money penalties against such centers and facilities for good cause; to update obsolete terminology; and requiring legislative rule making.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. LICENSING OF BEHAVIORAL HEALTH CENTERS.

§27-9-1. License from Secretary of Health and Human Resources; regulations.

1 No behavioral health center shall provide behavioral
2 health services unless a license is first obtained from the
3 Secretary of the Department of Health and Human
4 Resources. The secretary shall propose rules for legislative
5 approval in accordance with the provisions of §29A-3-1 *et*
6 *seq.*, in regard to the operation of behavioral health centers.
7 The secretary, or any person authorized by the secretary, has
8 authority to investigate and inspect any licensed behavioral
9 health center. The secretary may impose a civil money
10 penalty, suspend, or revoke the license of any center for
11 good cause after reasonable notice, including due process
12 rights as provided in legislative rule.

ARTICLE 17. GROUP RESIDENTIAL FACILITIES.**§27-17-3. License from Secretary of Health and Human Resources; regulations; and penalties.**

1 (a) No group residential facility shall be established or
2 operated unless a license is obtained from the Secretary of
3 the Department of Health and Human Resources. The
4 secretary shall propose rules for legislative approval in
5 accordance with the provisions of §29A-3-1 *et seq.*,
6 including the operation of the group residential facility; a
7 statement of the rights of patients in group residential
8 facilities to ensure the adequate care and supervision of
9 patients; and shall have the authority to investigate and
10 inspect a facility, and may impose a civil money penalty,
11 suspend or revoke the license for good cause after notice,
12 hearing, and other due process rights as provided by
13 legislative rule.

14 (b) A group residential home is not required to obtain a
15 license from the secretary.



CHAPTER 285**(Com. Sub. for H. B. 4620 - By Delegate Rohrbach)**

[Passed March 3, 2020; in effect ninety days from passage.]

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

AN ACT to amend and reenact §16-59-2 of the Code of West Virginia, 1931, as amended, relating to certification of recovery residences; and clarifying that building code applies to certain structures; and clarifying that fire code applies to certain structures.

Be it enacted by the Legislature of West Virginia:

ARTICLE 59. CERTIFICATION OF RECOVERY RESIDENCES.**§16-59-2. Voluntary certification of recovery residences.**

1 (a) The department shall contract with an entity to serve
2 as the certifying agency for a voluntary certification
3 program for drug-free and alcohol-free recovery residences
4 based upon standards determined by the National Alliance
5 for Recovery Residences (NARR) or a similar entity. The
6 certifying agency shall establish and implement an
7 accreditation program for drug-free and alcohol-free
8 recovery residences that shall maintain nationally
9 recognized standards that:

10 (1) Uphold industry best practices and support a safe,
11 healthy, and effective recovery environment;

12 (2) Evaluate the residence's ability to assist persons in
13 achieving long-term recovery goals;

14 (3) Protect residents of drug- and alcohol-free housing
15 against unreasonable and unfair practices in setting and
16 collecting fee payments.

17 (b) The department shall require the recovery residence
18 to submit the following:

19 (1) Documentation verifying certification as specified
20 and administered by the certifying agency;

21 (2) If a municipality or county offers or requires
22 verification of compliance with local building, maximum
23 occupancy, fire safety, and sanitation codes applicable to
24 single-family housing, documentation of verification by the
25 municipality or county where the recovery residence is
26 located stating that the recovery residence is in compliance.

27 (c) If a municipality or county offers or requires
28 verification of compliance with local building, maximum
29 occupancy, fire safety, and sanitation codes applicable to

30 single-family housing, the municipality or county must
31 perform requested or required inspections within 30 days of
32 receiving a request for verification. If a residence is located
33 within a municipality or county that offers or requires
34 verification of compliance with local building, maximum
35 occupancy, fire safety, and sanitation codes applicable to
36 single-family housing, and the municipality or county fails
37 to perform requested or required inspections within 30 days
38 of receiving a request for verification, the residence may
39 apply for and be granted certification directly through the
40 certifying agency without the aforementioned verification.

41 (d) Upon receiving a complete application, the
42 certifying agency shall evaluate the residence to determine
43 if the residence is in compliance with national best-practice
44 standards and safety requirements. Additionally, any
45 application of the items specified in this section must
46 comply with the Fair Housing Act, 42 U.S.C. §3601 *et seq.*
47 and the Americans with Disabilities Act of 2008, 42 U.S.C.
48 §12101 *et seq.*

49 (1) If it is determined that the residence is in
50 compliance, the certification agency shall issue a certificate
51 of compliance to the recovery residence operator for the
52 specific recovery residence location set forth in the
53 application.

54 (2) Each residence location, even if operated by the
55 same person or entity, must maintain a certificate of
56 compliance for the purposes of this article.

57 (e) The certifying agency may suspend or revoke a
58 certificate of compliance if the recovery residence is not in
59 compliance with any provision of this section or has failed
60 to remedy any deficiency identified in writing and served by
61 certified mail. Suspension or revocation may take place
62 after a notice of deficiency is served and has existed for at
63 least 30 days.

64 (f) The certifying agency shall implement and maintain
65 a process by which a residence whose certification has been
66 suspended or revoked may apply for and be granted
67 reinstatement. If a municipality or county offers or requires
68 verification of compliance with local building, maximum
69 occupancy, fire safety, and sanitation codes applicable to
70 single-family housing, and if the residence's certification
71 suspended or revoked for noncompliance with local
72 building, maximum occupancy, fire safety, and sanitation
73 codes applicable to single-family housing, the municipality
74 or county may charge a fee of up to \$100 for any requested
75 reinspection of a recovery residence by the residence
76 seeking reinstatement.

77 (g) The department shall periodically evaluate the
78 quality, integrity, and efficacy of the accreditation program
79 developed. The department shall promulgate rules subject
80 to legislative approval in accordance with §29A-3-1 *et seq.*
81 of this code to implement this section that shall include a
82 process for receiving complaints against drug-free and
83 alcohol-free recovery residences and criteria by which such
84 residences' certifications can be revoked.

85 (h) A person may not advertise to the public any
86 recovery residence as a "certified recovery residence"
87 unless the recovery residence has first secured a certificate
88 of compliance under this section. A person who violates this
89 subsection commits a misdemeanor, punishable by a fine of
90 not less than \$1,000 nor more than \$5,000 for each
91 infraction.

92 (i) This article does not permit a structure that would not
93 be normally classified as a single family dwelling to be
94 exempt from the state building code or fire code.

95 (j) Nothing herein shall be read to require any recovery
96 residence to obtain certifications set forth herein in order to
97 conduct operations.

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CHAPTER 286

**(H. B. 4655 - By Delegates Howell, Hott, Summers,
Maynard, C. Martin, Jennings, Staggers, Angelucci,
Ellington, Hamrick and Fast)**

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §16-4C-8 of the Code of West Virginia, 1931, as amended, relating to automatic certification as an emergency medical technician-paramedic or emergency medical technician-basic upon application; providing that an applicant may have previously served in any branch of the United States military, National Guard, Coast Guard, or the Reserve Components of the Armed Services; providing that an applicant must have been honorably discharged within two years of application; providing for similar military job titles that bear a rational nexus to the training and education required by the commissioner to be certified as a paramedic or emergency medical technician; providing that the commissioner must issue a license upon review of the application; and providing that if an individual permits a certification to expire the commissioner may require examination as a condition of recertification.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-8. Standards for emergency medical services personnel.

- 1 (a) Every ambulance operated by an emergency medical
- 2 services agency shall carry at least two personnel. At least
- 3 one person shall be certified in cardiopulmonary

4 resuscitation or first aid and the person in the patient
5 compartment shall be certified as an emergency medical
6 technician-basic at a minimum except that in the case of a
7 specialized multi-patient medical transport, only one staff
8 person is required and that person shall be certified, at a
9 minimum, at the level of an emergency medical technician-
10 basic. The requirements of this subsection will remain in
11 effect until revised by the legislative rule to be promulgated
12 pursuant to §16-4C-8(b) of this code.

13 (b) On or before May 28, 2010, the commissioner shall
14 submit a proposed legislative rule to the Emergency
15 Medical Services Advisory Council for review, and on or
16 before June 30, 2010, shall file the proposed legislative rule
17 with the Office of the Secretary of State, in accordance with
18 the provisions of §29A-3-1 *et seq.* of this code, to establish
19 certification standards for emergency medical vehicle
20 operators and to revise the requirements for emergency
21 medical services personnel.

22 (c) As of the effective date of the legislative rule to be
23 promulgated pursuant to §16-4C-8(b), emergency medical
24 services personnel who operate ambulances shall meet the
25 requirements set forth in the legislative rule.

26 (d) Any person desiring emergency medical services
27 personnel certification shall apply to the commissioner
28 using forms and procedures prescribed by the
29 commissioner. Upon receipt of the application, the
30 commissioner shall determine whether the applicant meets
31 the certification requirements and may examine the
32 applicant if necessary to make that determination.

33 (e) The applicant shall submit to a national criminal
34 background check, the requirement of which is declared to
35 be not against public policy.

36 (1) The applicant shall meet all requirements necessary
37 to accomplish the national criminal background check,
38 including submitting fingerprints, and authorizing the West

39 Virginia Office of Emergency Medical Services, the West
40 Virginia State Police, and the Federal Bureau of
41 Investigation to use all records submitted and produced for
42 the purpose of screening the applicant for certification.

43 (2) The results of the national criminal background
44 check may not be released to or by a private entity.

45 (3) The applicant shall submit a fee of \$75 for initial
46 certification and a fee of \$50 for recertification. The fees set
47 forth in this subsection remain in effect until modified by
48 legislative rule.

49 (f) An application for an original, renewal or temporary
50 emergency medical service personnel certificate or
51 emergency medical services agency license, shall be acted
52 upon by the commissioner and the certificate or license
53 delivered or mailed, or a copy of any order of the
54 commissioner denying any such application delivered or
55 mailed to the applicant, within 15 days after the date upon
56 which the complete application, including test scores and
57 background checks, if applicable, was received by the
58 commissioner.

59 (g) Any person may report to the commissioner or the
60 Director of the Office of Emergency Medical Services
61 information he or she may have that appears to show that a
62 person certified by the commissioner may have violated the
63 provisions of this article or legislative rules promulgated
64 pursuant to this article. A person who is certified by the
65 commissioner, who knows of or observes another person
66 certified by the commissioner violating the provisions of
67 this article or legislative rules promulgated pursuant to this
68 article, has a duty to report the violation to the commissioner
69 or director. Any person who reports or provides information
70 in good faith is immune from civil liability.

71 (h) The commissioner may issue a temporary
72 emergency medical services personnel certificate to an
73 applicant, with or without examination of the applicant,

74 when he or she finds that issuance to be in the public
75 interest. Unless suspended or revoked, a temporary
76 certificate shall be valid initially for a period not exceeding
77 120 days and may not be renewed unless the commissioner
78 finds the renewal to be in the public interest.

79 (i) For purposes of certification or recertification of
80 emergency medical services personnel, the commissioner
81 shall recognize and give full credit for all continuing
82 education credits that have been approved or recognized by
83 any state or nationally recognized accrediting body.

84 (j) Notwithstanding any other provision of code or rule,
85 the commissioner recognizes that military personnel,
86 National Guardsmen, members of the United States Coast
87 Guard, and members of the Reserve Components of the
88 Armed Services have advanced skills and training necessary
89 to meet the requirements of this section to be certified as an
90 emergency medical technician-paramedic upon application.
91 Any person may seek automatic certification as an
92 emergency medical technician-paramedic in this state if he
93 or she has:

94 (1) Been honorably discharged from any branch of the
95 United States military;

96 (2) Received paramedic or similar life-saving medical
97 training in positions including, but not limited to, United
98 States Army Combat Medic, United States Air Force
99 Pararescue, United States Air Force Combat Rescue
100 Officer, United States Navy Hospital Corpsman –
101 Advanced Technical Field, United States Coast Guard
102 Health Services Technician, National Guard Health Care
103 Specialist, the Reserve Components of any of the preceding
104 positions, or can otherwise demonstrate that his or her
105 occupation in the military received substantially similar
106 training to be certified as required by the commissioner; and

107 (3) Received an honorable discharge within two years
108 of the application date.

109 (k) Notwithstanding any other provision of code or rule,
110 the commissioner recognizes that military personnel,
111 National Guardsmen, members of the United States Coast
112 Guard, and members of the Reserve Components of the
113 Armed Services have advanced skills and training necessary
114 to meet the requirements of this section to be certified as an
115 emergency medical technician-basic upon application. Any
116 person may seek automatic certification as an emergency
117 medical technician-basic in this state if he or she has:

118 (1) Been honorably discharged from any branch in the
119 United States military;

120 (2) Received emergency medical technician training or
121 similar life-saving medical training in positions including,
122 but not limited to, United States Army Infantryman, United
123 States Air Force Security Forces, United States Navy
124 Hospital Corpsman, United States Coast Guard Aviation
125 Survival Technician, United States Marines Infantryman,
126 National Guard Infantryman, and Reserve Components of
127 any of the preceding positions, or can otherwise
128 demonstrate that his or her occupation in the military
129 received substantially similar training to be certified as
130 required by the commissioner; and

131 (3) Received an honorable discharge within two years
132 of the application date.

133 (l) Upon reviewing an application for certification
134 pursuant to subsection (j) and subsection (k) of this section,
135 the commissioner shall issue an appropriate certificate to the
136 individual applying for certification as an emergency
137 medical technician-paramedic or emergency medical
138 technician-basic without further examination or education.
139 If an individual certified pursuant to this section permits his
140 or her certification to expire, the commissioner may require
141 examination as a condition of recertification.

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CHAPTER 287

**(Com. Sub. for H. B. 4773 - By Delegates Zukoff,
Rowan, Ellington, Stagers, Rohrbach, Lavender-
Bowe, Estep-Burton, Pyles, Pushkin and Lovejoy)**

[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 article, designated †§16-5BB-1, all relating to creating a workgroup; designating members; authorizing workgroup to develop recommended protocols; authorizing workgroup to develop recommended education and training requirements; authorizing staff; providing for public hearings; providing for report; providing for sunset; authorizing screening protocols; and providing for effective date for screening protocols.

Be it enacted by the Legislature of West Virginia:

**†ARTICLE 5BB. SCREENING PROTOCOLS FOR
ADVERSE CHILDHOOD EXPERIENCES.**

**†§16-5BB-1. Development of Screening Protocols for Adverse
Childhood Experiences.**

1 (a) The Commissioner of the Bureau for Public Health
2 may form a workgroup to conduct a study of adverse
3 childhood experiences and their impact on the people of
4 West Virginia. The workgroup may be comprised of the
5 following members:

6 (1) The Commissioner of the Bureau of Children and
7 Families, or his or her designee;

† Redesignated

- 8 (2) The Dean of the West Virginia University School of
9 Medicine, or his or her designee;
- 10 (3) The Dean of the Marshall University Joan C.
11 Edwards School of Medicine, or his or her designee;
- 12 (4) The Dean of the West Virginia School of
13 Osteopathic Medicine, or his or her designee;
- 14 (5) The Executive Director of the West Virginia Herbert
15 Henderson Office of Minority Affairs, or his or her
16 designee;
- 17 (6) The Director of the Office of Maternal, Child and
18 Family Health, or his or her designee;
- 19 (7) Up to three representatives of primary care providers
20 chosen by the West Virginia Primary Care Association;
- 21 (8) Up to three representatives of behavioral healthcare
22 providers chosen by the West Virginia Behavioral
23 Healthcare Providers Association;
- 24 (9) Up to two members chosen by the Adverse
25 Childhood Experiences Coalition of West Virginia;
- 26 (10) One member chosen by the West Virginia Rural
27 Health Association;
- 28 (11) One member chosen by the West Virginia Hospital
29 Association;
- 30 (12) One member chosen by the West Virginia Nurses
31 Association;
- 32 (13) One member chosen by the West Virginia Chapter
33 of the American Academy of Pediatrics;
- 34 (14) One member chosen by the West Virginia State
35 Medical Association;

36 (15) One member chosen by the West Virginia
37 Osteopathic Medical Association;

38 (16) One member chosen by the West Virginia
39 Academy of Family Physicians;

40 (17) One member chosen by the West Virginia
41 Association of Physician Assistants;

42 (18) One member chosen by the West Virginia
43 Association of School Nurses;

44 (19) One member representing parents chosen by the
45 West Virginia Circle of Parents Network;

46 (20) One member chosen by the West Virginia Foster,
47 Adoptive and Kinship Network;

48 (21) The Commissioner of the Bureau for Behavioral
49 Health, or his or her designee;

50 (22) One representative of the West Virginia Defending
51 Childhood Initiative, commonly referred to as “Handle
52 With Care,” chosen by the West Virginia Children’s Justice
53 Task Force;

54 (23) One member chosen by the West Virginia Chapter
55 of the National Association for the Advancement of Colored
56 People; and

57 (24) The West Virginia State Superintendent of
58 Schools, or his or her designee.

59 (b) The Commissioner of the Bureau for Public Health
60 may designate additional persons who may participate in the
61 meetings of the workgroup: *Provided*, That any such person
62 must be the administrative head of the office or division
63 whose functions necessitate his or her inclusion in this
64 process.

65 (c) The workgroup may develop recommended
66 guidance, tools, and protocols for primary health care
67 practitioners to undertake the following:

68 (1) Provide information to patients regarding the impact
69 of adverse and positive childhood experiences on physical
70 and mental health, and the risks and benefits of screening
71 patients for adverse child experiences;

72 (2) Screen patients for adverse child experiences,
73 childhood trauma, and positive childhood experiences that
74 may impact a patient's physical or mental health or the
75 provision of health care services to the patient; and

76 (3) Within the context of a comprehensive systems
77 approach, provide clinical response that medical providers
78 should follow after screening, such as:

79 (A) Applying principles of trauma-informed care;

80 (B) Identification and treatment of adverse childhood
81 experiences and associated health conditions;

82 (C) Patient education about toxic stress and
83 buffering interventions, including supportive relationships,
84 mental health treatment, exercise, sleep hygiene, healthy
85 nutrition, and mindfulness and meditation practices;

86 (D) Validation of existing strengths and protective
87 factors;

88 (E) Referral to patient resources which may include, but
89 are not limited to, counseling and treatment programs,
90 community-based medical and non-medical resources, and
91 family support programs; and

92 (F) Follow-up as necessary.

93 (d) The workgroup may develop recommendations for
94 education and training requirements to be completed for

95 administering the screening process, trauma-informed care,
96 and clinical response as described in this section.

97 (e) The Bureau for Public Health may provide staff for
98 the workgroup. The workgroup may schedule one public
99 hearing in each of the congressional districts in West
100 Virginia as it relates to the screening protocols for adverse
101 childhood experiences. The workgroup may develop and
102 approve a final report by June 30, 2021, and a copy may be
103 submitted to the Joint Committee on Government and
104 Finance of the Legislature and the Governor. The
105 workgroup will sunset on March 31, 2022.

106 (f) The Bureau for Public Health may develop screening
107 protocols for adverse childhood experiences and make
108 recommendations in a report to be submitted to the
109 Governor no later than December 31, 2021: *Provided*, That
110 prior to submission, the bureau may present its proposed
111 screening protocols for adverse childhood experiences to
112 the Legislative Oversight Committee on Health and Human
113 Resources within 90 days after development of the drafts
114 and prior to submission of the final protocols to the
115 Governor. The Legislative Oversight Committee on Health
116 and Human Resources shall have 90 days to review the
117 standards and provide input to the bureau, which shall
118 consider such input when developing the final standards for
119 submission to the Governor. Upon submission to the
120 Governor, the report may be distributed to all health care
121 provider organizations in the state for consideration for
122 adoption.

123 (g) Any screening protocols for adverse childhood
124 experiences drafted pursuant to this section shall not
125 become effective until on or after March 31, 2021.

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CHAPTER 288

**(H. B. 4437 - By Delegates J. Jeffries, Toney,
Maynard and Porterfield)
[By Request of the State Auditor]**

[Passed February 29, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §12-3A-4 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Pay Card program; and providing additional eligible unbanked recipients of a pay card.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-4. Payment by a West Virginia pay card.

1 The State Auditor and the State Treasurer may jointly
2 establish a state-stored value debit card program known as
3 the “West Virginia Pay Card” for recipients of employee
4 payroll, retirement benefits, entitlement programs,
5 vocational rehabilitation services funds disbursed pursuant
6 to §18-10A-6 of this code, foster care and adoption stipends,
7 subsidies, and other payments made under programs
8 administered by the Department of Health and Human
9 Resources, payments to contractors of the state, or other
10 eligible payees of state funds, who do not possess a federally
11 insured depository institution account. The State Auditor
12 and the State Treasurer shall use every reasonable effort to
13 encourage all identified unbanked recipients to obtain a
14 federally insured depository account. The State Auditor
15 shall include an unbanked recipient in the program upon
16 determining that good cause exists. Once an unbanked
17 recipient is included in the program, the State Auditor shall

18 provide the State Treasurer with an electronic file
19 containing the necessary unbanked recipient information.
20 The State Treasurer shall issue a request for proposals in
21 accordance with §12-3A-3 of this code to aid in the
22 administration of the program. The State Auditor shall assist
23 in the review of pay card proposals. In carrying out the
24 purposes of this article, the State Treasurer shall not
25 compete with banks or other federally insured financial
26 institutions, or for profit.

CHAPTER 289

(H. B. 4665 - By Delegates Capito, Queen, Shott 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 §12-3-10d of the Code of West Virginia, 1931, as amended, relating to a decrease from 15.5 percent to 10 percent the amount transferred to the Purchasing Improvement Fund; and creating a transfer of five and one half percent to the Entrepreneurship and Innovation Investment Fund from fees generated by the use of the State Purchasing Card Program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-10d. Purchasing Card Fund continued; expenditures.

- 1 (a) All money received by the state pursuant to any
- 2 agreement with vendors providing purchasing charge cards,
- 3 and any interest or other return earned on the money, shall

4 be deposited in a special revenue revolving fund, designated
5 the Purchasing Card Administration Fund, in the State
6 Treasury to be administered by the Auditor. The fund shall
7 be used to pay all expenses incurred by the Auditor in the
8 implementation and operation of the Purchasing Card
9 Program and may be used to pay expenses related to the
10 general operation of the Auditor's office. The Auditor also
11 may use the fund to pay expenses incurred by spending units
12 associated with the use of the card, including system and
13 program enhancements, and inspection and monitoring of
14 compliance with all applicable rules and procedures.
15 Expenditures from the fund shall be made in accordance
16 with appropriations by the Legislature pursuant to the
17 provisions of §12-3-1 *et seq.* of this code and upon
18 fulfillment of the provisions of §5A-2-1 *et seq.* of this code.

19 (b) Within three days of receiving rebate moneys
20 resulting from state spending unit purchasing card
21 purchases, the Auditor shall transfer 10 percent of such
22 rebate moneys to the Purchasing Improvement Fund created
23 pursuant to §5A-3-58 of this code.

24 (c) Within three days of receiving rebate moneys
25 resulting from state spending unit purchasing card
26 purchases, the Auditor shall transfer five and one half
27 percent of such rebate moneys to the Entrepreneurship and
28 Innovation Investment Fund, 10 percent of such rebate
29 moneys to the Hatfield-McCoy Regional Recreation
30 Authority and 10 percent of such moneys to the State Park
31 Operating Fund.

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CHAPTER 290

(S. B. 600 - By Senators Weld, Cline and Maroney)

[Passed March 4, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §15-1J-4 of the Code of West Virginia, 1931, as amended, relating to creating a special revenue account of the State Treasury designated the Military Authority Fund to be administered by the Adjutant General for all nonfederal government entity revenues and expenses received by the West Virginia Military Authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1J. THE WEST VIRGINIA MILITARY AUTHORITY ACT.

§15-1J-4. Establishment and general powers of the authority.

1 (a) The West Virginia Military Authority is hereby
2 established to administer national security, homeland
3 security and other military-related or sponsored programs.

4 (b) The authority will be administered by the Adjutant
5 General and the Adjutant General's department.

6 (c) Funds provided by the federal government and any
7 state funds authorized by appropriation of the Legislature
8 used as a required match to secure federal funding for
9 programs administered by the authority pursuant to this
10 section shall be administered by the Adjutant General
11 subject to the provisions of §4-11-1 *et seq.* of this code.

12 (d) Except as otherwise prohibited by statute, the
13 authority, as a governmental instrumentality exercising

14 public powers of the state, shall have and may exercise all
15 powers necessary or appropriate to carry out the purpose of
16 this article, including the authority to:

17 (1) Execute cooperative agreements between the guard
18 and the federal and/or state governments;

19 (2) Contract on behalf of the guard with the federal
20 government, its instrumentalities and agencies, any state,
21 territory, or the District of Columbia and its agencies and
22 instrumentalities, municipalities, foreign governments,
23 public bodies, private corporations, partnerships,
24 associations, and individuals;

25 (3) Use funds administered by the authority pursuant to
26 subsection (c) of this section for the maintenance,
27 construction, or reconstruction of capital repair and
28 replacement items as necessary and approved by the
29 authority;

30 (4) Accept and use funds from the federal government,
31 its instrumentalities and agencies, any state, territory, or the
32 District of Columbia and its agencies and instrumentalities,
33 municipalities, foreign governments, public bodies, private
34 corporations, partnerships, associations, and individuals for
35 the purposes of national security, homeland security, and
36 other military-related or sponsored programs;

37 (5) Procure insurance with state funds through BRIM
38 covering property and other assets of the authority in
39 amounts and from insurers that BRIM determines
40 necessary;

41 (6) Contract on behalf of the guard with the federal
42 government, its instrumentalities, and agencies, any state,
43 territory, or the District of Columbia and its agencies and
44 instrumentalities, municipalities, foreign governments,
45 public bodies, private corporations, partnerships,
46 associations, and individuals for specialized technical
47 services at a rate commensurate with industry standards as

48 determined by the Adjutant General to support specific
49 activities related to national security, homeland security,
50 and other military-related programs;

51 (7) Hire employees at an appropriate salary equivalent
52 to a competitive wage rate;

53 (8) Enroll employees in PERS, PEIA, and workers'
54 compensation and unemployment programs, or their
55 equivalents: *Provided*, That the authority, through the
56 receipt of federal and/or state funds, pays the required
57 employer contributions;

58 (9) Cooperate with economic development agencies in
59 efforts to promote the expansion of industrial, commercial,
60 and manufacturing in the state;

61 (10) Develop a human resources division that will
62 administer and manage its employees and receive state
63 matching funds as necessary to ensure maximum federal
64 funds are secured;

65 (11) Due to the at-will employment relationship with the
66 authority, its employees may not avail themselves of the
67 state grievance procedure as set forth in §29-6A-1 *et seq.* of
68 this code; and

69 (12) Have the ability to secure all other bonding,
70 insurance, or other liability protections necessary for its
71 employees to fulfill their duties and responsibilities.

72 (e) There is hereby created in the State Treasury a
73 special revenue account designated the Military Authority
74 Fund which shall be administered by the Adjutant General.
75 All revenues received from nonfederal government entities
76 shall be deposited into the special revenue account and may
77 be used by the Adjutant General in accordance with the
78 provisions of this article.

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CHAPTER 291

**(Com. Sub. for S. B. 676 - By Senators Mann,
Baldwin, Jeffries, Takubo, Weld, Roberts and
Maroney)**

[Passed February 13, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 2, 2020.]

AN ACT to amend and reenact §15-2C-6 of the Code of West Virginia, 1931, as amended, relating to permitting fees from the central abuse registry to be used for costs relating to information technology support and infrastructure; and permitting the term “criminal recordkeeping” to include data creation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-6. Fees.

1 The criminal identification bureau may charge, and any
2 requester shall pay, a user charge of \$10 for each request for
3 information made by a requester to the central abuse
4 registry. In order to expedite requests by requesters, the
5 criminal identification bureau may establish a procedure
6 permitting service providers or qualified entities as defined
7 in §15-2C-1 of this code to deposit funds with the bureau in
8 anticipation of requests. Fees pursuant to this section shall
9 be paid into a special account in the State Treasury to be
10 expended for: (1) Registry purposes and criminal
11 recordkeeping; (2) information technology support and
12 infrastructure; and (3) technology-related hardware and/or
13 software that is associated with the routine operations of the
14 West Virginia State Police Criminal Identification Bureau,

15 including, but not limited to, the creation, transport, storage,
16 and delivery of criminal justice information: *Provided*, That
17 for and after the fiscal year ending June 30, 1998, all
18 expenditures shall be made in accordance with
19 appropriation by the Legislature. Amounts collected which
20 are found from time-to-time to exceed the funds needed for
21 central abuse registry and criminal recordkeeping purposes
22 may be transferred to other accounts or funds and
23 redesignated for other purposes by appropriation of the
24 Legislature. For purposes of this section, the term “criminal
25 recordkeeping” means the compiling of fingerprints,
26 photographs, criminal disposition reports, uniform crime
27 report statistics, and other relevant data regarding the arrest,
28 conviction, incarceration, and post-conviction status of
29 criminal violators and sex offenders.

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CHAPTER 292

**(S. B. 712 - By Senators Plymale, Woelfel, Jeffries,
Stollings and Takubo)**

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §5-2-24c of the Code of West Virginia, 1931, as amended, relating to correcting the name of the Forensic Analysis Laboratory of the Marshall University Forensic Science Center.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-24c. Relationship with Marshall University Forensic Science Center.

1 (a) The Forensic Analysis Laboratory of the Marshall
2 University Forensic Science Center is hereby declared to be
3 engaged in the administration of criminal justice as that term
4 is defined in 28 C. F. R. 20.3(b).

5 (b) The Marshall University Forensic Science Center
6 and the West Virginia State Police shall confer with each
7 other as to available grants or similar possible funding
8 sources and applications therefor.

9 (c) To avoid duplicative and wasteful use of limited
10 resources and to ensure maximum utilization of available
11 funds, the West Virginia State Police shall have primacy of
12 decisionmaking over the Marshall University Forensic
13 Science Center with regard to applications for particular grants
14 or funding in which both entities may have an interest to which
15 the Marshall University Forensic Science Center shall accede.

16 (d) The West Virginia State Police and the Marshall
17 University Forensic Science Center shall execute a written
18 agreement to ensure compliance with the provisions of
19 subsection (c) of this section.



CHAPTER 293

**(S. B. 838 - By Senators Azinger, Baldwin, Beach,
Clements, Cline, Hardesty, Jeffries, Lindsay,
Maynard, Pitsenbarger, Romano, Rucker, Smith,
Takubo, Weld, Woelfel and Trump)**

[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 §15-2-55,
relating to directing the State Police, in collaboration with the
Office of Drug Control Policy of the Department of Health
and Human Resources, to establish a referral program for

substance abuse treatment; limiting certain persons from the category of those voluntarily seeking assistance; exempting persons seeking treatment from arrest and prosecution; directing the destruction of controlled substances received from persons seeking treatment; requiring referrals to treatment of persons seeking same; specifying persons who are ineligible for referral; immunizing the State Police and its employees civilly for making referrals; and exempting records of program from freedom of information disclosure.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-55. Referral program for substance abuse treatment.

1 (a) The State Police shall create a program and may, in
2 collaboration with the Office of Drug Control Policy of the
3 Department of Health and Human Resources and existing
4 state government programs to refer persons to treatment for
5 substance use who voluntarily seek assistance from the
6 State Police.

7 (b) A person voluntarily seeking assistance through a
8 program created pursuant to this section and who is not
9 under arrest or the subject of a search warrant:

10 (1) Shall not be placed under arrest;

11 (2) Shall not be prosecuted for the possession of any
12 controlled substance or drug paraphernalia surrendered to
13 the State Police. Items surrendered pursuant to this
14 subdivision shall be recorded by the State Police at the time
15 of surrender and shall be destroyed; and

16 (3) Shall be promptly referred to a community mental
17 health center, medical provider, or other entity for substance
18 use treatment.

19 (c) A person is ineligible for placement through a
20 program established pursuant to this section if the person:

- 21 (1) Has an outstanding arrest warrant issued by a West
22 Virginia court or an extraditable arrest warrant issued by a
23 court of another state;
- 24 (2) Places law enforcement or its representatives in
25 reasonable apprehension of physical injury; or
- 26 (3) Is under the age of 18, is not a danger to self or
27 others, or does not have the consent of a parent or guardian.
- 28 (d) Information gathered by a program created pursuant
29 to this section related to a person who has voluntarily sought
30 assistance under this section is exempt from disclosure
31 under the provisions of chapter 29B of this code.
- 32 (e) Except for willful misconduct, the State Police and
33 any employee of the State Police that provides referrals or
34 services in accordance with subsection (b) of this section
35 shall be immune from civil liability.



CHAPTER 294

**(S. B. 851 - By Senators Azinger, Baldwin, Beach,
Clements, Cline, Hardesty, Jeffries, Lindsay,
Maynard, Pitsenbarger, Romano, Rucker, Smith,
Takubo, Weld, Woelfel and Trump)**

[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 §15-9-7, relating to requiring the Governor's Committee on Crime, Delinquency, and Correction to propose a legislative rule in coordination with law enforcement and certain medical boards; developing policies and protocols for law

enforcement and medical professionals to create treatment referral programs for persons suffering from substance use disorder; setting forth requirements for policies and protocols; providing that existing criminal charges not affected; providing civil immunity for law-enforcement officers and medical professionals; and requiring proposal of legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELIQUENCY, AND CORRECTION.

§15-9-7. Coordinated program for substance abuse treatment referral.

1 (a) The committee shall, on or before December 31,
2 2020, establish a program to coordinate with state, county,
3 and local law enforcement, the Board of Medicine, the
4 Board of Osteopathic Medicine, and the Board of Pharmacy
5 to develop policies and protocols for law enforcement and
6 medical professionals to create treatment referral programs
7 for persons suffering from substance use disorder which:

8 (1) Allow for the surrender of illegal controlled
9 substances or unlawfully possessed controlled substances to
10 law enforcement or medical professionals for destruction;
11 and

12 (2) Establish a confidential treatment referral program
13 for persons presenting themselves as suffering from
14 substance use disorder.

15 (b) A person voluntarily seeking assistance through a
16 program developed pursuant to this section shall:

17 (1) Not be placed under arrest;

18 (2) Not be prosecuted for the possession of any
19 controlled substance or drug paraphernalia already ingested
20 or surrendered; and

21 (3) Be promptly referred to a community-based mental
22 health center, medical provider, or other entity in substance
23 use treatment.

24 (c) Nothing in this section may be construed to effect
25 criminal charges which may exist independent of the
26 controlled substance ingested or surrendered or
27 paraphernalia surrendered.

28 (d) Except for willful misconduct, any law-enforcement
29 officer or medical professional providing services or a
30 referral under this section is immune from criminal or civil
31 liability.

32 (e) The committee and the medical professional boards
33 referenced in this section shall propose rules for legislative
34 approval pursuant to §29A-3-1 *et seq.* of this code and may
35 promulgate emergency rules pursuant to §29A-3-15 of this
36 code to effectuate the purposes of this section.



CHAPTER 295

**(Com. Sub. for H. B. 4123 - By Delegates Maynard,
Staggers, Evans, Higginbotham, Lavender-Bowe,
Walker, Caputo, S. Brown, Estep-Burton and
Swartzmiller)**

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

AN ACT to amend and reenact §15-5-2 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §24-6-2

and §24-6-5 of said code, all relating to emergency telecommunication; defining terms; requiring each county answering point be operated constantly by an emergency telecommunicator; 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:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-2. Definitions.

1 As used in this article:

2 “Board” means the West Virginia Disaster Recovery
3 Board created by this article;

4 “Code” means the Code of West Virginia, 1931, as
5 amended;

6 “Community facilities” means a specific work, or
7 improvement within this state or a specific item of
8 equipment or tangible personal property owned or operated
9 by any political subdivision or nonprofit corporation and
10 used within this state to provide any essential service to the
11 general public;

12 “Disaster” means the occurrence or imminent threat of
13 widespread or severe damage, injury, or loss of life or
14 property resulting from any natural or terrorist or man-made
15 cause, including weapons of mass destruction, fire, flood,
16 earthquake, wind, snow, storm, chemical or oil spill or other
17 water or soil contamination, epidemic, air contamination,
18 blight, drought, infestation or other public calamity
19 requiring emergency action;

20 “Disaster recovery activities” means activities
21 undertaken prior to, during or following a disaster to
22 provide, or to participate in the provision of, emergency
23 services, temporary housing, residential housing, essential
24 business activities, and community facilities;

25 “Emergency services” means the preparation for and the
26 carrying out of all emergency functions, other than
27 functions for which military forces are primarily
28 responsible, to protect, respond, and recover, to prevent,
29 detect, deter, and mitigate, to minimize and repair injury and
30 damage resulting from disasters or other event caused by
31 flooding, terrorism, enemy attack, sabotage, or other natural
32 or other man-made causes. These functions include, without
33 limitation, firefighting services, police services, medical
34 and health services, communications, emergency
35 telecommunications, radiological, chemical, and other
36 special weapons defense, evacuation of persons from
37 stricken areas, emergency welfare services, emergency
38 transportation, existing or properly assigned functions of
39 plant protection, temporary restoration of public utility
40 services and other functions related to the health, safety, and
41 welfare of the citizens of this state, together with all other
42 activities necessary or incidental to the preparation for and
43 carrying out of these functions. Disaster includes the
44 imminent threat of disaster as well as its occurrence and any
45 power or authority exercisable on account of a disaster that
46 may be exercised during the period when there is an
47 imminent threat;

48 “Essential business activities” means a specific work or
49 improvement within this state or a specific item of
50 equipment or tangible personal property used within this
51 state by any person to provide any essential goods or service
52 determined by the authority to be necessary for recovery
53 from a disaster;

54 “Local organization for emergency services” means an
55 organization created in accordance with the provisions of

56 this article by state or local authority to perform local
57 emergency services function;

58 “Mobile support unit” means an organization for
59 emergency services created in accordance with the
60 provisions of this article by state or local authority to be
61 dispatched by the Governor to supplement local
62 organizations for emergency services in a stricken area;

63 “Person” means any individual, corporation, voluntary
64 organization or entity, partnership, firm, or other
65 association, organization, or entity organized or existing
66 under the laws of this or any other state or country;

67 “Political subdivision” means any county or municipal
68 corporation in this state;

69 “Recovery fund” means the West Virginia Disaster
70 Recovery Trust Fund created by this article;

71 “Residential housing” means a specific work or
72 improvement within this state undertaken primarily to
73 provide dwelling accommodations, including the
74 acquisition, construction or rehabilitation of land, buildings
75 and improvements thereto, for residential housing,
76 including, but not limited to, facilities for temporary
77 housing and emergency housing, and any other nonhousing
78 facilities that are incidental or appurtenant thereto;

79 “Secretary” means the Secretary of the West Virginia
80 Department of Military Affairs and Public Safety; and

81 “Temporary housing” means a specific work or
82 improvement within this state undertaken primarily to
83 provide dwelling accommodations, including the
84 acquisition, construction or rehabilitation of land, buildings
85 and improvements thereto, for temporary residential
86 shelters or housing for victims of a disaster and such other
87 nonhousing facilities that are incidental or appurtenant
88 thereto.

CHAPTER 24. PUBLIC SERVICE COMMISSION.**ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.****§24-6-2. Definitions.**

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

3 “Commercial mobile radio service provider” or “CMRS
4 provider” means cellular licensees, broadband personal
5 communications services (PCS) licensees and specialized
6 mobile radio (SMR) providers, as those terms are defined
7 by the Federal Communications Commission, which offer
8 on a post-paid or prepaid basis or via a combination of those
9 two methods, real-time, two-way switched voice service
10 that is interconnected with the public switched network and
11 includes resellers of any commercial mobile radio service.

12 “County answering point” means a facility to which
13 enhanced emergency telephone system calls for a county are
14 initially routed for response and where county personnel
15 respond to specific requests for emergency service by
16 directly dispatching the appropriate emergency service
17 provider, relaying a message to the appropriate provider or
18 transferring the call to the appropriate provider.

19 “Emergency services organization” means the
20 organization established under article five, chapter fifteen of
21 this code.

22 “Emergency service provider” means any emergency
23 services organization or public safety unit.

24 “Emergency telecommunicator” means a professional
25 telecommunicator meeting the training requirements set
26 forth in §24-6-5 and is a first responder tasked with the
27 gathering of information related to medical emergencies,
28 the provision of assistance and instructions by voice, prior
29 to the arrival of emergency medical services (EMS), and the

30 dispatching and support of EMS resources responding to an
31 emergency call.

32 “Emergency telephone system” means a telephone
33 system which through normal telephone service facilities
34 automatically connects a person dialing the primary
35 emergency telephone number to an established public
36 agency answering point, but does not include an enhanced
37 emergency telephone system.

38 “Enhanced emergency telephone system” means a
39 telephone system which automatically connects the person
40 dialing the primary emergency number to the county
41 answering point and in which the telephone network system
42 automatically provides to personnel receiving the call,
43 immediately on answering the call, information on the
44 location and the telephone number from which the call is
45 being made and, upon direction from the personnel
46 receiving the call, routes or dispatches the call by telephone,
47 radio or any other appropriate means of communication to
48 emergency service providers that serve the location from
49 which the call is made.

50 “Prepaid wireless calling service” means prepaid
51 wireless calling service as defined in section two, article
52 fifteen, chapter eleven of this code.

53 “Public agency” means the state and any municipality,
54 county, public district or public authority which provides or
55 has authority to provide firefighting, police, ambulance,
56 medical, rescue or other emergency services.

57 “Public safety unit” means a functional division of a
58 public agency which provides firefighting, police, medical,
59 rescue or other emergency services.

60 “Telephone company” means any public utility and any
61 CMRS provider which is engaged in the provision of
62 telephone service whether primarily by means of wire or
63 wireless facilities.

64 “Comprehensive plan” means a plan pertaining to the
65 installing, modifying or replacing of telephone switching
66 equipment; a telephone utility(s) response in a timely manner
67 to requests for emergency telephone service by a public
68 agency; a telephone utility(s) responsibility to report to the
69 Public Service Commission; charges and tariffs for the
70 services and facilities provided by a telephone utility; and
71 access to an emergency telephone system by emergency
72 service organizations.

73 “Technical and operational standards” means those
74 standards of telephone equipment and processes necessary
75 for the implementation of the comprehensive plan as
76 defined in subdivision (11) of this subsection.

***§24-6-5. Enhanced emergency telephone system requirements.**

1 (a) An enhanced emergency telephone system, at a
2 minimum, shall provide that:

3 (1) All the territory in the county, including every
4 municipal corporation in the county, which is served by
5 telephone company central office equipment that will
6 permit such a system to be established shall be included in
7 the system: *Provided*, That if a portion of the county or a
8 portion of a municipal corporation within the county is
9 already being served by an enhanced emergency telephone
10 system, that portion of the county or municipality may be
11 excluded from the county enhanced emergency telephone
12 system;

13 (2) Every emergency service provider that provides
14 emergency service within the territory of a county
15 participate in the system;

16 (3) Each county answering point be operated constantly
17 by an emergency telecommunicator;

*NOTE: This section was also amended by S. B. 649 (Chapter 70),
which passed prior to this act.

18 (4) Each emergency service provider participating in the
19 system maintain a telephone number in addition to the one
20 provided in the system; and

21 (5) If the county answering point personnel reasonably
22 determine that a call is not an emergency, the personnel
23 provide the caller with the number of the appropriate
24 emergency service provider.

25 (b) To the extent possible, enhanced emergency
26 telephone systems shall be centralized.

27 (c) In developing an enhanced emergency telephone
28 system, a county commission or the West Virginia State
29 Police shall seek the advice of both the telephone companies
30 providing local exchange service within the county and the
31 local emergency providers.

32 (d) As a condition of employment, a person employed
33 as the director of an emergency dispatch center who
34 dispatches emergency calls or supervises the dispatching of
35 emergency call takers is subject to an investigation of his or
36 her character and background. This investigation shall
37 include, at a minimum, a criminal background check
38 conducted by the State Police at its expense. A felony
39 conviction shall preclude a person from holding any of these
40 positions.

41 (e) As a condition of continued employment, persons
42 employed to dispatch emergency calls in county emergency
43 dispatch centers shall successfully complete:

44 (1) A 40-hour nationally recognized training course for
45 dispatchers within one year of the date of their employment;

46 (2) A nationally recognized training course in
47 emergency cardiovascular care for telephonic
48 cardiopulmonary resuscitation selected by the medical
49 director of an emergency medical dispatch center. This
50 training course shall incorporate protocols for out-of-
51 hospital cardiac arrest and compression-only

52 cardiopulmonary resuscitation and continuing education, as
53 appropriate. The training requirements of this subdivision
54 are effective not later than July 1, 2020. Persons employed
55 subsequent to July 1, 2019, shall complete the training
56 within one year of the date of employment; and

57 (3) An additional nationally recognized emergency
58 medical dispatch course or an emergency medical dispatch
59 course approved by the Office of Emergency Medical
60 Services within one year of the date of employment.

61 (f) The director of each county emergency dispatch
62 center shall develop policies and procedures to establish a
63 protocol for dispatching emergency medical calls
64 implementing a nationally recognized emergency medical
65 dispatch program, or an emergency medical dispatch
66 program approved by the Office of Emergency Medical
67 Services. If a county emergency dispatch center uses a one-
68 button transfer system, it may continue to use this system if
69 the county emergency dispatch center establishes policies
70 and procedures requiring the agency to whom the call is
71 transferred to remain on the call until a first responder
72 arrives.

73 (g) Each county or municipality shall appoint for each
74 answering point an enhanced emergency telephone system
75 advisory board consisting of at least six members to monitor
76 the operation of the system. The board shall be appointed by
77 the county or municipality and shall include at least one
78 member from affected:

79 (1) Fire service providers;

80 (2) Law-enforcement providers;

81 (3) Emergency medical providers;

82 (4) Emergency services providers participating in the
83 system; and

84 (5) Counties or municipalities.

85 (6) The director of the county or municipal enhanced
86 telephone system shall serve as an ex officio member of the
87 advisory board.

88 (h) All appointments to the advisory board shall be for
89 terms of three years, except that an appointment to fill a
90 vacancy shall be for the unexpired term. All members shall
91 serve without compensation. The board shall adopt any
92 policies, rules, and regulations necessary for its own
93 guidance. The board shall meet monthly or quarterly. The
94 board may make recommendations to the county or
95 municipality concerning the operation of the system.

96 (i) The establishment of multijurisdictional or regional
97 systems, or multijurisdictional or regional agreements for
98 the establishment of enhanced emergency telephone
99 systems, and any system established pursuant to this article
100 may include the territory of more than one public agency, or
101 may include only a portion of the territory of a public
102 agency.

103 (j) All public safety answering points that answer calls
104 for emergency medical conditions shall, in the appropriate
105 circumstances, provide telephonic assistance in
106 administering cardiopulmonary resuscitation directly or
107 transfer calls to a call center to provide assistance in
108 administering telephonic cardiopulmonary resuscitation.

109 (k) The director of the county or municipal enhanced
110 telephone system shall have the authority to enter into
111 mobile-phone contracts with service providers for the
112 purpose of obtaining a mobile-phone emergency line for the
113 county or municipality. The director must solicit bids for
114 mobile-phone contracts from mobile-phone service
115 providers in this state. The director may award the contract
116 to the lowest responsible bidder, or designate in writing,
117 why any other bidder other than the lowest responsible
118 bidder was awarded a contract. The director may obtain as
119 many lines as reasonably needed for emergencies where
120 landlines are unavailable to serve the county or

121 municipality. The director and phone service provider
122 should collaborate to obtain the following:

123 (1) The emergency mobile-phone number may be the
124 county prefix and end in 0911, as feasible for the phone
125 service provider;

126 (2) The emergency mobile-phone service provider
127 should permit roll-over service to allow multiple callers to
128 dial into the amount of lines purchased; and

129 (3) The emergency mobile-phone service provider
130 should provide the lowest possible cost.

131 Nothing in this subsection shall be construed to prohibit
132 or discourage in any way the establishment of
133 multijurisdictional or regional systems, or
134 multijurisdictional or regional agreements for the
135 establishment of emergency mobile-telephone systems.
136 This section shall be effective July 1, 2020.

137 (l) Emergency mobile-phone contracts entered into
138 pursuant to subsection (j) of this section may be paid from
139 funds received by the Public Service Commission relating
140 to 911 fees remitted to the county or by other county funds.
141 A report of the funds expended for subsection (j) of this
142 section shall be presented to the interim Joint Committee on
143 Government Organization no later than November 30, 2020,
144 to ensure the fiscal responsibility and efficacy of this
145 section.

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CHAPTER 296

**(Com. Sub. for H. B. 4176 - By Delegates Miller,
Hanshaw (Mr. Speaker), Miley, Shott, D. Kelly,
Kessinger, Canestraro and Lovejoy)**

[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 †§15A-12-1, †§15A-12-2, †§15A-12-3, †§15A-12-4, †§15A-12-5, †§15A-12-6, †§15A-12-7 and †§15A-12-8, all relating to establishing and delineating the powers, duties, and responsibilities of the West Virginia Fusion Center; requiring Governor to establish West Virginia Fusion Center and defining its purpose; providing that Department of Homeland Security will operate fusion center and provide legal counsel; prohibiting the Fusion Center from gathering information or intelligence information for a political purpose, except for the limited purposes of certain dignitary visits and to insure fair elections; providing Fusion Center or its officers, directors, agents, or employees shall not engage in prohibited non-law enforcement intelligence gathering activities on citizens of the United States; providing Fusion Center shall be housed in secure facilities; providing Fusion Center shall collaborate to fulfill duties of State Resiliency Office; providing for operations of Fusion Center; providing limitations upon when the Fusion Center may cooperate, with any federal agency, or a contractor for any federal agency; providing operations of the West Virginia Fusion Center shall be overseen by the cabinet secretary and deputy cabinet secretary of the West Virginia Department of Homeland Security; providing cabinet secretary and deputy cabinet secretary shall either have a current, valid federal security clearance at the

† Redesignated

appropriate level; providing cabinet secretary and deputy cabinet secretary may adopt policies and procedures for the operation of the West Virginia Fusion Center; establishing positions of fusion center director and deputy director; creating joint select oversight committee and establishing committee membership and powers; mandating entities participating in fusion center enter into memorandum of understanding with center and setting out minimum requirements of memorandum; limiting access to fusion center of certain persons; making certain information in possession of center confidential and not subject to disclosure; providing exceptions to confidentiality of information; establishing immunity from subpoena for individuals possessing criminal intelligence information gained from access to fusion center information; setting criminal penalties for knowing dissemination of fusion center information; providing whistleblower protections; prohibiting certain conduct by fusion center contractors and employees; defining terms; making persons providing or receiving certain information to or from center immune from civil liability and exceptions thereto; allowing participating agencies to share in costs of operating center; creating West Virginia Fusion Center Fund, and delineating uses and purposes of such fund; and authorizing Commissioner of Department of Motor Vehicles to issue license plates for state-owned fusion center vehicles.

Be it enacted by the Legislature of West Virginia:

†ARTICLE 12. WEST VIRGINIA FUSION CENTER.

†§15A-12-1. West Virginia Fusion Center Established.

- 1 (a) The Governor shall establish, organize, equip, staff,
- 2 and maintain a multiagency information fusion center
- 3 (“Fusion Center”) to receive, analyze, and disseminate all
- 4 hazard, crime, and threat information. The Department of
- 5 Homeland Security shall operate the facility, as directed by
- 6 the Governor, with oversight auditing and accountability to
- 7 the select committee of the Legislature as set forth herein,

† Redesignated

8 and in collaboration among federal, state, and local
9 agencies, as well as private sector persons, organizations,
10 entities, or agencies, including, but not limited to, those with
11 the primary purposes of homeland security, counter-
12 terrorism, public safety, public protection, and critical
13 infrastructure: *Provided*, That the Fusion Center shall not
14 knowingly participate in activity, or knowingly cooperate,
15 with any federal agency, or a contractor for any federal
16 agency, when that participation or cooperation involves
17 illegal or improper actions. Further, the Fusion Center shall
18 not allow a federal agency or contractor for a federal agency
19 to work inside the Fusion Center when it knows or has
20 reason to know that such federal agency or federal
21 contractor is presently engaged or intends to engage in
22 unlawful intelligence-gathering activity against a citizen of
23 West Virginia.

24 (b) The Fusion Center shall collect, integrate, analyze,
25 disseminate, and maintain such information to support local,
26 state, and federal law-enforcement agencies, other
27 governmental agencies, and private persons, organizations,
28 entities, or agencies in detecting, preventing, investigating,
29 preparing for, responding to, and recovering from any
30 possible or actual criminal or terrorist activity, as well as
31 any hazard, including to the state's critical infrastructure, in
32 compliance with applicable state and federal laws and
33 regulations, including 28 CFR 23: *Provided*, That as used in
34 this article, "terrorism" shall mean only foreign or
35 international terrorist groups or individuals, or domestic
36 groups or individuals involved in transnational or domestic
37 terrorism as defined in 6 U.S.C. §485: *Provided, however*,
38 That under no circumstance shall the Fusion Center or its
39 officers, directors, agents, or employees engage in, or be
40 ordered or directed to engage in prohibited non-law
41 enforcement intelligence gathering activities on citizens of
42 the United States as set forth in any federal or state law or
43 in contravention of the Constitution of the United States, nor
44 shall the Fusion Center engage in any information or
45 intelligence gathering for any political purpose nor be

46 solicited for, or cooperate in, any investigation of a public
47 official or candidate for elected office, unless reasonable
48 grounds exist to suspect the subject of the investigation is,
49 or may be, involved in criminal conduct. This provision
50 shall not prohibit the Fusion Center from participating in
51 matters dealing with election fraud, election tampering, or
52 other issues designed to provide the citizens of the state with
53 tamper-free elections, and shall not restrict the Fusion
54 Center from assisting in security matters involving political
55 or dignitary visits to or within the State of West Virginia.

56 (c) The West Virginia Fusion Center shall be housed
57 within secure facilities in order to access sensitive
58 information, as permitted by state and federal law. Within
59 the secure facilities, the Fusion Center shall house a
60 Homeland Secure Data Network (HSDN) in order to access
61 classified information as permitted by state and federal law
62 and ensure that appropriate security measures are in place
63 for: (1) the secure facilities; (2) data collected or stored at
64 the secure facilities; and (3) personnel working at the secure
65 facilities.

66 (d) The West Virginia Fusion Center shall do all acts
67 necessary and proper to carry out the powers granted to the
68 board of the State Resiliency Office.

†§15A-12-2. **Operation of center.**

1 (a) The West Virginia Department of Homeland
2 Security shall operate the West Virginia Fusion Center
3 under the direction of the Governor, with oversight auditing
4 and accountability to the select committee of the Legislature
5 as set forth herein, and shall cooperate with the United
6 States Department of Homeland Security, local, county,
7 state, or federal government agencies, and private
8 organizations: *Provided*, That the Fusion Center shall not
9 knowingly participate in activity, or knowingly cooperate,
10 with any federal agency, or a contractor for any federal
11 agency, when that participation or cooperation involves
12 illegal or improper actions. Further, the Fusion Center shall

13 not allow a federal agency or contractor for a federal agency
14 to work inside the Fusion Center when it knows or has
15 reason to know that such federal agency or federal
16 contractor is presently engaged or intends to engage in
17 unlawful intelligence-gathering activity against a citizen of
18 West Virginia: *Provided, however,* That all Fusion Center
19 operations shall be subject to applicable state and federal
20 laws and regulations, including, but not limited to, 28 CFR
21 Part 23, and shall at all times strictly abide by all restrictions
22 and prohibitions against conducting non-law enforcement
23 intelligence operations against U.S. citizens as set forth in
24 any federal or state law or in contravention of the
25 Constitution of the United States, including, but not limited
26 to, 50 U.S.C. §3036(d).

27 (b) The West Virginia Fusion Center shall: (1) Be the
28 primary clearinghouse for the State of West Virginia for the
29 collection, analysis, and proper distribution of information
30 and actionable intelligence as defined in this section; (2)
31 generate intelligence analyses critical for homeland security
32 policy and relevant threat warning in order to protect life,
33 liberty, and property in West Virginia; (3) promote and
34 improve intelligence sharing among public safety and
35 public service agencies at the federal, state, and local levels,
36 and with critical infrastructure and key resource entities
37 within the private sector subject to all restrictions and
38 prohibitions recited in this article; (4) receive and integrate
39 intelligence and information related to terrorism and other
40 homeland security threats; (5) collect, analyze, produce,
41 disseminate, and maintain such intelligence and
42 information, as allowed by law, to support local, state, and
43 federal law enforcement agencies, other governmental
44 agencies, and private organizations in: preventing,
45 preparing for, responding to, and recovering from any
46 possible or actual terrorist attack or other homeland security
47 threat; and (6) maximize intelligence and information
48 sharing in strict accordance with all applicable state and
49 federal laws, restrictions, and prohibitions: *Provided,* That
50 the Fusion Center shall not knowingly participate in

51 activity, or knowingly cooperate, with any federal agency,
52 or a contractor for any federal agency, when that
53 participation or cooperation involves illegal or improper
54 actions. Further, the Fusion Center shall not allow a federal
55 agency or contractor for a federal agency to work inside the
56 Fusion Center when it knows or has reason to know that
57 such federal agency or federal contractor is presently
58 engaged or intends to engage in unlawful intelligence-
59 gathering activity against a citizen of West Virginia.

60 (c) The Governor shall provide facilities, budget, and
61 administrative support for the West Virginia Fusion Center
62 and its employees and participants. The cabinet secretary
63 shall serve as security manager for the West Virginia Fusion
64 Center.

65 (d) Private sector persons, organizations, entities, or
66 agencies participating in the West Virginia Fusion Center
67 shall not be considered governmental entities, nor shall
68 employees or agents of private sector persons,
69 organizations, entities, or agencies assigned to the West
70 Virginia Fusion Center be considered state employees;
71 however, private sector entities and their employees or
72 agents are subject to the same confidentiality requirements
73 and held to the same standards as an employee of the West
74 Virginia Fusion Center, including, but not limited to, any
75 and all restrictions and prohibitions against conducting non-
76 law enforcement intelligence operations against U.S.
77 citizens as set forth in federal or state law or in
78 contravention of the Constitution of the United States,
79 including, but not limited to, 50 U.S.C. §3036(d): *Provided*,
80 That the Fusion Center shall not knowingly participate in
81 any activity, or knowingly cooperate, with any federal
82 agency, or a contractor for or any person or entity utilizing
83 or collaborating with any federal agency, when that
84 participation or cooperation involves illegal or improper
85 actions: *Provided, however*, that the Fusion Center shall not
86 allow a federal agency or contractor for a federal agency to
87 work inside the Fusion Center when it knows or has reason

88 to know that such federal agency or federal contractor is
89 presently engaged or intends to engage in unlawful
90 intelligence-gathering activity against a citizen of West
91 Virginia.

92 (e) The operations of the West Virginia Fusion Center
93 shall be overseen by the cabinet secretary and deputy
94 cabinet secretary of the West Virginia Department of
95 Homeland Security, with oversight auditing and
96 accountability to the select committee of the Legislature as
97 set forth herein.

98 (f) The cabinet secretary and deputy cabinet secretary
99 shall either have a current, valid federal security clearance
100 at the appropriate level, and training and certifications
101 commensurate with the position, or be eligible for that
102 clearance, and be in the process of obtaining the appropriate
103 clearance.

104 (g) The cabinet secretary and deputy cabinet secretary
105 may adopt policies and procedures for the operation of the
106 West Virginia Fusion Center. The cabinet secretary and
107 deputy cabinet secretary may adopt rules and regulations as
108 may be necessary to carry out the provisions of this act,
109 including rules and regulations concerning the operations of
110 the West Virginia Fusion Center: *Provided*, That all
111 policies, procedures, rules, and regulations shall be subject
112 to any and all restrictions and prohibitions against
113 conducting non-law enforcement intelligence operations
114 against U.S. citizens as set forth in federal or state law or in
115 contravention of the Constitution of the United States,
116 including but not limited to, 50 U.S.C. §3036(d).

117 (h) Subject to appropriations, the West Virginia Fusion
118 Center shall have the following employees, all in the
119 unclassified service of the civil service act:

120 (1) A director, who shall be appointed by and serve at
121 the pleasure of the cabinet secretary. The director shall
122 either have a current, valid federal security clearance at the

123 appropriate level, and training and certifications
124 commensurate with the position, or be eligible for that
125 clearance, and be in the process of obtaining the appropriate
126 clearance, and shall:

127 (A) Be responsible for all operations of the West
128 Virginia Fusion Center and shall report to the cabinet
129 secretary or deputy cabinet secretary;

130 (B) Be responsible for:

131 (i) Facilitating and implementing applicable federal
132 standards and programs by the West Virginia Fusion
133 Center;

134 (ii) Ensuring compliance with all applicable laws and
135 federal requirements, including, but not limited to, any and
136 all restrictions and prohibitions against conducting non-law
137 enforcement intelligence operations against U.S. citizens as
138 set forth in federal or state law or in contravention of the
139 Constitution of the United States, including, but not limited
140 to, 50 U.S.C. §3036(d);

141 (iii) Maintaining proper separation between military and
142 civilian capacities;

143 (iv) Providing support, as needed, to the cabinet
144 secretary and deputy cabinet secretary; and

145 (v) Other duties and responsibilities as may be assigned
146 by the cabinet secretary and deputy cabinet secretary,
147 subject to all restrictions and prohibitions described in this
148 article.

149 (2) A deputy director, who shall be appointed by and
150 serve at the pleasure of the director. The deputy director
151 shall either have a current, valid federal security clearance
152 at the appropriate level, and training and certifications
153 commensurate with the position, or be eligible for that
154 clearance, and be in the process of obtaining the appropriate
155 clearance, and shall be responsible for assisting the director

156 in: (A) facilitating and implementing applicable federal
157 standards and programs by the West Virginia Fusion
158 Center; (B) ensuring compliance with all applicable laws
159 and federal requirements; (C) maintaining proper separation
160 between military and civilian capacities; (D) providing
161 support, as needed, to the cabinet secretary and deputy
162 cabinet secretary; and (E) other duties and responsibilities
163 as may be assigned by the Fusion Center director.

†§15A-12-3. **Joint Oversight Committee.**

1 (a) The Speaker of the House of Delegates and President
2 of the Senate shall establish a select committee which shall
3 have oversight of the information collected by the West
4 Virginia Fusion Center to ensure the proper collection,
5 dissemination, storage, and destruction of information or
6 intelligence. The committee shall be composed of: (1) The
7 Speaker of the House of Delegates and four members of the
8 House of Delegates, to be appointed by the Speaker of the
9 House of Delegates, no more than two of whom shall be
10 appointed from the same political party; and (2) the
11 President of the Senate and four members of the Senate, to
12 be appointed by the President of the Senate, no more than
13 two of whom shall be from the same political party; and
14 counsel and staff to the Speaker and the Senate President:
15 *Provided*, That in the event the membership of a political
16 party is less than 15 percent in the House of Delegates or
17 Senate, then the membership of that political party from the
18 legislative house with less than 15 percent membership may
19 be one from that house. The committee shall be chaired by
20 the President of the Senate and the Speaker of the House of
21 Delegates. All members appointed to the select committee
22 by the select committee chairs serve until their successors
23 are appointed as provided in this section. The select
24 committee members, counsel, and staff must have the
25 appropriate security clearance in order to obtain information
26 that is classified and shall be subject to the same rules,
27 regulations, and laws as the employees of the West Virginia
28 Fusion Center for safeguarding both classified and law
29 enforcement sensitive information or intelligence. These

† Redesignated

30 select committee members, counsel, and staff shall be
31 advised of the restrictions and protocol for handling such
32 information or intelligence and shall sign a statement of
33 understanding as well as a confidentiality agreement.

34 (b) Members of the select committee may enter and
35 inspect the West Virginia Fusion Center at any time staff is
36 present with select committee counsel and staff, with or
37 without notice to the West Virginia Fusion Center.

38 (c) Meetings of the select committee shall be
39 confidential and the information and materials, in any
40 medium, including hard copy and electronic, coming to the
41 attention of or placed in the custody of the Select Committee
42 shall not be subject to the West Virginia Freedom of
43 Information Act as set forth in §29B-1-1 *et seq.* of this code.

44 (d) The select committee may conduct proceedings in a
45 confidential executive session for the purpose of conducting
46 business, establishing policy, reviewing investigations, and
47 interrogating a witness or witnesses.

48 (e) All witnesses appearing before the select committee
49 shall testify under oath or affirmation, and any member of
50 the select committee or its counsel may administer oaths or
51 affirmations to such witnesses. To compel witnesses to
52 attend a hearing or produce any books, records, documents,
53 or papers, or any other tangible thing except where the
54 records, documents, data, or items are protected from
55 disclosure by privilege recognized by state or federal courts,
56 the select committee may issue subpoenas, signed by one of
57 the co-chairs: *Provided*, That the select committee may
58 specifically authorize or delegate the power to any member
59 of the select committee to sign subpoenas on its behalf. The
60 subpoenas shall be served by any person authorized by law
61 to serve and execute legal process, and service shall be made
62 without charge. Witnesses subpoenaed to attend hearings
63 shall be allowed the same mileage and per diem as is
64 allowed witnesses before any petit jury in this state.

65 (f) If any person subpoenaed to appear at any hearing
66 shall refuse to appear or to answer inquiries there
67 propounded, or shall fail or refuse to produce books,
68 records, documents, papers, or any other tangible thing
69 within his or her control when the same are demanded, the
70 select committee shall report the facts to the circuit court of
71 Kanawha County or any other court of competent
72 jurisdiction and that court may compel obedience to the
73 subpoena as though the subpoena had been issued by that
74 court in the first instance: *Provided*, That prior to seeking
75 circuit court relief, the select committee may, in its
76 discretion, first demand the Secretary of Homeland Security
77 or the director of the West Virginia Fusion Center under
78 whom an employee has failed to appear or which has failed
79 to produce requested or subpoenaed material to appear
80 before the select committee and address the basis for the
81 failure to comply and whether compliance will be
82 forthcoming.

83 (g) The select committee may direct the West Virginia
84 Fusion Center to send its budgetary accounting to the State
85 Auditor: *Provided*, That if budgetary expenditures are
86 classified, or security or law enforcement sensitive such that
87 disclosure would compromise an investigation, those entry
88 descriptions, but not the expenditure amounts, may be
89 redacted from the West Virginia Fusion Center accounting
90 provided to the State Auditor: *Provided, however*, That the
91 State Auditor shall bring any accounting issues of concern
92 to the attention of the select committee, upon which the
93 select committee shall subpoena the West Virginia Fusion
94 Center for unredacted copies of the accounting items to be
95 presented for explanation and justification of the necessity
96 and legality of the concerns raised by the State Auditor. The
97 select committee may take whatever action it deems
98 necessary, if any, after review and analysis of the
99 subpoenaed unredacted materials.

†§15A-12-4. Memoranda of understanding required.

1 (a) Each governmental and nongovernmental entity
2 participating in the West Virginia Fusion Center shall enter

3 a memorandum of understanding between the West Virginia
4 Fusion Center and the participating entity. The
5 memorandum of understanding shall at a minimum:

6 (1) Provide a framework and working mechanism for
7 the organization of the West Virginia Fusion Center to
8 address issues that are common to city, county, state, and
9 federal governments' obligations to protect the safety and
10 well-being of citizens and to enhance the success of the
11 Fusion Center in responding to criminal, terrorist, and other
12 threats to public safety through the achievement of
13 coordination and cooperation;

14 (2) Clarify the working relationships between the
15 governmental and nongovernmental entities and use
16 limitations of shared information; and

17 (3) Outline the intent of the parties regarding the
18 information provided by the governmental and non-
19 governmental entities to the West Virginia Fusion Center.

20 (b) Nothing in any agreement shall obligate any
21 nongovernmental entity to provide information nor
22 establish any duty for any nongovernmental entity to
23 assume any police or law enforcement responsibilities.

24 (c) Failure of any governmental or nongovernmental
25 entity to abide by the restrictions and use limitations set
26 forth by the West Virginia Fusion Center may result in the
27 suspension or termination of use privileges, discipline
28 sanctions imposed by the user's employing agency, or
29 criminal prosecution.

30 (d) Any and all interagency memoranda of
31 understanding and participating public or private persons,
32 organizations, entities, or agencies described in this section
33 shall be subject to all restrictions and prohibitions described
34 in this section.

**†§15A-12-5. Confidentiality and immunity from service of
process; penalties.**

† Redesignated

1 (a) Papers, records, documents, reports, materials,
2 databases, or other evidence or information relative to
3 criminal intelligence, any terrorism investigation, threat
4 assessment, or information on infrastructure which if
5 released would compromise the public safety in the
6 possession of the West Virginia Fusion Center shall be
7 confidential and shall not be subject to the West Virginia
8 Freedom of Information Act (§29B-1-1 *et seq.* of this code):
9 *Provided*, That this exemption from the West Virginia
10 Freedom of Information Act may be lifted in the event a
11 court determines in a state or federal whistleblower action
12 that unlawful or unauthorized activity has taken place, and
13 shall in no way restrict the Legislature's select oversight
14 committee from access to all such information. Every five
15 years, the West Virginia Fusion Center shall conduct a
16 review of information contained in any database maintained
17 by the West Virginia Fusion Center. Data that has been
18 determined not to have a nexus to criminal or terrorist
19 activity shall be removed from such database. A reasonable
20 suspicion standard shall be applied when determining
21 whether or not information has a nexus to terrorist activity
22 for non-U.S. citizens, but a probable cause standard shall
23 apply for U.S. citizens: *Provided, however*, That all such
24 determinations shall be reported to the Legislature's select
25 oversight committee at regularly scheduled oversight audit
26 and committee meetings.

27 (b) No person having access to information maintained
28 by the West Virginia Fusion Center shall be subject to
29 subpoena in a civil action in any court of the state to testify
30 concerning a matter of which he has knowledge pursuant to
31 his access to criminal intelligence information maintained
32 by the West Virginia Fusion Center.

33 (c) No person or agency receiving information from the
34 West Virginia Fusion Center shall release or disseminate
35 that information without prior authorization from the West
36 Virginia Fusion Center.

37 (d) Intelligence data in the possession of a criminal or
38 juvenile justice agency, state or federal regulatory agency,
39 or peace officer, or disseminated by such agency or peace
40 officer, are confidential records under §29B-1-1 *et seq.* of
41 this code.

42 (e) Any person who knowingly disseminates
43 information in violation of this section is guilty of a
44 misdemeanor and, upon conviction thereof, shall be fined
45 not less than \$200 nor more than \$1,000, or be confined in
46 jail for not more than 20 days, or both fined and confined.
47 If such unauthorized dissemination results in death or
48 serious bodily injury to another person, such person is guilty
49 of a felony and, upon conviction thereof, shall be
50 imprisoned in a state correctional facility not less than one
51 nor more than five years: *Provided*, That all state and federal
52 Whistleblower Protection Act protections shall apply to any
53 person whose disclosures are found to have been made to
54 report or protect against violation or attempted violation of
55 any and all restrictions and prohibitions against conducting
56 non-law enforcement intelligence operations against U.S.
57 citizens as set forth in federal or state law or in
58 contravention of the Constitution of the United States,
59 including, but not limited to, 50 U.S.C. §3036(d).

60 (f) Any person, being an officer or employee of the
61 United States, the State of West Virginia or of any
62 department, agency, or political subdivision thereof, or any
63 person from the private sector or industry assigned to or
64 working with the West Virginia Fusion Center in any
65 capacity, who knowingly publishes, divulges, discloses, or
66 makes known in any manner, or to any extent not authorized
67 by law, any critical infrastructure or national intelligence
68 information protected from disclosure by this section
69 coming to him or her in the course of his or her employment,
70 affiliation, or official duties with the West Virginia Fusion
71 Center, or by reason of any examination or investigation
72 made by, return, report, or record made to or filed with, such
73 department or agency, officer or employee thereof, shall be

74 guilty of a felony and, upon conviction, be imprisoned in a
75 state correctional facility for not less than one year, and shall
76 be removed from office or employment and affiliation with
77 the West Virginia Fusion Center: *Provided*, That all state
78 and federal Whistleblower Protection Act protections shall
79 apply to any person whose disclosures are found to have
80 been made to report or protect against violation or attempted
81 violation of any and all restrictions and prohibitions against
82 conducting non-law enforcement intelligence operations
83 against U.S. citizens as set forth in federal or state law or in
84 contravention of the Constitution of the United States,
85 including, but not limited to, 50 U.S.C. §3036(d).

86 (g) The West Virginia Department of Homeland
87 Security shall provide legal counsel to the West Virginia
88 Fusion Center to serve as privacy and civil liberties counsel
89 to the West Virginia Fusion Center. Such attorney shall
90 advise the West Virginia Fusion Center director and its
91 deputy director on all matters necessary to ensure
92 compliance with all applicable federal and state privacy or
93 civil liberties laws, obligations, restrictions, and
94 prohibitions as set forth herein.

95 (h) For purposes of this article:

96 (1) “Criminal intelligence information” means data or
97 information that has been evaluated and determined to be
98 relevant to the identification and criminal activity of
99 individuals or organizations that are reasonably suspected
100 of involvement in criminal activity.

101 (2) “Critical Infrastructure” means systems and assets as
102 defined in 42 U.S.C. § 5195c(e).

103 (3) “National Intelligence” means data or information
104 determined to meet the definition stated in 50 U.S.C. §3003
105 (5): *Provided*, That Fusion Center activities and operations
106 relating to National Intelligence shall at all times strictly
107 abide by all restrictions and prohibitions against conducting
108 non-law enforcement intelligence operations against U.S.
109 citizens as set forth in federal or state law or in

110 contravention of the Constitution of the United States,
111 including, but not limited to, 50 U.S.C. §3036(d).

†§15A-12-6. **Receipt of information; immunity from liability.**

1 (a) No cause of action for defamation, invasion of
2 privacy, or negligence shall arise against any person by
3 reason of that person's furnishing information concerning
4 any suspected, anticipated, or completed criminal violation
5 or terrorist activity when the information is provided to or
6 received from the West Virginia Fusion Center or any
7 federal, state, or local governmental or private sector entity
8 established for the purpose of detecting and preventing acts
9 of criminal activity or terrorism: *Provided*, That with regard
10 to any Fusion Center intelligence or information gathering
11 activity or operation against a U.S. Citizen related to alleged
12 terrorism or violation of a law, such allegation must be
13 vetted and confirmed by procedures substantially in
14 compliance with those set forth in laws, rules, and
15 regulations developed in accordance with 50 U.S.C.
16 §3036(d).

17 (b) No person shall be subject to such cause of action
18 for cooperating with or furnishing evidence or information
19 regarding any suspected criminal violation to the West
20 Virginia Fusion Center.

21 (c) This section shall not provide immunity for those
22 disclosing or furnishing false information with malice or
23 willful intent to injure any person, nor for any person who
24 does not comply with the procedures set forth in §15A-9-
25 6(a) of this code.

26 (d) This section does not in any way abrogate or modify
27 common law or statutory privilege or immunity heretofore
28 enjoyed by any person or entity.

†§15A-12-7. **Costs.**

1 (a) The director, with approval of the cabinet secretary
2 or deputy cabinet secretary, may enter into agreements with
3 participating agencies or organizations, whether public or

4 private, for their participation in the West Virginia Fusion
5 Center. Such agreements: (1) Shall define the duties and
6 responsibilities of each participating agency or
7 organization; (2) may provide for payment by the
8 participating agency or organization of a reasonable share
9 of the cost to establish, maintain, and operate the West
10 Virginia Fusion Center; and (3) shall require compliance
11 with all requirements, restrictions, and prohibitions set forth
12 in this article.

13 (b)(1) The West Virginia Fusion Center, with approval
14 of the cabinet secretary or deputy cabinet secretary, may
15 accept any gift, grant, payment, moneys, or assets seized by
16 forfeiture as a result of collaborative efforts or contribution
17 from any source, public or private, for the purpose of paying
18 the costs to establish, maintain, or operate the West Virginia
19 Fusion Center. Such gift, grant, payment, moneys, or assets
20 seized by forfeiture as a result of collaborative works or
21 contribution may be in the form of services, equipment,
22 supplies, materials, or funds. All amounts received under
23 this section shall be remitted to the State Treasurer in
24 accordance with chapter 12 of this code, and the
25 amendments thereto. Upon receipt of each such remittance,
26 the State Treasurer shall deposit the entire amount in the
27 State Treasury to the credit of the West Virginia Fusion
28 Center Fund, that is hereby created in the State Treasury and
29 shall be administered by the West Virginia Department of
30 Homeland Security in accordance with this article and
31 subject to regular auditing and oversight by the
32 Legislature's select oversight committee.

33 (2) Moneys in the West Virginia Fusion Center Fund
34 may be used by the director to pay any costs associated with
35 establishing, maintaining, or operating the West Virginia
36 Fusion Center. The director of the West Virginia Fusion
37 Center Fund shall develop policy and procedures for
38 purchasing, and expenditures shall be made in accordance
39 with vouchers approved by the director or the director's
40 designee. Any gift, grant, payment, moneys, or any assets
41 seized by forfeiture as a result of collaborative efforts, or

42 contribution in any form other than funds may be accepted
43 by the director, with approval of the cabinet secretary, and
44 utilized and expended in any manner authorized by law to
45 establish, maintain, or operate the West Virginia Fusion
46 Center: *Provided*, That all moneys used by the director shall
47 be subject to all restrictions and prohibitions set forth in this
48 article, and also to regular auditing and oversight by the
49 Legislature's select oversight committee.

50 (3) The moneys credited to the fund created in
51 subsection (b) of this section shall be used for the purposes
52 set forth in this section and for no other governmental
53 purposes. It is the intent of the Legislature that the moneys
54 deposited in this fund shall remain intact and inviolate for
55 the purposes set forth in this act.

†§15A-12-8. Registration plates to official vehicles used in agency activities.

1 Notwithstanding any provision of this code to the
2 contrary, the Commissioner of the Division of Motor
3 Vehicles is authorized to issue Class A license plates to
4 authorized state-owned vehicles operated by the West
5 Virginia Fusion Center when the director signs a written
6 affidavit stating that the vehicle or vehicles for which the
7 plates are being requested will be used by the West Virginia
8 Fusion Center in fulfilling its mission.

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CHAPTER 297

**(H. B. 4178 - By Delegates Miller, Lovejoy, Lavender-
Bowe, D. Kelly, Hansen 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 and reenact §24-6-13 of the Code of West Virginia, 1931, as amended, relating to requiring calls which are recorded be maintained for a period of two years.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-13. Confidentiality of certain calls to county answering points and records; retention of records.

1 (a) Except as provided by the provisions of this section,
2 calls for emergency service to a county answering point are
3 not confidential. All calls for emergency service reporting
4 alleged criminal conduct which are recorded electronically,
5 in writing or in any other form are to be kept confidential by
6 the county answering point receiving the call and may be
7 released only pursuant to an order entered by a court of
8 competent jurisdiction, a valid subpoena or through the
9 course of discovery in a criminal action requiring the release
10 of the information: *Provided*, That nothing contained in this
11 section may be construed as preventing the county
12 answering point from releasing information to a responding
13 agency as may be necessary for that agency's response on a
14 call or the completion of necessary reports relating to that
15 call.

16 (b) Upon proper request and payment of a reasonable
17 fee set by the center director to cover the cost of production,
18 a person or entity may obtain, without court order or a valid
19 subpoena, a transcription of a call for emergency service
20 reporting alleged criminal conduct. The answering point
21 shall exclude from the transcription any information relating
22 to the identity of the caller including, but not limited to, the
23 caller's name, address, telephone number or his or her
24 location in relation to the alleged offense or the alleged
25 perpetrator. If the transcript of a call is such that it cannot
26 be successfully redacted so as to protect the identity of the
27 caller, the answering point may decline to provide the
28 transcript. In that case, the person requesting the
29 transcription may apply to a court of competent jurisdiction
30 for a court order releasing the transcript.

31 (c) All calls for emergency service which are recorded
32 electronically, in writing or in any other form are to be
33 maintained for a period of at least two years or longer if
34 required by an order entered by a court of competent
35 jurisdiction or a valid subpoena.

36 (d) A county answering point may release information
37 to bonafide law-enforcement agencies, the prosecuting
38 attorney of a county or a United States attorney pursuant to
39 a lawful criminal investigation. Nothing in this article may
40 be construed as prohibiting a freedom of information
41 request under §29B-1-1 *et seq.* of this code for information
42 relating to the operation of the center or to calls for
43 emergency service which do not involve reporting of
44 alleged criminal conduct.

45 (e) Nothing in this article requires disclosure of any
46 information that is specifically exempt from disclosure by
47 statute. Except as otherwise provided in this article, nothing
48 prohibits disclosure of information that is not specifically
49 exempted from disclosure under a provision of this code.

50 (f) Every county answering point shall, within 90 days
51 of the effective date of this section, promulgate a written

52 policy, available to the public, reflecting its compliance
53 with the provisions of this section.

54 (g) No answering point or center personnel may be
55 civilly liable for any injury arising from disclosure of
56 information pursuant to the provisions of this section.

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CHAPTER 298

**(H. B. 4409 - By Delegates Maynard, J. Jeffries,
Householder, Summers, Jennings, Linville, Hanshaw
(Mr. Speaker), Graves, Lovejoy, Miller and Nelson)**

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

AN ACT to amend and reenact §33-3-33a of the Code of West Virginia, 1931, as amended, relating to transferring funds from the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund to the Fire Service Equipment and Training Fund; and extending the sunset date to June 30, 2022.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-33a. Excess moneys of Fire Protection Fund deposited into Volunteer Fire Department Workers' Compensation Premium Subsidy Fund; other funding; special report from State Fire Marshal by December 15, 2015; termination of program June 30, 2022.

1 (a) There is hereby established a special fund in the
2 State Treasury known as the Volunteer Fire Department
3 Workers' Compensation Premium Subsidy Fund. The fund
4 shall be administered by the State Auditor and shall consist

5 of moneys deposited in the fund pursuant to this section, any
6 other funds appropriated by the Legislature for volunteer
7 fire departments for the purposes of §12-4-14a of this code,
8 and the interest or other earnings on the moneys in the fund.
9 The State Auditor shall administer the distribution of
10 moneys of the fund to volunteer fire departments to help
11 defray workers' compensation insurance premium increases
12 pursuant to said section. Balances in the fund at the end of
13 any fiscal year may not expire but shall be expended for
14 those purposes in ensuing fiscal years pursuant to
15 appropriation of the Legislature.

16 (b) Beginning July 1, 2013, and in each fiscal year
17 thereafter until June 30, 2022, the excess of the aggregate of
18 amounts collected by the commissioner that are otherwise
19 required under any provision of this code to be deposited
20 into the Fire Protection Fund over the aggregate of those
21 amounts deposited into the Fire Protection Fund during the
22 fiscal year ending June 30, 2013, shall be deposited into the
23 Volunteer Fire Department Workers' Compensation
24 Premium Subsidy Fund and expended solely for the
25 purposes established in §12-4-14a of this code.

26 (c) On or before August 1, 2013, the commissioner shall
27 transfer \$4 million from the Fire Marshal Fees Fund created
28 under §29-3-12b of this code to the Volunteer Fire
29 Department Workers' Compensation Premium Subsidy
30 Fund to be expended solely for the purposes established in
31 §12-4-14a of this code until June 30, 2022.

32 (d) The State Fire Marshal, in consultation with the
33 Insurance Commissioner, the State Auditor, the Secretary of
34 Revenue and the Legislative Auditor, shall conduct a review
35 of the needs of each volunteer or part volunteer fire
36 company or volunteer fire department serving in the various
37 counties of the state. On or before December 31, 2015, the
38 State Fire Marshal shall submit to the Joint Committee on
39 Government and Finance a comprehensive report of the
40 review and the State Fire Marshal's recommendations,
41 substantiated by the findings of the review, of steps that may

42 be taken to meet the needs of and sustain the volunteer and
43 part volunteer fire companies and volunteer fire
44 departments of this state, including, but not limited to, the
45 following:

46 (1) An assessment of all current funding received by the
47 volunteer fire companies and departments, and a further
48 assessment of the funding necessary to provide the
49 community protections required for the areas served by the
50 volunteer fire companies and departments, the extent to
51 which those needs are being met, the extent to which they
52 are not being met, and recommendations of sources of funds
53 to meet additional needs and the amounts needed, if any;

54 (2) An assessment of the cost of workers' compensation
55 coverage for the volunteer fire companies and departments
56 and recommendations for any actions that may be
57 undertaken by the volunteer fire companies and departments
58 and others to reduce those costs;

59 (3) An assessment of the causes of any decline in
60 recruitment and retention of volunteer firefighters and
61 recommendations for improvements in this area, including
62 any recommendations for incentives that have a
63 demonstrated record of significant increases in recruitment
64 and retention as well as recommendations of sources of
65 funds to provide those incentives, if funds are necessary;

66 (4) An assessment of the level of financial
67 accountability that should be required of volunteer fire
68 companies and departments in order to provide the
69 Legislature the information necessary to target future
70 funding for their activities based upon the safety and fire
71 protection needs of the various areas of the state;

72 (5) An assessment of the comparative levels of funding
73 for volunteer fire companies and departments provided by
74 counties, municipalities and other political subdivisions and
75 the means by which that funding is provided, including
76 identification of those which contribute little or no funding

77 to the volunteer fire companies and departments within their
78 jurisdictions, together with recommendations for increasing
79 those levels of contributions;

80 (6) An assessment of the comparative levels of funding
81 for volunteer fire companies and departments provided by
82 their own efforts, and the means by which that funding is
83 provided, including identification of those which provide
84 little or no funding through their own efforts, together with
85 recommendations for increasing these sources of funding;

86 (7) An assessment of the comparative economic and
87 other benefits provided by the various volunteer fire
88 companies and departments to their particular counties,
89 municipalities and other political subdivisions, as well as to
90 citizens of the local communities they serve;

91 (8) An assessment of the sustainability of the current
92 model of providing fire and other protections to the citizens
93 of rural communities through volunteer fire companies and
94 departments and an assessment of alternative models for
95 providing those protections; and

96 (9) Other assessments and recommendations which the
97 State Fire Marshal deems appropriate in the circumstances.

98 (e) Upon the conclusion of the fiscal year ending June
99 30, 2022, the provisions of this section and §12-4-14a of this
100 code shall expire and be of no further force and effect and
101 the Volunteer Fire Department Workers' Compensation
102 Premium Subsidy Fund shall be closed. Upon closure of the
103 fund, from any balances therein remaining, the State
104 Auditor shall first, to the extent available, transfer to the Fire
105 Protection Fund an amount equal to the aggregate of funds
106 deposited into the Volunteer Fire Department Workers'
107 Compensation Premium Subsidy Fund during the fiscal
108 years ending June 30, 2014, 2015, 2016, 2017, 2018, 2019,
109 2020, 2021 and 2022 pursuant to subsection (b) of this
110 section that would otherwise have been required to be
111 deposited into the Fire Protection Fund, and any balances

112 thereafter remaining in the Volunteer Fire Department
113 Workers' Compensation Premium Subsidy Fund shall
114 expire to the General Revenue Fund of the state.
115 Notwithstanding any provision of this code to the contrary,
116 on June 30, 2020, the State Auditor shall transfer one
117 million eight hundred thousand dollars from the Volunteer
118 Fire Department Workers' Compensation Premium Subsidy
119 Fund to the Fire Service Equipment and Training Fund
120 created pursuant to §29-3-5f of this code.



CHAPTER 299

**(Com. Sub. for H. B. 4444 - By Delegates Linville,
Rohrbach, Lovejoy, Mandt, Worrell, Miller,
Maynard, Little, Summers, Hanshaw (Mr. Speaker)
and D. Kelly)**

[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 §29-32-1, §29-32-2, §29-32-3, §29-32-4, and §29-32-5, all relating to establishing Medals of Valor for emergency medical service members, firefighters, and law-enforcement officers; establishing the Medal of Valor; establishing criteria for awarding the Medal of Valor; prohibiting awarding of Medal of Valor in any manner than otherwise set forth in this article; establishing the Firefighters Honors Board to recommend persons to receive the Medal of Valor; establishing the Law-Enforcement Honor Board to recommend persons to receive the Medal of Valor; establishing the Emergency Medical Services Honor Board to recommend persons to receive the Medal of Valor; providing duties and purpose of each board; setting forth the membership of each board, the manner of

membership selection, and the terms and conditions of service; setting forth process for identifying candidates to receive Medal of Valor; setting forth process for considering candidates to receive Medal of Valor; providing for submission of nominated persons to Speaker of the House of Delegates and President of the Senate; directing Governor to issue Medal of Valor to nominee upon adoption of concurrent resolution by Legislature; and directing the Department of Arts, Culture and History create design for Medal of Valor.

Be it enacted by the Legislature of West Virginia:

ARTICLE 32. MEDALS OF VALOR.

§29-32-1. Medal of Valor.

1 (a) There is hereby established a Medal of Valor to be
2 awarded to firefighters, law-enforcement officers, and
3 emergency medical services personnel who distinguish
4 themselves conspicuously by gallantry and intrepidity at the
5 risk of their lives above and beyond the call of duty in the
6 performance of their duties.

7 (b) A Medal of Valor can only be awarded in the manner
8 set forth in this article.

§29-32-2. Firefighters Honor Board.

1 (a) The Firefighters Honor Board is hereby established
2 as an advisory board to the Legislature. The purpose of the
3 board is to recommend to the Legislature, firefighters in
4 West Virginia who have distinguished themselves
5 conspicuously by gallantry and intrepidity at the risk of their
6 lives above and beyond the call of duty in the performance
7 of their duties, to be awarded a Medal of Valor.

8 (b) Board membership. —

9 (1) The board shall consist of two members from each
10 of the state's senatorial districts. Each state senator shall
11 appoint one member representing his or her district.

12 (2) The board shall be composed of firefighters, fire
13 chiefs, and other professionals who are qualified to evaluate
14 and determine whether the actions of firefighters rise to the
15 level of being above and beyond the call of duty.

16 (3) Members shall serve a one-year term and shall serve
17 without compensation.

18 (c) The board may consider candidates for the Medal of
19 Valor who are identified by members of the board or by
20 other citizens, and may design a system for the receipt of
21 those recommendations.

22 (d) The board shall review identified individuals to
23 determine if those firefighters have gone above and beyond
24 the call of duty in their professional capacities. Upon
25 determination that a firefighter is worthy of this honor, the
26 board shall submit the nomination to the Speaker of the
27 House of Delegates and the President of the Senate for
28 consideration by the Legislature.

§29-32-3. Law Enforcement Officers Honor Board.

1 (a) The Law Enforcement Officers Honor Board is
2 hereby established as an advisory board to the Legislature.
3 The purpose of the board is to recommend to the
4 Legislature, law enforcement officers in West Virginia who
5 distinguish themselves conspicuously by gallantry and
6 intrepidity at the risk of their lives above and beyond the call
7 of duty in the performance of their duties, to be awarded a
8 Medal of Valor.

9 (b) Board membership. —

10 (1) The board shall consist of two members from each
11 of the state's senatorial districts. Each state senator shall
12 appoint one member representing his or her district.

13 (2) The board shall be composed of law enforcement
14 officials, such as sheriffs and police chiefs, and other
15 professionals who are qualified to evaluate and determine

16 whether the actions of law enforcement officers rise to the
17 level of being above and beyond the call of duty.

18 (3) Members shall serve a one-year term and shall serve
19 without compensation.

20 (c) The board may consider candidates for the Medal of
21 Valor who are identified by members of the board or by
22 other citizens, and may design a system for the receipt of
23 those recommendations.

24 (d) The board shall review identified individuals to
25 determine if those law enforcement officers have gone
26 above and beyond the call of duty in their professional
27 capacities. Upon determination that a law enforcement
28 officer is worthy of this honor, the board shall submit the
29 nomination to the Speaker of the House of Delegates and
30 the President of the Senate for consideration by the
31 Legislature.

§29-32-4. Emergency Medical Services Honor Board.

1 (a) The Emergency Medical Services Honor Board is
2 hereby established as an advisory board to the Legislature.
3 The purpose of the board is to recommend to the
4 Legislature, emergency medical services personnel in West
5 Virginia who distinguish themselves conspicuously by
6 gallantry and intrepidity at the risk of their lives above and
7 beyond the call of duty in the performance of their duties, to
8 be awarded a Medal of Valor.

9 (b) Board membership. —

10 (1) The board shall consist of two members from each
11 of the state's senatorial districts. Each state senator shall
12 appoint one member representing his or her district.

13 (2) The board shall be composed of emergency medical
14 services personnel, medical officials, doctors, and other
15 professionals who are qualified to evaluate and determine
16 whether the actions of emergency medical services

17 personnel rise to the level of being above and beyond the
18 call of duty.

19 (3) Members shall serve a one-year term and shall serve
20 without compensation.

21 (c) The board may consider candidates for the Medal of
22 Valor who are identified by members of the board or by
23 other citizens, and may design a system for the receipt of
24 those recommendations.

25 (d) The board shall review identified individuals to
26 determine if those emergency medical services personnel
27 have gone above and beyond the call of duty in their
28 professional capacities. Upon determination that an
29 emergency medical services provider is worthy of this
30 honor, the board shall submit the nomination to the Speaker
31 of the House of Delegates and the President of the Senate
32 for consideration by the Legislature.

§29-32-5. Awarding of the Medal of Valor.

1 (a) The Legislature may act on a nomination from one
2 of the Honor Boards established by this article by passing a
3 concurrent resolution.

4 (b) Upon nomination by the Firefighters Honor Board,
5 and adoption of a concurrent resolution by the Legislature,
6 the Governor shall bestow the Medal of Valor for
7 Firefighters upon the nominee.

8 (c) Upon nomination by the Law Enforcement Officers
9 Honor Board, and adoption of a concurrent resolution by the
10 Legislature, the Governor shall bestow the Medal of Valor
11 for Law Enforcement Officers upon the nominee.

12 (d) Upon nomination by the Emergency Medical
13 Services Honor Board, and adoption of a concurrent
14 resolution by the Legislature, the Governor shall bestow the
15 Medal of Valor for Emergency Medical Services personnel
16 upon the nominee.

17 (e) The West Virginia Department of Arts, Culture and
 18 History shall create the designs for the Medal of Valor for
 19 Firefighters, Law Enforcement Officers, and Emergency
 20 Medical Services personnel.

CHAPTER 300

**(H. B. 4476 - By Delegates Shott, Criss, Steele,
 Howell, D. Kelly, Miller, N. Brown, Maynard,
 Lovejoy, Mandt and Fast)**

[Passed February 18, 2020; in effect ninety days from passage.]
 [Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §15-9B-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §15-9B-1a and §15-9B-5; and to amend and reenact §15-9B-2 and §15-9B-4 of said code, all relating to providing for the collection, submission, testing, retention, and disposition of forensic evidence in sexual assault cases; transferring some duties of the Division of Justice and Community Services to the Division of Administrative Services; defining terms; requiring sexual assault forensic examination kits collected by health care providers to be directly submitted to the West Virginia State Police Forensic Laboratory; requiring certain kits to be transported to Marshall University Forensic Science Center; establishing protocols for storage, retention, transmission and disposal of kits; notice to victim regarding disposal; establishing misdemeanor penalties; and granting rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9B. SEXUAL ASSAULT EXAMINATION NETWORK.

§15-9B-1. Sexual Assault Forensic Examination Commission.

1 (a) The Sexual Assault Forensic Examination
2 Commission is continued as a subcommittee of the
3 Governor's Committee on Crime, Delinquency and
4 Correction. The purpose of the commission is to establish,
5 manage, and monitor a statewide system to facilitate the
6 timely and efficient collection, submission, testing,
7 retention, tracking, and disposition of forensic evidence in
8 sexual assault cases. As used in this article, the word
9 "commission" means the Sexual Assault Forensic
10 Examination Commission.

11 (b) Membership on the commission shall consist of the
12 following:

13 (1) A representative chosen from the membership of the
14 West Virginia Prosecuting Attorneys Association who shall
15 be chosen by the president of that organization;

16 (2) A representative chosen from the membership of the
17 West Virginia Association of Counties who shall be chosen
18 by the executive director of that organization;

19 (3) The Commissioner of the Bureau for Public Health,
20 or his or her designee;

21 (4) A representative from the State Police Forensic
22 Laboratory who shall be chosen by the Superintendent of
23 the West Virginia State Police;

24 (5) A representative from the membership of the West
25 Virginia Child Advocacy Network;

26 (6) The President of the West Virginia Hospital
27 Association, or his or her designee;

28 (7) A representative from the membership of the West
29 Virginia Foundation for Rape and Information Services who
30 shall be chosen by the state coordinator of that organization;

31 (8) A representative of the West Virginia University
32 Forensic and Investigative Sciences Program who shall be
33 chosen by the director of that program; and

34 (9) A representative of the Marshall University Forensic
35 Science Center who shall be chosen by the director of that
36 organization.

37 (c) If any of the representative organizations listed in
38 subsection (b) of this section cease to exist, the director of
39 the Division of Administrative Services, or his or her
40 designee, may select a person from a similar organization.

41 (d) The director of the Division of Administrative
42 Services, or his or her designee, shall appoint the following
43 additional members of the commission:

44 (1) An emergency room physician licensed to practice
45 and practicing medicine in this state;

46 (2) A victim advocate from a rape crisis center
47 employed in this state;

48 (3) A sexual assault nurse examiner who is engaged in
49 an active practice within this state;

50 (4) A law-enforcement officer in this state with
51 experience in sexual assault investigations;

52 (5) A health care provider with pediatric and child abuse
53 expertise licensed in this state; and

54 (6) A director of a child advocacy center licensed and
55 operating in this state.

56 (e) The commission shall establish mandatory statewide
57 protocols for conducting sexual assault forensic
58 examinations, including designating locations and providers
59 to perform forensic examinations, establishing minimum
60 qualifications and procedures for performing forensic

61 examinations, and establishing protocols to assure the
62 proper collection of evidence.

§15-9B-1a. Definitions.

1 As used in this article:

2 (1) “Biological evidence” includes a sexual assault
3 forensic examination kit, semen, blood, saliva, hair, skin
4 tissue, or other identified biological material.

5 (2) “DNA” means deoxyribonucleic acid. DNA is
6 located in the nucleus of cells and provides an individual’s
7 personal genetic blueprint. DNA encodes genetic
8 information that is the basis of human heredity and forensic
9 identification.

10 (3) “Nonreported kit” means a kit collected from an
11 alleged victim who has consented to the collection of the kit,
12 but has not consented to participation in the criminal justice
13 process.

14 (4) “Sexual assault forensic examination kit” or “kit”
15 means a set of materials, including, but not limited to, swabs
16 and tools for collecting blood samples, clothing, or other
17 materials used to gather forensic evidence from a victim of
18 a reported sexual offense and the evidence obtained with the
19 materials.

20 (5) “Sexual offense” means any offense or attempted
21 offense in the jurisdiction of the state in which a sexual
22 assault forensic examination kit is collected, including, but
23 not limited to, the following sections:

24 (A) §61-8-12 of this code;

25 (B) §61-8A-2 of this code;

26 (C) §61-8A-4 of this code;

27 (D) §61-8A-5 of this code;

28 (E) Any offenses listed in §61-8B-1 *et seq.* of this code;

29 (F) Any offenses listed in §61-8C-1 *et seq.* of this code;

30 (G) Any offenses listed in §61-8D-1 *et seq.* of this code.

31 (6) “Unfounded” means evidence developed after
32 reasonable investigation and supported by proper
33 documentation proving no crime occurred or where the
34 alleged victim has recanted.

§15-9B-2. Powers and duties of the commission.

1 (a) The commission shall facilitate the recruitment and
2 retention of qualified health care providers that are properly
3 qualified to conduct forensic examinations. The
4 commission shall work with county and regional officials to
5 identify areas of greatest need, and develop and implement
6 recruitment and retention programs to help facilitate the
7 effective collection of evidence.

8 (b) The commission shall authorize minimum training
9 requirements for providers conducting exams and establish
10 a basic standard of care for victims of sexual assault. The
11 commission may adopt necessary and reasonable
12 requirements relating to establishment of a statewide
13 training and forensic examination system, including, but not
14 limited to, developing a data collection system to monitor
15 adherence to established standards, assisting exam
16 providers to receive training and support services,
17 advocating the fair and reasonable reimbursement to exam
18 providers, and facilitating transportation services for
19 victims to get to and from designated exam locations.

20 (c) The commission shall approve local plans for each
21 area of the state or a county or regional basis. If the
22 commission determines it necessary, it may add or remove
23 a county or portion of a county from a region to assure that
24 all areas of the state are included in an appropriate local
25 plan. Upon the failure of any county or local region to

26 propose a plan, the commission may implement a plan for
27 that county or region.

28 (d) Once a plan is approved by the commission, it can
29 only be amended or otherwise altered as provided by the
30 rules authorized pursuant to subsection (e) of this section.
31 Designated facilities and organizations providing services
32 shall give the commission 30 days' advance notice of their
33 intent to withdraw from the plan. If there is a change of
34 circumstances that would require a change in a county or
35 regional plan, the members of the local board and the state
36 commission shall be notified.

37 (e) The commission may adopt and modify bylaws,
38 policies, and procedures for the conduct of its meetings and
39 the operation of the committee. The commission may
40 propose rules for legislative approval, in accordance with
41 §29A-3-1 *et seq.* of this code, that are necessary to
42 implement this article.

43 (f) The commission shall elect a chair and a vice chair,
44 and any other officers as it considers necessary. Special
45 meetings may be held upon the call of the chair, vice chair,
46 or a majority of the members of the commission. A majority
47 of the members of the commission present in person, by
48 proxy or designation, or by electronic means constitutes a
49 quorum.

50 (g) Any member appointed to the commission who is a
51 written, designated representative has the full rights of a
52 member, including the right to vote, serve on
53 subcommittees, or perform any other function.

54 (h) The commission may make recommendations to the
55 Governor's Committee on Crime, Delinquency and
56 Correction for legislation related to the commission's duties
57 and responsibilities, or for research or studies by the
58 Division of Administrative Services, Justice and
59 Community Services Section on topics related to the
60 commission's duties and responsibilities.

61 (i) On or before December 1, 2020, the Commission
62 shall develop a written plan to:

63 (1) Prioritize the testing of kits;

64 (2) Ensure all kits are tested; and

65 (3) Establish a system of tracking kits received which
66 shall be available to victims;

67 (j) The Commission may suggest additional protocols to
68 the superintendent which it determines might improve the
69 efficacy of testing;

70 (k) Any reports generated by the Commission shall be
71 submitted to the Joint Committee on Government and
72 Finance.

§15-9B-4. Submission, testing, and retention of sexual assault forensic examination kits.

1 (a) The Sexual Assault Forensic Examination
2 Commission created by §15-9B-1 of this code shall
3 establish a subgroup of persons with subject matter
4 expertise to establish best-practice protocols for the
5 submission, testing, retention, and disposition of sexual
6 assault forensic examination kits collected by health care
7 providers. The commission shall propose rules for
8 legislative approval, in accordance with §29A-3-1 *et seq.* of
9 this code, detailing best-practice protocols. Upon approval
10 of the legislative rules, local sexual assault forensic
11 examination boards shall follow the rules.

12 (b) Rules promulgated pursuant to subsection (a) of this
13 section shall include:

14 (1) Time frames for submission of sexual assault
15 forensic examination kits in the possession of law
16 enforcement; and

17 (2) Protocols for storage of DNA samples and sexual
18 assault forensic examination kits.

19 (c) The commission may promulgate emergency rules
20 pursuant to the provisions of §29A-3-15 of this code in order
21 to implement this section: *Provided*, That no emergency
22 rule may permit the destruction of any DNA evidence.

23 (d) Upon collection, a sexual assault forensic
24 examination kit shall be submitted for testing by the health
25 care provider to the West Virginia State Police Forensic
26 Laboratory within 30 days of collection or as soon thereafter
27 as practicable. All packaging kits for transmittal and
28 transmittal protocols shall be designed to meet applicable
29 standards for maintaining the efficacy of the sample and
30 chain of custody.

31 (e) No sexual assault forensic examination kit need be
32 tested where the alleged victim has not consented to the
33 testing, requests that the kit not be tested, where he or she
34 recants as to the allegation of a sexual offense, or the
35 allegation that a sexual offense occurred is determined to be
36 unfounded. If the alleged victim does not consent to law
37 enforcement involvement, the kit shall be designated a
38 nonreported kit and transmitted to the Marshall University
39 Forensic Science Center.

40 (f) The Commission shall, in cooperation with the West
41 Virginia State Police, develop protocols for storage of
42 previously tested materials to be made available for
43 secondary testing upon a court order to do so.

44 (g) Biological evidence obtained through tests of a
45 sexual assault forensic examination kit shall not be
46 destroyed:

47 (1) During the time period of incarceration of a person
48 whose DNA was identified by the use of the biological
49 evidence, or while the person remains under continued
50 supervision, whichever is later in time; or

51 (2) For as long as the offense from which the biological
52 evidence is obtained remains unresolved;

53 (h) Notwithstanding any provision of this code, or any
54 rule or policy promulgated thereunder, upon completion of
55 the processing and testing set forth in subsection (d) of this
56 section, the sexual assault forensic examination kit shall be
57 transmitted to the appropriate investigating local or state
58 law-enforcement agency which shall retain all identified
59 biological material that is secured in connection with any
60 sexual offense or attempted sexual offense for the periods
61 set forth in subsection (g) of this section.

62 (i) After processing and testing of a sexual assault
63 forensic examination kit, the West Virginia State Police
64 Laboratory shall transmit the sexual assault forensic
65 examination kit to the appropriate investigating state or
66 local law-enforcement agency through any reasonable
67 means sufficient to establish the proper chain of custody,
68 including, but not limited to, use of the United States Postal
69 Service or hand delivery by appropriate personnel or a law-
70 enforcement officer. The appropriate investigating state or
71 local law-enforcement agency shall preserve the sexual
72 assault forensic examination kit for the period of time
73 prescribed in subsection (g) of this section in a condition
74 where any biological evidence is suitable for DNA testing.
75 The lack of timely submission, or the inadvertent loss or
76 destruction of a sexual assault forensic examination kit,
77 standing alone, shall not constitute a bar to the prosecution
78 of a sexual offense.

79 (j) Sexual assault forensic examination kits retained
80 pursuant to this section shall be made available for DNA
81 testing pursuant to §15-2B-7 of this code or pursuant to an
82 appropriate order of a circuit court of competent jurisdiction
83 for secondary testing.

84 (k) The appropriate investigating state or local law-
85 enforcement agency responsible for retaining the sexual
86 assault forensic examination kit shall obtain approval from

87 the circuit court of competent jurisdiction for the county in
88 which the crime occurred before disposal of any biological
89 evidence. Before the disposal of any sexual assault forensic
90 examination kit, reasonable efforts shall be made to provide
91 written notice to the victim by the prosecuting attorney of
92 the county in which the crime occurred.

93 (l) Nothing in this section shall be construed as limiting
94 a state or local law-enforcement agency's discretion
95 concerning the conditions under which biological evidence
96 is retained, preserved, or transferred among different
97 entities if the evidence is retained in a condition that is
98 suitable for DNA testing.

§15-9B-5. Offenses; penalty.

1 Any person who willfully neglects or refuses to do or
2 perform any duty imposed by this article is guilty of a
3 misdemeanor and, upon conviction, shall be fined not less
4 than \$50 nor more than \$200, or be confined in jail for a
5 period of not more than 60 days, or both fined and confined.

CHAPTER 301

**(H. B. 4715 - By Delegates Capito, Nelson, Byrd,
Robinson, Pushkin, Estep-Burton, Rowe, Skaff,
Bartlett and D. 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 §8-14-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-15-1 of said code, all relating to authorizing municipalities to grant certain fire department employees limited powers of arrest in relation to their duties; setting the limits of their

power to arrest; authorizing designated fire department employees to file complaints with appropriate courts; requiring initial and annual training of designated fire department employees as established by the State Fire Commission and the State Fire Marshal.

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.

§8-14-3. Powers, authority, and duties of law-enforcement officials and policemen.

1 The chief and any member of the police force or
2 department of a municipality, any municipal sergeant, and
3 any municipal fire marshal shall have all of the powers,
4 authority, rights, and privileges within the corporate limits
5 of the municipality with regard to the arrest of persons, the
6 collection of claims, and the execution and return of any
7 search warrant, warrant of arrest, or other process, which
8 can legally be exercised or discharged by a deputy sheriff of
9 a county: *Provided*, That any municipal fire marshal granted
10 authority under this section shall have these powers,
11 authority, rights, and privileges only to the limits described
12 in §8-15-1 of this code. In order to arrest for the violation of
13 municipal ordinances and as to all matters arising within the
14 corporate limits and coming within the scope of his or her
15 official duties, the powers of any chief, policeman,
16 municipal fire marshal, or sergeant shall extend anywhere
17 within the county or counties in which the municipality is
18 located, and any chief, policeman, municipal fire marshal,
19 or sergeant shall have the same authority of pursuit and
20 arrest beyond his or her normal jurisdiction as has a sheriff.
21 For an offense committed in his or her presence, any such

22 officer may arrest the offender without a warrant and take
23 the offender before the mayor or police court or municipal
24 court to be dealt with according to law. His or her sureties
25 are liable to all the fines, penalties, and forfeitures which a
26 deputy sheriff is liable to, for any failure or dereliction in
27 such office, to be recovered in the same manner and in the
28 same courts in which the fines, penalties, and forfeitures are
29 recovered against a deputy sheriff. In addition to the mayor,
30 or police court judge or municipal court judge, if any, of a
31 city, the chief of police of any municipality and in the
32 absence from the station house of the chief of police the
33 captains of police and lieutenants of police shall each have
34 authority to administer oaths to complainants and to issue
35 arrest warrants thereon for all violations of the ordinances
36 of the municipality.

37 The mayor and police officers of every municipality and
38 any municipal sergeant shall aid in the enforcement of the
39 criminal laws of the state within the municipality,
40 independently of any charter provision or any ordinance or
41 lack of an ordinance with respect thereto, and to cause the
42 arrest of, or arrest, any offender and take him or her before
43 a magistrate to be dealt with according to the law. Failure
44 on the part of any such official or officer to discharge any
45 duty imposed by the provisions of this section is official
46 misconduct for which he or she may be removed from
47 office. Any official or officer has the same authority to
48 execute a warrant issued by a magistrate, and the same
49 authority to arrest without a warrant for offenses committed
50 in his or her presence, as a deputy sheriff.

51 An officer or member of the police force or department
52 of a municipality may not aid or assist either party in any
53 labor trouble or dispute between employer and employee.
54 They shall in these cases see that the statutes and laws of
55 this state and municipal ordinances are enforced in a legal
56 way and manner. Nor shall he or she engage in off-duty
57 police work for any party engaged in or involved in the labor
58 dispute or trouble between employer and employee.

59 The chief of police shall be charged with the keeping
60 and security of the jail, and at any time that one or more
61 prisoners are being held in the jail, he or she shall require
62 that the jail be attended by a police officer or other
63 responsible person.

ARTICLE 15. FIREFIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

PART I. FIRE FIGHTING GENERALLY.

§8-15-1. Power and authority of governing body with respect to fires.

1 The governing body of every municipality shall have
2 plenary power and authority to provide for the prevention
3 and extinguishment of fires and, for this purpose, it may,
4 among other things, regulate how buildings shall be
5 constructed, procure proper engines and implements,
6 provide for the organization, equipment, and government of
7 volunteer fire companies or of a paid fire department,
8 prescribe the powers and duties of the companies or
9 department, and of the several officers, provide for the
10 appointment of officers to have command of firefighting,
11 prescribe what their powers and duties shall be, and impose
12 on those who fail or refuse to obey any lawful command of
13 the officers any penalty which the governing body is
14 authorized by law to impose for the violation of an
15 ordinance. It may give authority to any the officer or officers
16 to direct the pulling down or destroying of any fence, house,
17 building, or other thing, if determined necessary to prevent
18 the spreading of a fire. It may give authority to municipal
19 fire marshals to (1) arrest any individual disobeying lawful
20 orders at the scene of a fire, (2) arrest any individual who
21 violates prohibitions against arson and explosives offenses,
22 malicious burning, obstructing a fire marshal, or failing to
23 obey lawful orders, (3) arrest without a warrant, if the
24 unlawful conduct occurs in their presence, and (4) file
25 criminal complaints with the municipal court or other

26 appropriate judicial officer in order to obtain a warrant for
27 the arrest and initiate a criminal matter: *Provided*, That any
28 officer given this authority shall receive initial and annual
29 training that complies with Law Enforcement Core Training
30 Standards of the West Virginia State Fire Commission and
31 the West Virginia State Fire Marshal.

●

CHAPTER 302

**(H. B. 4859 - By Delegates Hanshaw (Mr. Speaker)
and Miley)**

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §8-15-8b of the Code of West Virginia, 1931, as amended; and to amend and reenact §12-4-14b of said code, all relating to accounting for state funds distributed to volunteer and part-volunteer fire companies and departments; clarifying that use of such moneys for debt reduction is authorized only if the debts were incurred for specified purposes; authorizing the investment of such moneys with certain restrictions; and amending the definition of ‘state funds accounts’.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-8b. Authorized expenditures of revenues from the Municipal Pensions and Protection Fund and the Fire

Protection Fund; deductions for unauthorized expenditures; record retention.

1 (a) Money received from the state for volunteer and
2 part-volunteer fire companies and departments, pursuant to
3 §33-3-14d, §33-3-33, and §33-12C-7 of this code, may not
4 be commingled with moneys received from any other
5 source, except money received as a grant from the Fire
6 Service Equipment and Training Fund as provided in §29-
7 3-5f of this code. Distributions from the Municipal Pensions
8 and Protection Fund and the Fire Protection Fund allocated
9 to volunteer and part-volunteer fire companies and
10 departments may be expended only for the following:

11 (1) Personal protective equipment, including protective
12 head gear, bunker coats, pants, boots, combination of
13 bunker pants and boots, coats, and gloves;

14 (2) Equipment for compliance with the national fire
15 protection standard or automotive fire apparatus, NFPA-
16 1901;

17 (3) Compliance with insurance service office
18 recommendations relating to fire departments;

19 (4) Rescue equipment, communications equipment, and
20 ambulance equipment: *Provided*, That no moneys received
21 from the Municipal Pensions and Protection Fund or the
22 Fire Protection Fund may be used for equipment for
23 personal vehicles owned or operated by volunteer or part-
24 volunteer fire company or department members;

25 (5) Capital improvements reasonably required for
26 effective and efficient fire protection service and
27 maintenance of the capital improvements;

28 (6) Retirement of debts, but only if the debts were
29 incurred exclusively for the purchase of the goods and
30 services allowed under this subsection;

31 (7) Payment of utility bills;

32 (8) Payment of the cost of immunizations, including any
33 laboratory work incident to the immunizations, for
34 firefighters against hepatitis-b and other blood-borne
35 pathogens: *Provided*, That the vaccine shall be purchased
36 through the state immunization program or from the lowest-
37 cost vendor available: *Provided, however*, That volunteer
38 and part-volunteer fire companies and departments shall
39 seek to obtain no-cost administration of the vaccinations
40 through local boards of health: *Provided further*, That in the
41 event any volunteer or part-volunteer fire company or
42 department is unable to obtain no-cost administration of the
43 vaccinations through a local board of health, the company
44 or department shall seek to obtain the lowest cost available
45 for the administration of the vaccinations from a licensed
46 health care provider;

47 (9) Any filing fee required to be paid to the Legislative
48 Auditor's Office under §12-4-14 of this code relating to
49 sworn statements of annual expenditures submitted by
50 volunteer or part- volunteer fire companies or departments
51 that receive state funds or grants;

52 (10) Property/casualty insurance premiums for
53 protection and indemnification against loss or damage or
54 liability;

55 (11) Operating expenses reasonably required in the
56 normal course of providing effective and efficient fire
57 protection service, which include, but are not limited to,
58 gasoline, bank fees, postage, and accounting costs;

59 (12) Dues paid to national, state, and county
60 associations;

61 (13) Workers' compensation premiums;

62 (14) Life insurance premiums to provide a benefit not to
63 exceed \$20,000 for firefighters; and

64 (15) Educational and training supplies and fire
65 prevention promotional materials, not to exceed \$500 per
66 year.

67 (b) If a volunteer or part-volunteer fire company or
68 department spends any amount of money received from the
69 Municipal Pensions and Protection Fund or the Fire
70 Protection Fund for an item, service, or purpose not
71 authorized by this section, that amount, when determined by
72 an official audit, review, or investigation, shall be deducted
73 from future distributions to the volunteer fire company or
74 part-volunteer fire department.

75 (c) If a volunteer or part-volunteer fire company or
76 department purchases goods or services authorized by this
77 section, but then returns the goods or cancels the services
78 for a refund, then any money refunded shall be deposited
79 back into the same, dedicated bank account used for the
80 deposit of distributions from the Municipal Pensions and
81 Protection Fund and the Fire Protection Fund.

82 (d) Each volunteer or part-volunteer fire company and
83 department shall retain, for five calendar years, all invoices,
84 receipts, and payment records for the goods and services
85 paid with money received from the state for volunteer and
86 part-volunteer fire companies and departments, pursuant to
87 §33-3-14d, §33-3-33, and §33-12C-7 of this code and
88 money received as a grant from the Fire Service Equipment
89 and Training Fund as provided in §29-3-5f of this code.

90 (e) Volunteer and part-volunteer fire companies and
91 departments may also invest the received moneys, described
92 in subsection (a) of this section, and collect interest thereon:
93 *Provided*, That volunteer and part-volunteer fire companies
94 and departments shall not commingle the received moneys
95 with funds received from any other source, shall not use the
96 invested money as collateral or security for any loan, and
97 shall retain all resulting statements of accounts and earnings
98 for a minimum of five years from the date of the statements.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.****§12-4-14b. Accountability of volunteer and part-volunteer fire companies or departments receiving state funds for equipment and training; review or audit of expenditures; withholding of state funds for delinquency or misuse; notifications.**

1 (a) *Definitions.* — For the purposes of this section:

2 “Equipment and training grant” means a grant of money
3 to a volunteer fire company or a part-volunteer fire
4 department from the Fire Service Equipment and Training
5 Fund created in §29-3-5f of this code;

6 “Formula distribution” means a distribution of money
7 to volunteer and part-volunteer fire companies or
8 departments made pursuant to §33-3-14d, §33-3-33, and
9 §33-12C-7 of this code; and

10 “State funds accounts” means every bank account and
11 investment account established by a volunteer or part-
12 volunteer fire company or department into which the
13 volunteer or part-volunteer fire company or department has
14 deposited or invested money from formula distributions and
15 equipment and training grants.

16 (b) *Filing required documentation.* — Every volunteer
17 and part-volunteer fire company or department seeking to
18 receive formula distributions or an equipment and training
19 grant shall file copies of bank statements and check images
20 from the company’s or department’s state funds accounts
21 for the previous calendar year with the Legislative Auditor
22 on or before February 1 of each year.

23 (c) *Reviews and audits.* — The Legislative Auditor is
24 authorized to conduct regular reviews or audits of deposits
25 and expenditures from formula distribution and equipment

26 and training grant funds by volunteer and part-volunteer fire
27 companies or departments. The Legislative Auditor may
28 assign an employee or employees to perform audits or
29 reviews at his or her direction. The State Treasurer shall
30 provide the Legislative Auditor information, in the manner
31 designated by the Legislative Auditor, concerning formula
32 distributions and equipment and training grants paid to
33 volunteer or part-volunteer fire companies and departments.
34 The volunteer or part-volunteer fire company or department
35 shall cooperate with the Legislative Auditor, the Legislative
36 Auditor's employees, and the State Auditor in performing
37 their duties under the laws of this state.

38 (d) *State Auditor.* — Whenever the State Auditor
39 performs an audit of a volunteer or part-volunteer fire
40 company or department for any purpose, the Auditor shall
41 also conduct an audit of other state funds received by the
42 company or department pursuant to §33-3-14d, §33-3-33,
43 and §33-12C-7 of this code. The Auditor shall send a copy
44 of the audit to the Legislative Auditor. The Legislative
45 Auditor may accept an audit performed by the Auditor in
46 lieu of performing an audit under this section.

47 (e) *Withholding of funds.* —The Treasurer is authorized
48 to withhold payment of a formula distribution or an
49 equipment and training grant from a volunteer or part-
50 volunteer fire company or department, when properly
51 notified by the Legislative Auditor pursuant to this section,
52 of any of the following conditions:

53 (1) Failure to file, in a timely manner, copies of bank
54 statements and check images with the Legislative Auditor;

55 (2) Failure to cooperate with a review or audit
56 conducted by the Legislative Auditor;

57 (3) Misapplication of state funds; or

58 (4) Failure to file a report or a sworn statement of
59 expenditures as required by §12-4-14 of this code for a state
60 grant other than an equipment and training grant.

61 (f) *Delinquency in filing.* — If, after February 1, a
62 volunteer or part-volunteer fire company or department has
63 failed to file the required bank statements and check images
64 with the Legislative Auditor, the Legislative Auditor shall
65 notify the delinquent company or department at two
66 separate times in writing of the delinquency and of possible
67 forfeiture of its Fire Service Equipment and Training Fund
68 distribution for the year. If the required bank statements and
69 check images are not filed with the Legislative Auditor by
70 March 31, unless the time period is extended by the
71 Legislative Auditor, the Legislative Auditor shall then
72 notify the Treasurer who shall withhold payment of any
73 amount that would otherwise be distributed to the company
74 or department. Prior to each subsequent quarterly
75 disbursement of funds by the Treasurer, the Legislative
76 Auditor shall notify each delinquent company or department
77 twice per each quarter in which the company or department
78 is delinquent. The Legislative Auditor may choose the
79 method or methods of notification most likely to be received
80 by the delinquent company or department.

81 (g) *Noncooperation.* — If, in the course of an audit or
82 review by the Legislative Auditor, a volunteer or part-
83 volunteer fire company or department fails to provide
84 documentation of its accounts and expenditures in response
85 to a request of the Legislative Auditor, the Legislative
86 Auditor shall notify the State Treasurer who shall withhold
87 payment of any amount that would otherwise be distributed
88 to the company or department under the provisions of §33-
89 3-14d, §33-3-33, and §33-12C-7 of this code until the
90 Legislative Auditor informs the State Treasurer that the
91 company or department has cooperated with the review or
92 audit.

93 (h) *Reporting of other grants.* — Nothing in this section
94 alters the duties and responsibilities of a volunteer or part-

95 volunteer fire company or department imposed under §12-
96 4-14 of this code if that company or department has received
97 funds from any state grant program other than from the Fire
98 Service Equipment and Training Fund. If the Legislative
99 Auditor is notified by a grantor that a volunteer or part-
100 volunteer fire company or department has failed to file a
101 report or a sworn statement of expenditures for a state grant
102 it received, the Legislative Auditor shall notify the State
103 Treasurer who shall withhold further distributions to the
104 company or department in the manner provided in this
105 section.

106 (i) *Escrow and forfeiture of moneys withheld.* — The
107 Volunteer Fire Department Audit Account previously
108 created in the Treasury is hereby continued. When the State
109 Treasurer receives notice to withhold the distribution of
110 money to a volunteer or part-volunteer fire company or
111 department pursuant to this section, the Treasurer shall
112 instead deposit the amounts withheld into the Volunteer Fire
113 Department Audit Account. If the Treasurer receives notice
114 that the volunteer or part-volunteer fire company or
115 department has come into compliance in less than one year
116 from the date of deposit into this special revenue account,
117 then the Treasurer shall release and distribute the withheld
118 amounts to the company or department, except that any
119 interest that has accrued thereon shall be credited to the
120 general revenue of the state. If, after one year from payment
121 of the amount withheld into the special revenue account, the
122 Legislative Auditor informs the State Treasurer of
123 continued noncooperation by the company or department,
124 the delinquent company or department forfeits the amounts
125 withheld and the State Treasurer shall pay the amounts
126 withheld into Fire Service Equipment and Training Fund
127 created in §29-3-5f of this code.

128 (j) *Misuse of state money.* — If the Legislative Auditor
129 determines that a volunteer or part-volunteer fire company
130 or department has used formula distribution money for
131 purposes not authorized by §8-15-8b of this code or has used

132 equipment and training grant money for purposes not
133 authorized by the grant program, the Legislative Auditor
134 shall give a written notice of noncompliance to the company
135 or department. If a volunteer or part-volunteer fire company
136 or department disagrees or disputes the finding, the
137 company or department may contest the finding by
138 submitting a written objection to the Legislative Auditor
139 within five working days of receipt of the Legislative
140 Auditor's finding. The department or company shall then
141 have 60 days from the date of the Legislative Auditor's
142 finding to provide documentation to substantiate that the
143 expenditures were made for authorized purposes. If the
144 volunteer or part-volunteer fire company or department
145 does not dispute the findings of the Legislative Auditor or if
146 the company or department is not able to substantiate an
147 authorized purpose for the expenditure, the Legislative
148 Auditor shall notify the Treasurer of the amount of
149 misapplied money and the Treasurer shall deduct that
150 amount from future distributions to that company or
151 department until the full amount of unauthorized
152 expenditure is offset.



CHAPTER 303

**(Com. Sub. for S. B. 579 - By Senators Cline and
Roberts)**

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §11-15-30 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-6-6b of said code, all relating to changing the wireless enhanced 911 fee; and establishing a separate public safety fee and wireless tower fee.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-30. Proceeds of tax; appropriation of certain revenues.

1 (a) The proceeds of the tax imposed by this article shall
2 be deposited in the General Revenue Fund of the state
3 except as otherwise expressly provided in this article.

4 (b) *School Major Improvement Fund.* — After the
5 payment or commitment of the proceeds or collections of
6 this tax for the purposes set forth in §11-15-16 of this code,
7 on the first day of each month, there shall be dedicated
8 monthly from the collections of this tax the amount of
9 \$416,667, and the amount dedicated shall be deposited on a
10 monthly basis into the School Major Improvement Fund
11 created pursuant to §18-9D-6 of this code: *Provided*, That
12 for fiscal year 2016, the amount so dedicated and deposited
13 annually under this subsection is reduced by \$2,000,004,
14 and the amount so dedicated and deposited monthly is
15 reduced to \$250,000 for fiscal year 2016. This reduction
16 shall cease for fiscal years beginning after June 30, 2016:
17 *Provided, however*, That for fiscal year 2017, the amount so
18 dedicated and deposited annually under this subsection is
19 reduced by \$999,996, and the amount so dedicated and
20 deposited monthly is reduced to \$333,334 for fiscal year
21 2017. This reduction shall cease for fiscal years beginning
22 after June 30, 2017.

23 (c) *School Construction Fund.* — After the payment or
24 commitment of the proceeds or collections of this tax for the
25 purposes set forth in §11-15-16 of this code:

26 (1) On the first day of each month, there shall be
27 dedicated monthly from the collections of this tax the
28 amount of \$1,416,667 and the amount dedicated shall be
29 deposited into the School Construction Fund created
30 pursuant to §18-9D-6 of this code.

31 (2) Except as provided in subdivision (3) of this
32 subsection, effective July 1, 1998, there shall be dedicated
33 from the collections of this tax an amount equal to any
34 annual difference that may occur between the debt service
35 payment for the 1997 fiscal year for school improvement
36 bonds issued under the Better School Building Amendment
37 under the provisions of §18-9C-1 et. seq. of this code and
38 the amount of funds required for debt service on these
39 school improvement bonds in any current fiscal year
40 thereafter. This annual difference shall be prorated monthly,
41 added to the monthly deposit in subdivision (1) of this
42 subsection and deposited into the School Construction Fund
43 created pursuant to §18-9D-6 of this code.

44 (3) After June 30, 2015, the provisions of subdivisions
45 (1) and (2) of this subsection shall have no force or effect.
46 After June 30, 2015, there shall be dedicated from the
47 collections of this tax the amount of \$27,216,996 annually.
48 This amount shall be prorated monthly and deposited into
49 the School Construction Fund created pursuant to §18-9D-
50 6 of this code: *Provided*, That for fiscal year 2016, the
51 amount so dedicated annually under this subdivision is
52 reduced by \$6 million. This reduction shall cease for fiscal
53 years beginning after June 30, 2016: *Provided, however*,
54 That for fiscal year 2017, the amount so dedicated and
55 deposited annually under this subdivision is reduced by \$3
56 million. This reduction shall cease for fiscal years
57 beginning after June 30, 2017. Amendments to this
58 subdivision enacted in the 2016 regular legislative session
59 are retroactive, in accordance with dates and fiscal years
60 specified herein.

61 (d) *Prepaid wireless calling service.* — The proceeds or
62 collections of this tax from the sale of prepaid wireless
63 service are dedicated as follows:

64 (1) The tax imposed by this article upon the sale of
65 prepaid wireless calling service is in lieu of the wireless
66 enhanced 911 fee, the public safety fee, and the wireless
67 tower fee imposed by §24-6-6b of this code.

68 (2) Within 30 days following the end of each calendar
69 month, the Tax Commissioner shall remit to the Public
70 Service Commission the proceeds of the tax imposed by this
71 article upon the sale of prepaid wireless calling service in
72 the preceding month, determined as follows: For purposes
73 of determining the amount of those monthly proceeds, the
74 Tax Commissioner shall use an amount equal to one twelfth
75 of the wireless enhanced 911 fees, the public safety fees,
76 and the wireless tower fees collected from prepaid wireless
77 calling service under §24-6-6b of this code during the period
78 beginning on July 1, 2020, and ending on June 30, 2021.
79 Beginning on July 1, 2022, the Tax Commissioner shall
80 adjust this amount annually by an amount proportionate to
81 the increase or decrease in the enhanced wireless 911 fees,
82 the public safety fees, and the wireless tower fees paid to the
83 Public Service Commission under said section during the
84 previous 12 months. The Public Service Commission shall
85 receive, deposit, and disburse the proceeds in the manner
86 prescribed in said section.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-6b. Wireless enhanced 911 fee; public safety wireless fee; wireless tower fee.

1 (a) All CMRS providers as defined in §24-6-2 of this
2 code shall, on a monthly basis or otherwise for good cause
3 and as directed by order of the Public Service Commission,
4 collect from each of their in-state two-way service
5 subscribers a wireless enhanced 911 fee, a public safety fee,
6 and a wireless tower fee. As used in this section “in-state
7 two-way service subscriber” has the same meaning as that
8 set forth in the rules of the Public Service Commission. The
9 CMRS providers shall, on a monthly basis, after retaining a
10 billing fee of three percent of the sum of the wireless
11 enhanced 911 fee, the public safety fee, and the wireless
12 tower fee, send moneys collected from the wireless

13 enhanced 911 fee, the public safety fee, and the wireless
14 tower fee to the Public Service Commission.

15 (b) The wireless enhanced 911 fee is \$3.47 per month
16 for each valid in-state two-way service subscriber, as that
17 term is defined by Public Service Commission rules.

18 Beginning in the year 2021, and every two years
19 thereafter, the Public Service Commission shall conduct a
20 survey of the enhanced 911 fees imposed by counties and
21 shall recalculate the wireless enhanced 911 fee so that
22 increases or decreases by the same percentage as the change
23 in the weighted average rounded to the nearest penny, as of
24 March 1 of the respecification year, of all of the enhanced
25 911 fees imposed by the counties which have adopted an
26 enhanced 911 ordinance: *Provided*, That the wireless
27 enhanced 911 fee may never be increased by more than 25
28 percent of its value at the beginning of the respecification
29 year: *Provided, however*, That the fee may never be less
30 than the amount set in subsection (b) of this section.

31 (c) The Public Service Commission shall, on a quarterly
32 and approximately evenly staggered basis, disburse wireless
33 enhanced 911 fee revenue in the following manner:

34 (1) Each county that does not have a 911 ordinance in
35 effect as of the original effective date of this section in the
36 year 1997, or has enacted a 911 ordinance within the five
37 years prior to the original effective date of this section in the
38 year 1997, shall receive eight and one-half tenths of one
39 percent of the fee revenues received by the Public Service
40 Commission: *Provided*, That after the effective date of this
41 section, in the year 2005, when two or more counties
42 consolidate into one county to provide government services,
43 the consolidated county shall receive one percent of the fee
44 revenues received by the Public Service Commission for
45 itself and for each county merged into the consolidated
46 county. Each county shall receive eight and one-half tenths
47 of one percent of the remainder of the wireless enhanced
48 911 fee revenues received by the Public Service

49 Commission: *Provided, however,* That after the effective
50 date of this section, in the year 2005, when two or more
51 counties consolidate into one county to provide government
52 services, the consolidated county shall receive one percent
53 of the fee revenues received by the Public Service
54 Commission for itself and for each county merged into the
55 consolidated county. Then, from any moneys remaining,
56 each county shall receive a pro rata portion of that remainder
57 based on that county's population as determined in the most
58 recent decennial census as a percentage of the state total
59 population. The Public Service Commission shall
60 recalculate the county disbursement percentages on a yearly
61 basis, with the changes effective on July 1, and using data
62 as of the preceding March 1. The public utilities which
63 normally provide local exchange telecommunications
64 service by means of lines, wires, cables, optical fibers, or by
65 other means extended to subscriber premises shall supply
66 the data to the Public Service Commission on a county
67 specific basis no later than June 1 of each year;

68 (2) Counties which have an enhanced 911 ordinance in
69 effect shall receive their share of the wireless enhanced 911
70 fee revenue for use in the same manner as the enhanced 911
71 fee revenues received by those counties pursuant to their
72 enhanced 911 ordinances;

73 (3) The Public Service Commission shall deposit the
74 wireless enhanced 911 fee revenue for each county which
75 does not have an enhanced 911 ordinance in effect into an
76 escrow account which it has established for that county.
77 Any county with an escrow account may, immediately upon
78 adopting an enhanced 911 ordinance, receive the moneys
79 which have accumulated in the escrow account for use as
80 specified in subdivision (2) of this subsection: *Provided,*
81 That a county that adopts a 911 ordinance after the original
82 effective date of this section in the year 1997, or has adopted
83 a 911 ordinance within five years of the original effective
84 date of this section in the year 1997, shall continue to
85 receive one percent of the total 911 fee revenue for a period

86 of five years following the adoption of the ordinance.
87 Thereafter, each county shall receive that county's eight and
88 one-half tenths of one percent of the remaining fee revenue,
89 plus that county's additional pro rata portion of the fee
90 revenues then remaining, based on that county's population
91 as determined in the most recent decennial census as a
92 percentage of the state total population: *Provided, however,*
93 That every five years from the year 1997, all fee revenue
94 residing in escrow accounts shall be disbursed on the pro
95 rata basis specified in subdivision (1) of this subsection,
96 except that data for counties without enhanced 911
97 ordinances in effect shall be omitted from the calculation
98 and all escrow accounts shall begin again with a zero
99 balance. From any funds distributed to a county pursuant to
100 this section, a total of three percent shall be set aside in a
101 special fund to be used exclusively for the purchase of
102 equipment that will provide information regarding the x and
103 y coordinates of persons who call an emergency telephone
104 system through a commercial mobile radio service:
105 *Provided further,* That upon purchase of the necessary
106 equipment, the special fund shall be dissolved and any
107 surplus shall be used for general operation of the emergency
108 telephone system as may otherwise be provided by law.

109 (d) Beginning July 1, 2020, CMRS providers shall
110 collect the public safety fee from each in-state two-way
111 service subscriber. The public safety fee shall be 29 cents
112 per month and will be shown as a separate fee on the
113 subscriber's bill. On a monthly basis, the Public Service
114 Commission will distribute 10 cents of the public safety fee
115 to the West Virginia State Police to be used for equipment
116 upgrades for improving and integrating their
117 communication efforts with those of the enhanced 911
118 systems, and the Public Service Commission will deposit 19
119 cents of the public safety fee in a special fund established
120 by the Division of Homeland Security and Emergency
121 Management to be used solely for the construction,
122 maintenance, and upgrades of the West Virginia
123 Interoperable Radio Project and any other costs associated

124 with establishing and maintaining the infrastructure of the
125 system. Any funds remaining in this fund at the end of the
126 fiscal year shall automatically be reappropriated for the
127 following year.

128 (e) Beginning July 1, 2020, CMRS providers shall
129 collect the wireless tower fee from each in-state two-way
130 service subscriber. The wireless tower fee shall be 8 cents
131 per month and will be shown as a separate fee on the
132 subscriber's bill. On a monthly basis, the commission shall
133 distribute the wireless tower fee to a fund administered by
134 the Public Service Commission, entitled the Wireless Tower
135 Access Assistance Fund, to subsidize the construction of
136 wireless towers. The moneys shall be expended in
137 accordance with an enhanced 911 wireless tower access
138 matching grant order adopted by the Public Service
139 Commission. The commission order shall contain terms and
140 conditions designed to provide financial assistance loans or
141 grants to state agencies, political subdivisions of the state,
142 and wireless telephone carriers for the acquisition,
143 equipping, and construction of new wireless towers, which
144 would not be available otherwise due to marginal financial
145 viability of the applicable tower coverage area: *Provided,*
146 That the grants shall be allocated among potential sites
147 based on application from county commissions
148 demonstrating the need for enhanced 911 wireless coverage
149 in specific areas of this state. Any tower constructed with
150 assistance from the fund created by this subsection shall be
151 available for use by emergency services, fire departments,
152 and law-enforcement agencies' communications
153 equipment, so long as that use does not interfere with the
154 carriers' wireless signal.

155 (f) CMRS providers have the same rights and
156 responsibilities as other telephone service suppliers in
157 dealing with the failure by an in-state two-way service
158 subscriber to timely pay the wireless enhanced 911 fee, the
159 public safety fee, and the wireless tower fee.

160 (g) Notwithstanding the provisions of §24-6-1a of this
161 code, for the purposes of this section, the term “county”
162 means one of the counties provided in §1-1-1 of this code.

163 (h) Notwithstanding anything to the contrary in this
164 code, prepaid wireless calling service is not subject to the
165 wireless enhanced 911 fee, the public safety fee, and the
166 wireless tower fee.

167 (i) The Public Service Commission shall promulgate
168 rules in accordance with §29A-3-1 *et seq.* of this code to
169 effectuate the provisions of this section. The Public Service
170 Commission may promulgate emergency rules pursuant to
171 the provisions of §29A-3-15 of this code.



CHAPTER 304

**(Com. Sub. for S. B. 583 - By Senators Rucker, Blair,
Smith, Weld, Cline, Maroney, Roberts and Palumbo)**

[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 §24-2-1o, relating to creating a program to further the development of renewable energy resources and renewable energy facilities for solar energy by modifying the powers and duties of the Public Service Commission; providing for legislative findings and declarations; providing for definitions; providing for an application process and program for multiyear comprehensive renewable energy facilities for electric utilities, as defined, to plan, design, construct, purchase, own, and operate renewable energy-generating facilities, energy-storage resources, or both, under specified conditions, requirements, and limitations; providing that solar energy output is to be offered

for sale or sold to residential, commercial, or industrial customers under renewable special contracts or renewable tariffs; providing for commission review and approval of said programs; allowing cost recovery for said programs; providing for requirements for said programs; providing for application requirements and contents in lieu of applications for certificates of public convenience and necessity; providing for public notice at the direction of the commission for anticipated rates and rate increases in interested counties; providing for a hearing on applications within 90 days of notice; defining circumstances when a hearing can be waived for lack of opposition; defining a time period of 150 days within which the commission shall issue a final order after the application date; requiring the commission to find the programs as in the public interest; requiring the commission, after notice and hearing, to approve applications and allow cost recovery for just and reasonable expenditures; establishing accounting methods, practices, rates of return, calculations, dates, and procedures relevant for cost recovery; requiring a utility to place in effect commission-approved rates that include cost recovery with certain defined items; defining “concurrent cost recovery”; requiring yearly application filings by the utility with the commission regarding cost recovery; defining when a project is to be considered used and useful; limiting cost recovery from any one customer to a maximum increase of \$1000 per month; providing for siting certificates for exempt wholesale solar-generation facilities to be processed in 150 days by the Public Service Commission; providing that no provision shall displace current levels of coal-fired generation capacity; and providing for a sunset date under conditions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-10. Renewable energy facilities program.

1 (a) The Legislature finds and declares that:

2 (1) West Virginia is rich in energy resources, which
3 provide many advantages to the state, its economy and its
4 citizens;

5 (2) West Virginia's abundant mineral reserves have
6 created, and will continue to create, many benefits to the
7 state and its citizens, including thousands of jobs, a strong
8 tax base and a low-cost, reliable source of electricity;

9 (3) Coal-fired plants currently supply over 90 percent of
10 electricity generation to the citizens and businesses of this
11 state;

12 (4) Businesses that may otherwise locate or expand
13 facilities in this state often require that a portion of the
14 electricity that they purchase be generated via renewable
15 sources;

16 (5) Creating a program for the development of certain
17 renewable sources of electricity by electric utilities will
18 result in increased economic development opportunities in
19 the state, create jobs, and enhance the use of the state's
20 electricity generation; and

21 (6) Creating a program to authorize electric utilities to
22 provide a portion of the state's electricity needs through a
23 process that allows them to plan, design, construct,
24 purchase, own and operate renewable electric-generating
25 facilities, energy storage resources, or both, pursuant to this
26 section is in the public interest of the state.

27 (b) Definitions. – For the purpose of the section:

28 “Capital investments” include, but are not limited to,
29 costs related to the planning, design, construction, purchase,
30 and ownership of renewable electric-generating facilities,
31 energy storage resources, and interconnections with
32 transmission and distribution facilities.

33 “Commission” or “Public Service Commission” means
34 the Public Service Commission of West Virginia.

35 “Electric utility” means any electric distribution
36 company that sells electricity to retail customers in this state
37 under rates regulated by the commission. Unless
38 specifically provided for otherwise, for the purposes of this
39 section, the term “electric utility” may not include rural
40 electric cooperatives, municipally owned electric facilities
41 or utilities serving less than 30,000 residential electric
42 customers in West Virginia.

43 “Eligible site” means any site in this state that has been
44 previously used in electric generation, industrial,
45 manufacturing or mining operations, including, but not
46 limited to, brownfields, closed landfills, hazardous waste
47 sites, former industrial sites, and former mining sites. In the
48 event that there is no available site that has been previously
49 used in electric generation, industrial, manufacturing, or
50 mining operations in the area to be served by a renewable
51 electric facilities program, an eligible site may include any
52 suitable site in this state approved for use in connection with
53 a renewable electric facilities program by the Secretary of
54 the Department of Commerce.

55 “Energy storage resource” means infrastructure located
56 on an eligible site that allows for the energy absorption and
57 release of electrical energy into the electric grid.

58 “Renewable electric facilities program” means a
59 program proposed by an electric utility to plan, design,
60 construct, purchase, own, and operate renewable electric-
61 generating facilities, energy storage resources, or both,
62 pursuant to this section: *Provided*, That a renewable electric
63 facilities program may not consist solely of energy storage
64 resources.

65 “Renewable electric-generating facility” means
66 infrastructure located on an eligible site that generates
67 electricity solely through solar photovoltaic methods or
68 other solar methods.

69 (c) Electric utilities may file with the commission an
70 application for a multiyear comprehensive renewable
71 energy facilities program that complies with the provisions
72 of this section for planning, designing, constructing,
73 purchasing, owning, and operating renewable electric-
74 generating facilities, energy storage resources, or both, by
75 the electric utility. Subject to commission review and
76 approval, a renewable energy facilities program may be
77 amended and updated by the electric utility. The recovery
78 of costs in support of the renewable energy facilities
79 program shall be allowed in the manner set forth in this
80 section.

81 (d) Any renewable energy facilities program shall
82 comply with the following requirements:

83 (1) An electric utility may purchase each renewable
84 electric-generating facility and each energy storage resource
85 from a developer of renewable electric-generating facilities
86 or energy storage resources or construct such facilities on its
87 own, as applicable. Any purchase of a renewable electric-
88 generating facility or energy storage resources shall be
89 subject to a competitive procurement administered by the
90 electric utility. An electric utility may select to purchase a
91 renewable electric-generating facility, energy storage
92 resource, or both, based on a myriad of factors, including,
93 but not limited to, price and nonprice criteria, which shall
94 include, but not be limited to, geographic distribution of
95 generating capacity, areas of higher employment, or
96 regional economic development.

97 (2) An electric utility may elect to petition the
98 commission, outside of a base rate case proceeding, at any
99 time for a prudency determination with respect to the
100 purchase, construction, and ownership by the electric utility
101 of one or more renewable electric-generating facilities,
102 energy storage resources, or both. The commission's final
103 order regarding any such petition shall be entered by the
104 commission within 150 days after the date of the filing of
105 such petition.

106 (3) No renewable electric-generating facility shall have
107 a generating capacity greater than 50 megawatts until such
108 time as 85 percent of that renewable electric-generating
109 facility's annual energy output is being sold or is contracted
110 to be sold to residential, commercial, or industrial customers
111 pursuant to a renewable special contract or renewable tariff,
112 and, thereafter, any expansion of that or another renewable
113 energy-generating facility's generating capacity shall
114 proceed in increments of up to 50 megawatts each until such
115 time as 85 percent or more of all renewable energy-
116 generating facility's aggregate, annual energy output is
117 being sold or is contracted to be sold to customers pursuant
118 to a renewable special contract or renewable tariff;

119 (4) No single renewable electric-generating facility
120 shall have a generating capacity greater than 200
121 megawatts;

122 (5) The cumulative generating capacity of all renewable
123 electric-generating facilities operating at any given time,
124 and for which rate recovery is provided by the commission
125 under this section, shall not exceed 400 megawatts among
126 all investor-owned electric utilities in this state: *Provided*,
127 That the cumulative generating capacity of all renewable
128 electric-generating facilities operating at any one time, and
129 for which rate recovery is provided by the commission
130 under this section, shall not exceed 200 megawatts for all
131 electric utilities within the state owned by the same
132 corporate parent company;

133 (6) The calculation of maximum megawatts of
134 generating capacity for renewable electric-generating
135 facilities established in this subsection shall not include the
136 storage capacity of energy storage resources;

137 (7) As part of the renewable energy facilities program,
138 the electric utilities must offer the energy output for sale to
139 customers from all classes of service.

140 (e) Applications made under this section are in lieu of
141 an application for a certificate of public convenience and
142 necessity pursuant to §24-2-11 of this code and shall contain
143 the following:

144 (1) A description of the renewable electric-generating
145 facilities, energy storage resources, or both, in such detail as
146 the commission prescribes, including, but not limited to, the
147 generating capacity and location of the facilities and a
148 description of the competitive purchase procurement
149 process administered by the electric utility that is required
150 under this section;

151 (2) A proposed concurrent cost-recovery mechanism for
152 actual and projected capital investments in the renewable
153 electric-generating facilities, energy storage resources, or
154 both, and for operation and maintenance expenses and taxes
155 associated with such facilities; and

156 (3) Other information that the applicant considers
157 relevant or the commission requires.

158 (f) Upon filing of an application, the applicant shall
159 publish, in the form the commission directs, which form
160 shall include, but not be limited to, the anticipated rates and,
161 if any, rate increase under the proposal, by average
162 percentage and dollar amount for customers within a class
163 of service, as a Class I legal advertisement in compliance
164 with §59-3-1 *et seq.*, of this code, the publication area to be
165 each county in which service is provided by the electric
166 utility, a notice of the filing of the application and that the
167 commission shall hold a hearing on the application within
168 90 days of the notice; unless no opposition to the rate change
169 is received by the commission within one week of the
170 proposed hearing date, in which case the hearing can be
171 waived, and the commission shall issue a final order within
172 150 days of the application filing date.

173 (g) The planning, design, construction, purchase,
174 ownership, and operation of renewable electric-generating

175 facilities, energy storage resources, or both, pursuant to this
176 section is in the public interest, and the commission shall so
177 find when considering applications for renewable energy
178 facilities programs submitted by an electric utility pursuant
179 to this section.

180 (h) Upon notice and hearing, if required by the
181 commission, the commission shall approve the applications
182 made under this section and allow concurrent recovery of
183 costs related to the expenditures, as provided in subsection
184 (i) of this section, if the commission finds that the
185 expenditures and the associated rate requirements are just
186 and reasonable and that the applications comply with the
187 requirements of this section.

188 (i) Upon commission approval, electric utilities shall be
189 authorized to implement renewable electric facilities
190 programs and to concurrently recover their costs, including
191 a return on capital investments, operation and maintenance,
192 depreciation, and tax expenses directly attributable to the
193 renewable electric facilities program capital investments, if
194 any, as provided in the following:

195 (1) An allowance for return shall be calculated by
196 applying a rate of return to the average planned net
197 incremental increase to rate base attributable to the
198 renewable electric facilities program for the coming year,
199 considering the projected amount and timing of capital
200 investments under the renewable electric facilities program
201 plus any capital investments in previous years of the
202 program. The rate of return shall be determined by utilizing
203 the rate of return on equity and the capital structure
204 authorized by the commission in the electric utility's most
205 recent base rate case proceeding or in the case of a settled
206 base rate case, a rate of return on equity set forth in or
207 associated with such settlement or, if neither is set forth in
208 or associated with such settlement, a rate of return on equity
209 and a capital structure determined by the commission to be
210 reasonable, and the projected average weighted cost of the
211 electric utility's debt during the period of the renewable

212 electric facilities program to determine the weighted cost of
213 capital based upon the electric utility's capital structure
214 determined as specified above.

215 (2) Income taxes applicable to the return allowed on the
216 renewable electric facilities program shall be calculated at
217 the statutory rate for inclusion in rates.

218 (3) Incremental operation and maintenance,
219 depreciation, and property tax expenses directly attributable
220 to the renewable electric facilities program shall be
221 estimated for the upcoming year.

222 (4) Following commission approval of its application
223 made under this section, an electric utility shall place into
224 effect rates that include an increment for concurrent cost
225 recovery that recovers the allowance for return, related
226 income taxes at the statutory rate, operation and
227 maintenance, depreciation, and property tax expenses
228 associated with the electric utility's actual and projected
229 capital investments under the renewable electric facilities
230 program for the upcoming year, net of contributions to
231 recovery of those incremental costs provided by customers
232 who have executed renewable special contracts, or who are
233 taking power under renewable tariffs and are served by the
234 renewable electric facilities program investments, if any
235 (incremental cost-recovery increment). In each year
236 subsequent to the order approving the renewable electric
237 facilities program and the incremental cost-
238 recovery increment, the electric utility shall file an
239 application with the commission setting forth a new
240 proposed incremental cost-recovery increment for
241 concurrent cost recovery of forecasted costs to be made in
242 the subsequent year, plus any under-recovery or minus any
243 over-recovery of actual incremental costs attributable to the
244 renewable electric facilities program, for the preceding year.

245 (5) The renewable electric-generating facilities, energy
246 storage resources, or both, constructed, purchased,
247 contracted, owned, installed, and in service pursuant to an

248 application approved by the commission shall be considered
249 used and useful for rate recovery purposes. Any concurrent
250 cost recovery mechanism approved by the commission shall
251 limit the amount of cost to be recovered from any individual
252 customer of the electric utility to a maximum of \$1,000 per
253 month: *Provided*, That this limitation shall not impact the
254 electric utility's ability to recover all costs incurred pursuant
255 to this section from other customers. Customers who have
256 executed renewable special contracts or are taking power
257 under renewable tariffs pursuant to an approved renewable
258 electric facilities program are not subject to any such limits
259 imposed by the commission.

260 (6) If an electric utility serves customers in more than
261 one jurisdiction, and a jurisdiction other than this state
262 denies the electric utility recovery of the costs incurred
263 pursuant to a renewable electric facilities program approved
264 by the commission and allocated to that jurisdiction, the
265 electric utility shall recover all of the costs of the renewable
266 electric facilities program from its West Virginia
267 jurisdictional customers if the commission finds that the
268 expenditures and the associated rate requirements are just
269 and reasonable, and all attributes of the renewable electric
270 facilities program, including energy, capacity, and
271 renewable energy credits shall be assigned to this state.

272 (j) The electric utility may make any accounting
273 accruals necessary to establish a regulatory asset or liability
274 through which actual incremental costs incurred and costs
275 recovered through the rate mechanism are tracked.

276 (k) With respect to renewable electric facilities
277 programs, electric utilities may defer incremental operation
278 and maintenance expenses attributable to regulatory and
279 compliance-related requirements introduced after the
280 electric utility's last base rate case proceeding and not
281 included in the electric utility's current base rates or
282 incremental cost-recovery increment in lieu of current
283 recovery. In a future base rate case, the
284 commission shall allow recovery of such deferred costs

285 amortized over a reasonable period of time to be determined
286 by the commission provided the commission finds that the
287 costs were reasonable and prudently incurred and were not
288 reflected in rates in prior base rate cases.

289 (l) The provisions of this section shall expire on
290 December 31, 2025. The expiration of this section shall not
291 affect the full and timely cost recovery associated with a
292 renewable energy facilities program for which an
293 application has been filed with the commission pursuant to
294 this section on or before December 31, 2025, nor for any
295 projects previously approved by the commission pursuant to
296 this section.

297 (m) Notwithstanding any provision of this article to the
298 contrary, no provision herein this section shall displace any
299 current levels of coal-fired generation capacity.

300 (n) Notwithstanding the provisions of §24-2-11c of this
301 code, any person or entity: (1) Who is not an electric utility;
302 (2) who intends to purchase or construct and operate an
303 electric generating facility as an exempt wholesale
304 generator under federal law; (3) who will generate
305 electricity solely through solar photovoltaic or other solar
306 methods; and (4) who, if desired, intends to purchase or
307 construct and operate energy storage for such electricity
308 may file an application with the Public Service Commission
309 under this section in such detail and with such publication
310 requirements as the commission may prescribe; and the
311 commission shall hold a hearing, unless waived, within 90
312 days of publication and issue a final order on a siting
313 certificate or modification thereof within 150 days of the
314 application filing date. No other provision of this section
315 shall apply to these exempt wholesale generators.

●

CHAPTER 305

(Com. Sub. for S. B. 802 - By Senator Swope)

[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 §24-2-20, relating generally to the regulation of public utilities; providing legislative findings; providing that certain large volume end users may receive natural gas service without the permission, consent, control, review, or input of the West Virginia Public Service Commission; requiring the end user pay for the minimum amount of gas required for the exception; providing that the end user shall make certain certifications to the commission; providing that the commission shall receive, file, and retain all end user certifications; providing that no person, entity, or body shall be a public utility, intrastate pipeline, common carrier, or otherwise subject to the jurisdiction of the commission as a result of supplying such end users; and providing that provisions shall not prevent or impede the commission's safety regulation of pipelines.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-20. Direct use of natural gas.

1 (a) The Legislature hereby finds that:

2 (1) Consumers of natural gas with an annual gas usage
3 of at least 100 million cubic feet are sophisticated users of
4 natural gas capable of choosing their source of natural gas
5 supply;

6 (2) The Federal Energy Regulatory Commission has
7 approved bypass of local utilities and permitted construction
8 of interstate pipeline facilities to serve end use customers;

9 (3) The production and use of West Virginia natural gas
10 in West Virginia will provide jobs for West Virginians,
11 generate additional income and property taxes for our
12 governments and our law and regulations should not impede
13 use of West Virginia gas in West Virginia;

14 (4) The ability of large natural gas users to choose
15 among gas suppliers without regulatory supervision will
16 save economic resources, foster competition in this state,
17 and may induce new businesses to locate in West Virginia
18 and employ West Virginians; and

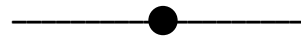
19 (5) Commission approval of natural gas service is
20 unnecessary for consumers of natural gas with an annual gas
21 usage of at least 100 million cubic feet.

22 (b) Notwithstanding any other provision of this code to
23 the contrary, any person, entity, or a facility that has not
24 previously been a natural gas utility customer and has a
25 projected annual natural gas usage in West Virginia of at
26 least 100 million cubic feet annually may receive natural gas
27 service from any person, corporation, limited liability
28 company, or other entity without the permission, consent,
29 review, or input of the commission if the using person or
30 entity notifies the utility providing natural gas service in the
31 area of use of its intent to receive service from a nonutility
32 and certifies to the commission that: (i) The utility has been
33 notified; (ii) its projected annual gas usage will be at least
34 100 million cubic feet per year; (iii) it desires to receive
35 natural gas from a supplier other than a public utility; (iv) it
36 will receive natural gas produced in West Virginia; and (v)
37 the name and West Virginia tax identification number of the
38 supplier or suppliers are identified in the certification:
39 *Provided*, That the natural gas provider bills the customer
40 and the customer pays for at least 100 million cubic feet
41 during each full calendar year after the utility has been

42 notified, except in the event one or both of the contracting
43 parties experiences a force majeure event or a condition
44 beyond their reasonable control.

45 (c) Notwithstanding any other provision of this code to
46 the contrary, no person, corporation, limited liability
47 company, or other entity shall be or become a public utility,
48 intrastate pipeline, common carrier, or otherwise subject to
49 the jurisdiction of the commission from or in connection
50 with purchasing, using, selling, giving, buying, providing,
51 transporting to or from, or otherwise supplying or using
52 natural gas pursuant to subsection (b) of this section:
53 *Provided*, That this subsection shall not prevent or impede
54 the commission's safety regulation of natural gas pipelines
55 pursuant to chapter 24B of this code.

56 (d) If a utility has an obligation to offer or provide
57 service to an end user who elects its own supply pursuant to
58 this section, the obligation shall terminate upon the
59 commission's receipt of a certification provided by this
60 section.



CHAPTER 306

**(Com. Sub. for H. B. 4587 - By Delegates D. Jeffries,
C. Martin, Worrell, Cadle, Hamrick, Sypolt 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 §24-2-4a of the Code of West Virginia, 1931, as amended; to amend and reenact §24A-5-2 of said code; to amend said code by adding thereto two new sections, designated §24A-5-2a and §24A-5-2b; all relating to the regulation of the collection, hauling, and disposal of solid

waste by motor carriers; authorizing indexed automatic rate increases for solid waste collection and hauling; setting procedures for the approval of rates; authorizing the Public Service Commission to approve alternative pick-up due to adverse conditions; and authorizing the Public Service Commission to promulgate rules.

Be it enacted by the Legislature of West Virginia:

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

*§24-2-4a. Procedure for changing rates after June 30, 1981.

1 (a) After June 30, 1981, no public utility subject to this
2 chapter, except for those entities subject to the provisions of
3 §24A-5-2a of this code and water and/or sewer utilities that are
4 political subdivisions of the state providing separate or
5 combined services and having at least 4,500 customers and
6 annual gross revenue of \$3 million or more from its separate
7 or combined services, shall change, suspend or annul any rate,
8 joint rate, charge, rental or classification except after thirty
9 days' notice to the commission and the public, which notice
10 shall plainly state the changes proposed to be made in the
11 schedule then in force and the time when the changed rates or
12 charges shall go into effect; but the commission may enter an
13 order suspending the proposed rate as hereinafter provided.
14 The proposed changes shall be shown by printing new
15 schedules, or shall be plainly indicated upon the schedules in
16 force at the time, and kept open to public inspection: *Provided,*
17 That the commission may, in its discretion, and for good cause
18 shown, allow changes upon less time than the notice herein
19 specified, or may modify the requirements of this section in
20 respect to publishing, posting and filing of tariffs, either by
21 particular instructions or by general order.

22 (b) Whenever there shall be filed with the commission
23 any schedule stating a change in the rates or charges, or joint

*NOTE: This section was also amended by S. B. 739 (Chapter 347), which passed prior to this act.

24 rates or charges, or stating a new individual or joint rate or
25 charge or joint classification or any new individual or joint
26 regulation or practice affecting any rate or charge, the
27 commission may, either upon complaint or upon its own
28 initiative without complaint, enter upon a hearing
29 concerning the propriety of such rate, charge, classification,
30 regulation or practice; and, if the commission so orders, it
31 may proceed without answer or other form of pleading by
32 the interested parties, but upon reasonable notice, and,
33 pending such hearing and the decisions thereon, the
34 commission, upon filing with such schedule and delivering
35 to the public utility affected thereby a statement in writing
36 of its reasons for such suspension, may suspend the
37 operation of such schedule and defer the use of such rate,
38 charge, classification, regulation or practice, but not for a
39 longer period than two hundred seventy days beyond the
40 time when such rate, charge, classification, regulation or
41 practice would otherwise go into effect; and after full
42 hearing, whether completed before or after the rate, charge,
43 classification, regulation or practice goes into effect, the
44 commission may make such order in reference to such rate,
45 charge, classification, regulation or practice as would be
46 proper in a proceeding initiated after the rate, charge,
47 classification, regulation or practice had become effective:
48 *Provided*, That in the case of a public utility having two
49 thousand five hundred customers or less and which is not a
50 political subdivision and which is not principally owned by
51 any other public utility corporation or public utility holding
52 corporation, the commission may suspend the operation of
53 such schedule and defer the use of such rate, charge,
54 classification, regulation or practice, but not for a longer
55 period than one hundred twenty days beyond the time when
56 such rate, charge, classification, regulation or practice
57 would otherwise go into effect; and in the case of a public
58 utility having more than two thousand five hundred
59 customers, but not more than five thousand customers, and
60 which is not a political subdivision and which is not
61 principally owned by any other public utility corporation or
62 public utility holding corporation, the commission may

63 suspend the operation of such schedule and defer the use of
64 such rate, charge, classification, regulation or practice, but
65 not for a longer period than one hundred fifty days beyond
66 the time when such rate, charge, classification, regulation or
67 practice would otherwise go into effect; and in the case of a
68 public utility having more than five thousand customers, but
69 not more than seven thousand five hundred customers, and
70 which is not a political subdivision and which is not
71 principally owned by any other public utility corporation or
72 public utility holding corporation, the commission may
73 suspend the operation of such schedule and defer the use of
74 such rate, charge, classification, regulation or practice, but
75 not for a longer period than one hundred eighty days beyond
76 the time when such rate, charge, classification, regulation or
77 practice would otherwise go into effect; and after full
78 hearing, whether completed before or after the rate, charge,
79 classification, regulation or practice goes into effect, the
80 commission may make such order in reference to such rate,
81 charge, classification, regulation or practice as would be
82 proper in a proceeding initiated after the rate, charge,
83 classification, regulation or practice had become effective:
84 *Provided, however,* That, in the case of rates established or
85 proposed that increase by less than twenty-five percent of
86 the gross revenue of the regulated public service district,
87 there shall be no suspension period in the case of rates
88 established by a public service district pursuant to section
89 nine, article thirteen-a, chapter sixteen of this code and the
90 proposed rates of public service districts shall go into effect
91 upon the date of filing with the commission, subject to
92 refund modification at the conclusion of the commission
93 proceeding. In the case of rates established or proposed that
94 increase by more than twenty-five percent of the gross
95 revenue of the public service district, the district may apply
96 for, and the commission may grant, a waiver of the
97 suspension period and allow rates to be effective upon the
98 date of filing with the commission. Notwithstanding the
99 provisions of subsection (e) of this section, the public
100 service district shall provide notice by Class I legal
101 advertisement in a newspaper of general circulation in its

102 service territory of the percentage increase in rates at least
103 fourteen days prior to the effective date of the increased
104 rates. Any refund determined to be determined to be due and
105 owing as a result of any difference between any final rates
106 approved by the commission and the rates placed into effect
107 subject to refund shall be refunded by the public service
108 district as a credit against each customer's account for a
109 period of up to six months after entry of the commission's
110 final order. Any remaining balance which is not fully
111 credited by credit within six months after entry of the
112 commission's final order shall be directly refunded to the
113 customer by check: *Provided further*, That if any such
114 hearing and decision thereon is not concluded within the
115 periods of suspension, as above stated, such rate, charge,
116 classification, regulation or practice shall go into effect at
117 the end of such period not subject to refund: *And provided*
118 *further*, That if any such rate, charge, classification,
119 regulation or practice goes into effect because of the failure
120 of the commission to reach a decision, the same shall not
121 preclude the commission from rendering a decision with
122 respect thereto which would disapprove, reduce or modify
123 any such proposed rate, charge, classification, regulation or
124 practice, in whole or in part, but any such disapproval,
125 reduction or modification shall not be deemed to require a
126 refund to the customers of such utility as to any rate, charge,
127 classification, regulation or practice so disapproved,
128 reduced or modified. The fact of any rate, charge,
129 classification, regulation or practice going into effect by
130 reason of the commission's failure to act thereon shall not
131 affect the commission's power and authority to
132 subsequently act with respect to any such application or
133 change in any rate, charge, classification, regulation or
134 practice. Any rate, charge, classification, regulation or
135 practice which shall be approved, disapproved, modified or
136 changed, in whole or in part, by decision of the commission
137 shall remain in effect as so approved, disapproved, modified
138 or changed during the period or pendency of any subsequent
139 hearing thereon or appeal therefrom. Orders of the
140 commission affecting rates, charges, classifications,

141 regulations or practices which have gone into effect
142 automatically at the end of the of the suspension period are
143 prospective in effect.

144 (c) At any hearing involving a rate sought to be
145 increased or involving the change of any rate, charge,
146 classification, regulation or practice, the burden of proof to
147 show the justness and reasonableness of the increased rate
148 or proposed increased rate, or the proposed change of rate,
149 charge, classification, regulation or practice shall be upon
150 the public utility making application for such change. The
151 commission shall, whenever practicable and within
152 budgetary constraints, conduct one or more public hearings
153 within the area served by the public utility making
154 application for such increase or change, for the purpose of
155 obtaining comments and evidence on the matter from local
156 ratepayers.

157 (d) Each public utility subject to the provisions of this
158 section shall be required to establish, in a written report
159 which shall be incorporated into each general rate case
160 application, that it has thoroughly investigated and
161 considered the emerging and state-of-the-art concepts in the
162 utility management, rate design and conservation as
163 reported by the commission under subsection (c), section
164 one, article one of this chapter as alternatives to, or in
165 mitigation of, any rate increase. The utility report shall
166 contain as to each concept considered the reasons for
167 adoption or rejection of each. When in any case pending
168 before the commission all evidence shall have been taken
169 and the hearing completed, the commission shall render a
170 decision in such case. The failure of the commission to
171 render a decision with respect to any such proposed change
172 in any such rate, charge, classification, regulation or
173 practice within the various time periods specified in this
174 section after the application therefor shall constitute neglect
175 of duty on the part of the commission and each member
176 thereof.

177 (e) Other than as provided in subsection (b) of this
178 section relating to public service districts, where more than
179 twenty members of the public are affected by a proposed
180 change in rates, it shall be a sufficient notice to the public
181 within the meaning of this section if such notice is published
182 as a Class II legal advertisement in compliance with the
183 provisions of article three, chapter fifty-nine of this code
184 and the publication area for such publication shall be the
185 community where the majority of the resident members of
186 the public affected by such change reside or, in case of
187 nonresidents, have their principal place of business within
188 this state.

189 (f) The commission may order rates into effect subject
190 to refund, plus interest in the discretion of the commission,
191 in cases in which the commission determines that a
192 temporary or interim rate increase is necessary for the utility
193 to avoid financial distress, or in which the costs upon which
194 these rates are based are subject to modification by the
195 commission or another regulatory commission and to refund
196 to the public utility. In such case the commission may
197 require such public utility to enter into a bond in an amount
198 deemed by the commission to be reasonable and
199 conditioned upon the refund to the persons or parties
200 entitled thereto of the amount of the excess if such rates so
201 put into effect are subsequently determined to be higher than
202 those finally fixed for such utility.

203 (g) No utility regulated under the provisions of this
204 section may make application for a general rate increase
205 while another general rate application is pending before the
206 commission and not finally acted upon, except pursuant to
207 the provisions of subsection (f) of this section. The
208 provisions of this subsection shall not be construed so as to
209 prohibit any such rate application from being made while a
210 previous application which has been finally acted upon by
211 the commission is pending before or upon appeal to the
212 West Virginia Supreme Court of Appeals.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.**ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.****§24A-5-2. Certificate of convenience and necessity.**

1 (a) *Required; application; hearing; granting.* — It shall
2 be unlawful for any common carrier by motor vehicle to
3 operate within this state without first having obtained from
4 the commission a certificate of convenience and necessity.
5 Upon the filing of an application for such certificate, the
6 commission shall set a time a place for a hearing on the
7 application: *Provided*, That the commission may, after
8 giving proper notice and if no protest is received, waive
9 formal hearing on the application. Notice shall be by
10 publication which shall state that a formal hearing may be
11 waived in the absence of a protest to such application. The
12 notice shall be published as a Class I legal advertisement in
13 compliance with the provisions of article three, chapter
14 fifty-nine of this code and the publication area for such
15 publication shall be the proposed area of operation. The
16 notice shall be published at least ten days prior to the date
17 of the hearing. After the hearing or waiver by the
18 commission of the hearing, if the commission finds from the
19 evidence that the public convenience and necessity require
20 the proposed service or any part thereof, it shall issue the
21 certificate as prayed for, or issue it for the partial exercise
22 only of the privilege sought, and may attach to the exercise
23 of the right granted by such certificate such terms and
24 conditions as in its judgment the public convenience and
25 necessity may require, and if the commission shall be of the
26 opinion that the service rendered by any common carrier
27 holding a certificate of convenience and necessity over any
28 route or routes in this state is in any respect inadequate or
29 insufficient to meet the public needs, such certificate holder
30 shall be given reasonable time and opportunity to remedy
31 such inadequacy or insufficiency before any certificate shall
32 be granted to an applicant proposing to operate over such
33 route or routes as a common carrier. Before granting a
34 certificate to a common carrier by motor vehicle the

35 commission shall take into consideration existing
36 transportation facilities in the territory for which a
37 certificate is sought, and in case it finds from the evidence
38 that the service furnished by existing transportation
39 facilities is reasonably efficient and adequate, the
40 commission shall not grant such certificate.

41 (b) *Rules and regulations; taking evidence at hearings;*
42 *burden of proof.* — The commission shall prescribe such
43 rules and regulations as it may deem proper for the
44 enforcement of the provisions of this section and in
45 establishing that public convenience and necessity do exist
46 the burden of proof shall be upon the applicant. The
47 commission may designate any of its employees to take
48 evidence at the hearing of any application for a certificate
49 and submit findings of fact as a part of a report or reports to
50 be made to the commission.

51 (c) *Certificate not franchise, etc.; assignment or*
52 *transfer.* — No certificate issued in accordance with the
53 terms of this chapter shall be construed to be either a
54 franchise or irrevocable or to confer any proprietary or
55 property rights in the use of the public highways. No
56 certificate issued under this chapter shall be assigned or
57 otherwise transferred without the approval of the
58 commission.

59 (1) Upon the death of a person holding a certificate, his
60 or her personal representative or representatives may
61 operate under such certificate while the same remains in
62 force and effect and, with the consent of the commission,
63 may transfer such certificate; and

64 (2) An application by a motor carrier to transfer a
65 certificate of convenience and necessity, or a portion
66 thereof, to another motor carrier possessing one or more
67 certificates of public convenience and necessity for the
68 same commodity shall be affirmed or denied within 90 days
69 of the submission of a complete application for transfer. The
70 commission shall make a determination within ten business

71 days of receiving a transfer application if the application is
72 complete and notify the applicant if additional information
73 is required. If the commission fails to act on a complete
74 application within 90 days, the application to transfer the
75 certificate shall be deemed approved.

76 (d) *Suspension, revocation or amendment.* — The
77 commission may at any time, for good cause, suspend and,
78 upon not less than fifteen days' notice to the grantee of any
79 certificate and an opportunity to be heard, revoke or amend
80 any certificate.

81 (e) The commission shall have the authority, after
82 hearing, to ratify, approve and affirm those orders issued
83 pursuant to this section since March 10, nineteen hundred
84 seventy-nine. For the purposes of this subsection the
85 commission may give notice by a Class I legal
86 advertisement of such hearing in any newspaper or
87 newspapers of general circulation in this state, and such
88 other newspapers as the commission may designate.

ARTICLE 5. POWERS AND DUTIES OF COMMISSION.

§24A-5-2a. Procedure for changing rates for collection and hauling of solid waste by motor carriers; rural rates.

1 (a) Unless a motor carrier collecting and hauling solid
2 waste elects to increase rates under section 2 of this chapter
3 and the commission's existing rules and regulations,
4 effective July 1, 2020, no solid waste motor carrier subject
5 to this chapter shall change, suspend, or annul any
6 individual rate, joint rate, fare, charge, or classification for
7 the collection or hauling of solid waste, except after 30
8 days' notice to the commission and the carrier's customers,
9 with such notice to customers being sent as a bill insert or
10 separately mailed statement that plainly states the changes
11 proposed to be made in the schedule then in force and the
12 time when the changed rates or charges will go into effect.
13 The motor carrier shall file its proposed public notice with
14 the commission for review. Within five business days of

15 the filing of the notice with the commission, the commission
16 shall issue an order approving the notice.

17 (b) Any proposed rate changes shall be shown by
18 printing new schedules, or shall be plainly indicated upon
19 the schedules in force at the time, and kept open to public
20 inspection: *Provided*, That the commission may, in its
21 discretion, and for good cause shown, allow changes upon
22 less time than the notice herein specified, or may modify the
23 requirements of this section in respect to publishing, posting
24 and filing of tariffs, either by particular instructions or by
25 general order.

26 (c) Whenever a solid waste motor carrier shall file with
27 the commission any schedule stating a change in the rates
28 or charges, or joint rates or charges, or stating a new
29 individual or joint rate or charge or joint classification or
30 any new individual or joint regulation or practice affecting
31 any rate or charge, except as set forth in subsection (d)
32 below, the commission shall have authority, on its own
33 initiative, or upon substantial protest filed with the
34 commission within 30 days' notice of the proposed increase
35 or change demonstrated by the complaints submitted by the
36 lesser of: (i) 25 percent of the customers impacted by the
37 proposed change in rates or charges; or (ii) 750 customers
38 impacted by the proposed change in rates or charges to
39 suspend the rates pending a hearing and final determination
40 that the rate, charge, classification, regulation or practice is
41 just, reasonable, and based primarily on the cost of service.
42 At any hearing involving a rate sought to be increased or
43 involving the change of any fare, charge, classification,
44 regulation, or practice, the burden of proof to show that the
45 increased rate or proposed increased rate, or the proposed
46 change of fare, charge, classification, regulation or practice,
47 is just, reasonable, and based primarily on the cost of
48 service, shall be upon the motor carrier making application
49 for such change. Any suspension of a rate, charge
50 classification, regulation, or practice under this subsection
51 shall not extend beyond such time that the commission
52 enters a final decision in the case or 120 days from the date

53 notice was first given. The commission may extend the time
54 in which a final decision is due by an additional 30 days if
55 a motor carrier fails to provide material information
56 requested by the commission more than 30 days in advance
57 of the hearing.

58 (d) Urban Consumer Garbage Trash Collection Index
59 rate change – Effective July 1, 2020, solid waste motor
60 carriers shall be permitted to increase rates for the collection
61 and hauling of solid waste once on January 1 of each year,
62 without the filing of an application for approval by the
63 commission and such increase shall be considered just and
64 reasonable and not unfairly discriminatory, prejudicial or
65 preferential if: (1) The carrier complies with the notice
66 requirements of subsection (a) of this section; and (2) the
67 percentage of the increase over the prior rate is equal to or
68 less than the percentage of any increase in the United States
69 Department of Labor Bureau of Labor Statistics Garbage
70 and Trash Collection Index (the “Index”) from January 1, of
71 the preceding year. Any rate increase that a motor carrier
72 believes is at or below the aforementioned increase in the
73 Index shall be identified as such when filed with the
74 commission. Such rate increases shall be subject to
75 challenge by the commission only if it determines that the
76 increase is in fact in excess of the amount of the increase in
77 the Index for the relevant time period. If the commission
78 determines a rate increase filed pursuant to this subsection
79 is in excess of the increase in the Index for the relevant time
80 period, it may enter an order suspending the rate increase
81 consistent with subsection (c) of this section. If such an
82 order is entered, the motor carrier shall be entitled to a
83 hearing pursuant to the process authorized in subsection (c)
84 of this section. Notwithstanding any provision to the
85 contrary, the fact that a solid waste motor carrier has already
86 raised its rates in a given year pursuant to this subsection
87 shall not preclude that carrier from applying for and
88 receiving from the commission a rate increase pursuant to
89 subsection (c) of this section: *Provided*, That the
90 commission shall take into account the prior rate increase

91 taken pursuant to this subsection when considering the
92 carrier's application to increase rates. A motor carrier may
93 implement up to four annual indexed rate increases under
94 this subsection before filing for a rate increase under chapter
95 24A of this code: *Provided*, That the commission shall not
96 engage in retroactive rate making.

97 (e) The commission shall prescribe such rules and
98 regulations as to the giving of notice of a change in rates
99 pursuant to this section as are reasonable and are deemed
100 proper in the public interest.

**§24A-5-2b. Authorizing Public Service Commission to
approve alternative pick-up due to adverse conditions.**

1 Every motor carrier of solid waste in residential service
2 shall provide and maintain regularly scheduled pickup
3 service. Exceptions to the regularly scheduled pickup
4 service may be made for reasons beyond the motor carrier's
5 control, including, but not limited to, dangerous road
6 conditions, inclement weather, flooding, road closures.
7 Exceptions to the regularly scheduled pickup service based
8 on such conditions will be at the motor carrier's discretion:
9 *Provided*, That nothing herein changes the universal service
10 obligation of any motor carrier. Any interruption of service
11 in this regard that lasts beyond five days shall be reported
12 by the motor carrier to the commission and the motor carrier
13 and the staff of the commission shall establish a contingency
14 pickup arrangement for the affected customers that the
15 motor carrier shall implement until the condition causing
16 the service interruption is alleviated.



CHAPTER 307

**(H. B. 4661 - By Delegates Anderson, J. Kelly,
Maynard, Storch, Azinger, Pethtel, Hartman, Miller,
P. Martin and C. Martin)**

[Passed February 27, 2020; in effect ninety days from passage.]

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

AN ACT to amend and reenact §24-2-4c of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-3-7 of said code, all relating to the powers of the Public Service Commission and the regulation of natural gas utilities; permitting natural gas utilities to seek proposals for drilling new natural gas wells and proposals for increasing production from existing natural gas wells; permitting natural gas utilities to create a process for identifying the cost to procure dependable supplies of natural gas to serve certain gas utility customers when dependable, lower-priced supplies of natural gas are not readily available to serve those customers; allowing natural gas utilities to petition the commission for approval of the related costs to serve such customers; providing that the commission may approve the petition the commission finds that: (1) The process of determining the costs and expected additional natural gas supply is reasonable; (2) the expected additional supply is dependable; and (3) the costs of the additional supply are reasonable and not contrary to the public interest; providing that natural gas utilities shall recover those costs pursuant to its annual purchased gas costs adjustment filings with the commission; allowing natural gas utilities to defer reasonable and prudent actual expenses attributable to converting each customer, incurred after the test year for the utility's last rate case proceeding, which are not included in the utility's current base rates; providing that natural gas utilities shall recover reasonable and prudent

deferred customer conversion expenses in future base rate cases through recovery of deferred expenses amortized over a reasonable period of time, as determined by the commission; providing that such recovery will be allowed only to the extent that the commission determines, based on evidence presented by the utility, that deferred amounts did not contribute to base rate earnings in excess of the utility's last authorized return on equity calculated since the effective date of base rates from the utility's last rate case proceeding; and adding lettering of subsections to an existing section of code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4c. Rate increases for natural gas public utilities relating to purchase of natural gas from suppliers; obtaining new supplies of natural gas to meet obligations.

1 (a) Before granting any rate increase to a natural gas
2 public utility the commission must determine that
3 dependable lower-priced supplies of natural gas are not
4 readily available to the applicant from other sources.

5 (b) At any hearing involving a rate increase for a natural
6 gas public utility, the burden of proof to demonstrate that
7 dependable lower-priced supplies of natural gas are not
8 readily available from other sources and that contracts
9 between the public utility and its suppliers for purchase of
10 natural gas are negotiated at arm's length and are not
11 detrimental to the customers of the utility's services shall be
12 upon the public utility making application for such change.
13 Should the applying public utility not satisfactorily meet
14 this burden, then the commission may not authorize an
15 increase greater than that which reflects the reasonable cost
16 of natural gas which is determined to be readily available.

17 (c) If a gas utility purchases from an affiliate more than
18 50 percent of its gas supplied to its customers, any purchase
19 cost adjustment increase shall be based on actual costs and

20 may be subject to the general rate case requirements and
21 review of section four-a of this article.

22 (d) Before January 1, 1984, the commission shall
23 promulgate rules and regulations detailing what an applying
24 natural gas utility must show in providing that dependable,
25 lower-priced supplies of natural gas are not readily available
26 to the applicant from other sources. Such rules and
27 regulations shall include a requirement that each such utility
28 let out bids for the purchase of a substantial quantity of
29 natural gas supplied to its customers and that each such
30 public utility present evidence demonstrating that all
31 available sources of gas have been thoroughly investigated
32 and that the utility's purchases were at the lowest available
33 price among reliable sources at the time of the purchase.
34 Such evidence shall include a list of all persons, firms and
35 corporations which were investigated as sources of gas; the
36 price per thousand cubic feet at which each investigated
37 person, firm or corporation offered gas for sale; the
38 availability and cost of transporting such gas and the amount
39 of gas potentially available each month by such person, firm
40 or corporation. Such list shall also include the same
41 information resulting from investigation of all "shut-in"
42 wells.

43 (e) A gas utility may seek proposals for drilling new
44 natural gas wells and proposals for increasing production
45 from existing natural gas wells and may create a process for
46 identifying the cost to procure dependable supplies of
47 natural gas to serve certain gas utility customers when
48 dependable, lower-priced supplies of natural gas are not
49 readily available to serve those customers. A gas utility may
50 petition the commission for approval of the related costs to
51 serve such customers. Upon a finding by the commission
52 that: (1) The process of determining the costs and expected
53 additional natural gas supply is reasonable; (2) the expected
54 additional supply is dependable; and (3) the costs of the
55 additional supply are reasonable and not contrary to the
56 public interest; the commission may approve the petition.

57 The gas utility shall recover those costs pursuant to its
58 annual purchased gas costs adjustment filings with the
59 commission under this section and the above-referenced
60 rules of the commission.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-7. Permit to abandon service; certificate; hearing upon intervention by consumer advocate; alternative service; recouping costs of converting customers.

1 (a) No railroad or other public utility shall abandon all
2 or any portion of its service to the public or the operation of
3 any of its lines which would affect the service it is rendering
4 the public unless and until there shall first have been filed
5 with the Public Service Commission of this state an
6 application for a permit to abandon service and obtained
7 from the commission an order stating that the present and
8 future public convenience and necessity permits such
9 abandonment.

10 (b) The consumer advocate's office shall be notified of
11 all notices to abandon rail service. Within five days of the
12 receipt of such notice the consumer advocate shall notify the
13 West Virginia public port authority of such proposed
14 abandonment. The public port authority shall advise the
15 consumer advocate as to whether such abandonment is in
16 the public interest or if such rail line or service is an integral
17 part of the intermodal transportation system within West
18 Virginia. If the public port authority deems such
19 abandonment to be not in the public interest, then the
20 consumer advocate shall intervene to block such
21 abandonment before all appropriate state and federal
22 agencies or courts.

23 (c) The Public Service Commissioner, to the extent
24 permitted by federal law, shall promulgate rules and
25 regulations to govern the abandonment of rail lines and rail

26 service, including, but not limited to, the providing of a
27 hearing for the presentation of evidence in cases where the
28 consumer advocate seeks intervention pursuant to
29 subsection (b).

30 (d) In the event the commission determines that an
31 application to abandon gas service or any part thereof is in
32 the public interest and required by the present and future
33 public convenience and necessity, it shall include in its
34 order, as a condition of releasing any such utility from its
35 public service obligation to provide gas service, a provision
36 requiring the utility, prior to discontinuing service, to pay
37 the cost reasonably necessary to convert each customer to
38 an alternate fuel source. Natural gas utilities may defer
39 reasonable and prudent actual expenses attributable to
40 converting each customer incurred after the test year for the
41 utility's last rate case proceeding and which are not included
42 in the utility's current base rates. The utility shall recover its
43 reasonable and prudent deferred customer conversion
44 expenses in a future base rate case through recovery of the
45 deferred expenses amortized over a reasonable period of
46 time to be determined by the commission, but such recovery
47 will be allowed only to the extent that the commission also
48 determines, based on evidence presented by the utility, that
49 deferred amounts did not contribute to base rate earnings in
50 excess of the utility's last authorized return on equity
51 calculated since the effective date of base rates from the
52 utility's last rate case proceeding.

●

CHAPTER 308

(Com. Sub. for H. B. 4823 - By Delegates Hanshaw (Mr. Speaker) and Miley)

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

AN ACT to amend and reenact §24-6-3 of the Code of West Virginia, 1931, as amended, relating to emergency 911 telephone system and wireless enhanced 911 fees; and requiring the Public Service Commission in cooperation with the State Auditor to develop a plan for periodic audits of the expenditure of the fees from these systems.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-3. Adoption of emergency telephone system plan.

1 (a) The Public Service Commission shall develop,
2 adopt, and periodically review a comprehensive plan
3 establishing the technical and operational standards to be
4 followed in establishing and maintaining emergency
5 telephone systems and enhanced emergency telephone
6 systems.

7 (b) In developing the comprehensive plan, the Public
8 Service Commission shall consult with telephone
9 companies, and with the various public agencies and public
10 safety units, including, but not limited to, emergency
11 services organizations.

12 (c) The Public Service Commission shall annually
13 review with each operating telephone company their
14 construction and switching replacements projections.

15 During this review, the Public Service Commission shall
16 ensure that all new switching facilities will accommodate
17 the emergency telephone system.

18 (d) The State Auditor, in cooperation with the Public
19 Service Commission, shall develop and adopt a
20 comprehensive plan for periodic audits of the expenditure
21 of emergency 911 telephone system fees and wireless
22 enhanced 911 fees. The results of the audits shall be
23 submitted to the Joint Committee on Government and
24 Finance, no less than annually.

CHAPTER 309

(S. B. 202 - By Senator Weld)

[Passed February 28, 2020; in effect 90 days from passage]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §16-13A-3 of the Code of West Virginia, 1931, as amended, relating to allowing one member of a public service board to be a county commissioner of the county commission with authority to appoint the members of the board, regardless of whether the commissioner resides within the district, when a board vacancy has existed for more than one year.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

1 From and after the date of the adoption of the order
2 creating any public service district, it is a public corporation
3 and political subdivision of the state, but without any power

4 to levy or collect ad valorem taxes. Each district may
5 acquire, own, and hold property, both real and personal, in
6 its corporate name, and may sue, may be sued, may adopt
7 an official seal, and may enter into contracts necessary or
8 incidental to its purposes, including contracts with any city,
9 incorporated town, or other municipal corporation located
10 within or without its boundaries for furnishing wholesale
11 supply of water for the distribution system of the city, town,
12 or other municipal corporation, or for furnishing stormwater
13 services for the city, town, or other municipal corporation,
14 and contract for the operation, maintenance, servicing,
15 repair, and extension of any properties owned by it or for
16 the operation and improvement or extension by the district
17 of all or any part of the existing municipally owned public
18 service properties of any city, incorporated town, or other
19 municipal corporation included within the district:
20 *Provided*, That no contract may extend beyond a maximum
21 of 40 years, but provisions may be included therein for a
22 renewal or successive renewals thereof and shall conform to
23 and comply with the rights of the holders of any outstanding
24 bonds issued by the municipalities for the public service
25 properties.

26 The powers of each public service district shall be
27 vested in and exercised by a public service board consisting
28 of not less than three members who shall be persons residing
29 within the district, who possess certain educational,
30 business, or work experience which will be conducive to
31 operating a public service district, with the exception,
32 however, that in the event a public service board has had a
33 vacancy for more than one year one member of the public
34 service board may be a county commissioner of the county
35 commission with authority to appoint the members of the
36 board regardless of whether the commissioner resides
37 within the district. In the event the public service district is
38 providing any utility service and billing rates and charges to
39 its customers, at least one board member shall be a rate-
40 paying residential customer of the public service district:
41 *Provided*, That if an existing public service board does not

42 have a member who is a rate-paying residential customer of
43 the public service district on July 1, 2013, the next following
44 appointment to the board shall be a rate-paying residential
45 customer of that public service district. For purposes of this
46 section, “rate-paying residential customer” means a person
47 who:

48 (1) In the case of a water or sewer public service district,
49 is physically connected to and actively receiving residential
50 public service district utility services; or

51 (2) In the case of a stormwater public service district,
52 has storm water conveyed away from the residential
53 property by a utility-owned system; and

54 (3) Has an active account in good standing and is the
55 occupier of the residential property which is on the public
56 service district utility service account.

57 Each board member shall, within six months of taking
58 office, successfully complete the training program to be
59 established and administered by the Public Service
60 Commission in conjunction with the Department of
61 Environmental Protection and the Bureau for Public Health.
62 Board members may not be or become pecuniarily
63 interested, directly or indirectly, in the proceeds of any
64 contract or service, or in furnishing any supplies or
65 materials to the district nor may a former board member be
66 hired by the district in any capacity within a minimum of 12
67 months after the board member’s term has expired or the
68 board member has resigned from the district board. The
69 members shall be appointed in the following manner:

70 Each city, incorporated town, or other municipal
71 corporation having a population of more than 3,000 but less
72 than 18,000 is entitled to appoint one member of the board,
73 and each city, incorporated town, or other municipal
74 corporation having a population in excess of 18,000 shall be
75 entitled to appoint one additional member of the board for
76 each additional 18,000 in population. The members of the

77 board representing such cities, incorporated towns, or other
78 municipal corporations shall be residents thereof and shall
79 be appointed by a resolution of the governing bodies thereof
80 and upon the filing of a certified copy or copies of the
81 resolution or resolutions in the office of the clerk of the
82 county commission which entered the order creating the
83 district, the persons so appointed become members of the
84 board without any further act or proceedings. If the number
85 of members of the board so appointed by the governing
86 bodies of cities, incorporated towns, or other municipal
87 corporations included in the district equals or exceeds three,
88 then no further members shall be appointed to the board and
89 the members so appointed are the board of the district except
90 in cases of merger or consolidation where the number of
91 board members may equal five.

92 If no city, incorporated town, or other municipal
93 corporation having a population of more than 3,000 is
94 included within the district, then the county commission
95 which entered the order creating the district shall appoint
96 three members of the board, who are persons residing within
97 the district and residing within the state of West Virginia,
98 which three members become members of the board of the
99 district without any further act or proceedings except in
100 cases of merger or consolidation where the number of board
101 members may equal five.

102 If the number of members of the board appointed by the
103 governing bodies of cities, incorporated towns, or other
104 municipal corporations included within the district is less
105 than three, then the county commission which entered the
106 order creating the district shall appoint such additional
107 member or members of the board, who are persons residing
108 within the district, as is necessary to make the number of
109 members of the board equal three except in cases of merger
110 or consolidation where the number of board members may
111 equal five, and the member or members appointed by the
112 governing bodies of the cities, incorporated towns, or other
113 municipal corporations included within the district and the

114 additional member or members appointed by the county
115 commission as aforesaid, are the board of the district. A
116 person may serve as a member of the board in one or more
117 public service districts.

118 The population of any city, incorporated town, or other
119 municipal corporation, for the purpose of determining the
120 number of members of the board, if any, to be appointed by
121 the governing body or bodies thereof, is the population
122 stated for such city, incorporated town or other municipal
123 corporation in the last official federal census.

124 Notwithstanding any provision of this code to the
125 contrary, whenever a district is consolidated or merged
126 pursuant to §16-13A-2 of this code, the terms of office of
127 the existing board members shall end on the effective date
128 of the merger or consolidation. The county commission
129 shall appoint a new board according to rules promulgated
130 by the Public Service Commission. Whenever districts are
131 consolidated or merged no provision of this code prohibits
132 the expansion of membership on the new board to five.

133 The respective terms of office of the members of the
134 first board shall be fixed by the county commission and shall
135 be as equally divided as may be, that is approximately one
136 third of the members for a term of two years, a like number
137 for a term of four years, the term of the remaining member
138 or members for six years, from the first day of the month
139 during which the appointments are made. The first members
140 of the board appointed as aforesaid shall meet at the office
141 of the clerk of the county commission which entered the
142 order creating the district as soon as practicable after the
143 appointments and shall qualify by taking an oath of office:
144 *Provided*, That any member or members of the board may
145 be removed from their respective office as provided in §16-
146 13A-3a of this code.

147 Any vacancy shall be filled for the unexpired term
148 within 30 days; otherwise successor members of the board
149 shall be appointed for terms of six years and the terms of

150 office shall continue until successors have been appointed
151 and qualified. All successor members shall be appointed in
152 the same manner as the member succeeded was appointed.
153 The district shall provide to the Public Service Commission,
154 within 30 days of the appointment, the following
155 information: The new board member's name, home address,
156 home and office phone numbers, date of appointment,
157 length of term, who the new member replaces, and if the
158 new appointee has previously served on the board. The
159 Public Service Commission shall notify each new board
160 member of the legal obligation to attend training as
161 prescribed in this section.

162 The board shall organize within 30 days following the
163 first appointments and annually thereafter at its first meeting
164 after January 1 of each year by selecting one of its members
165 to serve as chair and by appointing a secretary and a
166 treasurer who need not be members of the board. The
167 secretary shall keep a record of all proceedings of the board
168 which shall be available for inspection as other public
169 records. Duplicate records shall be filed with the county
170 commission and shall include the minutes of all board
171 meetings. The treasurer is lawful custodian of all funds of
172 the public service district and shall pay same out on orders
173 authorized or approved by the board. The secretary and
174 treasurer shall perform other duties appertaining to the
175 affairs of the district and shall receive salaries as shall be
176 prescribed by the board. The treasurer shall furnish bond in
177 an amount to be fixed by the board for the use and benefit
178 of the district.

179 The members of the board, and the chair, secretary, and
180 treasurer thereof, shall make available to the county
181 commission, at all times, all of its books and records
182 pertaining to the district's operation, finances, and affairs,
183 for inspection and audit. The board shall meet at least
184 monthly.

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CHAPTER 310

**(Com. Sub. for H. B. 4748 - 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 §39-4-23 and §39-4-30 of the Code of West Virginia, 1931, as amended, all relating to the increase of fees that private nongovernment notary publics may charge for notarial acts; clarifying the appropriate manner of advertising for non-government notarial services; and providing the proper manner and content of the required disclaimer to notarial customers by private notary publics, which disclaimer clearly notifies notary customers that nonattorney notary publics are not permitted to provide legal services including document drafting, document review, or legal advice.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. REVISED UNIFORM LAW ON NOTARIAL ACTS.

§39-4-23. Prohibited acts.

- 1 (a) A commission as a notary public does not authorize
- 2 an individual to:
 - 3 (1) Assist persons in drafting legal records, give legal
 - 4 advice or otherwise practice law;
 - 5 (2) Act as an immigration consultant or an expert on
 - 6 immigration matters;

7 (3) Represent a person in a judicial or administrative
8 proceeding relating to immigration to the United States,
9 United States citizenship or related matters; or

10 (4) Receive compensation for performing any of the
11 activities listed in this subsection.

12 (b) A notary public may not engage in false or deceptive
13 advertising.

14 (c) A notary public, other than an attorney licensed to
15 practice law in this state, may not use the term “notario” or
16 “notario publico”.

17 (d) A notary public, other than an attorney licensed to
18 practice law in this state, may not advertise or represent that
19 the notary public may assist persons in drafting legal
20 records, give legal advice, or otherwise practice law.

21 (e) If a notary public who is not an attorney licensed to
22 practice law in this state in any manner advertises or
23 represents that the notary public offers notarial services,
24 whether orally or in writing, the notary public shall provide
25 a clear disclaimer that the notary is not authorized to
26 practice law under the following conditions:

27 (1) If the form of advertisement or representation is not
28 broadcast media, print media or the internet and does not
29 permit inclusion of a disclaimer as required by subsection
30 (e) because of size, it must be displayed prominently or
31 provided at the place of performance of the notarial act
32 before the notarial act is performed.

33 (2) If the form of advertisement is made through
34 broadcast media, print media or the Internet, the following
35 statement, or an alternate statement authorized or required
36 by the Secretary of State, shall be prominently included in
37 each advertisement or representation: “I am not an attorney
38 licensed to practice law in this state. I am not permitted to
39 draft legal records, give advice on legal matters, including

40 but not limited to, immigration, or charge a fee for those
41 activities”.

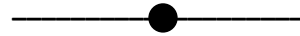
42 (f) Except as otherwise allowed by law, a notary public
43 may not withhold access to or possession of an original
44 record provided by a person that seeks performance of a
45 notarial act by the notary public.

§39-4-30. Maximum fees.

1 (a) The maximum fee in this state for notarization of
2 each signature and the proper recordation thereof in the
3 journal of notarial acts is \$10.00 for each signature
4 notarized.

5 (b) The maximum fee in this state for certification of a
6 facsimile of a document, retaining a facsimile in the
7 notary’s file, and the proper recordation thereof in the
8 journal of notarial acts is \$10.00 for each eight and one-half
9 by eleven inch page retained in the notary’s file.

10 (c) The maximum fee in this state is \$10.00 for any other
11 notarial act performed.



CHAPTER 311

(Com. Sub. for S. B. 136 - By Senator Swope)

[Passed March 7, 2020; in effect 90 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 §47-28-1, §47-28-
2, §47-28-3, §47-28-4, and §47-28-5, all relating to
prohibiting certain deceptive legal advertising practices;
defining terms; setting forth prohibited legal advertising
practices; requiring disclosures and warnings pertaining to

prescription drugs and medical devices; providing that engaging in prohibited legal advertising practices or failure to provide required disclosures and warnings constitute unfair and deceptive acts under the West Virginia Consumer and Credit Protection Act; prohibiting the use or disclosure of protected health information for solicitation of legal services; providing that the use or disclosure of protected health information constitutes a violation of West Virginia health privacy laws or the West Virginia Consumer and Credit Protection Act; providing criminal penalties for unauthorized use or disclosure of protected health information; and clarifying that the West Virginia Supreme Court of Appeals retains authority to regulate the practice of law.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 28. PREVENTION OF DECEPTIVE LAWSUIT
ADVERTISING AND SOLICITATION PRACTICES
REGARDING THE USE OF MEDICATIONS.**

§47-28-1. Short title.

1 This article may be known and cited as the Prevention
2 of Deceptive Lawsuit Advertising and Solicitation Practices
3 Regarding the Use of Medications Act.

§47-28-2. Definitions.

1 As used in this article:

2 (1) “Legal advertisement” means a solicitation for legal
3 services regarding the use of medications through
4 television, radio, newspaper or other periodical, outdoor
5 display, or other written, electronic, or recorded
6 communications wherein the advertisement solicits clients
7 or potential clients for legal services.

8 (2) “Person” means an individual or entity, including,
9 but not limited to: (i) Attorneys; (ii) law firms; or (iii) third
10 parties who solicit potential clients on behalf of attorneys or
11 law firms, which pays for or authorizes a legal

12 advertisement that solicits potential clients for attorneys or
13 law firms under this article.

14 (3) “Protected health information” has the meaning
15 given such term in 45 C.F.R. 160.103 (2013).

16 (4) “Solicit” means an offer to provide legal services
17 regarding the use of medications by written, recorded, or
18 electronic communication or by in-person, telephone, or
19 real-time electronic contact.

§47-28-3. Deceptive legal advertising practices.

1 (a) Specifically prohibited legal advertising practices. —
2 A person engages in an unfair or deceptive act or practice
3 if, in a legal advertisement, the person does any of the
4 following:

5 (1) Fails to contain the statement: “This is a paid
6 advertisement for legal services.”;

7 (2) Presents a legal advertisement as a “consumer
8 medical alert”, “health alert”, “consumer alert”, “public
9 service health announcement”, or substantially similar
10 phrase suggesting to a reasonable recipient that the
11 advertisement is offering professional, medical, or
12 government agency advice about pharmaceuticals or
13 medical devices rather than legal services;

14 (3) Displays the logo of a federal or state government
15 agency in a manner that suggests affiliation with the
16 sponsorship of that agency;

17 (4) Uses the word “recall” when referring to a product
18 that has not been recalled by a government agency or
19 through an agreement between a manufacturer and
20 government agency;

21 (5) Fails to identify the sponsor of the legal
22 advertisement; or

23 (6) Fails to indicate the identity of the attorney or law
24 firm that will represent clients, or how potential clients or
25 cases will be referred to attorneys or law firms that will
26 represent clients if the sponsor of the legal advertisement
27 may not represent persons responding to the advertisement.

28 (b) Disclosures and warnings for protection of patients. —

29 (1) A legal advertisement soliciting clients for legal
30 services in connection with a prescription drug or medical
31 device approved by the U.S. Food and Drug Administration
32 shall include the following warning: “Do not stop taking a
33 prescribed medication without first consulting with your
34 doctor. Discontinuing a prescribed medication without your
35 doctor’s advice can result in injury or death.”.

36 (2) A legal advertisement soliciting clients for legal
37 services in connection with a prescription drug or medical
38 device approved by the U.S. Food and Drug Administration
39 shall disclose that the subject of the legal advertisement
40 remains approved by the U.S. Food and Drug
41 Administration, unless the product has been recalled or
42 withdrawn.

43 (c) Appearance of required statements, disclosures, and
44 warnings. — Any words or statements required by this
45 section to appear in an advertisement must be presented
46 clearly and conspicuously.

47 (1) Written disclosures shall be clearly legible and, if
48 televised or displayed electronically, shall be displayed for
49 a sufficient time to enable the viewer to easily see and fully
50 read the disclosure or disclaimer.

51 (2) Spoken disclosures shall be plainly audible and
52 clearly intelligible.

53 (d) A person who willfully and knowingly violates this
54 section engages in an unfair and deceptive act or practice in
55 violation of §46A-6-101 *et seq.* of this code.

§47-28-4. Wrongful use or disclosure of protected health information for solicitation of legal services regarding the use of medications.

1 (a) Use or disclosure of protected health information for
2 legal solicitation. — A person shall not use, cause to be
3 used, obtain, sell, transfer, or disclose to another person
4 without written authorization protected health information
5 for the purpose of soliciting an individual for legal services
6 regarding the use of medications.

7 (b) Enforcement. —

8 (1) A violation of this section is a violation of West
9 Virginia's health privacy laws or §46A-6-101 *et seq.* of this
10 code.

11 (2) In addition to any other remedy provided by law, a
12 person who willfully and knowingly violates this section is
13 guilty of a misdemeanor and, upon conviction thereof, shall
14 be fined not more than \$5,000 or confined in jail not more
15 than one year, or both fined and confined.

16 (c) Construction. — This section does not apply to the
17 use or disclosure of protected health information to an
18 individual's legal representative, in the course of any
19 judicial or administrative proceeding, or as otherwise
20 permitted or required by law.

21 (d) Nothing in this section creates or implies liability on
22 behalf of a broadcaster who holds a license for over-the-air
23 terrestrial broadcasting from the federal communications
24 commission, or against a cable operator as defined in 47
25 U.S.C. §522(5).

§47-28-5. Authority of judiciary or State Bar to regulate practice of law.

1 This article does not limit or otherwise affect the
2 authority of the judiciary or the Lawyer Disciplinary Board
3 to regulate the practice of law, enforce the West Virginia
4 Rules of Professional Conduct, or discipline persons
5 admitted to the bar.

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CHAPTER 312

(Com. Sub. for H. B. 2478 - By Delegates Steele, Pack, Lovejoy, Mandt and Rohrbach)

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

AN ACT to amend and reenact §47-11A-2, §47-11A-6, and §47-11A-9 of the Code of West Virginia, 1931, as amended, all relating to unfair trade practices; generally providing for invoice cost of each separate or distinct product or item of merchandise to retailer in calculation of cost to business of retailer; including applicable taxes in invoice cost in calculation of cost to business of retailer; clarifying application of misdemeanor offenses under the act; eliminating markup in calculation of cost to business of retailer; authorizing court to award treble damages, court costs, litigation costs, and attorney fees for violation; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11A. UNFAIR TRADE PRACTICES.

§47-11A-2. When selling below cost prohibited; penalty.

1 Except as otherwise provided in this article, it shall be
2 unlawful for any person, partnership, firm, corporation, or
3 other entity engaged in business as a retailer or wholesaler
4 within this state to sell, offer for sale, or advertise for sale
5 any product or item of merchandise at a price less than the
6 cost thereof with the intent to destroy or the effect of
7 destroying competition. Each violation shall constitute a
8 misdemeanor and, upon conviction thereof, any person,
9 partnership, firm, corporation, or other entity violating this

10 section shall be subject to the penalty set forth in §47-11A-
11 11 of this code.

§47-11A-6. How cost determined.

1 (a) The term “cost” when applicable to the business of
2 retailer shall mean bona fide cost and shall mean: (i) The
3 invoice cost of each separate or distinct product or item of
4 merchandise to the retailer to include applicable taxes, or
5 the replacement cost thereof to the retailer within 30 days
6 prior to the date of sale, offer for sale, or advertisement for
7 sale, as the case may be, in the quantity last purchased,
8 whichever is lower, from either of which there shall be
9 deducted all trade discounts, except customary discounts for
10 cash; and (ii) to either of which there shall be added freight
11 charges not otherwise included in the cost of the article,
12 product, or item of merchandise, but which freight charges
13 shall not be construed as including cartage to retail outlet if
14 done or paid for by the retailer.

15 (b) The term “cost” when applicable to the business of
16 a wholesaler shall mean bona fide cost and shall mean: (i)
17 The invoice cost of the merchandise to the wholesaler to
18 include applicable taxes, or the replacement cost of the
19 merchandise to the wholesaler within 30 days prior to the
20 date of sale, offer for sale, or advertisement for sale, as the
21 case may be, in the quantity last purchased, whichever is
22 lower, from either of which there shall be deducted all trade
23 discounts except customary discounts for cash; and (ii) to
24 either of which there shall be added the following items of
25 expense:

26 (1) Freight charges not otherwise included in the cost of
27 the article, product, or item of merchandise, but which
28 freight charges shall not be construed as including cartage
29 to the retail outlet if done or paid for by the wholesaler;

30 (2) A markup to cover, in part, the cost of doing
31 business, which markup in the absence of proof of a lesser
32 cost, shall be four percent of the aggregate of invoice cost

33 or replacement cost (whichever is used), less trade discounts
34 as aforesaid, and plus said freight charges: *Provided*, That
35 such a markup to cover the cost of doing business as
36 provided for in this subdivision shall be exclusive of any
37 federal and state motor fuel taxes.

§47-11A-9. Injunctions; damage suits; and jurisdiction.

1 (a) Any person, partnership, firm, corporation, or other
2 entity injured by a violation of §47-11A-2 or §47-11A-3 of
3 this code may maintain an action to enjoin a continuance of
4 any such violation in the circuit court of the county wherein
5 said violation is alleged to have occurred. If a violation is
6 established in such an action, the court shall enjoin, restrain,
7 or otherwise prohibit such violation. In such action, if
8 damages are alleged and proven, the plaintiff in the action,
9 in addition to injunctive relief, shall recover from the
10 defendant the actual damages sustained and proven to be a
11 result of the violation, and the court may award the plaintiff
12 treble damages, court costs, litigation costs, and attorneys'
13 fees.

14 (b) In the event no injunctive relief is sought or required,
15 any person, partnership, firm, corporation, or other entity
16 injured by a violation of the provisions of this article may
17 maintain an action for damages alone in the circuit court of
18 the county wherein said violation is alleged to have
19 occurred. If a violation is established in such an action and
20 proven, a plaintiff shall recover from the defendant the
21 actual damages sustained and proven to be a result of the
22 violation, and the court may award the plaintiff treble
23 damages, court costs, litigation costs, and attorneys' fees.

24 (c) In any action under subsections (a) and (b) of this
25 section it shall be an absolute defense that the sale price of
26 any product or item of merchandise alleged to be in
27 violation of this article is equal to or greater than the sales
28 price of the same product or item being sold by a competitor
29 of the defendant.

30 (d) A court may dismiss any action under subsections
31 (a) and (b) of this section upon a motion for summary
32 judgment if the court finds pursuant to Rule 56 of the West
33 Virginia Rules of Civil Procedure that the provisions of
34 subsection (c) of this section have been satisfied.

35 (e) The circuit courts of this state shall have jurisdiction
36 of actions under this section.

CHAPTER 313

(S. B. 734 - By Senator Clements)

[Passed February 27, 2020; in effect 90 days from passage]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §17-2A-17 of the Code of West Virginia, 1931, as amended, relating to clarifying the powers and duties of the Division of Highways in acquiring property for state road purposes to include depth as well as width; and updating antiquated language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-17. Acquisition of property for state road purposes; “state road purposes” defined.

1 In addition to all other powers given and assigned to the
2 commissioner in this chapter, the commissioner may
3 acquire, either temporarily or permanently, in the name of
4 the Division of Highways all real or personal property,
5 public or private, or any interests or rights therein, including
6 any easement, riparian right, or right of access, deemed by
7 the commissioner to be necessary for present or presently

8 foreseeable future state road purposes by gift, lease, grant,
9 bequest, devise, agreement, purchase, exchange, right of
10 eminent domain, or other lawful means. Real property may
11 be acquired in fee simple or in any lesser estate or interest
12 therein, except in the case of a public road, only the right-
13 of-way shall be acquired. Acquisition of such personal
14 property shall be subject to the provisions of §17-2A-13 and
15 §17-2A-15 of this code. The acquisition of all such real and
16 personal property is hereby declared to be a cost of highway
17 construction. Nothing in this section restricts or relinquishes
18 any right the state or any agency thereof now or hereafter
19 possesses or may exercise by virtue of the police power or
20 other lawful authority.

21 As used in this article, “state road purposes” shall
22 include provision for, but shall not be limited to, the
23 following:

24 (a) Constructing, establishing, laying out, widening,
25 enlarging, extending, straightening, reconstructing,
26 relocating, grading, altering, improving, and maintaining
27 state roads;

28 (b) Rights-of-way for state roads, including those
29 needed for such roads within municipalities, such rights-of-
30 way to be to such width and depth as deemed necessary for
31 the project by the commissioner and shall include all
32 material therein;

33 (c) Adequate drainage of state roads;

34 (d) Controlled-access facilities, as defined in §17-4-39
35 of this code, including existing and vested rights of access,
36 air, view and light, whether privately or publicly owned, and
37 local service roads to controlled-access facilities;

38 (e) Broadcasting stations, weighing stations, shops,
39 equipment sheds, office buildings, storage buildings and
40 yards, snow fences, road maintenance, or construction sites;

41 (f) Road-building material storage sites, quarry sites,
42 gravel pits, sites for the acquisition or manufacture of road-
43 building materials including borrow pits, stockpile sites,
44 waste-material sites and access roads to any such sites or
45 places;

46 (g) The culture and support of trees which benefit any
47 state road by aiding in the maintenance and preservation of
48 the road;

49 (h) Landscape and roadside development, and
50 maintenance thereof, within any state road right-of-way,
51 and the acquisition and maintenance of lands and interests
52 in lands for the restoration, preservation, and enhancement
53 of places of scenic beauty, and other objects of attraction or
54 scenic value adjacent to or near any state road, and the
55 acquisition, development, and maintenance of publicly
56 owned and controlled rest and recreation areas and sanitary
57 and other facilities reasonably necessary for the
58 accommodation of the traveling public, within, adjacent to,
59 or near the right-of-way of any road within the state road
60 system;

61 (i) Development and maintenance of parking places,
62 auto camps, camp sites, roadside parks, historic roadside
63 markers and sites, forest or timbered areas, or other places
64 of attraction and scenic value which are adjacent to or near
65 any state road and which in the judgment of the
66 commissioner are necessary for the convenience of the
67 public and will contribute to the general welfare and
68 pleasure of the motoring public or road users;

69 (j) Maintenance of an unobstructed view of any portion
70 of any state road in order to provide for the safety of the
71 traveling public;

72 (k) Erection and maintenance of markers, warning signs
73 and traffic signals;

74 (l) Construction and maintenance on state roads of
75 sidewalks and highway illumination;

76 (m) Elimination or prevention of hazardous or
77 undesirable points of entry to state roads from adjacent
78 property;

79 (n) Acquisition of property, or any interest or right
80 therein, for the purpose of exchanging it for other property,
81 or any interest or right therein, which the Division of
82 Highways is authorized to acquire by the other provisions
83 of this section: *Provided*, That such substitute property, or
84 any interest or right therein, may be acquired by the
85 commissioner by condemnation only if the following
86 conditions are satisfied: (1) Monetary compensation would
87 be substantially inadequate for the property, or interest or
88 right therein, which the commissioner is authorized to
89 acquire by the other provisions of this section; and (2) the
90 Division of Highways has entered into a written agreement
91 to exchange the substitute property, or the right or interest
92 therein, for the property, or right or interest therein, which
93 is needed for state road purposes, regardless of whether the
94 person who has agreed to accept the exchange has the right
95 to condemn the substitute property, or the right or interest
96 therein; and

97 (o) Acquisition of real property, not needed for a state
98 road, for the purpose of moving and relocating thereon a
99 building or other structure or appurtenance which is situated
100 on a lot or tract of land all or a portion of which is needed
101 for a state road and which, after relocation, will be suitable
102 for the purpose for which it was used prior to its being
103 relocated: *Provided*, That such additional real property may
104 be acquired by the commissioner by condemnation only if
105 the following conditions are satisfied: (1) The building or
106 other structure or appurtenance is of substantial value; (2)
107 the real property on which it is to be relocated is not
108 substantially improved and is adjacent to or near the
109 location from which it is to be removed; (3) the owner of the
110 real property needed for the state road has entered into a

111 written agreement with the Division of Highways to accept
112 in exchange the additional property with the relocated
113 building or structure or appurtenance thereon; (4)
114 substantial savings in expenditure of state road funds will
115 result from condemning the additional property and
116 relocating the building or structure or appurtenance rather
117 than condemning the lot or tract, or the portion thereof, on
118 which the building or other structure or appurtenance may
119 be located; and (5) the real property with the relocated
120 building or structure or appurtenance thereon will be
121 relatively equal in value to the real property needed for the
122 state road.



CHAPTER 314

**(Com. Sub. for H. B. 4017 - By Delegates Summers,
D. Jeffries, Sypolt, D. Kelly, Toney, Hardy, Mandt,
Maynard, Linville, Phillips and Criss)**

[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 §17-2A-6b, relating to establishing country roads accountability and transparency; directing the State Auditor to develop and maintain a searchable website of funding actions and expenditures relating state and public roads; setting forth the minimum content to be contained in the website; directing the Commissioner of Highways to provide information and data to the State Auditor; and requiring an annual update to the Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.**§ 17-2A-6b. Country roads accountability and transparency.**

1 (a) The Legislature finds that taxpayers should be able
2 to easily access the details of how the state is spending their
3 tax dollars to build and repair state and public roads. The
4 taxpayers should also be able to easily access and compare
5 the budgeted moneys and the performance results that are
6 achieved for those expenditures. It is the intent of the
7 Legislature, therefore, to direct the Auditor to create and
8 maintain a searchable website detailing where, how much,
9 and from what source the taxpayer moneys in state
10 government are expended for state and public roads.

11 (b) No later than July 1, 2020, the Auditor shall develop
12 and make publicly available a searchable website
13 containing, at a minimum, the following information for a
14 given fiscal year, and the three immediately preceding fiscal
15 years:

16 (1) The project number or name for each state and
17 public road in which moneys have been expended to build
18 or repair or in which funding has been directed;

19 (2) The county location for each such project;

20 (3) The funding source for a given funding action or
21 expenditure;

22 (4) The budget program or activity related to a given
23 funding action or expenditure;

24 (5) The name and the address, principal location or
25 residence of the recipients of a given funding action or
26 expenditure; and

27 (6) Additional information as to the funding action or
28 expenditure the Auditor considers valuable for the public.

29 (c) For the purposes of this section:

30 “Auditor” means the State Auditor of West Virginia, by
31 himself or herself, or by any person appointed, designated
32 or approved by the State Auditor to perform the service;

33 “Funding action or expenditure” includes details on the
34 type of spending (grant, contract, appropriations, etc.). This
35 includes, but is not limited to, tax exemptions, tax credits,
36 or any expenditure from any civil contingency or similar
37 fund. Where possible, a hyperlink to the actual grants or
38 contracts shall be provided: *Provided*, That any private or
39 confidential information is redacted: *Provided*, That any
40 private or confidential information contained in the contract
41 shall be redacted;

42 “Funding source” means the state account from which
43 the funding action or expenditure is appropriated;

44 “Recipients” means any individual, person, corporation,
45 association, union, limited liability corporation, limited
46 liability partnership, legal business entity including
47 nonprofit organizations, grantees, contractors, or any
48 county, municipal or other local government entity that
49 directly receives the benefit of a funding action or
50 expenditure;

51 “Searchable website” means a website that allows the
52 public at no cost to search and aggregate information
53 regarding the state’s budget and spending.

54 (d) The searchable website shall be updated periodically
55 as new data becomes available and is submitted by the
56 commissioner to the Auditor. The commissioner shall
57 provide to the Auditor, in a format specified by the Auditor,
58 all the data that is required to be included in the searchable
59 website no later than 30 days after the data becomes
60 available to the agency. The Auditor shall provide guidance
61 and specifications to the commissioner to promote
62 compliance with this section.

63 (e) Nothing in this section may be construed to require
64 the commissioner to provide information in a form that is
65 not already available in the Division of Highways'
66 accounting system: *Provided*, That when funding action or
67 expenditure is not available separately for a road, the
68 commissioner shall provide available information by
69 county.

70 (f) The Auditor shall annually provide an update to the
71 Joint Committee on Government and Finance as to the
72 status of the website and shall make known to the Joint
73 Committee and the public any failure by the commissioner
74 to timely submit to the Auditor appropriate and requested
75 information.



CHAPTER 315

**(Com. Sub. for S. B. 623 - By Senators Rucker,
Plymale, Roberts and Cline)**

[Passed February 21, 2020; in effect from passage]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §18A-3-1 and §18A-3-1f of the Code of West Virginia, 1931, as amended, all relating to making a noncitizen of the United States eligible for a certificate to teach or an alternative program teacher certificate if he or she holds a valid Permanent Resident Card, Employment Authorization Document, or work permit issued by the United States Citizenship and Immigration Services.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 3. TRAINING, CERTIFICATION, LICENSING,
PROFESSIONAL DEVELOPMENT.**

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

1 (a) The education of professional educators in the state
2 is under the general direction and control of the state board.

3 The education of professional educators in the state
4 includes all programs leading to certification to teach or
5 serve in the public schools. The programs include the
6 following:

7 (1) Programs in all institutions of higher education,
8 including student teaching and teacher-in-residence
9 programs as provided in this section;

10 (2) Beginning teacher induction programs;

11 (3) Granting West Virginia certification to persons who
12 received their preparation to teach outside the boundaries of
13 this state, except as provided in subsection (b) of this
14 section;

15 (4) Alternative preparation programs in this state
16 leading to certification, including programs established
17 pursuant to the provisions of §18A-3-1a, §18A-3-1b, §18A-
18 3-1c, §18A-3-1d, §18A-3-1e, §18A-3-1f, §18A-3-1g,
19 §18A-3-1h, and §18A-3-1i of this code and programs which
20 are in effect on the effective date of this section; and

21 (5) Continuing professional education, professional
22 development, and in-service training programs for
23 professional educators employed in the public schools in the
24 state.

25 (b) The state board shall adopt standards for the
26 education of professional educators in the state and for
27 awarding certificates valid in the public schools of this state.
28 The standards include, but are not limited to, the following:

29 (1) A provision for the study of the history and
30 philosophical foundations of Western Civilization and the
31 writings of the founders of the United States of America;

32 (2) A provision for the study of multicultural education.
33 As used in this section, multicultural education means the
34 study of the pluralistic nature of American society including
35 its values, institutions, organizations, groups, status
36 positions, and social roles;

37 (3) A provision for the study of classroom management
38 techniques, including methods of effective management of
39 disruptive behavior including addressing societal factors
40 and their impact on student behavior; and

41 (4) A teacher from another state shall be awarded a
42 teaching certificate for a comparable grade level and subject
43 area valid in the public schools of this state, subject to §18A-
44 3-10 of this code if he or she has met the following
45 requirements:

46 (A) Holds a valid teaching certificate or a certificate of
47 eligibility issued by another state;

48 (B) Has graduated from an educator preparation
49 program at a regionally accredited institution of higher
50 education or from another educator preparation program;

51 (C) Possesses the minimum of a bachelor's degree; and

52 (D) Meets all of the requirements of the state for full
53 certification except employment.

54 (c) The state board may enter into an agreement with
55 county boards for the use of the public schools in order to
56 give prospective teachers the teaching experience needed to
57 demonstrate competence as a prerequisite to certification to
58 teach in the West Virginia public schools.

59 (d) An agreement established pursuant to subsection (c)
60 of this section shall recognize student teaching as a joint

61 responsibility of the educator preparation institution and the
62 cooperating public schools. The agreement shall include the
63 following items:

64 (1) The minimum qualifications for the employment of
65 public school teachers selected as supervising teachers,
66 including the requirement that field-based and clinical
67 experiences be supervised by a teacher fully certified in the
68 state in which that teacher is supervising;

69 (2) The remuneration to be paid to public school
70 teachers by the state board, in addition to their contractual
71 salaries, for supervising student teachers;

72 (3) Minimum standards to guarantee the adequacy of the
73 facilities and program of the public school selected for
74 student teaching;

75 (4) Assurance that the student teacher, under the
76 direction and supervision of the supervising teacher, shall
77 exercise the authority of a substitute teacher;

78 (5) A provision requiring any higher education
79 institution with an educator preparation program to
80 document that the student teacher's field-based and clinical
81 experiences include participation and instruction with
82 multicultural, at-risk, and exceptional children at each
83 programmatic level for which the student teacher seeks
84 certification; and

85 (6) A provision authorizing a school or school district
86 that has implemented a comprehensive beginning teacher
87 induction program to enter into an agreement that provides
88 for the training and supervision of student teachers
89 consistent with the educational objectives of this subsection
90 by using an alternate structure implemented for the support,
91 supervision, and mentoring of beginning teachers. The
92 agreement is in lieu of any specific provisions of this
93 subsection and is subject to the approval of the state board.

94 (e) Teacher-in-residence programs. —

95 (1) In lieu of the provisions of subsections (c) and (d) of
96 this section and subject to approval of the state board, an
97 institution of higher education with a program for the
98 education of professional educators approved by the state
99 board may enter into an agreement with county boards for
100 the use of teacher-in-residence programs in the public
101 schools.

102 (2) A “teacher-in-residence program” means an
103 intensively supervised and mentored residency program for
104 prospective teachers during their senior year that refines
105 their professional practice skills and helps them gain the
106 teaching experience needed to demonstrate competence as a
107 prerequisite to certification to teach in the West Virginia
108 public schools.

109 (3) The authorization for the higher education institution
110 and the county board to implement a teacher-in-residence
111 program is subject to state board approval. The provisions
112 of the agreement include, but are not limited to, the
113 following items:

114 (A) A requirement that the prospective teacher in a
115 teacher-in-residence program has completed all other
116 preparation courses and has passed the appropriate basic
117 skills and subject matter test or tests required by the state
118 board for teachers to become certified in the area for which
119 licensure is sought;

120 (B) A requirement that the teacher-in-residence serve
121 only in a teaching position in the county which has been
122 posted and for which no other teacher fully certified for the
123 position has been employed;

124 (C) Specifics regarding the program of instruction for
125 the teacher-in-residence setting forth the responsibilities for
126 supervision and mentoring by the higher education
127 institution’s educator preparation program, the school
128 principal, and peer teachers and mentors, and the
129 responsibilities for the formal instruction or professional

130 development necessary for the teacher-in-residence to
131 perfect his or her professional practice skills. The program
132 also may include other instructional items as considered
133 appropriate;

134 (D) A requirement that the teacher-in-residence hold a
135 teacher-in-residence permit qualifying the individual to
136 teach in his or her assigned position as the teacher of record;

137 (E) A requirement that the salary and benefit costs for
138 the position to which the teacher-in-residence is assigned
139 shall be used only for program support and to pay a stipend
140 to the teacher-in-residence as specified in the agreement,
141 subject to the following:

142 (i) The teacher-in-residence is a student enrolled in the
143 teacher preparation program of the institution of higher
144 education and is not a regularly employed employee of the
145 county board;

146 (ii) The teacher-in-residence is included on the certified
147 list of employees of the county eligible for state aid funding
148 the same as an employee of the county at the appropriate
149 level based on their permit and level of experience;

150 (iii) All state aid funding due to the county board for the
151 teacher-in-residence shall be used only in accordance with
152 the agreement with the institution of higher education for
153 support of the program as provided in the agreement,
154 including costs associated with instruction and supervision
155 as set forth in paragraph (C) of this subdivision;

156 (iv) The teacher-in-residence is provided the same
157 liability insurance coverage as other employees; and

158 (v) All state aid funding due to the county for the
159 teacher-in-residence and not required for support of the
160 program shall be paid as a stipend to the teacher-in-
161 residence: *Provided*, That the stipend paid to the teacher-in-
162 residence shall be no less than 65 percent of all state aid
163 funding due the county for the teacher-in-residence;

164 (F) Other provisions that may be required by the state
165 board.

166 (f) In lieu of the student teaching experience in a public
167 school setting required by this section, an institution of
168 higher education may provide an alternate student teaching
169 experience in a nonpublic school setting if the institution of
170 higher education meets the following criteria:

171 (1) Complies with the provisions of this section;

172 (2) Has a state board-approved educator preparation
173 program; and

174 (3) Enters into an agreement pursuant to subdivisions
175 (g) and (h) of this section.

176 (g) At the discretion of the higher education institution,
177 an agreement for an alternate student teaching experience
178 between an institution of higher education and a nonpublic
179 school shall require one of the following:

180 (1) The student teacher shall complete at least one-half
181 of the clinical experience in a public school; or

182 (2) The educator preparation program shall include a
183 requirement that any student performing student teaching in
184 a nonpublic school shall complete the following:

185 (A) At least 200 clock hours of field-based training in a
186 public school; and

187 (B) A course, which is a component of the institution's
188 state board-approved educator preparation program, that
189 provides information to prospective teachers equivalent to
190 the teaching experience needed to demonstrate competence
191 as a prerequisite to certification to teach in the public
192 schools in West Virginia. The course also shall include
193 instruction on at least the following elements:

194 (i) State board policy and provisions of this code
195 governing public education;

196 (ii) Requirements for federal and state accountability,
197 including the mandatory reporting of child abuse;

198 (iii) Federal and state mandated curriculum and
199 assessment requirements, including multicultural education,
200 safe schools, and student code of conduct;

201 (iv) Federal and state regulations for the instruction of
202 exceptional students as defined by the Individuals with
203 Disabilities Education Act, 20 U.S.C. §1400 *et seq.*; and

204 (v) Varied approaches for effective instruction for
205 students who are at-risk.

206 (h) In addition to the requirements set forth in
207 subsection (g) of this section, an agreement for an alternate
208 student teaching experience between an institution of higher
209 education and a nonpublic school shall include the
210 following:

211 (1) A requirement that the higher education institution
212 with an educator preparation program shall document that
213 the student teacher's field-based and clinical experiences
214 include participation and instruction with multicultural, at-
215 risk, and exceptional children at each programmatic level
216 for which the student teacher seeks certification; and

217 (2) The minimum qualifications for the employment of
218 school teachers selected as supervising teachers, including
219 the requirement that field-based and clinical experiences be
220 supervised by a teacher fully certified in the state in which
221 that teacher is supervising.

222 (i) The state superintendent may issue certificates as
223 provided in §18A-3-2a of this code to graduates of educator
224 preparation programs and alternative educator preparation
225 programs approved by the state board. The certificates are

226 issued in accordance with this section and rules adopted by
227 the state board.

228 (1) A certificate to teach may be granted only to a person
229 who meets the following criteria:

230 (A) Is a citizen of the United States, except as provided
231 in subdivision (2) or (3) of this subsection;

232 (B) Is of good moral character;

233 (C) Is physically, mentally, and emotionally qualified to
234 perform the duties of a teacher; and

235 (D) Is at least 18 years of age on or before October 1 of
236 the year in which his or her certificate is issued.

237 (2) A permit to teach in the public schools of this state
238 may be granted to a person who is an exchange teacher from
239 a foreign country or an alien person who meets the
240 requirements to teach.

241 (3) A certificate to teach may be granted to a noncitizen
242 of the United States who holds a valid Permanent Resident
243 Card, Employment Authorization Document (EAD), or
244 work permit issued by the United States Citizenship and
245 Immigration Services (USCIS).

246 (j) Institutions of higher education approved for
247 educator preparation may cooperate with each other and
248 with one or more county boards to organize and operate
249 centers to provide selected phases of the educator
250 preparation program. The phases include, but are not limited
251 to, the following:

252 (1) Student teaching and teacher-in-residence programs;

253 (2) Beginning teacher induction programs;

254 (3) Instruction in methodology; and

255 (4) Seminar programs for college students, teachers
256 with provisional certification, professional support team
257 members, and supervising teachers.

258 By mutual agreement, the institutions of higher
259 education and county boards may budget and expend funds
260 to operate the centers through payments to the appropriate
261 fiscal office of the participating institutions and the county
262 boards.

263 (k) The provisions of this section do not require
264 discontinuation of an existing student teacher training center
265 or school which meets the standards of the state board.

266 (l) All institutions of higher education approved for
267 educator preparation in the 1962-63 school year continue to
268 hold that distinction so long as they meet the minimum
269 standards for educator preparation. Nothing in this section
270 infringes upon the rights granted to any institution by
271 charter given according to law previous to the adoption of
272 this code.

273 (m) Definitions. — For the purposes of this section, the
274 following words have the meanings ascribed to them unless
275 the context clearly indicates a different meaning:

276 (1) “Nonpublic school” means a private school,
277 parochial school, church school, school operated by a
278 religious order, or other nonpublic school that elects to meet
279 the following conditions:

280 (A) Comply with the provisions of §18-28-1 *et seq.* of
281 this code;

282 (B) Participate on a voluntary basis in a state-operated
283 or state-sponsored program provided to this type school
284 pursuant to this section; and

285 (C) Comply with the provisions of this section;

286 (2) “At-risk” means a student who has the potential for
287 academic failure including, but not limited to, the risk of
288 dropping out of school, involvement in delinquent activity,
289 or poverty as indicated by free or reduced lunch status; and

290 (3) “Exceptional child” or “exceptional children” has
291 the meaning ascribed to these terms pursuant to §18-20-1 of
292 this code but, as used in this section, the terms do not include
293 gifted students.

**§18A-3-1f. Alternative program participation; eligibility for
alternative program certificate; contract renewals; hiring
preference.**

1 (a) Alternative program participation. — A person may
2 not participate in an alternative program unless he or she
3 holds an alternative program teacher certificate issue by the
4 state superintendent for the alternative program position in
5 which he or she will be teaching. An alternative program
6 teacher certificate is the same as a professional teaching
7 certificate for the purpose of issuing a continuing contract.

8 (b) Eligibility for alternative program teacher
9 certificate. — To be eligible for an alternative program
10 teacher certificate, a person shall:

11 (1) Possess at least a bachelor’s degree from a regionally
12 accredited institution of higher education;

13 (2) Pass the same basic skills and subject matter test or
14 tests required by the state board for traditional program
15 candidates to become certified in the area for which he or
16 she is seeking licensure;

17 (3) Hold United States citizenship or, if a noncitizen of
18 the United States, hold a valid Permanent Resident Card,
19 Employment Authorization Document (EAD), or work
20 permit issued by the United States Citizenship and
21 Immigration Services (USCIS);

22 (4) Be of good moral character;

23 (5) Be physically, mentally, and emotionally qualified
24 to perform the duties of a teacher;

25 (6) Attain the age of 18 years on or before October 1 of
26 the year in which the alternative program teacher certificate
27 is issued;

28 (7) Receive from a county superintendent a formal offer
29 of employment in an area of critical need and shortage and
30 by a school or school district that is a member of an
31 approved educational provider;

32 (8) Have relevant academic or occupational
33 qualifications that reasonably indicate that the person will
34 be competent to fill the teaching position in which he or she
35 would be employed. For the purposes of this section,
36 “reasonably indicate” means an academic major or
37 occupational area the same as or similar to the subject matter
38 to which the alternative program teacher is being hired to
39 teach; and

40 (9) Qualify for employment after a criminal history
41 check made pursuant to §18A-3-10 of this code.

42 (c) Eligibility for alternative program certificate:
43 American Sign Language. — If a person seeks certification
44 to teach American Sign Language, in lieu of subdivisions
45 (1) and (2), subsection (b) of this section, he or she shall
46 pass one or more appropriate state board-approved tests
47 demonstrating his or her proficiency in American Sign
48 Language.

49 (d) Eligibility for alternative program certificate:
50 selected vocational and technical areas. — If a person seeks
51 certification to teach in selected vocational and technical
52 areas, in lieu of subdivisions (1) and (2), subsection (b) of
53 this section, he or she shall pass one or more appropriate
54 state board-approved tests demonstrating his or her
55 proficiency in the basic skills and occupational content
56 areas.

57 (e) Contract renewals. —

58 (1) A county board shall renew an alternative program
59 teacher's contract from year to year as long as he or she
60 makes satisfactory progress in the applicable alternative
61 education program and until he or she completes the
62 alternative program, except as provided in subdivision (2)
63 of this subsection.

64 (2) If the school or school district that employs the
65 alternative program teacher reduces its overall number of
66 teachers, the alternative program teacher is subject to the
67 same force reduction rules and procedures as any other
68 employee, except those that relate to seniority. In no event
69 will an alternative program teacher displace a professional
70 educator as defined in §18A-1-1 of this code.

●

CHAPTER 316

(S. B. 691 - By Senators Rucker, Cline and Roberts)

[Passed March 5, 2020; in effect 90 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 §18A-3-1j, relating to additional alternative preparation programs for teachers; providing that certain programs adopted by the State Board of Education are separate from specified programs; providing that programs are subject to state board rules; and providing that programs may be an alternative to college and university programs for teacher education.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 3. TRAINING, CERTIFICATION, LICENSING,
PROFESSIONAL DEVELOPMENT.****§18A-3-1j. Additional alternative preparation programs
administered by the Department of Education.**

1 (a) Additional alternative programs to prepare teachers
2 established or adopted solely by the State Board of
3 Education are separate from the programs established under
4 §18A-3-1b, §18A-3-1g, and §18A-3-1h of this code, do not
5 required any partner, and are applicable only to persons who
6 hold a bachelor's degree from an accredited institution of
7 higher education.

8 (b) These programs are subject to other provisions of
9 this article only to the extent specifically provided in state
10 board rules.

11 (c) These programs may be an alternative to the standard
12 college and university programs for the education of teacher
13 and also may address the content area preparation of these
14 persons.

**CHAPTER 317**

**(Com. Sub. for H. B. 4378 - By Delegates Hill, Pack,
Kessinger, Hanna, Ellington, Higginbotham, Foster,
P. Martin and Worrell)**

[Passed March 6, 2020; in effect ninety days from passage.]

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

AN ACT to amend and reenact §18A-2-8 of the Code of West Virginia, 1931, as amended; and to amend §18A-3-6 of said code, all relating to school personnel; requiring a county board of education to complete an investigation of an employee that

involves evidence that the employee may have engaged in certain conduct despite the employee's resignation; limiting time period for a county superintendent to report any employee suspended, dismissed, or who resigned during the course of an investigation of the employee's alleged misconduct; authorizing suspension of teaching certificate in certain instances and for certain causes; authorizing additional sanction options by the state superintendent with respect to violations; authorizing superintendent to issue subpoenas to aid investigation of allegations against persons subject to licensure; adding to reasons for which a teacher's certificate or license is automatically revoked; requiring professional relationship with students; providing minimum revocation period for offenses and specifying offenses; defining grooming a student or minor; adding a public school principal and public charter school administrator to the requirement to report certain acts of any teacher to the State Superintendent; requiring the State Superintendent to maintain a public database of individuals who have had adverse action taken against their teaching certificate; providing that individuals whose certificate has been revoked are not eligible to be employed by a county board until their certificate is reinstated; clarifying that all of certain teacher certificate provisions apply to all public school teachers whether employed by a county board or a public charter school governing board; requiring State Superintendent to periodically ensure that county boards are in compliance with certain teacher certificate provisions; and allowing the state board to propose legislative rules that are necessary to implement certain provisions pertaining to action against a teacher certificate.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

- 1 (a) Notwithstanding any other provisions of law, a board
- 2 may suspend or dismiss any person in its employment at any

3 time for: Immorality, incompetency, cruelty,
4 insubordination, intemperance, willful neglect of duty,
5 unsatisfactory performance, a finding of abuse by the
6 Department of Health and Human Resources in accordance
7 with §49-1-1 *et seq.* of this code, the conviction of a
8 misdemeanor or a guilty plea or a plea of *nolo contendere*
9 to a misdemeanor charge that has a rational nexus between
10 the conduct and performance of the employee's job, the
11 conviction of a felony or a guilty plea or a plea of *nolo*
12 *contendere* to a felony charge.

13 (b) A charge of unsatisfactory performance shall not be
14 made except as the result of an employee performance
15 evaluation pursuant to §18A-2-12 of this code. The charges
16 shall be stated in writing served upon the employee within
17 two days of presentation of the charges to the board.

18 (c) The affected employee shall be given an opportunity,
19 within five days of receiving the written notice, to request,
20 in writing, a level three hearing and appeals pursuant to the
21 provisions of §6C-2-1 *et seq.* of this code, except that
22 dismissal for a finding of abuse or the conviction of a felony
23 or guilty plea or plea of *nolo contendere* to a felony charge
24 is not by itself a grounds for a grievance proceeding. An
25 employee charged with the commission of a felony, a
26 misdemeanor with a rational nexus between the conduct and
27 performance of the employee's job, or child abuse may be
28 reassigned to duties which do not involve direct interaction
29 with pupils pending final disposition of the charges.

30 (d) A county board of education has the duty and
31 authority to provide a safe and secure environment in which
32 students may learn and prosper; therefore, it may take
33 necessary steps to suspend or dismiss any person in its
34 employment at any time should the health, safety, and
35 welfare of students be jeopardized or the learning
36 environment of other students has been impacted. A county
37 board shall complete an investigation of an employee that
38 involves evidence that the employee may have engaged in
39 conduct that jeopardizes the health, safety, or welfare of

40 students despite the employee's resignation from
41 employment prior to completion of the investigation.

42 (e) It shall be the duty of any county superintendent to
43 report any employee suspended or dismissed, or resigned
44 during the course of an investigation of the employee's
45 alleged misconduct, in accordance with this section,
46 including the rationale for the suspension or dismissal, to
47 the state superintendent within seven business days of the
48 suspension, dismissal, or resignation. The state
49 superintendent shall maintain a database of all individuals
50 suspended or dismissed for jeopardizing the health, safety,
51 and welfare of students, or for impacting the learning
52 environment of other students. The database shall also
53 include the rationale for the suspension or dismissal. The
54 database shall be confidential and shall only be accessible
55 to county human resource directors, county superintendents,
56 and the state superintendent.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-6. Grounds for revocation or suspension of certificates; other authorized actions by state superintendent; required reporting by county superintendents; and recalling certificates for correction.

1 (a) The State Superintendent may, after 10 days' notice
2 and upon proper evidence, revoke or suspend the certificates
3 of any teacher for any of the following causes:
4 Intemperance; untruthfulness; cruelty; immorality; the
5 conviction of a felony or a guilty plea or a plea of no contest
6 to a felony charge; the conviction, guilty plea or plea of no
7 contest to any charge involving sexual misconduct with a
8 minor or a student; or for using fraudulent, unapproved or
9 insufficient credit to obtain the certificates: *Provided*, That
10 in order for any conduct of a teacher involving
11 intemperance; cruelty; immorality; or using fraudulent,
12 unapproved or insufficient credit to obtain the certificates to
13 constitute grounds for the revocation of the certificates of

14 the teacher, there must be a rational nexus between the
15 conduct of the teacher and the performance of his or her job.
16 The State Superintendent shall also have the authority to
17 limit certificates, issue letters of admonishment, or enter
18 into consent agreements requiring specific training in order
19 for a teacher to maintain a certificate. The State
20 Superintendent may designate the West Virginia
21 commission for professional teaching standards or members
22 thereof to conduct hearings on revocations or certificate
23 denials and make recommendations for action by the State
24 Superintendent. The State Superintendent may issue
25 subpoenas and subpoenas duces tecum to obtain testimony
26 and documents to aid in the investigation of allegations
27 against any person subject to licensure by the State
28 Superintendent.

29 (b) A teacher, as defined by West Virginia Code §18-
30 1-1(g), convicted under §61-8D-3 or §61-8D-5 of this code
31 or comparable statute in any other state, any criminal
32 offense that requires the teacher to register as a sex offender,
33 or any criminal offense which has as an element delivery or
34 distribution of a controlled substance, or pleads guilty to or
35 is convicted under the provisions of §61-2-1 of this code or
36 has been so convicted under any law of the United States or
37 any other state for an offense which has the same elements
38 as those offenses described in §61-2-1, shall have his or her
39 certificate or license automatically revoked. Should the
40 conviction resulting in automatic revocation pursuant to this
41 section be overturned by any Court of this State or the
42 United States, the teacher's certification shall be reinstated
43 unless otherwise prohibited by law.

44 (c) A teacher, as defined by §18-1-1(g) of this code, and
45 including any individual holding a license granted pursuant
46 to §18A-3-2a of this code, shall maintain a professional
47 relationship with all students at all times, both in and out of
48 the classroom. Following a hearing as provided in
49 subsection (a) of this section, any teacher found to have
50 committed any act of sexual abuse of a student or minor or
51 to have engaged in inappropriate sexual conduct with a

52 student or minor; committed an act of cruelty to children or
53 an act of child endangerment or solicited, encouraged,
54 engaged in or consummated an inappropriate relationship
55 with any student, minor, or individual; exploited a student
56 by engaging in any of the aforementioned illegal or
57 inappropriate conduct which then escalated into a
58 relationship with the exploited student within 12 months of
59 that student's graduation; or engaged in grooming a student
60 or minor shall have his or her license revoked for a period
61 of time not less than five years. For the purposes of this
62 subsection, "grooming a student or minor" means
63 befriending and establishing an emotional connection with
64 a student or minor, which may include the family of the
65 student or minor, to lower the student's or minor's
66 inhibitions with the objective of committing sexual abuse,
67 child trafficking, child prostitution, the production of child
68 pornography, or any other offense for which a license shall
69 be revoked under this subsection.

70 (d) Any county superintendent, public school principal,
71 or public charter school administrator who knows of any
72 acts on the part of any teacher for which a certificate may
73 be revoked or for which other action may be taken in
74 accordance with this section shall report this, together with
75 all the facts and evidence, to the State Superintendent for
76 such action as in the State Superintendent's judgment may
77 be proper.

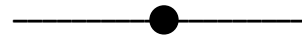
78 (e) If a certificate has been granted through an error,
79 oversight, or misinformation, the State Superintendent may
80 recall the certificate and make such corrections as will
81 conform to the requirements of law and the state board.

82 (f) The state superintendent shall maintain a public
83 database of individuals who have had adverse action taken
84 against their teaching certificate by the state superintendent.
85 Individuals whose certificate has been revoked by the state
86 superintendent are not eligible to be employed by a county
87 board unless the individual's certificate is subsequently
88 reinstated by the state superintendent.

89 (g) This section applies to all public school teachers
90 whether employed by a county board or the governing board
91 of a public charter school.

92 (h) The state superintendent shall periodically ensure
93 that county boards are acting in compliance with this
94 section.

95 (i) The state board may propose legislative rules
96 pursuant to §29A-3B-1 *et seq.* of this code that are necessary
97 to implement the provisions of this section.



CHAPTER 318

**(Com. Sub. for H. B. 4546 - By Delegates Atkinson,
Bartlett, Cooper, Dean, Ellington, Evans, J. Kelly,
Lavender-Bowe, Westfall and Higginbotham)**

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §18-4-2 of the Code of West Virginia, 1931, as amended, relating to tuberculosis testing for school superintendents; removing requirement for biennial screenings; and adding permissive screenings based upon suspicion of exposure.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

1 (a) A county superintendent shall hold a professional
2 administrative certificate endorsed for superintendent, or a

3 first class permit endorsed for superintendent, subject to the
4 following:

5 (1) A superintendent who holds a first class permit may
6 be appointed for one year only, and may be reappointed two
7 times for an additional year each upon an annual evaluation
8 by the county board and a determination of satisfactory
9 performance and reasonable progress toward completion of
10 the requirements for a professional administrative
11 certificate endorsed for superintendent;

12 (2) Any candidate for superintendent, assistant
13 superintendent or associate superintendent, who possesses
14 an earned doctorate from an accredited institution of higher
15 education and either has completed three successful years
16 of teaching in public education or has the equivalent of three
17 years of experience in management or supervision as
18 defined by state board rule, after employment by the county
19 board shall be granted a permanent administrative
20 certificate and shall be a licensed county superintendent;

21 (3) The state board shall promulgate a legislative rule in
22 accordance with §29A-3B-1 *et seq.* of this code, to address
23 those cases where a county board finds that course work
24 needed by the county superintendent who holds a first class
25 permit is not available or is not scheduled at state
26 institutions of higher education in a manner which will
27 enable the county superintendent to complete normal
28 requirements for a professional administrative certificate
29 within the three-year period allowed under the permit; and

30 (4) Any person employed as assistant superintendent or
31 educational administrator prior to June 27, 1988, and who
32 was previously employed as superintendent is not required
33 to hold the professional administrative certificate endorsed
34 for superintendent.

35 (b) In addition to other requirements set forth in this
36 section, a county superintendent shall meet the following
37 health-related conditions of employment:

38 (1) Before entering upon the discharge of his or her
39 duties, file with the president of the county board a
40 certificate from a licensed physician certifying the
41 following:

42 (A) A tuberculin skin test, of the type Mantoux test
43 (PPD skin test), approved by the Commissioner of the
44 Bureau for Public Health has been made within four months
45 prior to the beginning of the term of the county
46 superintendent; and

47 (B) The county superintendent does not have
48 tuberculosis in a communicable state based upon the test
49 results and any further study;

50 (2) The commissioner may require selective testing of
51 superintendents for tuberculosis when there is reason to
52 believe that they may have been exposed to the tuberculosis
53 organism or they have signs and symptoms indicative of the
54 disease. The county superintendent should contact the local
55 health department in instances where they have reason to
56 suspect that they have been exposed to tuberculosis or have
57 symptoms indicative of the disease. Positive reactors to the
58 skin test are to be referred immediately to licensed health
59 care practitioner for evaluation and indicated treatment or
60 further studies;

61 (3) A county superintendent who is certified by a
62 licensed health care practitioner to have tuberculosis in a
63 communicable stage shall have his or her employment
64 discontinued or suspended until the disease has been
65 arrested and is no longer communicable; and

66 (4) A county superintendent who fails to complete
67 required follow-up examinations as set forth in this
68 subsection shall be suspended from employment until a
69 report of examination is confirmed.

●

CHAPTER 319

**(H. B. 4691 - By Delegates Ellington, Dean, Espinosa,
Cooper, Hanna, Atkinson, Evans, Hornbuckle and
Campbell)**

[Passed March 4, 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 §18A-2-2b; and to amend and reenact §18A-2-3 of said code all relating to employment in areas of critical need; re-codifying provisions related to employment of prospective employable professional personnel as prospective teachers and other professional personnel in a separate code section; requiring county board approval; clarifying placement in next ensuing school year; deleting prospective employable professional personnel provisions; adding intent; removing reference to job fairs; restating authorization to employ prospective teachers on condition that certification is issued prior to beginning duties; requiring at least one job posting prior to placement; clarifying that placement is into school-specific critical need position; and extending date upon which provisions related to employment of retired teachers as critical need substitutes will expire.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2b. Employment of prospective teachers and other professional personnel for next ensuing school year; and payment of financial incentive for recruitment.

1 (a) Notwithstanding any other provision of this code to
2 the contrary, the county superintendent, subject to approval
3 of the county board, may employ prospective teachers and
4 other professional personnel each year who will be placed
5 in positions and begin regular employment in the next
6 ensuing school year. The intent of this section is to enable
7 school systems to recruit and employ prospective teachers
8 and other professional personnel during the prime recruiting
9 season for new graduates in positions in which the county
10 board has a critical need. The employment of prospective
11 teachers and other professional personnel is subject to the
12 following:

13 (1) The county board adopts a policy authorizing the
14 employment of prospective teachers and other professional
15 personnel to address areas of critical need;

16 (2) The county board posts a notice of the critical need
17 positions in the county in which the county intends to
18 employ the prospective teachers and other professional
19 personnel. The notice is posted in a conspicuous place in
20 each school or on the county board website for at least ten
21 working days prior to making offers of employment to
22 prospective teachers and other professional personnel;

23 (3) No qualified applicants currently employed by the
24 county are available and willing to fill the critical need
25 position in the next ensuing school year;

26 (4) The prospective teachers and other professional
27 personnel may only be employed from candidates who will
28 graduate or have graduated from an institution of higher
29 education during the current school year and will commence
30 employment in the next ensuing school year;

31 (5) When necessary to facilitate the employment of
32 prospective teachers and other professional personnel who
33 have not yet attained certification, the contract may be
34 signed upon the condition that the certificate is issued to the

35 employee prior to the beginning of the employment term in
36 which the employee enters upon his or her duties;

37 (6) The number of prospective teachers and other
38 professional personnel employed is limited to the number
39 required to fill the critical need positions posted in
40 accordance with subdivision (2) of this subsection;

41 (7) For the purpose of recruiting teachers and other
42 professional personnel in critical needs areas and to attract
43 teachers and other professional personnel in a critical need
44 areas, the county board may from local funds pay
45 prospective teachers and other professional personnel a one-
46 time financial incentive such as, but not limited to, a signing
47 bonus or moving expenses, after a contract of employment
48 has been signed;

49 (8) The prospective teachers and other professional
50 personnel are initially employed on a reserve list at the
51 county level and placed into a school-specific critical need
52 position if the job has been posted at least once resulting in
53 no qualified applicants; and

54 (9) Regular employment status for prospective teachers
55 and other professional personnel may be obtained only upon
56 recommendation by the superintendent and approval by the
57 county board following consideration of the qualifications
58 of the candidate in accordance with the applicable
59 provisions of § 18A-4-7a of this code;

60 (b) Nothing in this section prevents a county board from
61 filling a posted vacancy in an established, existing or newly
62 created position at any time in accordance with the other
63 provisions of this chapter.

**§18A-2-3. Employment of substitute teachers; and
employment of retired teachers as substitutes in areas of
critical need and shortage.**

1 (a) The county superintendent, subject to approval of the
2 county board, may employ and assign substitute teachers to
3 any of the following duties:

4 (1) Fill the temporary absence of any teacher or an
5 unexpired school term made vacant by resignation, death,
6 suspension or dismissal;

7 (2) Fill a teaching position of a regular teacher on leave
8 of absence; and

9 (3) Perform the instructional services of any teacher
10 who is authorized by law to be absent from class without
11 loss of pay, providing the absence is approved by the board
12 of education in accordance with the law.

13 The substitute shall be a duly certified teacher.

14 (b) Notwithstanding any other provision of this code to
15 the contrary, a substitute teacher who has been assigned as
16 a classroom teacher in the same classroom continuously for
17 more than one half of a grading period and whose
18 assignment remains in effect two weeks prior to the end of
19 the grading period, shall remain in the assignment until the
20 grading period has ended, unless the principal of the school
21 certifies that the regularly employed teacher has
22 communicated with and assisted the substitute with the
23 preparation of lesson plans and monitoring student progress
24 or has been approved to return to work by his or her
25 physician. For the purposes of this section, teacher and
26 substitute teacher, in the singular or plural, mean
27 professional educator as defined in section one, article one
28 of this chapter.

29 (c) (1) The Legislature hereby finds and declares that
30 due to a shortage of qualified substitute teachers, a
31 compelling state interest exists in expanding the use of
32 retired teachers to provide service as substitute teachers in
33 areas of critical need and shortage. The Legislature further
34 finds that diverse circumstances exist among the counties
35 for the expanded use of retired teachers as substitutes.

36 (2) For the purposes of this subsection:

37 (A) “Area of critical need and shortage for substitute
38 teachers” means an area of certification and training in
39 which the number of available substitute teachers in the
40 county who hold certification and training in that area and
41 who are not retired is insufficient to meet the projected need
42 for substitute teachers; and

43 (B) “Teacher or substitute teacher” includes speech
44 pathologists, school nurses and school counselors.

45 (3) A person receiving retirement benefits under article
46 seven-a, chapter eighteen of this code or who is entitled to
47 retirement benefits during the fiscal year in which that
48 person retired may accept employment as a critical needs
49 substitute teacher for an unlimited number of days each
50 fiscal year without affecting the monthly retirement benefit
51 to which the retirant is otherwise entitled if the following
52 conditions are satisfied:

53 (A) The county board adopts a policy recommended by
54 the superintendent to address areas of critical need and
55 shortage for substitute teachers;

56 (B) The policy sets forth the areas of critical need and
57 shortage for substitute teachers in the county in accordance
58 with the definition of area of critical need and shortage for
59 substitute teachers set forth in subdivision (2) of this
60 subsection;

61 (C) The policy provides for the employment of retired
62 teachers as critical needs substitute teachers during the
63 school year on an expanded basis in areas of critical need
64 and shortage for substitute teachers as provided in this
65 subsection;

66 (D) The policy provides that a retired teacher may be
67 employed as a substitute teacher in an area of critical need
68 and shortage for substitute teachers on an expanded basis as
69 provided in this subsection only when no other teacher who

70 holds certification and training in the area and who is not
71 retired is available and accepts the substitute assignment;

72 (E) The policy is effective for one school year only and
73 is subject to annual renewal by the county board;

74 (F) The state board approves the policy and the use of
75 retired teachers as substitute teachers on an expanded basis
76 in areas of critical need and shortage for substitute teachers
77 as provided in this subsection; and

78 (G) Prior to employment of a retired teacher as a critical
79 needs substitute teacher beyond the post-retirement
80 employment limitations established by the Consolidated
81 Public Retirement Board, the superintendent of the affected
82 county submits to the state board in a form approved by the
83 Consolidated Public Retirement Board and the state board,
84 an affidavit signed by the superintendent stating the name
85 of the county, the fact that the county has adopted a policy
86 to employ retired teachers as substitutes to address areas of
87 critical need and shortage, the name or names of the person
88 or persons to be employed as a critical needs substitute
89 pursuant to the policy, the critical need and shortage area
90 position filled by each person, the date that the person gave
91 notice to the county board of the person's intent to retire,
92 and the effective date of the person's retirement. Upon
93 verification of compliance with this section and the
94 eligibility of the critical needs substitute teacher for
95 employment beyond the post-retirement limit, the state
96 board shall submit the affidavit to the Consolidated Public
97 Retirement Board.

98 (4) Any person who retires and begins work as a critical
99 needs substitute teacher within the same fiscal year in which
100 that person retired shall lose those retirement benefits
101 attributed to the annuity reserve, effective from the first day
102 of employment as a retiree critical needs substitute teacher
103 in that fiscal year and ending with the month following the
104 date the retiree ceases to perform service as a critical needs
105 substitute teacher.

106 (5) Retired teachers employed to perform expanded
107 substitute service pursuant to this subsection are considered
108 day-to-day, temporary, part-time employees. The
109 substitutes are not eligible for additional pension or other
110 benefits paid to regularly employed employees and may not
111 accrue seniority.

112 (6) A retired teacher is eligible to be employed as a
113 critical needs substitute teacher to fill a vacant position
114 without any loss of retirement benefits attributed to the
115 annuity reserve only if the retired teacher's retirement
116 became effective before the first day of July preceding at
117 least the fiscal year during which he or she is employed as a
118 critical needs substitute teacher.

119 (7) When a retired teacher is employed as a critical
120 needs substitute to fill a vacant position, the county board
121 shall continue to post the vacant position until it is filled
122 with a regularly employed teacher who is fully certified or
123 permitted for the position.

124 (8) When a retired teacher is employed as a critical
125 needs substitute to fill a vacant position, the position
126 vacancy shall be posted electronically and easily accessible
127 to prospective employees as determined by the state board.

128 (9) Until this subsection is expired pursuant to
129 subdivision (10) of this subsection, the state board shall
130 report to the Joint Committee on Government and Finance,
131 prior to February 1 of each year, information indicating the
132 effectiveness of the provisions of this subsection on
133 reducing the critical need and shortage of substitute teachers
134 including, but not limited to, the number of retired teachers,
135 by critical need and shortage area position filled and by
136 county, employed beyond the post-retirement employment
137 limit established by the Consolidated Public Retirement
138 Board, the date that each person gave notice to the county
139 board of the person's intent to retire, and the effective date
140 of the person's retirement. A copy of the report shall also

141 be provided to the Legislative Oversight Commission on
142 Education Accountability.

143 (10) The provisions of this subsection shall expire on
144 June 30, 2025.



CHAPTER 320

**(H. B. 4804 - By Delegates Ellington, Espinosa,
Cowles, Householder, Atkinson, Hardy,
Higginbotham, Bibby and C. Thompson)**

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

AN ACT to amend and reenact §18-9A-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18A-3C-3 of said code, all relating to comprehensive systems of support for teacher and leader induction and professional growth; providing for retention of \$100,000 of school aid funds for comprehensive systems of support, each year for five-year period, for use by department of education to assist county boards in design and implementation of teacher leader framework to accomplish teacher induction and growth aspects of comprehensive system; clarifying intent of comprehensive systems of support includes meaningful assistance for beginning teachers and leaders; authorizing state board guidelines for design and implementation of comprehensive systems to include design and implementation of teacher leader framework; clarifying references to appropriations supporting county-level implementation of comprehensive systems of support; removing prohibition on specific level of compensation guarantee to employee service or employment as mentor; authorizing county board adoption of teacher leader framework to accomplish purposes of section for teacher induction and professional growth and

apply appropriations to support county salary supplement if adopted and meeting qualifications specified for teacher duties; requiring department to assist county boards with design and implementation of teacher leader framework; stating goals of framework; authorizing formation of networks of schools or systems or both for design and implementation of frameworks with certain objectives; providing minimum components of teacher leader frameworks adopted by county boards; and requiring Legislative Oversight Commission on Education Accountability to review the progress of the implementation of the comprehensive systems of support for teacher and leader induction and professional growth.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs, instructional technology, and teacher and leader induction and professional growth.

1 (a) The total allowance to improve instructional
2 programs and instructional technology is the sum of the
3 following:

4 (1) For instructional improvement, in accordance with
5 county and school electronic strategic improvement plans
6 required by §18-2E-5 of this code, an amount equal to 10
7 percent of the increase in the local share amount for the next
8 school year shall be added to the amount of the
9 appropriation for this purpose for the immediately
10 preceding school year. The sum of these amounts shall be
11 allocated to the counties as follows:

12 (A) One hundred fifty thousand dollars shall be
13 allocated to each county; and

14 (B) Allocation to the counties of the remainder of these
15 funds shall be made proportional to the average of each
16 county's average daily attendance for the preceding year
17 and the county's second month net enrollment.

18 Moneys allocated by this subdivision shall be used to
19 improve instructional programs according to the county and
20 school strategic improvement plans required by §18-2E-5 of
21 this code and approved by the state board.

22 Up to 50 percent of this allocation for the improvement
23 of instructional programs may be used to employ
24 professional educators and service personnel in the county.
25 Prior to the use of any funds from this subdivision for
26 personnel costs, the county board must receive
27 authorization from the State Superintendent. The State
28 Superintendent shall require the county board to
29 demonstrate: (1) The need for the allocation; (2) efficiency
30 and fiscal responsibility in staffing; (3) sharing of services
31 with adjoining counties in the use of the total local district
32 board budget; and (4) employment of technology
33 integration specialists to meet the needs for implementation
34 of the West Virginia Strategic Technology Learning Plan.
35 County boards shall make application for the use of funds
36 for personnel for the next fiscal year by May 1 of each year.
37 On or before June 1, the State Superintendent shall review
38 all applications and notify applying county boards of the
39 approval or disapproval of the use of funds for personnel
40 during the fiscal year appropriate. The State Superintendent
41 shall require the county board to demonstrate the need for
42 an allocation for personnel based upon the county's inability
43 to meet the requirements of state law or state board policy.

44 The funds available for personnel under this subdivision
45 may not be used to increase the total number of professional
46 noninstructional personnel in the central office beyond four.

47 The plan shall be made available for distribution to the
48 public at the office of each affected county board; plus

49 (2) For the purposes of improving instructional
50 technology, an amount equal to 20 percent of the increase
51 in the local share amount for the next school year shall be
52 added to the amount of the appropriation for this purpose
53 for the immediately preceding school year. The sum of these
54 amounts shall be allocated to the counties as follows:

55 (A) Thirty thousand dollars shall be allocated to each
56 county; and

57 (B) Allocation to the counties of the remainder of these
58 funds shall be made proportional to the average of each
59 county's average daily attendance for the preceding year
60 and the county's second month net enrollment.

61 Moneys allocated by this subdivision shall be used to
62 improve instructional technology programs according to the
63 county board's strategic technology learning plan.

64 This allocation for the improvement of instructional
65 technology programs may also be used for the employment
66 of technology system specialists essential for the technology
67 systems of the schools of the county to be fully functional
68 and readily available when needed by classroom teachers.
69 The amount of this allocation used for the employment of
70 technology system specialists shall be included and justified
71 in the county board's strategic technology learning plan;
72 plus

73 (3) One percent of the state average per pupil state aid
74 multiplied by the number of students enrolled in dual credit,
75 advanced placement, and international baccalaureate
76 courses, as defined by the state board, distributed to the
77 counties proportionate to enrollment in these courses in
78 each county; plus

79 (4) For the purpose of supporting county-level
80 implementation of the comprehensive systems for teacher
81 and leader induction and professional growth pursuant to
82 §18A-3C-3 of this code, an amount equal to 20 percent of

83 the increase in the local share amount for the next school
84 year shall be added to the amount of the appropriation for
85 this purpose for the immediately preceding school year. The
86 sum of these amounts shall be allocated to the counties in a
87 manner established by the state board which takes into
88 account the following factors:

89 (A) The number of full-time-equivalent teachers
90 employed by the county with zero years of experience;

91 (B) The total number of full-time-equivalent teachers
92 employed by the county with one year of experience, with
93 two years of experience, and with three years of experience;

94 (C) The number of full-time-equivalent principals,
95 assistant principals, and vocational administrators
96 employed by the county who are in their first or second year
97 of employment as a principal, assistant principal, or
98 vocational administrator;

99 (D) The number of full-time-equivalent principals,
100 assistant principals, and vocational administrators
101 employed by the county who are in their first year in an
102 assignment at a school with a programmatic level in which
103 they have not previously served as a principal, assistant
104 principal, or vocational administrator; and

105 (E) Needs identified in the strategic plans for continuous
106 improvement of schools and school systems including those
107 identified through the performance evaluations of
108 professional personnel.

109 Notwithstanding any provision of this subsection to the
110 contrary, no county may receive an allocation for the
111 purposes of this subdivision which is less than the county's
112 total 2016-2017 allocation from the Teacher Mentor and
113 Principals Mentorship appropriations to the Department of
114 Education. Moneys allocated by this subdivision shall be
115 used for implementation of the comprehensive systems for
116 teacher and leader induction and professional growth

117 pursuant to §18A-3C-3 of this code. Notwithstanding any
118 provision of this subsection to the contrary, for each of the
119 five school years beginning with the school year 2020 –
120 2021 and ending after the school year 2024 – 2025, from
121 funds to be allocated under this subdivision, \$100,000 shall
122 be retained by the Department of Education to assist county
123 boards with the design and implementation of a teacher
124 leader framework to accomplish the teacher induction and
125 professional growth aspects of their comprehensive systems
126 of support for teacher and leader induction and professional
127 growth pursuant to §18A-3C-3 of this code; plus

128 (5) An amount not less than the amount required to meet
129 debt service requirements on any revenue bonds issued prior
130 to January 1, 1994, and the debt service requirements on any
131 revenue bonds issued for the purpose of refunding revenue
132 bonds issued prior to January 1, 1994, shall be paid by the
133 Department of Education in accordance with the
134 expenditure schedule approved by the state budget office
135 into the School Building Capital Improvements Fund
136 created by §18-9D-6 of this code and shall be used solely
137 for the purposes of that article. The School Building Capital
138 Improvements Fund shall not be utilized to meet the debt
139 services requirement on any revenue bonds or revenue
140 refunding bonds for which moneys contained within the
141 School Building Debt Service Fund have been pledged for
142 repayment pursuant to that section.

143 (b) Notwithstanding the restrictions on the use of funds
144 pursuant to subdivisions (1) and (2), subsection (a) of this
145 section, a county board may:

146 (1) Utilize up to 25 percent of the allocation for the
147 improvement of instructional programs in any school year
148 for school facility and equipment repair, maintenance, and
149 improvement or replacement and other current expense
150 priorities and for emergency purposes. The amount of this
151 allocation used for any of these purposes shall be included
152 and justified in the county and school strategic improvement
153 plans or amendments thereto; and

154 (2) Utilize up to 50 percent of the allocation for
155 improving instructional technology in any school year for
156 school facility and equipment repair, maintenance, and
157 improvement or replacement and other current expense
158 priorities and for emergency purposes. The amount of this
159 allocation used for any of these purposes shall be included
160 and justified in the county board's strategic technology
161 learning plan or amendments thereto.

162 (c) When the school improvement bonds secured by
163 funds from the School Building Capital Improvements Fund
164 mature, the State Board of Education shall annually deposit
165 an amount equal to \$24 million from the funds allocated in
166 this section into the School Construction Fund created
167 pursuant to the provisions of §18-9D-6 of this code to
168 continue funding school facility construction and
169 improvements.

170 (d) Any project funded by the School Building
171 Authority shall be in accordance with a comprehensive
172 educational facility plan which must be approved by the
173 state board and the School Building Authority.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3C. IMPROVING TEACHING AND LEARNING.

§18A-3C-3. Comprehensive system for teacher and leader induction and professional growth.

1 (a) The intent of the Legislature is to allow for local-
2 level implementation of comprehensive systems of support
3 for building professional practice consistent with sound
4 educational practices and resources available. In this regard,
5 it is the intent of the Legislature that the comprehensive
6 systems of support shall incorporate support for improved
7 professional performance that begins with meaningful
8 assistance for beginning teachers and leaders and also is
9 targeted on deficiencies identified through the educator
10 personnel evaluation process and other professional

11 development needs identified in the strategic plans for
12 continuous improvement of schools and school systems.
13 Further, because of significant variability among the
14 counties, not only in the size of their teaching force,
15 distribution of facilities and available resources, but also
16 because of their varying needs, the Legislature intends for
17 the implementation of this section to be accomplished in a
18 manner that provides adequate flexibility to the counties to
19 design and implement a comprehensive system of support
20 for improving professional performance that best achieves
21 the goals of this section within the county. Finally, because
22 of the critical importance of ensuring that all teachers
23 perform at the accomplished level or higher in the delivery
24 of instruction that at least meets the West Virginia
25 Professional Teaching Standards and because achieving this
26 objective at a minimum entails providing assistance to
27 address the needs as indicated by the data informed results
28 of annual performance evaluations, including the self-
29 assessed needs of the teachers themselves, the Legislature
30 expects the highest priority for county and state professional
31 development will be on meeting these needs and that the
32 comprehensive systems of support for improving
33 professional practice will reflect substantial redirection of
34 existing professional development resources toward this
35 highest priority.

36 (b) On or before July 1, 2018, the state board shall
37 publish guidelines on the design and implementation of a
38 county-level comprehensive system of support for
39 improving professional practice. The purpose of the
40 guidelines is to assist the county board with the design and
41 implementation of a system that best achieves the goals of
42 this section within the county. The guidelines may include
43 examples of best practices and resources available to county
44 boards to assist them with the design and implementation of
45 a comprehensive system of support and may include
46 guidelines for the design and implementation of a teacher
47 leader framework committed to improving the quality of
48 instruction.

49 (c) Effective for the school year beginning July 1, 2018,
50 and thereafter, a county board is not eligible to receive state
51 funding appropriated for the purposes of this section or any
52 other provision of law related to beginning teacher and
53 principal internships and mentor teachers and principals
54 unless it has adopted a plan for implementation of a
55 comprehensive system of support for improving
56 professional practice, the plan has been verified by the state
57 board as meeting the requirements of this section and the
58 county is implementing the plan. The plan shall address the
59 following:

60 (1) The manner in which the county will provide the
61 strong school-based support and supervision that will assist
62 beginning teachers in developing instructional and
63 management strategies, procedural and policy expertise,
64 and other professional practices they need to be successful
65 in the classroom and perform at the accomplished level.
66 Nothing in this subdivision prohibits a school or school
67 system that was granted an exception or waiver from §18A-
68 3-2c of this code prior to the effective date of this section
69 from continuing implementation of the program in
70 accordance with the exception or waiver;

71 (2) The manner in which the county will provide the
72 strong support and supervision that will assist beginning
73 principals in developing instructional leadership,
74 supervisory, and management strategies, procedural and
75 policy expertise, and other professional practices they need
76 to be successful in leading continuous school improvement
77 and performing at the accomplished level or above;

78 (3) The manner in which the county in cooperation with
79 the teacher preparation programs in this state will provide
80 strong school-based support and assistance necessary to
81 make student teaching a productive learning experience;

82 (4) The manner in which the county will use the data
83 from the educator performance evaluation system to serve
84 as the basis for providing professional development

85 specifically targeted on the area or areas identified through
86 the evaluation process as needing improvement. If possible,
87 this targeted professional development should be delivered
88 at the school site using collaborative processes, mentoring
89 or coaching or other approaches that maximize use of the
90 instructional setting;

91 (5) The manner in which the county will use the data
92 from the educator performance evaluation system to serve
93 as the basis for establishing priorities for the provision of
94 county-level professional development when aggregate
95 evaluation data from the county's schools indicates an area
96 or areas of needed improvement;

97 (6) If a county uses master teachers, mentors, academic
98 coaches, or any other approaches using individual
99 employees to provide support, supervision, or other
100 professional development or training to other employees for
101 the purpose of improving their professional practice, the
102 manner in which the county will select each of these
103 individual employees based upon demonstrated superior
104 performance and competence as well as the manner in
105 which the county will coordinate support for these
106 employees. If the duties of the position are to provide
107 mentoring to an individual teacher at only one school, then
108 priority shall be given to applicants employed at the school
109 at which those duties will be performed;

110 (7) The manner in which the county will use local
111 resources available, including, but not limited to, funds for
112 professional development and academic coaches, to focus
113 on the priority professional development goals of this
114 section;

115 (8) The manner in which the county will adjust its
116 scheduling, use of substitutes, collaborative planning time,
117 calendar, or other measures as may be necessary to provide
118 sufficient time for professional personnel to accomplish the
119 goals of this section as set forth in the county's plan; and

120 (9) The manner in which the county will monitor and
121 evaluate the effectiveness of implementation and outcomes
122 of the county system of support for improving professional
123 practice.

124 (d) Effective the school year beginning July 1, 2020, and
125 thereafter, appropriations for supporting county level
126 implementation of the comprehensive systems of support
127 for teacher and leader induction and professional growth
128 pursuant to §18-9A-10 of this code and any new
129 appropriation which may be made for the purposes of this
130 section shall be expended by county boards only to
131 accomplish the activities as set forth in their county plan
132 pursuant to this section. Effective the school year beginning
133 July 1, 2020, and thereafter, any employee service or
134 employment as a mentor is not subject to the provisions of
135 this code governing extra duty contracts. A county board
136 may adopt a teacher leader framework designed to
137 accomplish the purposes of this section related to teacher
138 induction and professional growth and, if the county board
139 adopts a county salary supplement pursuant to §18A-4-5a
140 of this code to provide additional compensation to teachers
141 who, in addition to teaching duties, are assigned other duties
142 for new teacher induction, improving professional practice
143 and furthering professional growth among teachers as set
144 forth in the county's comprehensive system of support, then
145 appropriations made for supporting the purposes of this
146 section may be applied to that salary supplement and other
147 associated costs which may include a reduction in the
148 teaching load of the teacher leader.

149 (e) The Department of Education shall assist county
150 boards with the design and implementation of a teacher
151 leader framework to accomplish the teacher induction and
152 professional growth aspects of their comprehensive systems
153 of support pursuant to this section. The goals of a teacher
154 leader framework are to achieve:

155 (1) Increased student achievement and growth through
156 the development of a shared leadership structure at the
157 school level;

158 (2) Broader dissemination and use of effective teacher
159 strategies through an increase in teacher collaboration; and

160 (3) Stronger and more positive school and district
161 culture through the development and retention of highly
162 effective teachers.

163 (f) The Department of Education may form networks
164 among schools or school systems, or both, of comparable
165 size and interests for the design and implementation of
166 teacher leader frameworks that are:

167 (A) Driven by varying district and school needs;

168 (B) Related to existing state and district initiatives;

169 (C) Designed to improve student achievement and
170 growth; and

171 (D) Designed to fit district size, current culture for
172 collaboration, and funding capacity.

173 (g) A teacher leader framework adopted by a county
174 board must:

175 (1) Create specific roles and responsibilities, eligibility
176 requirements, and compensation plans for each teacher
177 leader position, and clearly communicate these to teacher
178 leaders, administrators, and other stakeholders;

179 (2) Provide regular, targeted professional learning
180 opportunities for teacher leaders, and encourage redelivery
181 within their respective schools;

182 (3) Provide time and opportunities for teacher leaders to
183 collaborate with administrators, curriculum staff, other
184 teacher leaders, and teachers;

185 (4) Monitor and evaluate the effectiveness of the teacher
186 leader program through surveys from school administrators
187 and school faculty; and

188 (5) Include teacher leaders in the school improvement
189 planning process.

190 (h) The Legislative Oversight Commission on
191 Education Accountability shall review the progress of the
192 implementation of the comprehensive systems of support
193 for teacher and leader induction and professional growth
194 and may make any recommendations it considers necessary
195 to the Legislature during the next regular legislative session.



CHAPTER 321

**(Com. Sub. for H. B. 4377 - By Delegates Westfall,
Nelson, Queen, Criss, Storch, Rohrbach, Hott, D.
Jeffries, Atkinson and Toney)**

[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 §32-6-601, §32-6-602, §32-6-603, §32-6-604, §32-6-605, §32-6-606, §32-6-607, §32-6-608, §32-6-609, and §32-6-610, all relating to the creation of The Protection of Eligible Adults From Financial Exploitation Act; defining terms; establishing the obligations and duties of broker-dealers and investment advisors to notify certain agencies of potential financial exploitation; establishing the rights of broker-dealers and investment advisors to notify certain associated individuals regarding potential financial exploitation; permitting broker-dealers and investment advisors to delay a transaction or disbursement when financial exploitation is suspected; requiring the

retention of records; and providing limited immunity from administrative and civil liability.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6. THE PROTECTION OF ELIGIBLE ADULTS
FROM FINANCIAL EXPLOITATION.**

§32-6-601. Short title.

1 This article may be cited as “The Protection of Eligible
2 Adults from Financial Exploitation Act”.

§32-6-602. Definitions.

1 In this article, unless the context otherwise requires:

2 (1) “Agencies” means adult protective services and the
3 Securities Commission, a Division of the State Auditor’s
4 office.

5 (2) “Eligible adult” means a person 65 years of age or
6 older or a person subject to §9-6-1 *et seq.* of this code.

7 (3) “Financial exploitation” means:

8 (A) The wrongful or unauthorized taking, withholding,
9 appropriation, or use of securities, money, assets, or
10 property of an eligible adult; or

11 (B) Any act or omission taken by a person, including
12 using a power of attorney, guardianship, or conservatorship
13 of an eligible adult to:

14 (i) Obtain control, through deception, intimidation, or
15 undue influence over the eligible adult’s money, assets, or
16 property to deprive the eligible adult of the ownership, use,
17 benefit, or possession of his or her money, assets, or
18 property; or

19 (ii) Convert money, assets, or property of the eligible
20 adult to deprive the eligible adult of the ownership, use,

21 benefit, or possession of his or her money, assets, or
22 property.

§32-6-603. Governmental Disclosures.

1 If a broker-dealer or investment adviser reasonably
2 believes that financial exploitation of an eligible adult may
3 have occurred, may have been attempted, or is being
4 attempted, the broker-dealer or investment adviser shall
5 promptly notify the agencies.

§32-6-604. Immunity for Governmental Disclosures.

1 A broker-dealer or investment adviser that, in good faith
2 and exercising reasonable care, makes a disclosure of
3 information pursuant to section 603 of this article is immune
4 from administrative or civil liability that might otherwise
5 arise from the disclosure or for any failure to notify the
6 customer of the disclosure.

§32-6-605. Third-Party Disclosures.

1 If a broker-dealer or investment adviser reasonably
2 believes that financial exploitation of an eligible adult may
3 have occurred, may have been attempted, or is being
4 attempted, the broker-dealer or investment adviser may
5 notify any reasonably associated individuals. Disclosure
6 may not be made to any third party that is suspected of
7 financial exploitation or other abuse of the eligible adult.

§32-6-606. Immunity for Third-Party Disclosures.

1 A broker-dealer or investment adviser that, in good faith
2 and exercising reasonable care, complies with §32-6-605 of
3 this code is immune from any administrative or civil
4 liability that might arise from the disclosure.

§32-6-607. Delaying Transactions or Disbursements.

1 (a) A broker-dealer or investment adviser may delay a
2 transaction or disbursement from an account of an eligible

3 adult or an account on which an eligible adult is a
4 beneficiary if:

5 (1) The broker-dealer or investment adviser reasonably
6 believes, after initiating an internal review of the requested
7 transaction or disbursement and the suspected financial
8 exploitation, that the requested transaction or disbursement
9 may result in financial exploitation of an eligible adult; and

10 (2) The broker-dealer or investment adviser:

11 (i) Immediately, but in no event more than two business
12 days after the broker-dealer or investment adviser first
13 delayed the transaction or disbursement, provides written
14 notification of the delay and the reason for the delay to all
15 parties authorized to transact business on the account, unless
16 any party is reasonably believed to have engaged in
17 suspected or attempted financial exploitation of the eligible
18 adult;

19 (ii) Immediately, but in no event more than two business
20 days after the date on which the transaction or disbursement
21 was first delayed, notifies the agencies; and

22 (iii) Continues its internal review of the suspected or
23 attempted financial exploitation of the eligible adult as
24 necessary and reports the investigation's results to the
25 agencies on a reasonable and periodic basis, up to and
26 including the resolution of the investigation.

27 (b) Any delay of a transaction or disbursement as
28 authorized by this section expires upon the sooner of:

29 (1) A determination by the broker-dealer or investment
30 adviser that the disbursement will not result in financial
31 exploitation of the eligible adult; or

32 (2) Fifteen business days after the date on which the
33 broker-dealer or investment adviser first delayed the
34 transaction or disbursement of the funds, unless either of the
35 agencies requests that the broker-dealer or investment

36 adviser extend the delay, in which case the delay expires
37 when requested by an order of a court of competent
38 jurisdiction.

§32-6-608. Immunity for Delaying Transactions or Disbursements.

1 A broker-dealer or investment adviser that, in good faith
2 and exercising reasonable care, complies with §32-6-607 of
3 this code is immune from any administrative or civil
4 liability that might otherwise arise from the delay in a
5 transaction or disbursement.

§32-6-609. Records.

1 A broker-dealer or investment adviser shall provide
2 access to or copies of records that are relevant to the
3 suspected or attempted financial exploitation of an eligible
4 adult to agencies charged with administering state adult
5 protective services laws and to law enforcement, either as
6 part of a referral to the agency or to law enforcement, or
7 upon request of the agency or law enforcement pursuant to
8 an investigation. The records may include historical records
9 as well as records relating to the most recent transaction or
10 transactions that may comprise financial exploitation of an
11 eligible adult. All records made available to agencies under
12 this section shall not be considered a public record as
13 defined in §29B-1-1 *et seq.* of this code. Nothing in this
14 provision may limit or otherwise impede the authority of the
15 Securities Commission to access or examine the books and
16 records of broker-dealers and investment advisers as
17 otherwise provided by law.

§32-6-610. Immunity for Complying with Records Requests.

1 A broker-dealer or investment adviser that, in good faith
2 and exercising reasonable care, complies with §32-6-609 of
3 this code is immune from any administrative or civil
4 liability that might otherwise arise from such disclosure.

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CHAPTER 322

**(S. B. 300 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed February 14, 2020; in effect from passage.]
[Approved by the Governor on March 2, 2020.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal taxable income and certain other terms used in the West Virginia Corporation Net Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to federal income taxes, unless a different
4 meaning is clearly required by the context or by definition in
5 this article. Any reference in this article to the laws of the
6 United States means the provisions of the Internal Revenue
7 Code of 1986, as amended, and any other provisions of the
8 laws of the United States that relate to the determination of
9 income for federal income tax purposes. All amendments
10 made to the laws of the United States after December 31, 2018,
11 but prior to January 1, 2020, shall be given effect in
12 determining the taxes imposed by this article to the same extent
13 those changes are allowed for federal income tax purposes,
14 whether the changes are retroactive or prospective, but no
15 amendment to the laws of the United States made on or after
16 January 1, 2020, shall be given any effect.

17 (b) The term “Internal Revenue Code of 1986” means
18 the Internal Revenue Code of the United States enacted by
19 the federal Tax Reform Act of 1986 and includes the
20 provisions of law formerly known as the Internal Revenue
21 Code of 1954, as amended, and in effect when the federal
22 Tax Reform Act of 1986 was enacted that were not amended
23 or repealed by the federal Tax Reform Act of 1986. Except
24 when inappropriate, any reference in any law, executive
25 order, or other document:

26 (1) To the Internal Revenue Code of 1954 includes a
27 reference to the Internal Revenue Code of 1986; and

28 (2) To the Internal Revenue Code of 1986 includes a
29 reference to the provisions of law formerly known as the
30 Internal Revenue Code of 1954.

31 (c) Effective date. — The amendments to this section
32 enacted in the year 2020 are retroactive to the extent
33 allowable under federal income tax law. With respect to
34 taxable years that began prior to January 1, 2020, the law in
35 effect for each of those years shall be fully preserved as to
36 that year, except as provided in this section.

CHAPTER 323

(S. B. 307 - By Senator Maynard)

[Passed February 29, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §11A-3-23 of the Code of West Virginia, 1931, as amended, relating to correcting a citation to code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED, AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

1 (a) After the sale of any tax lien on any real estate
2 pursuant to §11A-3-5 of this code, the owner of, or any other
3 person who was entitled to pay the taxes on, any real estate
4 for which a tax lien on the real estate was purchased by an
5 individual may redeem at any time before a tax deed is
6 issued for the real estate. In order to redeem, he or she shall
7 pay to the State Auditor the following amounts:

8 (1) An amount equal to the taxes, interest and charges
9 due on the date of the sale, with interest at the rate of one
10 percent per month from the date of sale;

11 (2) All other taxes which have since been paid by the
12 purchaser, his or her heirs or assigns, with interest at the rate
13 of one percent per month from the date of payment;

14 (3) Any additional expenses incurred from January 1 of
15 the year following the sheriff's sale to the date of
16 redemption for the preparation of the list of those to be
17 served with notice to redeem and any written documentation
18 used for the preparation of the list, with interest at the rate
19 of one percent per month from the date of payment for
20 reasonable legal expenses incurred for the services of an
21 attorney who has performed an examination of the title to
22 the real estate and rendered written documentation used for
23 the preparation of the list: The maximum amount the owner
24 or other authorized person shall pay, excluding the interest,
25 for the expenses incurred for the preparation of the list of
26 those to be served required by §11A-3-19 of this code is
27 \$500. An attorney may only charge a fee for legal services
28 actually performed and must certify that he or she conducted

29 an examination to determine the list of those to be served
30 required by §11A-3-19 of this code; and

31 (4) All additional statutory costs paid by the purchaser.

32 (b) Where the State Auditor has not received from the
33 purchaser satisfactory proof of the expenses incurred in
34 preparing the notice to redeem, and any written
35 documentation used for the preparation of the list of those
36 to be served with notice to redeem, including the
37 certification required in subdivision (3), subsection (a) of
38 this section, incident thereto, in the form of receipts or other
39 evidence of legal expenses, incurred as provided in §11A-
40 3-19 of this code, the person redeeming shall pay the State
41 Auditor the sum of \$500 plus interest at the rate of one
42 percent per month from January 1 of the year following the
43 sheriff's sale for disposition by the sheriff pursuant to the
44 provisions of §11A-3-10, §11A-3-24, §11A-3-25, and
45 §11A-3-32 of this code.

46 (c) The person redeeming shall be given a receipt for the
47 payment and the written opinion or report used for the
48 preparation of the list of those to be served with notice to
49 redeem required by §11A-3-19 of this code.

50 (d) Any person who, by reason of the fact that no
51 provision is made for partial redemption of the tax lien on
52 real estate purchased by an individual, is compelled in order
53 to protect himself or herself to redeem the tax lien on all of
54 the real estate when it belongs, in whole or in part, to some
55 other person, shall have a lien on the interest of that other
56 person for the amount paid to redeem the interest. He or she
57 shall lose his or her right to the lien, however, unless within
58 30 days after payment he or she files with the clerk of the
59 county commission his or her claim in writing against the
60 owner of the interest, together with the receipt provided in
61 this section. The clerk shall docket the claim on the
62 judgment lien docket in his or her office and properly index
63 the claim. The lien may be enforced as other judgment liens
64 are enforced.

65 (e) Before a tax deed is issued, the county clerk may
66 accept, on behalf of the State Auditor, the payment
67 necessary to redeem any real estate encumbered with a tax
68 lien and write a receipt. The amount of the payment
69 necessary to redeem any real estate encumbered with a tax
70 lien shall be provided by the State Auditor and the State
71 Auditor shall update the required payments plus interest at
72 least monthly.

73 (f) On or before the 10th day of each month, the county
74 clerk shall deliver to the State Auditor the redemption
75 money paid and the name and address of the person who
76 redeemed the property on a form prescribed by the State
77 Auditor.



CHAPTER 324

**(S. B. 310 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed February 17, 2020; in effect from passage]
[Approved by the Governor on March 2, 2020.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. WEST VIRGINIA PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 (a) Any term used in this article has the same meaning
2 as when used in a comparable context in the laws of the
3 United States relating to income taxes, unless a different
4 meaning is clearly required. Any reference in this article to
5 the laws of the United States means the provisions of the
6 Internal Revenue Code of 1986, as amended, and any other
7 provisions of the laws of the United States that relate to the
8 determination of income for federal income tax purposes.
9 All amendments made to the laws of the United States after
10 December 31, 2018, but prior to January 1, 2020, shall be
11 given effect in determining the taxes imposed by this article
12 to the same extent those changes are allowed for federal
13 income tax purposes, whether the changes are retroactive or
14 prospective, but no amendment to the laws of the United
15 States made on or after January 1, 2020, may be given any
16 effect.

17 (b) *Medical savings accounts.* — The term “taxable
18 trust” does not include a medical savings account
19 established pursuant to §33-15-20 or §33-16-15 of this code.
20 Employer contributions to a medical savings account
21 established pursuant to those sections are not wages for
22 purposes of withholding under §11-21-71 of this code.

23 (c) *Surtax.* — The term “surtax” means the 20 percent
24 additional tax imposed on taxable withdrawals from a
25 medical savings account under §33-15-20 of this code and
26 the 20 percent additional tax imposed on taxable
27 withdrawals from a medical savings account under §33-16-
28 15 of this code which are collected by the Tax
29 Commissioner as tax collected under this article.

30 (d) *Effective date.* — The amendments to this section
31 enacted in the year 2020 are retroactive to the extent
32 allowable under federal income tax law. With respect to
33 taxable years that began prior to January 1, 2020, the law in
34 effect for each of those years shall be fully preserved as to
35 that year, except as provided in this section.

36 (e) For purposes of the refundable credit allowed to a
37 low income senior citizen for property tax paid on his or her
38 homestead in this state, the term “laws of the United States”
39 as used in subsection (a) of this section means and includes
40 the term “low income” as defined in §11-21-21(b) of this
41 code and as reflected in the poverty guidelines updated
42 periodically in the federal register by the U.S. Department
43 of Health and Human Services under the authority of 42
44 U.S.C. § 9902(2).

45 (f) For taxable years beginning on and after January 1,
46 2018, whenever this article refers to “each exemption for
47 which he or she is entitled to a deduction for the taxable year
48 for federal income tax purposes”, this phrase means the
49 exemption the person would have been allowed to claim for
50 the taxable year had the federal income tax law not been
51 amended to eliminate the personal exemption for federal tax
52 years beginning on or after January 1, 2018.



CHAPTER 325

**(Com. Sub. for S. B. 530 - By Senators Blair and
Rucker)**

[Passed March 7, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended, relating to taxation of the sale of certain aircraft; exempting from consumers sales and service tax the sale of aircraft sold in this state and registered in another state and removed from this state within 60 days; and providing conditions of exemption.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**§11-15-9. Exemptions.**

1 (a) *Exemptions for which exemption certificate may be*
2 *issued.* — A person having a right or claim to any exemption
3 set forth in this subsection may, in lieu of paying the tax
4 imposed by this article and filing a claim for refund, execute
5 a certificate of exemption, in the form required by the Tax
6 Commissioner, and deliver it to the vendor of the property
7 or service in the manner required by the Tax Commissioner.
8 However, the Tax Commissioner may, by rule, specify
9 those exemptions authorized in this subsection for which
10 exemption certificates are not required. The following sales
11 of tangible personal property and services are exempt as
12 provided in this subsection:

13 (1) Sales of gas, steam, and water delivered to
14 consumers through mains or pipes and sales of electricity;

15 (2) Sales of textbooks required to be used in any of the
16 schools of this state or in any institution in this state which
17 qualifies as a nonprofit or educational institution subject to
18 the West Virginia Department of Education and the Arts,
19 the Higher Education Policy Commission, or the Council
20 for Community and Technical College Education for
21 universities and colleges located in this state;

22 (3) Sales of property or services to this state, its
23 institutions or subdivisions, governmental units,
24 institutions, or subdivisions of other states: *Provided,* That
25 the law of the other state provides the same exemption to
26 governmental units or subdivisions of this state and to the
27 United States, including agencies of federal, state, or local
28 governments for distribution in public welfare or relief
29 work;

30 (4) Sales of vehicles which are titled by the Division of
31 Motor Vehicles and which are subject to the tax imposed by
32 §11-15-3c of this code or like tax;

33 (5) Sales of property or services to churches which make
34 no charge whatsoever for the services they render:
35 *Provided*, That the exemption granted in this subdivision
36 applies only to services, equipment, supplies, food for
37 meals, and materials directly used or consumed by these
38 organizations and does not apply to purchases of gasoline or
39 special fuel;

40 (6) Sales of tangible personal property or services to a
41 corporation or organization which has a current registration
42 certificate issued under §11-12-1 *et seq.* of this code, which
43 is exempt from federal income taxes under Section
44 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
45 amended, and which is:

46 (A) A church or a convention or association of churches
47 as defined in Section 170 of the Internal Revenue Code of
48 1986, as amended;

49 (B) An elementary or secondary school which maintains
50 a regular faculty and curriculum and has a regularly enrolled
51 body of pupils or students in attendance at the place in this
52 state where its educational activities are regularly carried
53 on;

54 (C) A corporation or organization which annually
55 receives more than one half of its support from any
56 combination of gifts, grants, direct or indirect charitable
57 contributions, or membership fees;

58 (D) An organization which has no paid employees and
59 its gross income from fundraisers, less reasonable and
60 necessary expenses incurred to raise the gross income (or
61 the tangible personal property or services purchased with
62 the net income), is donated to an organization which is
63 exempt from income taxes under Section 501(c)(3) or (c)(4)
64 of the Internal Revenue Code of 1986, as amended;

65 (E) A youth organization, such as the Girl Scouts of the
66 United States of America, the Boy Scouts of America, or the

67 YMCA Indian Guide/Princess Program and the local
68 affiliates thereof, which is organized and operated
69 exclusively for charitable purposes and has as its primary
70 purpose the nonsectarian character development and
71 citizenship training of its members;

72 (F) For purposes of this subsection:

73 (i) The term “support” includes, but is not limited to:

74 (I) Gifts, grants, contributions, or membership fees;

75 (II) Gross receipts from fundraisers which include
76 receipts from admissions, sales of merchandise,
77 performance of services, or furnishing of facilities in any
78 activity which is not an unrelated trade or business within
79 the meaning of Section 513 of the Internal Revenue Code of
80 1986, as amended;

81 (III) Net income from unrelated business activities,
82 whether or not the activities are carried on regularly as a
83 trade or business;

84 (IV) Gross investment income as defined in Section
85 509(e) of the Internal Revenue Code of 1986, as amended;

86 (V) Tax revenues levied for the benefit of a corporation
87 or organization either paid to or expended on behalf of the
88 organization; and

89 (VI) The value of services or facilities (exclusive of
90 services or facilities generally furnished to the public
91 without charge) furnished by a governmental unit referred
92 to in Section 170(c)(1) of the Internal Revenue Code of
93 1986, as amended, to an organization without charge. This
94 term does not include any gain from the sale or other
95 disposition of property which would be considered as gain
96 from the sale or exchange of a capital asset or the value of
97 an exemption from any federal, state, or local tax or any
98 similar benefit;

99 (ii) The term “charitable contribution” means a
100 contribution or gift to or for the use of a corporation or
101 organization, described in Section 170(c)(2) of the Internal
102 Revenue Code of 1986, as amended; and

103 (iii) The term “membership fee” does not include any
104 amounts paid for tangible personal property or specific
105 services rendered to members by the corporation or
106 organization;

107 (G) The exemption allowed by this subdivision does not
108 apply to sales of gasoline or special fuel or to sales of
109 tangible personal property or services to be used or
110 consumed in the generation of unrelated business income as
111 defined in Section 513 of the Internal Revenue Code of
112 1986, as amended. The exemption granted in this
113 subdivision applies only to services, equipment, supplies,
114 and materials used or consumed in the activities for which
115 the organizations qualify as tax-exempt organizations under
116 the Internal Revenue Code and does not apply to purchases
117 of gasoline or special fuel which are taxable as provided in
118 §11-14C-1 *et seq.* of this code;

119 (7) An isolated transaction in which any taxable service
120 or any tangible personal property is sold, transferred,
121 offered for sale, or delivered by the owner of the property
122 or by his or her representative for the owner’s account, the
123 sale, transfer, offer for sale, or delivery not being made in
124 the ordinary course of repeated and successive transactions
125 of like character by the owner or on his or her account by
126 the representative; *Provided*, That nothing contained in this
127 subdivision may be construed to prevent an owner who
128 sells, transfers, or offers for sale tangible personal property
129 in an isolated transaction through an auctioneer from
130 availing himself or herself of the exemption provided in this
131 subdivision, regardless of where the isolated sale takes
132 place. The Tax Commissioner may propose a legislative
133 rule for promulgation pursuant to §29A-3-1 *et seq.* of this
134 code which he or she considers necessary for the efficient
135 administration of this exemption;

136 (8) Sales of tangible personal property or of any taxable
137 services rendered for use or consumption in connection with
138 the commercial production of an agricultural product the
139 ultimate sale of which is subject to the tax imposed by this
140 article or which would have been subject to tax under this
141 article: *Provided*, That sales of tangible personal property
142 and services to be used or consumed in the construction of
143 or permanent improvement to real property and sales of
144 gasoline and special fuel are not exempt: *Provided*,
145 *however*, That nails and fencing may not be considered as
146 improvements to real property;

147 (9) Sales of tangible personal property to a person for
148 the purpose of resale in the form of tangible personal
149 property: *Provided*, That sales of gasoline and special fuel
150 by distributors and importers is taxable except when the sale
151 is to another distributor for resale: *Provided, however*, That
152 sales of building materials or building supplies or other
153 property to any person engaging in the activity of
154 contracting, as defined in this article, which is to be installed
155 in, affixed to or incorporated by that person or his or her
156 agent into any real property, building, or structure is not
157 exempt under this subdivision;

158 (10) Sales of newspapers when delivered to consumers
159 by route carriers;

160 (11) Sales of drugs, durable medical goods, mobility-
161 enhancing equipment and prosthetic devices dispensed
162 upon prescription and sales of insulin to consumers for
163 medical purposes;

164 (12) Sales of radio and television broadcasting time,
165 preprinted advertising circulars and newspaper, and outdoor
166 advertising space for the advertisement of goods or services;

167 (13) Sales and services performed by day care centers;

168 (14) Casual and occasional sales of property or services
169 not conducted in a repeated manner or in the ordinary course

170 of repetitive and successive transactions of like character by
171 a corporation or organization which is exempt from tax
172 under subdivision (6) of this subsection on its purchases of
173 tangible personal property or services. For purposes of this
174 subdivision, the term “casual and occasional sales not
175 conducted in a repeated manner or in the ordinary course of
176 repetitive and successive transactions of like character”
177 means sales of tangible personal property or services at
178 fundraisers sponsored by a corporation or organization
179 which is exempt, under subdivision (6) of this subsection,
180 from payment of the tax imposed by this article on its
181 purchases when the fundraisers are of limited duration and
182 are held no more than six times during any 12-month period
183 and “limited duration” means no more than 84 consecutive
184 hours: *Provided*, That sales for volunteer fire departments
185 and volunteer school support groups, with duration of
186 events being no more than 84 consecutive hours at a time,
187 which are held no more than 18 times in a 12-month period
188 for the purposes of this subdivision are considered “casual
189 and occasional sales not conducted in a repeated manner or
190 in the ordinary course of repetitive and successive
191 transactions of a like character”;

192 (15) Sales of property or services to a school which has
193 approval from the Higher Education Policy Commission or
194 the Council for Community and Technical College
195 Education to award degrees, which has its principal campus
196 in this state and which is exempt from federal and state
197 income taxes under Section 501(c)(3) of the Internal
198 Revenue Code of 1986, as amended: *Provided*, That sales
199 of gasoline and special fuel are taxable as provided in §11-
200 15-18, §11-15-18b, and §11-14C-1 *et seq.* of this code;

201 (16) Sales of lottery tickets and materials by licensed
202 lottery sales agents and lottery retailers authorized by the
203 State Lottery Commission, under the provisions of §29-22-
204 1 *et seq.* of this code;

205 (17) Leases of motor vehicles titled pursuant to the
206 provisions of §17A-3-1 *et seq.* of this code to lessees for a
207 period of 30 or more consecutive days;

208 (18) Notwithstanding the provisions of §11-15-18 or
209 §11-15-18b of this code or any other provision of this article
210 to the contrary, sales of propane to consumers for poultry
211 house heating purposes, with any seller to the consumer
212 who may have prior paid the tax in his or her price, to not
213 pass on the same to the consumer, but to make application
214 and receive refund of the tax from the Tax Commissioner
215 pursuant to rules which are promulgated after being
216 proposed for legislative approval in accordance with chapter
217 29A of this code by the Tax Commissioner;

218 (19) Any sales of tangible personal property or services
219 purchased and lawfully paid for with food stamps pursuant
220 to the federal food stamp program codified in 7 U. S. C.
221 §2011, *et seq.*, as amended, or with drafts issued through the
222 West Virginia special supplement food program for women,
223 infants, and children codified in 42 U. S. C. §1786;

224 (20) Sales of tickets for activities sponsored by
225 elementary and secondary schools located within this state;

226 (21) Sales of electronic data processing services and
227 related software: *Provided*, That, for the purposes of this
228 subdivision, “electronic data processing services” means:

229 (A) The processing of another’s data, including all
230 processes incident to processing of data such as
231 keypunching, keystroke verification, rearranging, or sorting
232 of previously documented data for the purpose of data entry
233 or automatic processing and changing the medium on which
234 data is sorted, whether these processes are done by the same
235 person or several persons; and

236 (B) Providing access to computer equipment for the
237 purpose of processing data or examining or acquiring data
238 stored in or accessible to the computer equipment;

239 (22) Tuition charged for attending educational summer
240 camps;

241 (23) Dispensing of services performed by one
242 corporation, partnership, or limited liability company for
243 another corporation, partnership, or limited liability
244 company when the entities are members of the same
245 controlled group or are related taxpayers as defined in
246 Section 267 of the Internal Revenue Code. "Control" means
247 ownership, directly or indirectly, of stock, equity interests,
248 or membership interests possessing 50 percent or more of
249 the total combined voting power of all classes of the stock
250 of a corporation, equity interests of a partnership or
251 membership interests of a limited liability company entitled
252 to vote or ownership, directly or indirectly, of stock, equity
253 interests or membership interests possessing 50 percent or
254 more of the value of the corporation, partnership, or limited
255 liability company;

256 (24) Food for the following are exempt:

257 (A) Food purchased or sold by a public or private
258 school, school-sponsored student organizations, or school-
259 sponsored parent-teacher associations to students enrolled
260 in the school or to employees of the school during normal
261 school hours; but not those sales of food made to the general
262 public;

263 (B) Food purchased or sold by a public or private
264 college or university or by a student organization officially
265 recognized by the college or university to students enrolled
266 at the college or university when the sales are made on a
267 contract basis so that a fixed price is paid for consumption
268 of food products for a specific period of time without respect
269 to the amount of food product actually consumed by the
270 particular individual contracting for the sale and no money
271 is paid at the time the food product is served or consumed;

272 (C) Food purchased or sold by a charitable or private
273 nonprofit organization, a nonprofit organization, or a

274 governmental agency under a program to provide food to
275 low-income persons at or below cost;

276 (D) Food sold by a charitable or private nonprofit
277 organization, a nonprofit organization, or a governmental
278 agency under a program operating in West Virginia for a
279 minimum of five years to provide food at or below cost to
280 individuals who perform a minimum of two hours of
281 community service for each unit of food purchased from the
282 organization;

283 (E) Food sold in an occasional sale by a charitable or
284 nonprofit organization, including volunteer fire departments
285 and rescue squads, if the purpose of the sale is to obtain
286 revenue for the functions and activities of the organization
287 and the revenue obtained is actually expended for that
288 purpose;

289 (F) Food sold by any religious organization at a social
290 or other gathering conducted by it or under its auspices, if
291 the purpose in selling the food is to obtain revenue for the
292 functions and activities of the organization and the revenue
293 obtained from selling the food is actually used in carrying
294 out those functions and activities: *Provided*, That purchases
295 made by the organizations are not exempt as a purchase for
296 resale; or

297 (G) Food sold by volunteer fire departments and rescue
298 squads that are exempt from federal income taxes under
299 Section 501(c)(3) or (c)(4) of the Internal Revenue Code of
300 1986, as amended, when the purpose of the sale is to obtain
301 revenue for the functions and activities of the organization
302 and the revenue obtained is exempt from federal income tax
303 and actually expended for that purpose;

304 (25) Sales of food by little leagues, midget football
305 leagues, youth football or soccer leagues, band boosters, or
306 other school, or athletic booster organizations supporting
307 activities for grades kindergarten through 12 and similar
308 types of organizations, including scouting groups and

309 church youth groups, if the purpose in selling the food is to
310 obtain revenue for the functions and activities of the
311 organization and the revenues obtained from selling the
312 food is actually used in supporting or carrying on functions
313 and activities of the groups: *Provided*, That the purchases
314 made by the organizations are not exempt as a purchase for
315 resale;

316 (26) Charges for room and meals by fraternities and
317 sororities to their members: *Provided*, That the purchases
318 made by a fraternity or sorority are not exempt as a purchase
319 for resale;

320 (27) Sales of or charges for the transportation of
321 passengers in interstate commerce;

322 (28) Sales of tangible personal property or services to
323 any person which this state is prohibited from taxing under
324 the laws of the United States or under the Constitution of
325 this state;

326 (29) Sales of tangible personal property or services to
327 any person who claims exemption from the tax imposed by
328 this article or §11-15A-1 *et seq.* of this code, or pursuant to
329 the provision of any other chapter of this code;

330 (30) Charges for the services of opening and closing a
331 burial lot;

332 (31) Sales of livestock, poultry, or other farm products
333 in their original state by the producer of the livestock,
334 poultry, or other farm products or a member of the
335 producer's immediate family who is not otherwise engaged
336 in making retail sales of tangible personal property; and
337 sales of livestock sold at public sales sponsored by breeders
338 or registry associations or livestock auction markets:
339 *Provided*, That the exemptions allowed by this subdivision
340 may be claimed without presenting or obtaining exemption
341 certificates provided the farmer maintains adequate records;

342 (32) Sales of motion picture films to motion picture
343 exhibitors for exhibition if the sale of tickets or the charge
344 for admission to the exhibition of the film is subject to the
345 tax imposed by this article and sales of coin-operated video
346 arcade machines or video arcade games to a person engaged
347 in the business of providing the machines to the public for a
348 charge upon which the tax imposed by this article is remitted
349 to the Tax Commissioner: *Provided*, That the exemption
350 provided in this subdivision may be claimed by presenting
351 to the seller a properly executed exemption certificate;

352 (33) Sales of aircraft repair, remodeling, and
353 maintenance services when the services are to an aircraft
354 operated by a certified or licensed carrier of persons or
355 property, or by a governmental entity, or to an engine or
356 other component part of an aircraft operated by a
357 certificated or licensed carrier of persons or property, or by
358 a governmental entity and sales of tangible personal
359 property that is permanently affixed or permanently
360 attached as a component part of an aircraft owned or
361 operated by a certificated or licensed carrier of persons or
362 property, or by a governmental entity, as part of the repair,
363 remodeling, or maintenance service and sales of machinery,
364 tools, or equipment directly used or consumed exclusively
365 in the repair, remodeling, or maintenance of aircraft, aircraft
366 engines, or aircraft component parts for a certificated or
367 licensed carrier of persons or property or for a governmental
368 entity;

369 (34) Charges for memberships or services provided by
370 health and fitness organizations relating to personalized
371 fitness programs;

372 (35) Sales of services by individuals who babysit for a
373 profit: *Provided*, That the gross receipts of the individual
374 from the performance of baby-sitting services do not exceed
375 \$5,000 in a taxable year;

376 (36) Sales of services by public libraries or by libraries
377 at academic institutions or by libraries at institutions of
378 higher learning;

379 (37) Commissions received by a manufacturer's
380 representative;

381 (38) Sales of primary opinion research services when:

382 (A) The services are provided to an out-of-state client;

383 (B) The results of the service activities, including, but
384 not limited to, reports, lists of focus group recruits and
385 compilation of data are transferred to the client across state
386 lines by mail, wire, or other means of interstate commerce,
387 for use by the client outside the state of West Virginia; and

388 (C) The transfer of the results of the service activities is
389 an indispensable part of the overall service.

390 For the purpose of this subdivision, the term "primary
391 opinion research" means original research in the form of
392 telephone surveys, mall intercept surveys, focus group
393 research, direct mail surveys, personal interviews, and other
394 data collection methods commonly used for quantitative and
395 qualitative opinion research studies;

396 (39) Sales of property or services to persons within the
397 state when those sales are for the purposes of the production
398 of value-added products: *Provided*, That the exemption
399 granted in this subdivision applies only to services,
400 equipment, supplies, and materials directly used or
401 consumed by those persons engaged solely in the
402 production of value-added products: *Provided, however*,
403 That this exemption may not be claimed by any one
404 purchaser for more than five consecutive years, except as
405 otherwise permitted in this section.

406 For the purpose of this subdivision, the term "value-
407 added product" means the following products derived from
408 processing a raw agricultural product, whether for human

409 consumption or for other use. For purposes of this
410 subdivision, the following enterprises qualify as processing
411 raw agricultural products into value-added products: Those
412 engaged in the conversion of:

413 (A) Lumber into furniture, toys, collectibles, and home
414 furnishings;

415 (B) Fruits into wine;

416 (C) Honey into wine;

417 (D) Wool into fabric;

418 (E) Raw hides into semi-finished or finished leather
419 products;

420 (F) Milk into cheese;

421 (G) Fruits or vegetables into a dried, canned, or frozen
422 product;

423 (H) Feeder cattle into commonly accepted slaughter
424 weights;

425 (I) Aquatic animals into a dried, canned, cooked, or
426 frozen product; and

427 (J) Poultry into a dried, canned, cooked, or frozen
428 product;

429 (40) Sales of music instructional services by a music
430 teacher and artistic services or artistic performances of an
431 entertainer or performing artist pursuant to a contract with
432 the owner or operator of a retail establishment, restaurant,
433 inn, bar, tavern, sports or other entertainment facility, or any
434 other business location in this state in which the public or a
435 limited portion of the public may assemble to hear or see
436 musical works or other artistic works be performed for the
437 enjoyment of the members of the public there assembled
438 when the amount paid by the owner or operator for the
439 artistic service or artistic performance does not exceed

440 \$3,000: *Provided*, That nothing contained herein may be
441 construed to deprive private social gatherings, weddings, or
442 other private parties from asserting the exemption set forth
443 in this subdivision. For the purposes of this exemption,
444 artistic performance or artistic service means and is limited
445 to the conscious use of creative power, imagination, and
446 skill in the creation of aesthetic experience for an audience
447 present and in attendance and includes, and is limited to,
448 stage plays, musical performances, poetry recitations and
449 other readings, dance presentation, circuses and similar
450 presentations, and does not include the showing of any film
451 or moving picture, gallery presentations of sculptural or
452 pictorial art, nude or strip show presentations, video games,
453 video arcades, carnival rides, radio or television shows, or
454 any video or audio taped presentations, or the sale or leasing
455 of video or audio tapes, air shows, or any other public
456 meeting, display or show other than those specified herein:
457 *Provided, however*, That nothing contained herein may be
458 construed to exempt the sales of tickets from the tax
459 imposed in this article. The State Tax Commissioner shall
460 propose a legislative rule pursuant to §29A-3-1 *et seq.* of
461 this code establishing definitions and eligibility criteria for
462 asserting this exemption which is not inconsistent with the
463 provisions set forth herein: *Provided further*, That nude
464 dancers or strippers may not be considered as entertainers
465 for the purposes of this exemption;

466 (41) Charges to a member by a membership association
467 or organization which is exempt from paying federal
468 income taxes under Section 501(c)(3) or (c)(6) of the
469 Internal Revenue Code of 1986, as amended, for
470 membership in the association or organization, including
471 charges to members for newsletters prepared by the
472 association or organization for distribution primarily to its
473 members, charges to members for continuing education
474 seminars, workshops, conventions, lectures, or courses put
475 on or sponsored by the association or organization,
476 including charges for related course materials prepared by
477 the association or organization or by the speaker or speakers

478 for use during the continuing education seminar, workshop,
479 convention, lecture, or course, but not including any
480 separate charge or separately stated charge for meals,
481 lodging, entertainment, or transportation taxable under this
482 article: *Provided*, That the association or organization pays
483 the tax imposed by this article on its purchases of meals,
484 lodging, entertainment, or transportation taxable under this
485 article for which a separate or separately stated charge is not
486 made. A membership association or organization which is
487 exempt from paying federal income taxes under Section
488 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as
489 amended, may elect to pay the tax imposed under this article
490 on the purchases for which a separate charge or separately
491 stated charge could apply and not charge its members the
492 tax imposed by this article or the association or organization
493 may avail itself of the exemption set forth in subdivision (9)
494 of this subsection relating to purchases of tangible personal
495 property for resale and then collect the tax imposed by this
496 article on those items from its member;

497 (42) Sales of governmental services or governmental
498 materials by county assessors, county sheriffs, county
499 clerks, or circuit clerks in the normal course of local
500 government operations;

501 (43) Direct or subscription sales by the Division of
502 Natural Resources of the magazine currently entitled
503 Wonderful West Virginia and by the Division of Culture
504 and History of the magazine currently entitled Goldenseal
505 and the journal currently entitled West Virginia History;

506 (44) Sales of soap to be used at car wash facilities;

507 (45) Commissions received by a travel agency from an
508 out-of-state vendor;

509 (46) The service of providing technical evaluations for
510 compliance with federal and state environmental standards
511 provided by environmental and industrial consultants who
512 have formal certification through the West Virginia

513 Department of Environmental Protection or the West
514 Virginia Bureau for Public Health, or both. For purposes of
515 this exemption, the service of providing technical
516 evaluations for compliance with federal and state
517 environmental standards includes those costs of tangible
518 personal property directly used in providing such services
519 that are separately billed to the purchaser of such services
520 and on which the tax imposed by this article has previously
521 been paid by the service provider;

522 (47) Sales of tangible personal property and services by
523 volunteer fire departments and rescue squads that are
524 exempt from federal income taxes under Section 501(c)(3)
525 or (c)(4) of the Internal Revenue Code of 1986, as amended,
526 if the sole purpose of the sale is to obtain revenue for the
527 functions and activities of the organization and the revenue
528 obtained is exempt from federal income tax and actually
529 expended for that purpose;

530 (48) Lodging franchise fees, including royalties,
531 marketing fees, reservation system fees, or other fees
532 assessed that have been or may be imposed by a lodging
533 franchiser as a condition of the franchise agreement;

534 (49) Sales of the regulation size United States flag and
535 the regulation size West Virginia flag for display; and

536 (50) Sales of an aircraft sold in this state on or after July
537 1, 2020, as evidenced by a Federal Aviation Administration
538 Bill of Sale AC Form 8050-2 and registered outside of this
539 state as evidenced by Federal Aviation Administration
540 Aircraft Registration AC Form 8050-1 shall be exempt, so
541 long as the aircraft is removed from this state within 60 days
542 of the date of purchase on the bill of sale. The time between
543 the date of purchase and the removal of the aircraft shall not
544 be counted for purposes of determining whether the aircraft
545 is subject to use tax.

546 (b) Refundable exemptions. — Any person having a
547 right or claim to any exemption set forth in this subsection

548 shall first pay to the vendor the tax imposed by this article
549 and then apply to the Tax Commissioner for a refund or
550 credit, or as provided in §11-15-9d of this code give to the
551 vendor his or her West Virginia direct pay permit number.
552 The following sales of tangible personal property and
553 services are exempt from tax as provided in this subsection:

554 (1) Sales of property or services to bona fide charitable
555 organizations who make no charge whatsoever for the
556 services they render: *Provided*, That the exemption granted
557 in this subdivision applies only to services, equipment,
558 supplies, food, meals, and materials directly used or
559 consumed by these organizations and does not apply to
560 purchases of gasoline or special fuel;

561 (2) Sales of services, machinery, supplies, and materials
562 directly used or consumed in the activities of manufacturing,
563 transportation, transmission, communication, production of
564 natural resources, gas storage, generation, or production or
565 selling electric power, provision of a public utility service or
566 the operation of a utility service or the operation of a utility
567 business, in the businesses or organizations named in this
568 subdivision and does not apply to purchases of gasoline or
569 special fuel;

570 (3) Sales of property or services to nationally chartered
571 fraternal or social organizations for the sole purpose of free
572 distribution in public welfare or relief work: *Provided*, That
573 sales of gasoline and special fuel are taxable;

574 (4) Sales and services, firefighting or station house
575 equipment, including construction and automotive, made to
576 any volunteer fire department organized and incorporated
577 under the laws of the State of West Virginia: *Provided*, That
578 sales of gasoline and special fuel are taxable; and

579 (5) Sales of building materials or building supplies or
580 other property to an organization qualified under Section
581 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
582 amended, which are to be installed in, affixed to, or

583 incorporated by, the organization or its agent into real
584 property or into a building or structure which is or will be
585 used as permanent low-income housing, transitional
586 housing, an emergency homeless shelter, a domestic
587 violence shelter, or an emergency children and youth shelter
588 if the shelter is owned, managed, developed, or operated by
589 an organization qualified under Section 501(c)(3) or (c)(4)
590 of the Internal Revenue Code of 1986, as amended.

591 (c) *Effective date.* – The amendments to this section in
592 2018 shall take effect beginning July 1, 2018, and apply to
593 former sales made on and after that date: *Provided*, That the
594 amendments to subdivision (6), subsection (b) of this
595 section take effect upon passage of this act of the Legislature
596 and shall be construed to prohibit on and after January 1,
597 2018, all transfers to the State Road Fund established in the
598 State Treasury pursuant to section 52, article VI of the
599 Constitution of West Virginia, of the taxes imposed by §11-
600 15-1 *et seq.* and §11-15A-1 *et seq.* of this code.



CHAPTER 326

**(Com. Sub. for S. B. 578 - By Senators Roberts and
Cline)**

[Passed March 6, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §11-13-20 of the Code of West Virginia, 1931, as amended, relating to adjusting the calculation of business and occupation tax on the business of generating, producing, or selling electricity from solar energy facilities; defining terms; and establishing the taxable generating capacity for certain generating units utilizing solar photovoltaic methods.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2o. Business of generating or producing or selling electricity on and after June 1, 1995; definitions; rate of tax; exemptions; effective date.

1 (a) *Definitions.* — As used in this section:

2 (1) “Average four-year generation” is computed by
3 dividing by four the sum of a generating unit’s net
4 generation, expressed in kilowatt hours, for calendar years
5 1991, 1992, 1993, and 1994. For any generating unit which
6 was newly installed and placed into commercial operation
7 after January 1, 1991, and prior to the effective date of this
8 section, “average four-year generation” is computed by
9 dividing the unit’s net generation for the period beginning
10 with the month in which the unit was placed into
11 commercial operation and ending with the month preceding
12 the effective date of this section by the number of months in
13 the period and multiplying the resulting amount by twelve
14 with the result being a representative 12-month average of
15 the unit’s net generation while in an operational status.

16 (2) “Capacity factor” means a fraction, the numerator of
17 which is average four-year generation and the denominator
18 of which is the maximum possible annual generation.

19 (3) “Generating unit” means a mechanical apparatus or
20 structure which through the operation of its component parts
21 is capable of generating or producing electricity and is
22 regularly used for this purpose.

23 (4) “Inactive reserve” means the removal of a
24 generating unit from commercial service for a period of not
25 less than 12 consecutive months as a result of lack of need
26 for generation from the generating unit or as a result of the
27 requirements of state or federal law or the removal of a
28 generating unit from commercial service for any period as a

29 result of any physical exigency which is beyond the
30 reasonable control of the taxpayer.

31 (5) "Maximum possible annual generation" means the
32 product, expressed in kilowatt hours, of official capability
33 times 8,760 hours.

34 (6) "Official capability" means the nameplate capacity
35 rating of a generating unit expressed in kilowatts.

36 (7) "Peaking unit" means a generating unit designed for
37 the limited purpose of meeting peak demands for electricity
38 or filling emergency electricity requirements.

39 (8) "Retired from service" means the removal of a
40 generating unit from commercial service for a period of at
41 least 12 consecutive months with the intent that the unit may
42 not thereafter be returned to active service.

43 (9) "Taxable generating capacity" means the product,
44 expressed in kilowatts, of the capacity factor times the
45 official capability of a generating unit, subject to the
46 modifications set forth in subdivisions (2) and (3),
47 subsection (c) of this section.

48 (10) "Net generation" for a period means the kilowatt
49 hours of net generation available for sale generated or
50 produced by the generating unit in this state during the
51 period less the following:

52 (A) Twenty-one twenty-sixths of the kilowatt hours of
53 electricity generated at the generating unit and sold during
54 the period to a plant location of a customer engaged in
55 manufacturing activity if the contract demand at the plant
56 location exceeds 200,000 kilowatts per hour in a year or
57 where the usage at the plant location exceeds 200,000
58 kilowatts per hour in a year;

59 (B) Twenty-one twenty-sixths of the kilowatt hours of
60 electricity produced or generated at the generating unit
61 during the period by any person producing electric power

62 and an alternative form of energy at a facility located in this
63 state substantially from gob or other mine refuse;

64 (C) The total kilowatt hours of electricity generated at
65 the generating unit exempted from tax during the period by
66 §11-13-2n(b)* of this code.

67 (b) *Rate of tax.* — Upon every person engaging or
68 continuing within this state in the business of generating or
69 producing electricity for sale, profit or commercial use,
70 either directly or indirectly through the activity of others, in
71 whole or in part, or in the business of selling electricity to
72 consumers, or in both businesses, the tax imposed by §11-
73 13-2 of this code shall be equal to:

74 (1) For taxpayers who generate or produce electricity
75 for sale, profit or commercial use, the product of \$22.78
76 multiplied by the taxable generating capacity of each
77 generating unit in this state owned or leased by the taxpayer,
78 subject to the modifications set forth in subsection (c) of this
79 section: *Provided*, That with respect to each generating unit
80 in this state which has installed a flue gas desulfurization
81 system, the tax imposed by section two of this article shall,
82 on and after January 31, 1996, be equal to the product of
83 \$20.70 multiplied by the taxable generating capacity of the
84 units, subject to the modifications set forth in subsection (c)
85 of this section: *Provided, however*, That with respect to
86 kilowatt hours sold to or used by a plant location engaged
87 in manufacturing activity in which the contract demand at
88 the plant location exceeds 200,000 kilowatts per hour per
89 year or if the usage at the plant location exceeds 200,000
90 kilowatts per hour in a year, in no event may the tax imposed
91 by this article with respect to the sale or use of the electricity
92 exceed five hundredths of one cent times the kilowatt hours
93 sold to or used by a plant engaged in a manufacturing
94 activity; and

95 (2) For taxpayers who sell electricity to consumers in
96 this state that is not generated or produced in this state by
97 the taxpayer, nineteen hundredths of one cent times the

*NOTE: Correction of apparent word to number translation error.

98 kilowatt hours of electricity sold to consumers in this state
99 that were not generated or produced in this state by the
100 taxpayer, except that the rate shall be five hundredths of one
101 cent times the kilowatt hours of electricity not generated or
102 produced in this state by the taxpayer which is sold to a plant
103 location in this state of a customer engaged in
104 manufacturing activity if the contract demand at such plant
105 location exceeds 200,000 kilowatts per hour per year or if
106 the usage at such plant location exceeds 200,000 kilowatts
107 per hour in a year. The measure of tax under this subdivision
108 shall be equal to the total kilowatt hours of electricity sold
109 to consumers in the state during the taxable year, that were
110 not generated or produced in this state by the taxpayer, to be
111 determined by subtracting from the total kilowatt hours of
112 electricity sold to consumers in the state the net kilowatt
113 hours of electricity generated or produced in the state by the
114 taxpayer during the taxable year. For the purposes of this
115 subdivision, net kilowatt hours of electricity generated or
116 produced in this state by the taxpayer includes the
117 taxpayer's pro rata share of electricity generated or
118 produced in this state by a partnership or limited liability
119 company of which the taxpayer is a partner or member. The
120 provisions of this subdivision may not apply to those
121 kilowatt hours exempt under §11-13-2n(b)* of this code.
122 Any person taxable under this subdivision shall be allowed
123 a credit against the amount of tax due under this subdivision
124 for any electric power generation taxes or a tax similar to
125 the tax imposed by subdivision (1) of this subsection paid
126 by the taxpayer with respect to the electric power to the state
127 in which the power was generated or produced. The amount
128 of credit allowed may not exceed the tax liability arising
129 under this subdivision with respect to the sale of the power.

130 (c) The following provisions are applicable to taxpayers
131 subject to tax under subdivision (1), subsection (b) of this
132 section:

133 (1) *Retired units; inactive reserve.* — If a generating
134 unit is retired from service or placed in inactive reserve, a

*NOTE: Correction of apparent word to number translation error.

135 taxpayer may not be liable for tax computed with respect to
136 the taxable generating capacity of the unit for the period that
137 the unit is inactive or retired. The taxpayer shall provide
138 written notice to the Joint Committee on Government and
139 Finance, as well as to any other entity as may be otherwise
140 provided by law, 18 months prior to retiring any generating
141 unit from service in this state.

142 (2) *New generating units.* — If a new generating unit,
143 other than a peaking unit, is placed in initial service on or
144 after the effective date of this section, the generating unit’s
145 taxable generating capacity shall equal 40 percent of the
146 official capability of the unit: *Provided*, That the taxable
147 generating capacity of a county-owned or municipally
148 owned generating unit shall equal zero percent of the
149 official capability of the unit and for taxable periods ending
150 on or before December 31, 2007, the taxable generating
151 capacity of a generating unit utilizing a turbine powered
152 primarily by wind shall equal five percent of the official
153 capability of the unit: *Provided, however*, That for taxable
154 periods beginning on or after January 1, 2008, the taxable
155 generating capacity of a generating unit utilizing a turbine
156 powered primarily by wind shall equal 12 percent of the
157 official capability of the unit: *Provided further*, That for
158 taxable periods beginning on or after January 1, 2020, the
159 taxable generating capacity of a generating unit utilizing
160 solar photovoltaic methods shall equal eight percent of the
161 official capacity of the unit. For purposes of this subsection,
162 “solar photovoltaic methods” means a module or array of
163 solar cells electronically connected in a series or in parallel
164 to provide suitable voltages and currents for electricity
165 generation. Methods include, but are not limited to, a grid-
166 connected photovoltaic system designed to operate in
167 parallel with an electric utility grid.

168 (3) *Peaking units.* — If a peaking unit is placed in initial
169 service on or after the effective date of this section, the
170 generating unit’s taxable generating capacity shall equal
171 five percent of the official capability of the unit: *Provided*,

172 That the taxable generating capacity of a county-owned or
173 municipally owned generating plant shall equal zero percent
174 of the official capability of the unit.

175 (4) *Transfers of interests in generating units.* — If a
176 taxpayer acquires an interest in a generating unit, the
177 taxpayer shall include the computation of taxable generating
178 capacity of the unit in the determination of the taxpayer's
179 tax liability as of the date of the acquisition. Conversely, if
180 a taxpayer transfers an interest in a generating unit, the
181 taxpayer may not for periods thereafter be liable for tax
182 computed with respect to the taxable generating capacity of
183 the transferred unit.

184 (5) *Proration, allocation.* — The Tax Commissioner
185 shall promulgate rules in conformity with §29A-3-1 *et seq.*
186 of this code to provide for the administration of this section
187 and to equitably prorate taxes for a taxable year in which a
188 generating unit is first placed in service, retired, or placed in
189 inactive reserve, or in which a taxpayer acquires or transfers
190 an interest in a generating unit, to equitably allocate and
191 reallocate adjustments to net generation, and to equitably
192 allocate taxes among multiple taxpayers with interests in a
193 single generating unit, it being the intent of the Legislature
194 to prohibit multiple taxation of the same taxable generating
195 capacity.

196 So as to provide for an orderly transition with respect to
197 the rate-making effect of this section, those electric light and
198 power companies which, as of the effective date of this
199 section, are permitted by the West Virginia Public Service
200 Commission to utilize deferred accounting for purposes of
201 recovery from ratepayers of any portion of business and
202 occupation tax expense under this article shall be permitted,
203 until the time that action pursuant to a rate application or
204 order of the commission provides for appropriate alternative
205 rate-making treatment for that expense, to recover the tax
206 expense imposed by this section by means of deferred
207 accounting to the extent that the tax expense imposed by this

208 section exceeds the level of business and occupation tax
209 under this article currently allowed in rates.

210 (6) *Electricity generated by manufacturer or affiliate*
211 *for use in manufacturing activity.* — When electricity used
212 in a manufacturing activity is generated in this state by the
213 person who owns the manufacturing facility in which the
214 electricity is used and the electricity-generating unit or units
215 producing the electricity so used are owned by the
216 manufacturer, or by a member of the manufacturer's
217 controlled group, as defined in Section 267 of the Internal
218 Revenue Code of 1986, as amended, the generation of the
219 electricity may not be taxable under this article: *Provided,*
220 That any electricity generated or produced at the generating
221 unit or units which is sold or used for purposes other than in
222 the manufacturing activity shall be taxed under this section
223 and the amount of tax payable shall be adjusted to be equal
224 to an amount which is proportional to the electricity sold for
225 purposes other than the manufacturing activity. The
226 Department of Revenue shall promulgate rules in
227 accordance with §29A-3-1 *et seq.* of this code: *Provided,*
228 *however,* That the rules shall be promulgated as emergency
229 rules.

230 (d) Beginning June 1, 1995, electric light and power
231 companies that actually paid tax based on §11-13-2d(a)(3)
232 of this code or §11-13-2m of this code for every taxable
233 month in 1994 shall determine their liability for payment of
234 tax under this article in accordance with subdivisions (1)
235 and (2) of this subsection. All other electric light and power
236 companies shall determine their liability for payment of tax
237 under this article exclusively under this section beginning
238 June 1, 1995, and thereafter.

239 (1) If for taxable months beginning on or after June 1,
240 1995, liability for tax under this section is equal to or greater
241 than the sum of the power company's liability for payment
242 of tax under §11-13-2d(a)(3) of this code and this section,
243 then the company shall pay the tax due under this section
244 and not the tax due under §11-13-2d(a)(3) of this code and

245 §11-13-2m of this code. If tax liability under this section is
 246 less, then the tax shall be paid under §11-13-2d(a)(3) of this
 247 code and §11-13-2m of this code and the tax due under this
 248 section may not be paid.

249 (2) Notwithstanding subdivision (1) of this subsection,
 250 for taxable years beginning on or after January 1, 1998, all
 251 electric and light power companies shall determine their
 252 liability for payment of tax under this article exclusively
 253 under this section.

CHAPTER 327

**(Com. Sub. for S. B. 719 - By Senators Maroney,
 Cline, Prezioso, Rucker, Sypolt, Takubo, Trump,
 Clements and Stollings)**

[Passed March 6, 2020; in effect July 1, 2020.]
 [Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §11-27-10a of the Code of West Virginia, 1931, as amended, relating to imposing a health care-related provider tax on certain health care organizations; and extending termination date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-10a. Imposition of tax on managed care organizations.

1 (a) *Imposition of tax.* — For the privilege of holding a
 2 certificate of authority within this state to establish or
 3 operate a “health maintenance organization” pursuant to
 4 §33-25A-4 of this code (hereinafter “certified HMO”), there
 5 is hereby levied and shall be collected from every such

6 certified HMO an annual broad-based health care-related
7 tax.

8 (b) *Rate and measure of tax.* — The tax imposed by this
9 section shall be based on the following rates applied to each
10 taxable health plan’s total Medicaid member months within
11 tiers I, II, and III, and to non-Medicaid member months
12 within tiers IV and V:

13 (1) Tier I — \$35 for each Medicaid member month
14 under 250,000;

15 (2) Tier II — \$20 for each Medicaid member month
16 between 250,000 and 500,000;

17 (3) Tier III — \$1 for each Medicaid member month
18 greater than 500,000;

19 (4) Tier IV — 25 cents for each non-Medicaid member
20 month under 150,000; and

21 (5) Tier V — 10 cents for each non-Medicaid member
22 month of 150,000 or more.

23 (c) *Definitions.* —

24 (1) “Managed care organization” or “MCO” means a
25 certified HMO that provides health care services to
26 Medicaid members pursuant to an agreement or contract
27 with the department.

28 (2) “Managed care plan” means an agreement or
29 contract between the secretary and an MCO under which the
30 MCO agrees to provide health care services to Medicaid
31 members.

32 (3) “Medicaid member” means an individual enrolled in
33 a taxable health plan who is a Medicaid beneficiary on
34 whose behalf the department directly pays the health plan a
35 capitated payment.

36 (4) “Medicaid member months” means the number of
37 Medicaid members in a taxable health plan in each month
38 or part of a month over the course of the tax year.

39 (5) “Non-Medicaid enrollee” means an individual who
40 is an “enrollee”, “subscriber”, or “member”, as those terms
41 are defined in §33-25A-2(8) of this code, in a taxable health
42 plan who is not a Medicaid member: *Provided*, That this
43 definition does not include Public Employees Retirement
44 Agency members or Medicare Advantage members.

45 (6) “Non-Medicaid member months” means the number
46 of non-Medicaid enrollees in a taxable health plan in each
47 month or part of a month over the course of the tax year, but
48 does not include persons enrolled in either a health plan
49 issued by the West Virginia Public Employees Insurance
50 Agency or a plan issued pursuant to the Federal Employees
51 Health Benefits Act of 1959 (Public Law 86-382) to the
52 extent the imposition of the tax under this section is
53 preempted pursuant to 5 U.S.C. §8909(f).

54 (7) “Taxable health plan” means: (i) An agreement or
55 contract under which a certified HMO agrees to provide
56 health care services to a non-Medicaid member in
57 accordance with §33-25A-1 *et seq.* of this code; and (ii) a
58 managed care plan.

59 (d) *Effective date.* —

60 (i) Subject to an earlier termination pursuant to the terms
61 of subdivision (ii) of this subsection, the tax imposed by this
62 section shall be effective for three years beginning on the
63 first day of the state fiscal year following a 30-day period
64 after the secretary has posted notice on the department
65 Internet website that approval had been received from the
66 federal Centers for Medicare and Medicaid Services that the
67 tax imposed by this section is a permissible health care-
68 related tax in accordance with 42 C.F.R. §433.68 and is
69 therefore eligible for federal financial participation.

70 (ii) The tax imposed by this section shall be
71 administered in accordance with the provisions of this
72 article and the Tax Administration and Procedures act in
73 §11-10-1 *et seq.* of this code: *Provided*, That the tax
74 imposed by this section shall be automatically void if the
75 Centers for Medicare and Medicaid Services determines
76 that it is no longer a permissible health care-related tax that
77 is eligible for federal financial participation. Subject to the
78 terms of this subdivision, the tax imposed by this section
79 shall remain in effect until June 30, 2023, and as of June 30,
80 2023, is repealed.

81 (e) *Time for paying tax.* — Notwithstanding the
82 provisions of §11-27-25 of this code, no taxes may be
83 collected under this article until the department receives
84 written notice that the federal Centers for Medicare and
85 Medicaid Services has approved proposed Medicaid rates as
86 actuarially sound for the taxable year in which the tax will
87 be imposed.



CHAPTER 328

**(Com. Sub. for S. B. 793 - By Senators Smith, Sypolt
and Cline)**

[Passed March 5, 2020; in effect ninety days from passage.]

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

AN ACT to amend and reenact §11-13-2q of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-13-2r, all relating to business and occupation taxes imposed on operators of certain coal-fired electric generating units located in this state; clarifying application of certain sections of code; providing for recomputation of taxable generating capacity of certain coal-fired electric generating units for business and

occupation tax purposes under certain circumstances; defining certain terms, imposing recapture tax under certain circumstances; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2q. Exemption from tax for certain merchant power plants.

1 (a) *Exemption.* — Notwithstanding the provisions of
2 §11-13-2o of this code, for taxable years, or portions
3 thereof, beginning on or after January 1, 2020, a coal-fired
4 merchant power plant is exempt from the business and
5 occupation tax imposed by §11-13-2o of this code on the
6 generating capacity of its generating units located in this
7 state that are owned or leased by the taxpayer and used to
8 generate electricity. When the January 1, 2020, date falls
9 during a taxpayer’s taxable year, the tax liability for that
10 year shall be prorated based upon the number of months
11 before and the number of months beginning on and after
12 January 1, 2020, in that taxable year.

13 (b) *Definition.* — As used in this section, the term “coal-
14 fired merchant power plant” means a coal-fired electricity
15 generating unit or plant in this state with relation to which
16 the owners, operators, interest holders, or any combination
17 thereof do not receive regulated cost recovery pursuant to
18 any tariff, regulated rate, or cost recovery fee mandated or
19 authorized by the West Virginia Public Service
20 Commission, or by any rate-making authority of any other
21 state of the United States, and that: (1) Is not subject to
22 regulation of its rates by the West Virginia Public Service
23 Commission or any rate-making authority of any other state
24 of the United States; (2) sells electricity it generates only on
25 the wholesale market; (3) does not sell electricity pursuant
26 to one or more long-term sales contracts; and (4) does not
27 sell electricity to retail consumers.

28 (c) *Effective date.* — The amendments to this section
29 enacted in the year 2020 shall be retroactive to January 1,
30 2020.

§11-13-2r. Recomputation of taxable generating capacity of certain coal-fired electric generating facilities; imposition of recapture tax.

1 (a) *General.* — Notwithstanding any provision of this
2 article to the contrary, for the taxable year beginning
3 January 1, 2021, the tax on the privilege of generating
4 electricity from coal-fired generating units in operation
5 before January 1, 1995, shall be computed as provided in
6 §11-13-2o of this code and the tax attributable to the months
7 of January through June of 2021 shall be remitted before
8 July 31, 2021, as provided in §11-13-4 of this code.
9 Beginning July 1, 2021, the owner or operator of a coal-fired
10 generating unit in operation before January 1, 1995, may
11 elect to recompute the taxable generating capacity of those
12 coal-fired generating units determined under §11-13-2o of
13 this code so that the tax attributable to the second half of
14 2021 is computed and paid on 45 percent of the official
15 capability of those generating units, as defined in §11-13-2o
16 of this code: *Provided*, That this election is an irrevocable
17 election and the owner or operator of the coal-fired
18 generating units for which this election is made shall agree
19 to keep them in operation until at least July 1, 2025. The tax
20 attributable to the months of July through December of
21 2021, as recomputed under this section, shall be remitted
22 before January 31, 2022, as provided in §11-13-4 of this
23 code. When this election is made, then for taxable years
24 beginning on and after January 1, 2022, the taxable
25 generating capacity of coal-fired generating units in
26 operation before January 1, 1995, shall be 45 percent of the
27 official capability of the generating unit as defined in §11-
28 13-2o of this code.

29 (b) *Recapture tax.* — Beginning on and after July 1,
30 2021, but before July 1, 2025, should the coal-fired
31 generating units impacted by this tax cease to operate, the

32 owner or operator of said plants shall remit back to the West
33 Virginia State Tax Department all of the business and
34 occupation tax savings incurred during the time period
35 between July 1, 2021, and the date the coal-fired generating
36 units ceased operation. A recapture tax is imposed by this
37 subsection, which tax is an amount equal to the business and
38 occupation tax savings the owner or operator of the plant
39 realized, or would have realized, due to enactment of this
40 section, on or after July 1, 2021, but before July 1, 2025.
41 The recapture tax shall be due and payable on the date the
42 annual business and occupation tax return is due under this
43 article for the taxable period for which the recapture tax
44 applies. In the event federal law or regulation requires the
45 closing of coal-fired generating units before July 1, 2025,
46 the recapture tax shall not apply to taxable periods
47 beginning subsequent to the closure date.

48 (c) *Transfer of generating unit.* — If at any time after
49 the effective date of this section but before July 1, 2025, a
50 coal-fired generating unit whose taxable generating
51 capacity was recomputed under this section is transferred to
52 another entity, the amount of the business and occupation
53 tax benefit the transferor received, or would have received,
54 under this section had the owner continued to own and
55 operated the generating unit shall be recaptured under
56 subsection (b) of this section.

57 (d) *Definitions.* — Terms “taxable generating capacity”
58 and “official capability” used in this section are defined as
59 provided in §11-13-20 of this code except to the extent those
60 definitions are modified by language in this section for
61 taxable periods beginning on and after July 1, 2021.

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CHAPTER 329

(S. B. 816 - By Senator Blair)

[Passed February 29, 2020; in effect July 1, 2020.]

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

AN ACT to amend and reenact §11-6F-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-13S-3 of said code, all relating generally to updating the North American Industry Classification System code references; and making other technical changes to conform to new bill-drafting requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL ADDITIONS TO MANUFACTURING FACILITIES.

§11-6F-2. Definitions.

1 As used in this article, the term:

2 (a) “Certified capital addition property” means all real
3 property and personal property included within or to be
4 included within a qualified capital addition to a
5 manufacturing facility that has been certified by the State
6 Tax Commissioner in accordance with §11-6F-4 of this
7 code: *Provided*, That airplanes and motor vehicles licensed
8 by the Division of Motor Vehicles are not certified capital
9 addition property.

10 (b) “Manufacturing” means any business activity
11 classified as having a sector identifier, consisting of the first
12 two digits of the six-digit North American Industry
13 Classification System code number of 31, 32, or 33. For

14 purposes of this article, manufacturing also includes the
15 processing of raw natural gas or oil to recover or extract
16 liquid hydrocarbons, which activity is classified under
17 North American Industry Classification System code
18 number 211130. This definition does not mean or include
19 any other processes or activities classified, categorized,
20 grouped, or identified under North American Industry
21 Classification System code number 211130.

22 (c) “Manufacturing facility” means any factory, mill,
23 chemical plant, refinery, warehouse, building or complex of
24 buildings, including land on which it is located, and all
25 machinery, equipment, improvements, and other real
26 property and personal property located at or within the
27 facility used in connection with the operation of the facility
28 in a manufacturing business.

29 (d) “Personal property” means all property specified in
30 §2-2-10(q) of this code and includes, but is not limited to,
31 furniture, fixtures, machinery, and equipment, pollution
32 control equipment, computers, and related data processing
33 equipment, spare parts, and supplies.

34 (e) “Qualified capital addition to a manufacturing
35 facility” means either:

36 (1) All real property and personal property, the
37 combined original cost of which exceeds \$50 million to be
38 constructed, located, or installed at or within two miles of a
39 manufacturing facility owned or operated by the person
40 making the capital addition that has a total original cost
41 before the capital addition of at least \$100 million. If the
42 capital addition is made in a steel, chemical, or polymer
43 alliance zone as designated from time-to-time by executive
44 order of the Governor, then the person making the capital
45 addition may, for purposes of satisfying the requirements of
46 this subsection, join in a multiparty project with a person
47 owning or operating a manufacturing facility that has a total
48 original cost before the capital addition of at least \$100
49 million if the capital addition creates additional production

50 capacity of existing or related products or feedstock or
51 derivative products respecting the manufacturing facility,
52 consists of a facility used to store, handle, process, or
53 produce raw materials for the manufacturing facility,
54 consists of a facility used to store, handle, or process natural
55 gas to produce fuel for the generation of steam or electricity
56 for the manufacturing facility or consists of a facility that
57 generates steam or electricity for the manufacturing facility,
58 including, but not limited to, a facility that converts coal to
59 a gas or liquid for the manufacturing facility's use in
60 heating, manufacturing or generation of electricity. When
61 the new capital addition is a facility that is or will be
62 processing raw natural gas or oil to recover or extract liquid
63 hydrocarbons, or is a manufacturing facility that uses
64 product produced at a facility engaged in processing of raw
65 natural gas or oil to recover or extract liquid hydrocarbons,
66 then wherever the term "100 million" is used in this
67 subsection, the term "20 million" shall be substituted and
68 where the term "50 million" is used, the term "10 million"
69 shall be substituted; or

70 (2) (A) All real property and personal property, the
71 combined original cost of which exceeds \$2 billion to be
72 constructed, located or installed at a facility, or a
73 combination of facilities by a single entity or combination
74 of entities engaged in a unitary business, that:

75 (i) Is or will be engaged in processing of raw natural gas
76 or oil to recover or extract liquid hydrocarbons; or

77 (ii) Is a manufacturing facility that uses one or more
78 products produced at a facility described in subparagraph (i)
79 above; or

80 (iii) Is a manufacturing facility that uses one or more
81 products produced at a facility described in subparagraph
82 (ii) of this subdivision.

83 (B) No preexisting investment made, or in place before
84 the capital addition is required for property specified in this

85 subdivision. The requirements set forth in subdivision (1) of
86 this subsection do not apply to property specified in this
87 subdivision relating to:

88 (i) Location or installation of investment at or within
89 two miles of a manufacturing facility owned or operated by
90 the person making the capital addition;

91 (ii) Total original cost of preexisting investment before
92 the capital addition of at least \$100 million or \$20 million;
93 or

94 (iii) Multiparty projects.

95 (f) “Real property” means all property specified in §2-
96 2-10(p) of this code and includes, but is not limited to, lands,
97 buildings, and improvements on the land such as sewers,
98 fences, roads, paving, and leasehold improvements:
99 *Provided*, That for capital additions certified on or after July
100 1, 2011, the value of the land before any improvements shall
101 be subtracted from the value of the capital addition and the
102 unimproved land value shall not be given salvage value
103 treatment.

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

§11-13S-3. Definitions.

1 (a) Any term used in this article has the meaning
2 ascribed by this section unless a different meaning is clearly
3 required by the context of its use or by definition in this
4 article.

5 (b) For purpose of this article, the term:

6 (1) “Eligible taxpayer” means an industrial taxpayer
7 who purchases new property for the purpose of industrial
8 expansion or for the purpose of industrial revitalization of
9 an existing industrial facility in this state.

10 (2) “Industrial expansion” means capital investment in
11 a new or expanded industrial facility in this state.

12 (3) “Industrial facility” means any factory, mill, plant,
13 refinery, warehouse, building, or complex of buildings
14 located within this state, including the land on which it is
15 located, and all machinery, equipment, and other real and
16 tangible personal property located at or within the facility
17 primarily used in connection with the operation of the
18 manufacturing business.

19 (4) “Industrial revitalization” or “revitalization” means
20 capital investment in an industrial facility located in this
21 state to replace or modernize buildings, equipment,
22 machinery, and other tangible personal property used in
23 connection with the operation of the facility in an industrial
24 business of the taxpayer including the acquisition of any real
25 property necessary to the industrial revitalization.

26 (5) “Industrial taxpayer” means any taxpayer who is
27 primarily engaged in a manufacturing business.

28 (6) “Manufacturing” means any business activity
29 classified as having a sector identifier, consisting of the first
30 two digits of the six-digit North American Industry
31 Classification System code number of 31, 32, or 33. For
32 purposes of this article, manufacturing also includes the
33 processing of raw natural gas or oil to recover or extract
34 liquid hydrocarbons, which is classified under North
35 American Industry Classification System code number
36 211130. This definition does not mean or include any other
37 processes or activities classified, categorized, grouped, or
38 identified under North American Industry Classification
39 System code number 211130.

40 (7) “Property purchased for manufacturing investment”
41 means real property, and improvements thereto, and
42 tangible personal property but only if the property was
43 constructed or purchased on or after January 1, 2003, for use
44 as a component part of a new, expanded, or revitalized

45 industrial facility. This term includes only that tangible
46 personal property with respect to which depreciation, or
47 amortization in lieu of depreciation, is allowable in
48 determining the federal income tax liability of the industrial
49 taxpayer, that has a useful life, at the time the property is
50 placed in service or use in this state, of four years or more.
51 Property acquired by written lease for a primary term of 10
52 years or longer, if used as a component part of a new or
53 expanded industrial facility, is included within this
54 definition.

55 (A) "Property purchased for manufacturing investment"
56 does not include:

57 (i) Repair costs, including materials used in the repair,
58 unless for federal income tax purposes, the cost of the repair
59 must be capitalized and not expensed;

60 (ii) Motor vehicles licensed by the Division of Motor
61 Vehicles;

62 (iii) Airplanes;

63 (iv) Off-premises transportation equipment;

64 (v) Property which is primarily used outside this state;
65 and

66 (vi) Property which is acquired incident to the purchase
67 of the stock or assets of an industrial taxpayer which
68 property was or had been used by the seller in his or her
69 industrial business in this state or in which investment was
70 previously the basis of a credit against tax taken under any
71 other article of this chapter.

72 (B) Purchases or acquisitions of land or depreciable
73 property qualify as purchases of property purchased for
74 manufacturing investment for purposes of this article only
75 if:

76 (i) The property is not acquired from a person whose
77 relationship to the person acquiring it would result in the
78 disallowance of deductions under section 267 or 707(b) of
79 the United States Internal Revenue Code of 1986, as defined
80 in §11-21-1 *et seq.* and §11-24-1 *et seq.* of this code;

81 (ii) The property is not acquired from a related person
82 or by one component member of a controlled group from
83 another component member of the same controlled group.
84 The Tax Commissioner may waive this requirement if the
85 property was acquired from a related party for its then fair
86 market value; and

87 (iii) The basis of the property for federal income tax
88 purposes, in the hands of the person acquiring it, is not
89 determined, in whole or in part, by reference to the federal
90 adjusted basis of the property in the hands of the person
91 from whom it was acquired or under section 1014(e) of the
92 United States Internal Revenue Code of 1986.

93 (8) “Qualified manufacturing investment” means that
94 amount determined under §11-13S-5 of this code as
95 qualified manufacturing investment.

96 (9) “Taxpayer” means any person subject to any of the
97 taxes imposed by §11-13A-1 *et seq.*, §11-21-1 *et seq.*, or
98 §11-24-1 *et seq.* of this code, or any combination of those
99 articles of this chapter.

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CHAPTER 330

**(Com. Sub. for H. B. 2149 - By Delegates Lovejoy,
Linville, Hansen and Boggs)**

[Passed February 29, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §11-13DD-3 of the Code of West Virginia, 1931, as amended, relating to the Farm-To-Food Bank Tax Credit; and allowing the credit to equal 30 percent of the value of the donated edible agricultural products when the value is \$2,500 or less.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13DD. WEST VIRGINIA FARM-TO-FOOD BANK TAX CREDIT.

§11-13DD-3. Amount of credit; limitation of credit.

1 (a) There is allowed to farming taxpayers who make
2 donations of edible agricultural products to one or more
3 nonprofit food programs in this state, a credit against taxes
4 imposed by §11-21-1 *et seq.* and §11-24-1 *et seq.* of this
5 code in the amount set forth in this section.

6 (b) The amount of the credit is equal to 30 percent of the
7 value of the donated edible agricultural products, but not to
8 exceed \$2,500 during a taxable year or the total amount of
9 tax imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this
10 code, whichever is less, in the year of donations.

11 (c) If the amount of the credit exceeds the taxpayer's tax
12 liability for the taxable year, the amount which exceeds the
13 tax liability may be carried over and applied as a credit
14 against the tax liability of the taxpayer pursuant to §11-21-

15 1 *et seq.* or §11-24-1 *et seq.* of this code to each of the next
16 four taxable years unless sooner used.

17 (d) No more than \$200,000 of tax credits may be
18 allocated by the department in any fiscal year. The
19 department shall allocate the tax credits in the order the
20 donation forms are received.

CHAPTER 331

**(Com. Sub. for H. B. 2967 - By Delegates Hardy,
Bibby, Barrett, Espinosa, Cowles, Householder,
Mandt, Linville, Wilson, D. Jeffries and Rowan)**

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

AN ACT to amend and reenact §11-22-2 of the Code of West Virginia, 1931, as amended, relating to phasing in elimination of state excise tax on privilege of transferring property and replacing it with county excise tax on certain date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL PROPERTY.

§11-22-2. Rate of tax; when and by whom payable; additional county tax.

1 (a) Every person who delivers, accepts, or presents for
2 recording any document, or in whose behalf any document
3 is delivered, accepted, or presented for recording, is subject
4 to pay for, and in respect to the transaction or any part
5 thereof, a state excise tax upon the privilege of transferring
6 title to real estate at the rate of \$1.10 for each \$500 value or
7 fraction thereof as represented by the document as defined

8 in §11-22-1 of this code: *Provided*, That beginning July 1,
9 2021, ten percent of each state excise tax collected pursuant
10 to the provisions of this subsection shall be retained by the
11 county wherein the tax was collected to be used for county
12 purposes: *Provided, however*, That beginning July 1, in
13 every year thereafter, an additional ten percent of each state
14 excise tax collected pursuant to this subsection shall be
15 retained by the county wherein the tax was collected to be
16 used for county purposes: *Provided, further*, That beginning
17 July 1, 2030, the excise tax collected pursuant to this
18 subsection shall be a county excise tax to be used by the
19 county wherein it is collected for county purposes. The state
20 tax is payable at the time of delivery, acceptance, or
21 presenting for recording of the document. In addition to the
22 state excise tax described in this subsection, there is
23 assessed a fee of \$20 upon the privilege of transferring real
24 estate for consideration. The clerk of the county commission
25 shall collect the additional \$20 fee before recording a
26 transfer of title to real estate and shall deposit the moneys
27 from the additional fees into the Affordable Housing Fund
28 as provided in §31-18-20d of this code. The moneys
29 collected from this additional fee shall be segregated from
30 other funds of the West Virginia Housing Development
31 Fund and shall be accounted for separately. None of these
32 moneys may be expended by the West Virginia Housing
33 Development Fund to defray administrative and operating
34 costs and expenses actually incurred by the West Virginia
35 Housing Development Fund. The West Virginia Housing
36 Development Fund shall publish monthly on the Internet
37 site an accounting of all revenue deposited into the fund
38 during the month and a full disclosure of all expenditures
39 from the fund including the group receiving funds, their
40 location and any contractor awarded the construction
41 contract.

42 (b) Effective January 1, 1968, and thereafter, there is
43 imposed an additional county excise tax for the privilege of
44 transferring title to real estate at the rate of 55 cents for each
45 \$500 value or fraction thereof as represented by such

46 document as defined in §11-22-1 of this code, which county
47 tax shall be payable at the time of delivery, acceptance, or
48 presenting for recording of such document: *Provided*, That
49 after July 1, 1989, the county may increase said excise tax
50 to an amount equal to the state excise tax. The additional tax
51 hereby imposed is declared to be a county tax and to be used
52 for county purposes: *Provided, however*, That after July 1,
53 2017, the county may increase the excise tax to an amount
54 not to exceed \$1.65 for each \$500 value, or fraction thereof,
55 as represented by a document as defined in §11-22-1 of this
56 code: *Provided further*, That only one such state tax and one
57 such county tax shall be paid on any one document and shall
58 be collected in the county where the document is first
59 admitted to record and the tax shall be paid by the grantor
60 therein unless the grantee accepts the document without
61 such tax having been paid, in which event such tax shall be
62 paid by the grantee: *And provided further*, That on any
63 transfer of real property from a trustee or a county clerk
64 transferring real estate sold for taxes, such tax shall be paid
65 by the grantee. The county excise tax imposed under this
66 section may not be increased in any county unless the
67 increase is approved by a majority vote of the members of
68 the county commission of such county. Any county
69 commission intending to increase the excise tax imposed in
70 its county shall publish a notice of its intention to increase
71 such tax not less than 30 days nor more than 60 days prior
72 to the meeting at which such increase will be considered,
73 such notice to be published as a Class I legal advertisement
74 in compliance with the provisions of §59-3-1 *et seq.* of this
75 code and the publication area shall be the county in which
76 such county commission is located.

●

CHAPTER 332

**(Com. Sub. for H. B. 4019 - By Delegates J. Kelly,
Toney, Westfall, Barnhart, Maynard, Porterfield,
Mandt, Little, Queen, Householder and Butler)**

[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 article, designated †§11-13GG-1, †§11-13GG-2, †§11-13GG-3, †§11-13GG-4, †§11-13GG-5, †§11-13GG-6, †§11-13GG-7, †§11-13GG-8, †§11-13GG-9, †§11-13GG-10, †§11-13GG-11, †§11-13GG-12, †§11-13GG-13, †§11-13GG-14, †§11-13GG-15, †§11-13GG-16, †§11-13GG-17, †§11-13GG-18, †§11-13GG-19, and †§11-13GG-20, all relating generally to creating the Downstream Natural Gas Manufacturing Investment Tax Credit Act of 2020; providing for administration and enforcement of act; providing a short title; making legislative findings; stating legislative purpose; defining terms; specifying an amount of credit allowable based on amount of qualified investment and the number of new jobs created; providing limitations and conditions for qualification and use; defining in service or use; providing for the application of the credit to the corporate net income tax and the personal income tax, as appropriate; providing for methods of calculation of the qualified investment; providing for determination and certification of the number of new jobs; providing for carry over and forfeiture of unused tax credits and redetermination of tax credits under certain circumstances; providing limitations for credits being carried over; providing for full recapture and partial recapture of credit under certain circumstances and imposing a recapture tax; allowing transfer of qualified investment property without forfeiture or recapture under

† Redesignated

certain circumstances; requiring identification of qualified investment property and record keeping; providing penalties for failure to keep required records; providing for interpretation and construction of credit; requiring timely filing of application for credit; specifying burden of proof; requiring periodic tax credit review and accountability reports; authorizing rulemaking; making credit subject to West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act; providing for severability; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

**†ARTICLE 13GG. DOWNSTREAM NATURAL GAS
MANUFACTURING INVESTMENT TAX CREDIT
OF 2020.**

†§11-13GG-1. Short title.

1 This article may be cited as the Downstream Natural
2 Gas Manufacturing Investment Tax Credit Act of 2020.

†§11-13GG-2. Legislative finding and purpose.

1 The Legislature finds that the encouragement of
2 downstream manufacturing in this state is in the public
3 interest and promotes the general welfare of the people of
4 this state. In order to encourage greater capital investment
5 in downstream natural gas manufacturing businesses in this
6 state and thereby increase economic opportunity in this
7 state, there is hereby enacted the downstream
8 manufacturing tax credit.

†§11-13GG-3. Definitions.

1 (a) *General.* — When used in this article, or in the
2 administration of §11-13FF-1 *et seq.* of this code, terms
3 defined in subsection (b) have the meanings ascribed to
4 them by this section, unless a different meaning is clearly
5 required by either the context in which the term is used, or
6 by specific definition, in §11-13FF-1 *et seq.* of this code.

† Redesignated

7 (b) Terms defined.

8 (1) “Affiliated group” means any affiliated group within
9 the meaning section 1504(a) of the Internal Revenue Code,
10 or any similar group defined under a similar provision of
11 state, local, or foreign law, except that section 1504 of
12 Internal Revenue Code shall be applied by substituting
13 “more than 50 percent” for “at least 80 percent” each place
14 it appears in that section.

15 (2) “Business” means a downstream natural gas
16 manufacturing business activity which is engaged in by any
17 person in this state which is taxable under §11-21-1 *et seq.*
18 or §11-24-1 *et seq.* of this code.

19 (3) “Business expansion” means capital investment in a
20 new or expanded downstream natural gas manufacturing
21 facility in this state.

22 (4) “Commissioner” or “Tax Commissioner” are used
23 interchangeably in this article and mean the Tax
24 Commissioner of the State of West Virginia, or his or her
25 designee.

26 (5) “Compensation” means wages, salaries,
27 commissions, and any other form of remuneration paid to
28 employees for personal services.

29 (6) “Controlled group of corporations” means a
30 controlled group of corporations as defined in section
31 1563(a) of the Internal Revenue Code.

32 (7) “Corporation” means any corporation, joint-stock
33 company, association, or other entity treated as a
34 corporation for federal income tax purposes, and any
35 business conducted by a trustee or trustees wherein interest
36 or ownership is evidenced by a certificate of interest or
37 ownership or similar written instrument.

38 (8) “Designee” in the phrase “or his or her designee,”
39 when used in reference to the Tax Commissioner, means

40 any officer or employee of the State Tax Department duly
41 authorized by the commissioner directly, or indirectly by
42 one or more redelegations of authority, to perform the
43 functions mentioned or described in this article.

44 (9) “Downstream natural gas manufacturing” refers to
45 oil and gas manufacturing operations after the production
46 and processing phases and includes, but is not limited to,
47 facilities that use oil, natural gas, natural gas liquids, or the
48 products produced by ethane crackers as raw materials to
49 manufacture industrial and commercial products.

50 (10) “Downstream natural gas manufacturing business”
51 means a business primarily engaged in this state in
52 downstream natural gas manufacturing.

53 (11) “Downstream natural gas manufacturing facility”
54 or “downstream manufacturing facility” means any factory,
55 mill, plant, warehouse, building, or complex of buildings
56 located within this state, including the land on which it is
57 located, and all machinery, equipment, and other real and
58 personal property located at or within the facility, used in
59 connection with the operation of the facility, in a business
60 that is taxable in this state, and all site preparation and start-
61 up costs of the taxpayer for the downstream natural gas
62 manufacturing facility which it capitalizes for federal
63 income tax purposes.

64 (12) “Eligible taxpayer” means any person who makes
65 qualified investment in a new or expanded downstream
66 natural gas manufacturing facility located in this state and
67 creates at least the required number of new jobs and who is
68 subject to any of the taxes imposed by §11-21-1 *et seq.* or
69 §11-24-1 *et seq.* of this code.

70 (13) “Expanded facility” means any downstream natural
71 gas manufacturing facility, other than a new or replacement
72 business facility, resulting from the acquisition,
73 construction, reconstruction, installation, or erection of
74 improvements or additions to existing property if the

75 improvements or additions are purchased on or after July 1,
76 2020, but only to the extent of the taxpayer's qualified
77 investment in the improvements or additions.

78 (14) "Includes" and "including" when used in a
79 definition contained in this article, shall not be considered
80 to exclude other things otherwise within the meaning of the
81 term defined.

82 (15) "Leased property" does not include property which
83 the taxpayer is required to show on its books and records as
84 an asset under generally accepted principles of financial
85 accounting. If the taxpayer is prohibited from expensing the
86 lease payments for federal income tax purposes, the
87 property shall be treated as purchased property under this
88 section.

89 (16) "Natural gas" means a gaseous fossil energy source
90 that formed deep beneath the earth's surface that is a
91 combustible mixture of methane and other hydrocarbons.

92 (17) "Natural gas liquids" includes the following
93 separated from raw natural gas: butane, ethane, isobutane,
94 pentane, propane, and similar liquid hydrocarbons and
95 byproducts separated from natural gas.

96 (18) "Natural resources" means all forms of minerals,
97 including, but not limited to, rock, stone limestone, coal
98 shale, gravel, sand, clay, natural gas, oil, and natural gas
99 liquids which are contained in or on the soils or waters of
100 this state and includes standing timber.

101 (19) "New downstream natural gas manufacturing
102 facility" means a business facility which satisfies all the
103 requirements of paragraphs (A), (B), (C), and (D) of this
104 subdivision.

105 (A) The facility is employed by the taxpayer in the
106 conduct of a downstream natural gas manufacturing activity
107 the net income of which is or would be taxable under §11-
108 21-1 *et seq.* or §11-24-1 *et seq.* of this code. The facility is

109 not considered a new downstream natural gas
110 manufacturing facility in the hands of the taxpayer if the
111 taxpayer's only activity with respect to the facility is to lease
112 it to another person or persons.

113 (B) The facility is purchased by, or leased to, the
114 taxpayer on or after July 1, 2020.

115 (C) The facility was not purchased or leased by the
116 taxpayer from a related person. The commissioner may
117 waive this requirement if the facility was acquired from a
118 related party for its fair market value and the acquisition was
119 not tax motivated.

120 (D) The facility was not in service or use during the 90
121 days immediately prior to transfer of the title to the facility,
122 or prior to the commencement of the term of the lease of the
123 facility: *Provided*, That this 90-day period may be waived
124 by the commissioner if the commissioner determines that
125 persons employed at the facility may be treated as "new
126 employees" as that term is defined in this subsection.

127 (20) "New employee" –

128 (A) The term new employee means an individual hired
129 by the taxpayer to fill a position or a job in this state which
130 previously did not exist in the taxpayer's downstream
131 natural gas manufacturing activity in this state prior to the
132 date on which the taxpayer's qualified investment in a new
133 or expanded downstream natural gas manufacturing facility
134 is placed in service or use in this state. In no case may the
135 number of new employees directly attributable to the
136 investment for purposes of this credit exceed the total net
137 increase in the taxpayer's employment in this state:
138 *Provided*, That the Tax Commissioner may require that the
139 net increase in the taxpayer's employment in this state be
140 determined and certified for the taxpayer's controlled
141 group: *Provided, however*, That persons filling jobs saved
142 as a direct result of taxpayer's qualified investment in
143 property purchased or leased for business expansion may be

144 treated as new employees filling new jobs if the taxpayer
145 certifies the material facts to the commissioner and the Tax
146 Commissioner expressly finds that:

147 (i) But for the new employer purchasing the assets of a
148 downstream natural gas manufacturing business in
149 bankruptcy under chapter seven or 11 of the United States
150 bankruptcy code and the new employer making qualified
151 investment in property purchased or leased for business
152 expansion, the assets would have been sold by the United
153 States bankruptcy court in a liquidation sale and the jobs
154 saved would have been lost; or

155 (ii) But for the taxpayer's qualified investment in
156 property purchased or leased for downstream
157 manufacturing business expansion in this state, the taxpayer
158 would have closed its downstream natural gas
159 manufacturing facility in this state and the employees of the
160 taxpayer located at the facility would have lost their jobs:
161 *Provided*, That the Tax Commissioner may not make this
162 certification unless the commissioner finds that the taxpayer
163 is insolvent as defined in 11 U.S.C. §101(32) or that the
164 taxpayer's natural gas manufacturing facility was destroyed,
165 in whole or in significant part, by fire, flood, or other act of
166 God.

167 (B) A person is considered to be a new employee only
168 if the person's duties in connection with the operation of the
169 downstream natural gas manufacturing facility are on:

170 (i) A regular, full-time and permanent basis:

171 (I) Full-time employment means employment for at
172 least 140 hours per month at a wage not less than the
173 applicable state or federal minimum wage, depending on
174 which minimum wage provision is applicable to the
175 business.

176 (II) Permanent employment does not include
177 employment that is temporary or seasonal and therefore the

178 wages, salaries, and other compensation paid to the
179 temporary or seasonal employees will not be considered for
180 purposes of §11-13FF-5 of this code.

181 (ii) A regular, part-time, and permanent basis: *Provided*,
182 That the person is customarily performing the duties at least
183 20 hours per week for at least six months during the taxable
184 year.

185 (21) “New job” means a job which did not exist in the
186 downstream natural gas manufacturing business of the
187 taxpayer in this state prior to the taxpayer’s qualified
188 investment being made, and which is filled by a new
189 employee.

190 (22) “New property” means:

191 (A) Property, the construction, reconstruction, or
192 erection of which is completed on or after July 1, 2020, and
193 placed in service or use after that date; and

194 (B) Property leased or acquired by the taxpayer that is
195 placed in service or use in this state on or after July 1, 2020,
196 if the original use of the property commences with the
197 taxpayer and commences after that date.

198 (23) “Original use” means the first use to which the
199 property is put, whether or not the use corresponds to the
200 use of the property by the taxpayer.

201 (24) “Partnership” includes a syndicate, group, pool,
202 joint venture, or other unincorporated organization through
203 or by means of which any business, financial operation, or
204 venture is carried on, which is treated as a partnership for
205 federal income tax purposes, and which is not a trust or
206 estate, a corporation, or a sole proprietorship.

207 (25) “Partner” includes a member in such a syndicate,
208 group, pool, joint venture, or other organization.

209 (26) “Person” includes any natural person, corporation,
210 or partnership.

211 (27) “Property purchased or leased for business
212 expansion” —

213 (A) *Included property.* — Except as provided in
214 paragraph (B), the term “property purchased or leased for
215 business expansion” means real property and improvements
216 thereto, and tangible personal property, but only if the real
217 or personal property was constructed, purchased, or leased
218 and placed in service or use by the taxpayer, for use as a
219 component part of a new or expanded downstream natural
220 gas manufacturing facility as defined in this section, which
221 is located within the State of West Virginia. This term
222 includes only:

223 (i) Real property and improvements thereto having a
224 useful life of four or more years, placed in service or use on
225 or after July 1, 2020, by the taxpayer.

226 (ii) Real property and improvements thereto, acquired
227 by written lease having a primary term of 10 or more years
228 and placed in service or use by the taxpayer on or after July
229 1, 2020.

230 (iii) Tangible personal property placed in service or use
231 by the taxpayer on or after July 1, 2020, with respect to
232 which depreciation, or amortization in lieu of depreciation,
233 is allowable in determining the personal or corporation net
234 income tax liability of the business taxpayer under §11-21-
235 1 *et seq.* or §11-24-1 *et seq.* of this code, and which has a
236 useful life, at the time the property is placed in service or
237 use in this state, of four or more years.

238 (iv) Tangible personal property acquired by written
239 lease having a primary term of four years or longer, that
240 commenced and was executed by the parties thereto on or
241 after July 1, 2020, if used as a component part of a new or

242 expanded downstream manufacturing business facility,
243 shall be included within this definition.

244 (v) Tangible personal property owned or leased, and
245 used by the taxpayer at a business location outside this state
246 which is moved into the State of West Virginia on or after
247 July 1, 2020, for use as a component part of a new or
248 expanded downstream natural gas manufacturing facility
249 located in this state: *Provided*, That if the property is owned,
250 it must be depreciable or amortizable personal property for
251 income tax purposes, and have a useful life of four or more
252 years remaining at the time it is placed in service or use in
253 this state, and if the property is leased, the primary term of
254 the lease remaining at the time the leased property is placed
255 in service or use in this state, must be four or more years.

256 (B) *Excluded property*. — The term property purchased
257 or leased for business expansion does not include:

258 (i) Property owned or leased by the taxpayer and for
259 which the taxpayer was previously or is currently being
260 allowed tax credit under §11-13D-1 *et seq.*, §11-13Q-1 *et*
261 *seq.*, §11-13S-1 *et seq.*, or §11-13U-1 *et seq.* of this code.

262 (ii) Property owned or leased by the taxpayer and for
263 which the seller, lessor, or other transferor, was previously
264 or is currently being allowed tax credit under §11-13D-1 *et*
265 *seq.*, §11-13Q-1 *et seq.*, §11-13S-1 *et seq.*, or §11-13U-1 *et*
266 *seq.* of this code.

267 (iii) Repair costs, including materials used in the repair,
268 unless for federal income tax purposes the cost of the repair
269 must be capitalized and not expensed.

270 (iv) Airplanes and helicopters.

271 (v) Property which is primarily used outside this state,
272 with use being determined based upon the amount of time
273 the property is actually used both within and outside this
274 state.

275 (vi) Property which is acquired incident to the purchase
276 of the stock or assets of the seller, unless for good cause
277 shown, the Tax Commissioner consents to waiving this
278 requirement.

279 (vii) Natural resources in place.

280 (viii) Purchased or leased property, the cost or
281 consideration for which cannot be quantified with any
282 reasonable degree of accuracy at the time the property is
283 placed in service or use: *Provided*, That when the contract
284 of purchase or lease specifies a minimum purchase price or
285 minimum annual rent the amount thereof shall be used to
286 determine the qualified investment in the property under
287 §11-13FF-6 of this code if the property otherwise qualifies
288 as property purchased or leased for expansion of a
289 downstream natural gas manufacturing facility.

290 (28) "Purchase" means any acquisition of property, but
291 only if:

292 (A) The property is not acquired from a person whose
293 relationship to the person acquiring it would result in the
294 disallowance of deductions under section 267 or 707 (b) of
295 the United States Internal Revenue Code.

296 (B) The property is not acquired by one component
297 member of an affiliated or controlled group from another
298 component member of the same affiliated or controlled
299 group, as applicable. The Tax Commissioner may waive
300 this requirement if the property was acquired from a related
301 party for its then fair market value; and

302 (C) The basis of the property for federal income tax
303 purposes, in the hands of the person acquiring it, is not
304 determined:

305 (i) In whole or in part, by reference to the federal
306 adjusted basis of the property in the hands of the person
307 from whom it was acquired; or

308 (ii) Under Section 1014(e) of the United States Internal
309 Revenue Code.

310 (29) “Qualified activity” means any downstream natural
311 gas manufacturing business activity subject to any of the
312 taxes imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this
313 code but does not include the activity of severance or
314 production of natural resources.

315 (30) “Related person” means:

316 (A) A corporation, partnership, association, or trust
317 controlled by the taxpayer;

318 (B) An individual, corporation, partnership, association,
319 or trust that is in control of the taxpayer;

320 (C) A corporation, partnership, association, or trust
321 controlled by an individual, corporation, partnership,
322 association, or trust that is in control of the taxpayer; or

323 (D) A member of the same affiliated or controlled group
324 as the taxpayer.

325 For purposes of this subdivision, control, with respect to
326 a corporation, means ownership, directly or indirectly, of
327 stock possessing 50 percent or more of the total combined
328 voting power of all classes of the stock of the corporation
329 entitled to vote.

330 Control, with respect to a trust, means ownership,
331 directly or indirectly, of 50 percent or more of the beneficial
332 interest in the principal or income of the trust. The
333 ownership of stock in a corporation, of a capital or profits
334 interest in a partnership or association, or of a beneficial
335 interest in a trust is determined in accordance with the rules
336 for constructive ownership of stock provided in section
337 267(c) of the United States Internal Revenue Code, other
338 than paragraph (3) of that section.

339 (31) “Replacement downstream natural gas
340 manufacturing facility” means any property (other than an
341 expanded downstream natural gas manufacturing facility)
342 that replaces or supersedes any other property located
343 within this state that:

344 (A) The taxpayer or a related person used in or in
345 connection with any downstream natural gas manufacturing
346 facility for more than two years during the period of five
347 consecutive years ending on the date the replacement or
348 superseding property is placed in service by the taxpayer; or

349 (B) Is not used by the taxpayer or a related person in or
350 in connection with any downstream natural gas
351 manufacturing facility for a continuous period of one year
352 or more commencing with the date the replacement or
353 superseding property is placed in service by the taxpayer.

354 (32) “Taxpayer” means any person subject to any of the
355 taxes imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this
356 code.

357 (33) “This code” means the Code of West Virginia,
358 1931, as amended.

359 (34) “This state” means the State of West Virginia.

360 (35) “United States Internal Revenue Code” or “I.R.C.”
361 means the Internal Revenue Code as defined in §11-21-1 *et*
362 *seq.* or §11-24-1 *et seq.* of this code.

363 (36) “Used property” means property acquired after
364 June 30, 2020, that is not “new property”.

†§11-13GG-4. Amount of credit allowed.

1 (a) *Credit allowed.* — Notwithstanding any other
2 provision of this code, eligible taxpayers are allowed a
3 credit against the portion of taxes imposed by this state that
4 are attributable to and the consequence of the taxpayer’s
5 qualified investment in a new or expanded downstream

6 natural gas manufacturing facility in this state, which results
7 in the creation of new jobs. The amount of this credit is
8 determined and applied as provided in this article.

9 (b) *Amount of credit.* — The amount of credit allowable
10 is determined by multiplying the amount of the taxpayer's
11 qualified investment, determined under §11-13FF-6 of this
12 code, in property purchased or leased for a new, or
13 expansion of an existing "downstream natural gas
14 manufacturing facility", as defined in §11-13FF-3 of this
15 code, by the taxpayer's new jobs percentage, determined
16 under §11-13FF-7 of this code. The product of this
17 calculation establishes the maximum amount of credit
18 allowable under this article due to the qualified investment.

19 (c) *Application of credit over 10 years.* — The amount
20 of credit allowable must be taken over a 10-year period, at
21 the rate of one tenth of the amount thereof per taxable year,
22 beginning with the taxable year in which the taxpayer places
23 the qualified investment in service or use in this state, unless
24 the taxpayer elected to delay the beginning of the 10-year
25 period until the next succeeding taxable year. This election
26 shall be made in the annual income tax return filed under
27 this chapter for the taxable year in which qualified
28 investment is first placed into service or use by the taxpayer.
29 Once made, the election cannot be revoked. The annual
30 credit allowance is taken in the manner prescribed in §11-
31 13FF-5 of this code.

32 (d) *Placed in service or use.* — For purposes of the
33 credit allowed by this section, property is considered placed
34 in service or use in the earlier of the following taxable years:

35 (1) The taxable year in which, under the taxpayer's
36 depreciation practice, the period for depreciation with
37 respect to the property begins; or

38 (2) The taxable year in which the property is placed in a
39 condition or state of readiness and availability for a
40 specifically assigned function.

†§11-13GG-5. Application of annual credit allowance.

1 (a) *In general.* — The aggregate annual credit allowance
2 for the current taxable year is an amount equal to the sum of
3 the following:

4 (1) The one-tenth part allowed under §11-13FF-4 of this
5 code for qualified investment property placed into service
6 or use during a prior taxable year; plus

7 (2) The one-tenth part allowed under §11-13FF-4 of this
8 code for qualified investment property placed into service
9 or use during the current taxable year.

10 (b) *Application of current year annual credit*
11 *allowance.* — The amount determined under subsection (a)
12 of this section is allowed as a credit against 80 percent of
13 that portion of the taxpayer's state tax liability which is
14 attributable to and the direct result of the taxpayer's
15 qualified investment, and applied as provided in subsections
16 (c) and (d), both inclusive, of this section, and in that order:
17 *Provided,* That if the median salary of the new jobs is higher
18 than the statewide average nonfarm payroll wage, as
19 determined annually by Workforce West Virginia, the
20 amount determined under subsection (a) of this section is
21 allowed as a credit against 100 percent of that portion of the
22 taxpayer's state tax liability which is attributable to and the
23 direct result of the taxpayer's qualified investment, and shall
24 be applied, as provided in subsections (c) through (d), both
25 inclusive, of this section, and in that order.

26 (c) *Corporation net income taxes.* —

27 (1) That portion of the allowable credit attributable to
28 qualified investment in a downstream natural gas
29 manufacturing facility may be applied to reduce the taxes
30 imposed by §11-24-1 *et seq.* of this code for the taxable year
31 as determined before application of allowable credits
32 against tax.

33 (2) If the taxes due under §11-24-1 *et seq.* of this code,
34 as determined before application of allowable credits
35 against tax, are not solely attributable to and the direct result
36 of the taxpayer's qualified investment in a downstream
37 natural gas manufacturing business, the amount of the taxes
38 that is attributable are determined by multiplying the
39 amount of taxes due under §11-24-1 *et seq.* of this code for
40 the taxable year, as determined before application of
41 allowable credits against tax, by a fraction, the numerator of
42 which is all wages, salaries, and other compensation paid
43 during the taxable year to all employees of the taxpayer
44 employed in this state whose positions are directly
45 attributable to the qualified investment. The denominator of
46 the fraction is the wages, salaries, and other compensation
47 paid during the taxable year to all employees of the taxpayer
48 employed in this state.

49 (d) *Personal income taxes.* —

50 (1) If the person making the qualified investment in a
51 downstream natural gas manufacturing facility is an electing
52 small business corporation, as defined in section 1361 of the
53 United States Internal Revenue Code, a partnership, a
54 limited liability company that is treated as a partnership for
55 federal income tax purposes, or a sole proprietorship, then
56 any unused credit is allowed as a credit against the taxes
57 imposed by §11-21-1 *et seq.* of this code on the income from
58 downstream natural gas manufacturing facility, or on
59 income of a sole proprietor attributable to the downstream
60 natural gas manufacturing facility.

61 (2) Electing small business corporations, limited
62 liability companies treated as partnerships for federal
63 income tax purposes, partnerships, and other
64 unincorporated organizations shall allocate the credit
65 allowed by this article among its members in the same
66 manner as profits and losses are allocated for the taxable
67 year.

68 (3) If the amount of taxes due under §11-21-1 *et seq.* of
69 this code, as determined before application of allowable
70 credits against tax, that is attributable to business, is not
71 solely attributable to and the direct result of the qualified
72 investment of the electing small business corporation,
73 limited liability company treated as a partnership for federal
74 income tax purposes, other unincorporated organization, or
75 sole proprietorship, the amount of the taxes that are so
76 attributable are determined by multiplying the amount of
77 taxes due under §11-21-1 *et seq.* of this code, as determined
78 before application of allowable credits against tax that is
79 attributable to business by a fraction, the numerator of
80 which is all wages, salaries, and other compensation paid
81 during the taxable year to all employees of the electing small
82 business corporation, limited liability company,
83 partnership, other unincorporated organization, or sole
84 proprietorship employed in this state, whose positions are
85 directly attributable to the qualified investment. The
86 denominator of the fraction is the wages, salaries, and other
87 compensation paid during the taxable year to all employees
88 of the taxpayer.

89 (4) No credit is allowed under this section against any
90 employer withholding taxes imposed by §11-21-1 *et seq.* of
91 this code.

92 (e) If the wages, salaries, and other compensation
93 fraction formula provisions of subsections (c) and (d) of this
94 section, inclusive, do not fairly represent the taxes solely
95 attributable to and the direct result of qualified investment
96 of the taxpayer the Tax Commissioner may require, in
97 respect to all or any part of the taxpayer's businesses or
98 activities, if reasonable:

99 (1) Separate accounting or identification;

100 (2) Adjustment to the wages, salaries, and other
101 compensation fraction formula to reflect all components of
102 the tax liability;

103 (3) The inclusion of one or more additional factors that
104 will fairly represent the taxes solely attributable to and the
105 direct result of the qualified investment of the taxpayer and
106 all other project participants in the businesses or other
107 activities subject to tax; or

108 (4) The employment of any other method to effectuate
109 an equitable attribution of the taxes.

110 In order to effectuate the purposes of this subsection, the
111 Tax Commissioner may propose for promulgation rules,
112 including emergency rules, in accordance with §29A-3-1 *et*
113 *seq.* of this code.

114 (f) *Unused credit.* — If any credit remains after
115 application of subsection (b) of this section, the amount
116 thereof is carried forward to each ensuing tax year until used
117 or until the expiration of the tenth taxable year subsequent
118 to the end of the initial 10-year credit application period. If
119 any unused credit remains after the 20th year, the amount
120 thereof is forfeited. No carryback to a prior taxable year is
121 allowed for the amount of any unused portion of any annual
122 credit allowance.

†§11-13GG-6. Qualified investment.

1 (a) *General.* — The qualified investment in property
2 purchased or leased for a new, or expansion of an existing,
3 downstream natural gas manufacturing facility is the
4 applicable percentage of the cost of each property purchased
5 or leased for the purpose of the new, or expansion of an
6 existing, downstream natural gas manufacturing facility
7 which is placed in service or use in this state by the taxpayer
8 during the taxable year.

9 (b) *Applicable percentage.* — For the purpose of
10 subsection (a), the applicable percentage of any property is
11 determined under the following table:

12	If useful life is:	The applicable percentage is:
13	Less than four years	0%
14	Four years or more but less than six years	33 1/3%
15	Six years or more but less than eight years	66 2/3%
16	Eight years or more	100%

17 The useful life of any property, for purposes of this
18 section, is determined as of the date the property is first
19 placed in service or use in this state by the taxpayer,
20 determined in accordance with such rules and requirements
21 the Tax Commissioner may prescribe.

22 (c) *Cost.* — For purposes of subsection (a) of this
23 section, the cost of each property purchased for a new, or
24 expansion of an existing, downstream natural gas
25 manufacturing facility is determined under the following
26 rules:

27 (1) *Trade-ins.* — Cost does not include the value of
28 property given in trade or exchange for the property
29 purchased for a new, or for expansion of an existing,
30 downstream natural gas manufacturing facility.

31 (2) *Damaged, destroyed, or stolen property.* — If
32 property is damaged or destroyed by fire, flood, storm, or
33 other casualty, or is stolen, then the cost of replacement
34 property does not include any insurance proceeds received
35 in compensation for the loss.

36 (3) *Rental property.* —

37 (A) The cost of real property acquired by written lease
38 for a primary term of 10 years or longer is 100 percent of
39 the rent reserved for the primary term of the lease, not to
40 exceed 20 years.

41 (B) The cost of tangible personal property acquired by
42 written lease for a primary term of:

43 (i) Four years, or longer, is one third of the rent reserved
44 for the primary term of the lease;

45 (ii) Six years, or longer, is two thirds of the rent reserved
46 for the primary term of the lease; or

47 (iii) Eight years, or longer, is 100 percent of the rent
48 reserved for the primary term of the lease, not to exceed 20
49 years: *Provided*, That in no event may rent reserved include
50 rent for any year subsequent to expiration of the book life of
51 the equipment, determined using the straight-line method of
52 depreciation.

53 (4) *Self-constructed property*. — In the case of self-
54 constructed property, the cost thereof is the amount properly
55 charged to the capital account for depreciation in
56 accordance with federal income tax law.

57 (5) *Transferred property*. — The cost of property used
58 by the taxpayer out-of-state and then brought into this state,
59 is determined based on the remaining useful life of the
60 property at the time it is placed in service or use in this state,
61 and the cost is the original cost of the property to the
62 taxpayer less straight line depreciation allowable for the tax
63 years or portions thereof the taxpayer used the property
64 outside this state. In the case of leased tangible personal
65 property, cost is based on the period remaining in the
66 primary term of the lease after the property is brought into
67 this state for use in a new or expanded business facility of
68 the taxpayer, and is the rent reserved for the remaining
69 period of the primary term of the lease, not to exceed 20
70 years, or the remaining useful life of the property, as
71 determined as aforesaid, whichever is less.

†§11-13GG-7. **New jobs percentage.**

1 (a) *In general*. — The new jobs percentage is based on
2 the number of new jobs created in this state directly
3 attributable to the qualified investment of the taxpayer.

4 (b) *When a job is attributable.* — An employee's
 5 position is directly attributable to the qualified investment
 6 if:

7 (1) The employee's service is performed or his or her
 8 base of operations is at the new or expanded downstream
 9 natural gas manufacturing facility;

10 (2) The position did not exist prior to the construction,
 11 renovation, expansion, or acquisition of the downstream
 12 natural gas manufacturing facility and the making of the
 13 qualified investment; and

14 (3) But for the qualified investment, the position would
 15 not have existed.

16 (c) *Applicable percentage.* — For the purpose of
 17 subsection (a) of this section, the applicable new jobs
 18 percentage is determined under the following table:

19 20	If number of new jobs is at least:	The applicable percentage is:
21	5	10%
22	50	15%
23	150	20%

24 (d) *Certification of new jobs.* — With the annual return
 25 for the applicable taxes filed for the taxable year in which
 26 the qualified investment is first placed in service or use in
 27 this state, the taxpayer shall estimate and certify the number
 28 of new jobs reasonably projected to be created by it in this
 29 state within the period prescribed in subsection (f) of this
 30 section that are, or will be, directly attributable to the
 31 qualified investment of the taxpayer. For purposes of this
 32 section, applicable taxes means the taxes imposed by §11-
 33 21-1 *et seq.* or §11-24-1 *et seq.* of this code against which
 34 this credit is applied.

35 (e) *Equivalency of permanent employees.* — The hours
36 of part-time employees shall be aggregated to determine the
37 number of equivalent full-time employees for the purpose
38 of this section.

39 (f) *Redetermination of new jobs percentage.* — With the
40 annual return for the applicable taxes imposed, filed for the
41 third taxable year in which the qualified investment is in
42 service or use, the taxpayer shall certify the actual number
43 of new jobs created by it in this state that are directly
44 attributable to the qualified investment of the taxpayer.

45 (1) If the actual number of jobs created would result in
46 a higher new jobs percentage, the credit allowed under this
47 article shall be redetermined and amended returns shall be
48 filed for the first and second taxable years that the qualified
49 investment was in service or use in this state.

50 (2) If the actual number of jobs created would result in
51 a lower new jobs percentage, the credit previously allowed
52 under this article shall be redetermined and amended returns
53 shall be filed for the first and second taxable years. In
54 applying the amount of redetermined credit allowable for
55 the two preceding taxable years, the redetermined credit
56 shall first be applied to the extent it was originally applied
57 in the prior two years to personal income taxes, and then to
58 corporation net income taxes. Any additional taxes due
59 under this chapter shall be remitted with the amended
60 returns filed with the Tax Commissioner, along with
61 interest, as provided in §11-10-17 of this code, and a 10-
62 percent penalty determined on the amount of taxes due with
63 the amended return, which may be waived by the
64 commissioner if the taxpayer shows that the overclaimed
65 amount of the new jobs percentage was due to reasonable
66 cause and not due to willful neglect.

67 (g) *Additional new jobs percentage.* — When the
68 qualified investment is \$20 million or more and if the
69 number of full-time construction laborers and mechanics
70 working at the job site of the new or expanded business

71 facility is 50 or more, or if the number of hours of all
72 construction laborers and mechanics working at the job site
73 is equal to or greater than the number of hours 50 full-time
74 construction laborers and mechanics would have worked at
75 the job site during a 12 consecutive month period, a
76 taxpayer that is allowed a new jobs percentage determined
77 under subsection (a) of this section shall be allowed a new
78 jobs percentage that is five percentage points higher than the
79 new jobs percentage allowed under subsection (a) of this
80 section. In no event may construction laborers and
81 mechanics be used to attain or retain a subsection (a) new
82 jobs percentage. The number of full-time construction
83 laborers and mechanics working at the job site shall be
84 determined by dividing the total number of hours worked by
85 all construction laborers and mechanics on a new or
86 expanded business facility during a 12 consecutive month
87 period by 2,080 hours per year. A taxpayer may not claim
88 the additional new jobs percentage allowed by this section
89 unless the taxpayer includes with the certification filed
90 under subsection (d) of this section a certification signed by
91 the general contractor or the construction manager
92 certifying that construction laborers employed at the job site
93 during a consecutive 12 month period aggregated the
94 equivalent of at least 50 full-time employees and the
95 taxpayer has received from the general contractor or
96 construction manager records substantiating the
97 certification, which records shall be retained by the taxpayer
98 for 13 years after the day the expansion to an existing
99 business facility, or the new business facility, is first placed
100 in service or use by the taxpayer. For purposes of subsection
101 (g) of this section:

102 (1) The term construction laborers and mechanics
103 means those workers, utilized by a contractor or
104 subcontractor at any tier, whose duties are manual or
105 physical in nature, including those workers who use tools or
106 are performing the work of a trade, as distinguished from
107 mental or managerial and working foremen who devote

108 more than 20 percent of their time during a workweek
109 performing the duties of a laborer or mechanic; and

110 (2) The term job site is limited to the physical place or
111 places where the construction called for in the contract will
112 remain when the work on it is completed and nearby
113 property, as described in subdivision (3) of this subsection,
114 used by the contractor or subcontractor during construction
115 that, because of proximity, can reasonably be included in
116 the site.

117 (3) Except as provided in subdivision (4) of this
118 subsection, fabrication plants, mobile factories, batch
119 plants, borrow pits, job headquarters, and tool yards are part
120 of the job site provided they are dedicated exclusively, or
121 nearly so, to performance of the contract or project and are
122 located in proximity to the actual construction location so
123 that it would be reasonable to include them.

124 (4) The term “job site” does not include permanent
125 home offices, branch offices, branch plant establishments,
126 fabrication yards, or tool yards of a contractor or
127 subcontractor whose locations and continuance in operation
128 are determined without regard to the contract or subcontract
129 for construction of a new or expanded business facility.

**†§11-13GG-8. Forfeiture of unused tax credits;
redetermination of credit allowed.**

1 (a) *Disposition of property or cessation of use.* — If
2 during any taxable year, property with respect to which a
3 tax credit has been allowed under §11-13FF-1 *et seq.* of this
4 code:

5 (1) Is disposed of prior to the end of its useful life, as
6 determined under §11-13FF-6 of this code; or

7 (2) Ceases to be used in a downstream natural gas
8 manufacturing facility of the taxpayer in this state prior to
9 the end of its useful life, as determined under §11-13FF-6
10 of this code, then the unused portion of the credit allowed

11 for the property is forfeited for the taxable year and all
12 ensuing years. Additionally, except when the property is
13 damaged or destroyed by fire, flood, storm, or other
14 casualty, or is stolen, the taxpayer shall redetermine the
15 amount of credit allowed in all earlier years by reducing the
16 applicable percentage of cost of the property allowed under
17 §11-13FF-5 of this code, to correspond with the percentage
18 of cost allowable for the period of time that the property was
19 actually used in this state in the new or expanded business
20 of the taxpayer. The taxpayer shall then file a reconciliation
21 statement for the year in which the forfeiture occurs and pay
22 any additional taxes owed due to reduction of the amount of
23 credit allowable for the earlier years, plus interest and any
24 applicable penalties. The reconciliation statement shall be
25 filed with the annual income return for the primary tax for
26 which the taxpayer is liable under §11-21-1 *et seq.* or §11-
27 24-1 *et seq.* of this code, whichever is applicable.

28 (b) *Cessation of operation of downstream*
29 *manufacturing facility.* — If during any taxable year the
30 taxpayer ceases operation of a downstream natural gas
31 manufacturing facility in this state for which credit was
32 allowed under this article, before expiration of the useful
33 life of property with respect to which tax credit has been
34 allowed under this article, then the unused portion of the
35 allowed credit is forfeited for the taxable year and for all
36 ensuing years. Additionally, except when the cessation is
37 due to fire, flood, storm, or other casualty, the taxpayer shall
38 redetermine the amount of credit allowed in earlier years by
39 reducing the applicable percentage of cost of the property
40 allowed under §11-13FF-6 of this code, to correspond with
41 the percentage of cost allowable for the period of time that
42 the property was actually used in this state in a downstream
43 manufacturing business of the taxpayer that is taxable under
44 §11-24-1 *et seq.* of this code, or in the case of a partnership,
45 limited liability company treated as a partnership for federal
46 income tax purposes, electing small business corporation,
47 other unincorporated entity, or sole proprietorship, taxable
48 under §11-21-1 *et seq.* of this code. The taxpayer shall then

49 file a reconciliation statement with the annual return for the
50 primary tax for which the taxpayer is liable under §11-21-1
51 *et seq.* or §11-24-1 *et seq.* of this code, whichever is
52 applicable, for the year in which the forfeiture occurs, and
53 pay any additional taxes owed due to the reduction of the
54 amount of credit allowable for the earlier years, plus interest
55 and any applicable penalties.

56 (c) *Reduction in number of employees.* — If during any
57 taxable year subsequent to the taxable year in which the new
58 jobs percentage is redetermined as provided in §11-13FF-7
59 of this code, the average number of employees of the
60 taxpayer, for the then current taxable year, employed in
61 positions created because of and directly attributable to the
62 qualified investment falls below the minimum number of
63 new jobs created upon which the taxpayer's annual credit
64 allowance is based, the taxpayer shall calculate what his or
65 her annual credit allowance would have been had his or her
66 new jobs percentage been determined based upon the
67 average number of employees, for the then current taxable
68 year, employed in positions created because of and directly
69 attributable to the qualified investment. The difference
70 between the result of this calculation and the taxpayer's
71 annual credit allowance for the qualified investment as
72 determined under §11-13FF-4 of this code, is forfeited for
73 the then current taxable year, and for each succeeding
74 taxable year unless for a succeeding taxable year the
75 taxpayer's average employment in positions directly
76 attributable to the qualified investment once again meets the
77 level required to enable the taxpayer to utilize its full annual
78 credit allowance for that taxable year.

†§11-13GG-9. **Recapture of credit; recapture tax imposed.**

1 (a) *When recapture tax applies.* —

2 (1) Any person who places qualified investment
3 property in service or use at a downstream natural gas
4 manufacturing facility and who fails to use the qualified
5 investment property for at least the period of its useful life,

† Redesignated

6 as determined as of the time the property was placed in
7 service or use, or the period of time over which tax credits
8 allowed under this article with respect to the property are
9 applied under this article, whichever period is less, and who
10 reduces the number of its employees filling new jobs at its
11 downstream natural gas manufacturing facility in this state,
12 which were created and are directly attributable to the
13 qualified investment property, after the third taxable year in
14 which the qualified investment property was placed in
15 service or use, or fails to continue to employ individuals in
16 all the new jobs created as a direct result of the qualified
17 investment property and used to qualify for the credit
18 allowed by this article, prior to the end of the tenth taxable
19 year after the qualified investment property was placed in
20 service or use, the person shall pay the recapture tax
21 imposed by subsection (b) of this section.

22 (2) This section does not apply when §11-13FF-11 of
23 this code applies. However, the successor, or the successors,
24 and the person, or persons, who previously claimed credit
25 under this article with respect to the qualified investment
26 property and the new jobs attributable thereto, are jointly
27 and severally liable for payment of any recapture tax
28 subsequently imposed under this section with respect to the
29 qualified investment property and new jobs.

30 (b) *Recapture tax imposed.* — The recapture tax
31 imposed by this subsection is the amount determined as
32 follows:

33 (1) *Full recapture.* — If the taxpayer prematurely
34 removes qualified investment property placed in service
35 (when considered as a class) from economic service in the
36 taxpayer's downstream natural gas manufacturing facility in
37 this state, and the number of employees filling the new jobs
38 created by the person falls below the number of new jobs
39 required to be created in order to qualify for the amount of
40 credit being claimed, the taxpayer shall recapture the
41 amount of credit claimed under §11-13FF-5 of this code for
42 the taxable year, and all preceding taxable years, on

43 qualified investment property which has been prematurely
44 removed from service. The amount of tax due under this
45 subdivision is an amount equal to the amount of credit that
46 is recaptured under this subdivision.

47 (2) *Partial recapture.* — If the taxpayer prematurely
48 removes qualified investment property from economic
49 service in the taxpayer's downstream natural gas
50 manufacturing facility in this state, and the number of
51 employees filling the new jobs created by the person
52 remains 20 or more, but falls below the number necessary
53 to sustain continued application of credit determined by use
54 of the new job percentage upon which the taxpayer's one-
55 tenth annual credit allowance was determined under §11-
56 13FF-4 of this code, taxpayer shall recapture an amount of
57 credit equal to the difference between:

58 (A) The amount of credit claimed under §11-13FF-5 of
59 this code for the taxable year, and all preceding taxable
60 years; and

61 (B) The amount of credit that would have been claimed
62 in those years if the amount of credit allowable under §11-
63 13FF-4 of this code had been determined based on the
64 qualified investment property which remains in service
65 using the average number of new jobs filled by employees
66 in the taxable year for which recapture occurs. The amount
67 of tax due under this subdivision is an amount equal to the
68 amount of credit that is recaptured under this subdivision.

69 (3) *Additional recapture.* — If after a partial recapture
70 under subdivision (2) of this subsection, the taxpayer further
71 reduces the number of employees filling new jobs, the
72 taxpayer shall recapture an additional amount determined as
73 provided under subdivision (1) of this subsection. The
74 amount of tax due under this subdivision is an amount equal
75 to the amount of credit that is recaptured under this
76 subdivision.

77 (c) *Payment of recapture tax.* — The amount of tax
78 recaptured under this section is due and payable on the day
79 the person's annual return is due for the taxable year in
80 which this section applies, under §11-21-1 *et seq.* or §11-
81 24-1 *et seq.* of this code. When the employer is a
82 partnership, limited liability company, or S corporation for
83 federal income tax purposes, the recapture tax shall be paid
84 by those persons who are partners in the partnership,
85 members in the company, or shareholders in the S
86 corporation, in the taxable year in which recapture occurs
87 under this section.

88 (d) *Rules.* — The Tax Commissioner may promulgate
89 such rules as may be useful or necessary to carry out the
90 purpose of this section and to implement the intent of the
91 Legislature. Rules shall be promulgated in accordance with
92 the provisions §29A-3-1 *et seq.* of this code.

†§11-13GG-10. **Transfer of qualified investment to successors.**

1 (a) *Mere change in form of business.* — Property may
2 not be treated as disposed of under §11-13FF-8 of this code,
3 by reason of a mere change in the form of conducting the
4 business as long as the property is retained in the successor's
5 downstream natural gas manufacturing facility in this state,
6 and the transferor business retains a controlling interest in
7 the successor business. In this event, the successor business
8 is allowed to claim the amount of credit still available with
9 respect to the business facility or facilities transferred, and
10 the transferor business may not be required to redetermine
11 the amount of credit allowed in earlier years.

12 (b) *Transfer or sale to successor.* — Property is not
13 treated as disposed of under §11-13FF-10 of this code by
14 reason of any transfer or sale to a successor business which
15 continues to operate the downstream natural gas
16 manufacturing facility in this state. Upon transfer or sale,
17 the successor shall acquire the amount of credit that remains
18 available under this article for each subsequent taxable year

† Redesignated

19 and the transferor business is not required to redetermine the
20 amount of credit allowed in earlier years.

†§11-13GG-11. **Identification of investment credit property.**

1 Every taxpayer who claims credit under §11-13FF-1 *et*
2 *seq.* of this code shall maintain sufficient records to
3 establish the following facts for each item of qualified
4 property:

5 (1) Its identity;

6 (2) Its actual or reasonably determined cost;

7 (3) Its straight-line depreciation life;

8 (4) The month and taxable year in which it was placed
9 in service;

10 (5) The amount of credit taken; and

11 (6) The date it was disposed of or otherwise ceased to
12 be use as qualified property in the downstream natural gas
13 manufacturing facility of the taxpayer.

†§11-13GG-12. **Failure to keep records of investment credit property.**

1 A taxpayer who does not keep the records required for
2 identification of investment credit property is subject to the
3 following rules:

4 (1) A taxpayer is treated as having disposed of, during
5 the taxable year, any investment credit property which the
6 taxpayer cannot establish was still on hand, in this state, at
7 the end of that year.

8 (2) If a taxpayer cannot establish when investment
9 credit property reported for purposes of claiming this credit
10 returned during the taxable year was placed in service, the
11 taxpayer is treated as having placed it in service in the most
12 recent prior year in which similar property was placed in

13 service, unless the taxpayer can establish that the property
14 placed in service in the most recent year is still on hand. In
15 that event, the taxpayer will be treated as having placed the
16 returned property in service in the next most recent year.

†§11-13GG-13. **Interpretation and construction.**

1 (a) No inference, implication, or presumption of
2 legislative construction or intent may be drawn or made by
3 reason of the location or grouping of any particular section,
4 provision, or portion of §11-13FF-1 *et seq.* of this code; and
5 no legal effect may be given to any descriptive matter or
6 heading relating to any section, subsection, or paragraph of
7 this article.

8 (b) The provisions of §11-13FF-1 *et seq.* of this code
9 shall be reasonably construed in order to effectuate the
10 legislative intent recited in §11-13FF-2 of this code.

†§11-13GG-14. **Burden of proof; application required; failure to make timely application.**

1 (a) *Burden of proof.* — The burden of proof is on the
2 taxpayer to establish by clear and convincing evidence that
3 the taxpayer is entitled to the benefits allowed by §11-13FF-
4 1 *et seq.* of this code.

5 (b) *Application for credit required.* —

6 (1) *Application required.* — Notwithstanding any
7 provision of this article to the contrary, no credit is allowed
8 or may be applied under §11-13FF-1 *et seq.* of this code for
9 any qualified investment property placed in service or use
10 until the person asserting a claim for the allowance of credit
11 under this article makes written application to the
12 commissioner for allowance of credit as provided in this
13 subsection. An application for credit shall be filed, in the
14 form prescribed by the Tax Commissioner, no later than the
15 last day for filing the tax returns, determined by including
16 any authorized extension of time for filing the return,
17 required under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this

18 code for the taxable year in which the property to which the
19 credit relates is placed in service or use and all information
20 required by the form shall be provided.

21 (2) *Failure to make timely application.* — The failure to
22 timely apply for the credit results in the forfeiture of 50
23 percent of the annual credit allowance otherwise allowable
24 under §11-13FF-1 *et seq.* of this code. This penalty applies
25 annually until the application is filed.

†§11-13GG-15. **Tax credit review and accountability.**

1 (a) Beginning on February 1, 2025, and every third year
2 thereafter, the Tax Commissioner shall submit to the
3 Governor, the President of the Senate, and the Speaker of
4 the House of Delegates a tax credit review and
5 accountability report evaluating the cost effectiveness of
6 this credit during the most recent three-year period for
7 which information is available. The criteria to be evaluated
8 shall include, but not be limited to, for each year of the
9 three-year period:

10 (1) The numbers of taxpayers claiming the credit;

11 (2) The net number of new jobs created by all taxpayers
12 claiming the credit;

13 (3) The cost of the credit;

14 (4) The cost of the credit per new job created; and

15 (5) Comparison of employment trends for an industry
16 and for taxpayers within the industry that claim the credit.

17 (b) Taxpayers claiming the credit shall provide any
18 information the Tax Commissioner may require to prepare
19 the report required by this section: *Provided*, That the
20 information provided is subject to the confidentiality and
21 disclosure provisions of §11-10-5d of this code.

22 (c) On or before February 1, 2025, the Department of
23 Commerce, in consultation with the Tax Commissioner, the

24 Department of Transportation, and the Department of
25 Environmental Protection shall submit to the Governor, the
26 President of the Senate, and the Speaker of the House of
27 Delegates a report of the impact of all the tax credits and
28 other economic incentives provided in §11-13FF-1 *et seq.*
29 of this code upon; (1) Economic development in this state,
30 including, but not limited to, the creation of jobs in this
31 state; (2) the state's infrastructure, including, but not limited
32 to, the need for construction or maintenance of the roads and
33 highways of the state; (3) the natural resources of the state;
34 and (4) upon public and private property interests in the
35 state.

†§11-13GG-16. **Rules.**

1 The Tax Commissioner may promulgate such
2 interpretive, legislative, and procedural rules as the
3 commissioner deems to be useful or necessary to carry out
4 the purpose of §11-13FF-1 *et seq.* of this code and to
5 implement the intent of the Legislature. The Tax
6 Commissioner may promulgate emergency rules if they are
7 filed in the West Virginia Register before January 1, 2021.
8 All rules shall be promulgated in accordance with the
9 provisions of §29A-3-1 *et seq.* of this code.

†§11-13GG-17. **General procedure and administration.**

1 Each and every provision of the “West Virginia Tax
2 Procedure and Administration Act” set forth in §11-10-1 *et*
3 *seq.* of this code applies to the tax credit allowed under §11-
4 13FF-1 *et seq.* of this code, except as otherwise expressly
5 provided in this article, with like effect as if that act were
6 applicable only to the tax credit allowed by §11-13FF-1 *et*
7 *seq.* of this code and were set forth in extenso in this article.

†§11-13GG-18. **Crimes and penalties.**

1 Each and every provision of the “West Virginia Tax
2 Crimes and Penalties Act” set forth in §11-9-1 *et seq.* of this
3 code applies to the tax credit allowed by §11-13FF-1 *et seq.*
4 of this code with like effect as if that act were applicable

† Redesignated

5 only to the tax credit §11-13FF-1 *et seq.* of this code and
6 were set forth in extenso in this article.

†§11-13GG-19. **Severability.**

1 (a) If any provision of §11-13FF-1 *et seq.* of this code,
2 or the application thereof, is for any reason adjudged by any
3 court of competent jurisdiction to be invalid, the judgment
4 may not affect, impair, or invalidate the remainder of §11-
5 13FF-1 *et seq.* of this code, but shall be confined in its
6 operation to the provision thereof directly involved in the
7 controversy in which the judgment shall have been
8 rendered, and the applicability of the provision to other
9 persons or circumstances may not be affected thereby.

10 (b) If any provision of §11-13FF-1 *et seq.* of this code,
11 or the application thereof, is made invalid or inapplicable by
12 reason of the repeal or any other invalidation of any statute
13 therein addressed or referred to, such invalidation or
14 inapplicability may not affect, impair, or invalidate the
15 remainder of §11-13FF-1 *et seq.* of this code, but shall be
16 confined in its operation to the provision thereof directly
17 involved with, pertaining to, addressing, or referring to the
18 statute, and the application of the provision with regard to
19 other statutes or in other instances not affected by any such
20 repealed or invalid statute may not be abrogated or
21 diminished in any way.

†§11-13GG-20. **Effective date.**

1 The credit allowed by this article is allowable for
2 qualified investment property placed in service or use on or
3 after July 1, 2020, subject to the rules contained in §11-
4 13FF-1 *et seq.* of this code and rules promulgated by the Tax
5 Commissioner pursuant to §29A-3-1 *et seq.* of this code.

CHAPTER 333

**(H. B. 4113 - By Delegates Atkinson, Pack, Anderson,
Cooper, Criss, Cowles, Maynard, Hardy, Steele,
Ellington and Jennings)**

[Passed March 5, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §11-14C-9 and §11-14C-30 of the Code of West Virginia, 1931, as amended, all relating to refundable exemptions from tax on motor fuels generally; extending certain refundable exemption from tax to tax on motor fuel used in a power take-off unit on a fuel delivery truck; and expanding certain refundable exemptions from tax on motor fuel claimable by certain taxpayers to include the variable rate component of the tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-9. Exemptions from tax; claiming refunds of tax.

1 (a) *Per se exemptions from flat rate component of tax.* —
2 Sales of motor fuel to the following, or as otherwise stated
3 in this subsection, are exempt per se from the flat rate of the
4 tax levied by section five of this article and the flat rate may
5 not be paid at the rack:

6 (1) All motor fuel exported from this state to any other
7 state or nation: *Provided*, That the supplier collects and
8 remits to the destination state or nation the appropriate
9 amount of tax due on the motor fuel transported to that state
10 or nation. This exemption does not apply to motor fuel

11 which is transported and delivered outside this state in the
12 motor fuel supply tank of a highway vehicle;

13 (2) Sales of aviation fuel;

14 (3) Sales of dyed special fuel; and

15 (4) Sales of propane unless sold for use in a motor
16 vehicle.

17 (b) *Per se exemptions from variable component of tax.* —
18 Sales of motor fuel to the following are exempt per se from
19 the variable component of the tax levied by section five of
20 this article and the variable component may not be paid at
21 the rack:

22 All motor fuel exported from this state to any other state
23 or nation: *Provided*, That the supplier collects and remits to
24 the destination state or nation the appropriate amount of tax
25 due on the motor fuel transported to that state or nation. This
26 exemption does not apply to motor fuel which is transported
27 and delivered outside this state in the motor fuel supply tank
28 of a highway vehicle.

29 (c) *Refundable exemptions from flat rate component*
30 *of tax.* — A person having a right or claim to any of the
31 following exemptions from the flat rate component of the
32 tax levied by section five of this article shall first pay the tax
33 levied by this article and then apply to the Tax
34 Commissioner for a refund:

35 (1) The United States or agency thereof: *Provided*, That
36 if the United States government, or agency or
37 instrumentality thereof, does not pay the seller the tax
38 imposed by section five of this article on a purchase of
39 motor fuel, the person selling tax previously paid motor fuel
40 to the United States government, or its agencies or
41 instrumentalities, may claim a refund of the flat rate
42 component of tax imposed by section five of this article on
43 those sales;

44 (2) A county government or unit or agency thereof;

45 (3) A municipal government or any agency thereof;

46 (4) A county board of education;

47 (5) An urban mass transportation authority created
48 pursuant to the provisions of article twenty-seven, chapter
49 eight of this code;

50 (6) A municipal, county, state or federal civil defense or
51 emergency service program pursuant to a government
52 contract for use in conjunction therewith or to a person who
53 is required to maintain an inventory of motor fuel for the
54 purpose of the program: *Provided*, That motor fueling
55 facilities used for these purposes are not capable of fueling
56 motor vehicles and the person in charge of the program has
57 in his or her possession a letter of authority from the Tax
58 Commissioner certifying his or her right to the exemption.
59 In order for this exemption to apply, motor fuel sold under
60 this subdivision and subdivisions (1) through (5), inclusive,
61 of this subsection shall be used in vehicles or equipment
62 owned and operated by the respective government entity or
63 government agency or authority;

64 (7) All invoiced gallons of motor fuel purchased by a
65 licensed exporter and subsequently exported from this state
66 to any other state or nation: *Provided*, That the exporter has
67 paid the applicable motor fuel tax to the destination state or
68 nation prior to claiming this refund or the exporter has
69 reported to the destination state or nation that the motor fuel
70 was sold in a transaction not subject to tax in that state or
71 nation. A refund may not be granted on motor fuel which is
72 transported and delivered outside this state in the motor fuel
73 supply tank of a highway vehicle;

74 (8) All gallons of motor fuel used and consumed in
75 stationary off-highway turbine engines;

76 (9) All gallons of fuel used for heating any public or
77 private dwelling, building or other premises;

- 78 (10) All gallons of fuel used for boilers;
- 79 (11) All gallons of motor fuel used as a dry cleaning
80 solvent or commercial or industrial solvent;
- 81 (12) All gallons of motor fuel used as lubricants,
82 ingredients or components of a manufactured product or
83 compound;
- 84 (13) All gallons of motor fuel sold for use or used as a
85 motor fuel for commercial watercraft;
- 86 (14) All gallons of motor fuel sold for use or consumed
87 in railroad diesel locomotives;
- 88 (15) All gallons of motor fuel purchased in quantities of
89 25 gallons or more for use as a motor fuel for internal
90 combustion engines not operated upon highways of this
91 state;
- 92 (16) All gallons of motor fuel purchased in quantities of
93 25 gallons or more and used to power a power take-off unit
94 on a motor vehicle. When a motor vehicle with auxiliary
95 equipment uses motor fuel and there is no auxiliary motor
96 for the equipment or separate tank for a motor, the person
97 claiming the refund may present to the Tax Commissioner
98 a statement of his or her claim and is allowed a refund for
99 motor fuel used in operating a power take-off unit on a
100 cement mixer truck, garbage truck, or fuel delivery truck
101 equal to 25 percent of the tax levied by this article paid on
102 all motor fuel used in such a truck;
- 103 (17) Motor fuel used by a person regularly operating a
104 vehicle under a certificate of public convenience and
105 necessity or under a contract carrier permit for
106 transportation of persons when purchased in an amount of
107 25 gallons or more: *Provided*, That the amount refunded is
108 equal to six cents per gallon: *Provided, however*, That the
109 gallons of motor fuel have been consumed in the operation
110 of urban and suburban bus lines and the majority of
111 passengers use the bus for traveling a distance not exceeding

112 40 miles, measured one way, on the same day between their
113 places of abode and their places of work, shopping areas or
114 schools; and

115 (18) All gallons of motor fuel that are not otherwise
116 exempt under subdivisions (1) through (6), inclusive, of this
117 subsection and that are purchased and used by any bona fide
118 volunteer fire department, nonprofit ambulance service or
119 emergency rescue service that has been certified by the
120 municipality or county wherein the bona fide volunteer fire
121 department, nonprofit ambulance service or emergency
122 rescue service is located.

123 (d) *Refundable exemptions from variable rate*
124 *component of tax.* — Any of the following persons may
125 claim an exemption from the variable rate component of the
126 tax levied by section five of this article on the purchase and
127 use of motor fuel by first paying the tax levied by this article
128 and then applying to the Tax Commissioner for a refund.

129 (1) The United States or agency thereof: *Provided*, That
130 if the United States government, or agency or
131 instrumentality thereof, does not pay the seller the tax
132 imposed by section five of this article on any purchase of
133 motor fuel, the person selling tax previously paid motor fuel
134 to the United States government, or its agencies or
135 instrumentalities, may claim a refund of the variable rate of
136 tax imposed by section five of this article on those sales.

137 (2) This state and its institutions;

138 (3) A county government or unit or agency thereof;

139 (4) A municipal government or agency thereof;

140 (5) A county board of education;

141 (6) An urban mass transportation authority created
142 pursuant to the provisions of article twenty-seven, chapter
143 eight of this code;

144 (7) A municipal, county, state or federal civil defense or
145 emergency service program pursuant to a government
146 contract for use in conjunction therewith, or to a person who
147 is required to maintain an inventory of motor fuel for the
148 purpose of the program: *Provided*, That fueling facilities
149 used for these purposes are not capable of fueling motor
150 vehicles and the person in charge of the program has in his
151 or her possession a letter of authority from the Tax
152 Commissioner certifying his or her right to the exemption;

153 (8) A bona fide volunteer fire department, nonprofit
154 ambulance service or emergency rescue service that has
155 been certified by the municipality or county where the bona
156 fide volunteer fire department, nonprofit ambulance service
157 or emergency rescue service is located;

158 (9) All invoiced gallons of motor fuel purchased by a
159 licensed exporter and subsequently exported from this state
160 to any other state or nation: *Provided*, That the exporter has
161 paid the applicable motor fuel tax to the destination state or
162 nation prior to claiming this refund. A refund may not be
163 granted on motor fuel which is transported and delivered
164 outside this state in the motor fuel supply tank of a highway
165 vehicle; or

166 (10) Beginning on January 1, 2018, all gallons of motor
167 fuel sold for use or consumed in railroad diesel locomotives:
168 *Provided*, That the refundable exemption contained in this
169 subdivision may not exceed an aggregate amount of
170 \$4,300,000 in any year to all taxpayers claiming the
171 exemption and that if more than an aggregate amount of
172 \$4,300,000 is appropriately claimed in any year, then the
173 refundable exemption shall be distributed proportionately to
174 the taxpayers so that the total aggregate refund is
175 \$4,300,000 in that year. The Tax Commissioner may
176 propose rules for legislative approval in accordance with
177 article three, chapter twenty-nine-a of this code that the Tax
178 Commissioner considers necessary to administer the
179 exemption contained in this subdivision.

180 (e) The provision in subdivision (9), subsection (a),
181 section nine, article fifteen of this chapter that exempts as a
182 sale for resale those sales of gasoline and special fuel by a
183 distributor or importer to another distributor does not apply
184 to sales of motor fuel under this article.

**§11-14C-30. Refund of taxes erroneously collected, etc.;
refund for gallonage exported or lost through casualty or
evaporation; change of rate; petition for refund.**

1 (a) The commissioner is hereby authorized to refund
2 from the funds collected under the provisions of this article
3 any tax, interest, additions to tax or penalties which have
4 been erroneously collected from any person.

5 (b) Any supplier, distributor, producer, retail dealer,
6 exporter or importer, while the owner of motor fuel in this
7 state, that loses any invoiced gallons of motor fuel through
8 fire, lightning, breakage, flood or other casualty, which
9 gallons having been previously included in the tax by or for
10 that person, may claim a refund of a sum equal to the
11 amount of any and all taxes levied by section five of this
12 article paid upon the invoiced gallons lost.

13 (c) Any dealer as defined in §47-11C-2 of this code, and
14 any bulk plant in this state that purchases or receives motor
15 fuel in this state upon which the tax levied by section five
16 of this article has been paid, is entitled to an annual refund
17 of any and all taxes levied by section five of this article for
18 invoiced gallons lost through evaporation: *Provided*, That
19 only the owner of the bulk plant that is also the owner of the
20 fuel in the bulk plant may claim this refund for invoiced
21 gallons lost through evaporation. The refund is computed at
22 the rate of tax levied per gallon under this article on all
23 invoiced gallons of motor fuel actually lost due to
24 evaporation, not exceeding one percent of the adjusted total
25 accountable gallons, computed as determined by the
26 Commissioner.

27 (d) Every supplier, distributor or producer, retail dealer,
28 exporter or importer is entitled to a refund of the rate of the
29 tax levied by section five of this article from this state of the
30 amount resulting from a change of rate decreasing the tax
31 under the provisions of this article on motor fuel on hand
32 and in inventory on the effective date of the rate change,
33 which motor fuel has been included in any previous
34 computation by which the tax levied by this article has been
35 paid.

CHAPTER 334

**(Com. Sub. for H. B. 4421 - By Delegates
Householder, J. Kelly, Criss, Westfall, Anderson,
Storch, Graves, Rowan, Pack, Linville and Maynard)**

[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 article, designated §5B-2J-1 and §5B-2J-2; and to amend said code by adding thereto a new article, designated †§11-13HH-1, †§11-13HH-2, †§11-13HH-3, †§11-13HH-4, †§11-13HH-5, †§11-13HH-6, †§11-13HH-7, †§11-13HH-8, †§11-13HH-9, and †§11-13HH-10, all relating to the creation of the Natural Gas Liquids Economic Development Act and the West Virginia Natural Gas Liquids Property Tax Adjustment Act; providing for short titles; making legislative findings and declarations; defining terms; creating a tax credit for eligible taxpayers who are in business for the transportation and storage of natural gas liquids; establishing eligibility requirements; defining the amount of the tax credit as being the amount paid yearly in West Virginia ad valorem property tax on inventory and equipment by an eligible taxpayer; providing for the application of the tax credit against

† Redesignated

personal income tax liability or the corporate net income tax liability; providing for the carrying forward of the tax credits; defining the tax credits' relationship to other available tax credits; providing for the expiration of unused tax credits; providing for annual schedules to be filed to claim the tax credit; providing for successors and transfers of the tax credit under certain conditions; providing for recapture of tax credits, interest, civil penalties, and additional taxes under certain conditions when a tax payer improperly claims a tax credit; providing a statute of limitations regarding tax filings with the tax credit; providing for reporting to the Legislature on the tax credits applied; authorizing the Tax Commissioner to promulgate rules; and providing for an effective date and an expiration date.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2J. NATURAL GAS LIQUIDS ECONOMIC DEVELOPMENT ACT.

§5B-2J-1. Short Title.

1 This article shall be known and cited as the "Natural Gas
2 Liquids Economic Development Act."

§5B-2J-2. Legislative findings; declaration of public policy.

1 (a) The Legislature finds that:

2 (1) The advent and advancement of new and existing
3 technologies and drilling practices have created the
4 opportunity for the efficient development of natural gas,
5 including natural gas liquids such as ethane, propane,
6 butane, isobutane and pentanes, contained in underground
7 shales and other geological formations.

8 (2) With the development of natural gas liquids from
9 shales and other geological formations comes the
10 opportunity for economic development in related areas of
11 the economy including, but not limited to, manufacturing,

12 transmission and storage of natural gas liquids and related
13 products, the use of such products in manufacturing, the
14 consumption of such products, and the transportation of
15 manufactured products.

16 (3) Producers of natural gas liquids, transporters and
17 storers of natural gas liquids, and manufacturers of products
18 using natural gas liquids face a significant number of
19 regulatory requirements, some of which may be redundant,
20 inconsistent, or overlapping. Agencies should work
21 together, where practical, to avoid duplication, promote
22 better coordination and reduce these requirements, thus
23 reducing costs, simplifying and harmonizing rules, and
24 streamlining regulatory oversight.

25 (4) In developing regulatory actions and identifying
26 appropriate approaches, agencies should attempt to promote
27 coordination, simplification, and harmonization.

28 (5) Agencies should also seek to identify, as
29 appropriate, means to achieve regulatory goals that are
30 designed to promote innovation.

31 (6) Agencies should review their existing significant
32 legislative, interpretive and procedural rules to determine
33 whether any such rules should be modified, streamlined,
34 expanded or repealed so as to make the agency's regulatory
35 program more effective and less burdensome in achieving
36 the regulatory objectives.

37 (7) The West Virginia Economic Development
38 Authority established in §31-15-1 *et seq.* of this code and
39 the West Virginia Infrastructure and Jobs Development
40 Council created in §31-15A-1 *et seq.* of this code, should,
41 where appropriate, provide assistance that grows or sustains
42 the natural gas liquids segment of the economy.

43 (b) The Legislature declares that facilitating the
44 development of business activity directly and indirectly
45 related to development, transportation, storage and use of

46 the natural gas liquids serves the public interest of the
47 citizens of this state by promoting economic development
48 and improving economic opportunities for the citizens of
49 this state.

CHAPTER 11. TAXATION.

†ARTICLE 13HH. THE WEST VIRGINIA NATURAL GAS LIQUIDS PROPERTY TAX ADJUSTMENT ACT.

†§11-13HH-1. Short title.

1 This article shall be known and cited as the “West
2 Virginia Natural Gas Liquids Property Tax Adjustment
3 Act.”

†§11-13HH-2. Definitions.

1 (a) General. – When used in this article, or in the
2 administration of this article, terms defined in subsection (b)
3 of this section have the meanings ascribed to them by this
4 section unless a different meaning is clearly required by the
5 context in which the term is used.

6 (b) Terms defined. –

7 “Affiliate” means and includes:

8 (A) An individual, corporation, partnership, affiliate,
9 association or trust or any combination or group thereof
10 controlled by the taxpayer;

11 (B) An individual, corporation, partnership, affiliate,
12 association or trust or any combination or group thereof that
13 is in control of the taxpayer;

14 (C) An individual, corporation, partnership, affiliate,
15 association or trust or any combination or group thereof
16 controlled by an individual, corporation, partnership,
17 affiliate, association or trust or any combination or group
18 thereof that is in control of the taxpayer; or

19 (D) A member of the same controlled group as the
20 taxpayer.

21 “Commissioner” or “Tax Commissioner” means the
22 Tax Commissioner of the State of West Virginia or the Tax
23 Commissioner’s delegate.

24 “Control”, with respect to a corporation, means
25 ownership, directly or indirectly, of stock possessing 50
26 percent or more of the total combined voting power of all
27 classes of the stock of the corporation which entitles its
28 owner to vote. “Control,” with respect to a trust, means
29 ownership, directly or indirectly, of 50 percent or more of
30 the beneficial interest in the principal or income of the trust.
31 The ownership of stock in a corporation, of a capital or
32 profits interest in a partnership or association or of a
33 beneficial interest in a trust shall be determined in
34 accordance with the rules for constructive ownership of
35 stock provided in Section 267(c) of the United States
36 Internal Revenue Code: *Provided*, That paragraph (3),
37 Section 267(c) of the United States Internal Revenue Code
38 does not apply.

39 “Corporation” means any corporation, joint-stock
40 company or association and any business conducted by a
41 trustee or trustees wherein interest or ownership is
42 evidenced by a certificate of interest or ownership or similar
43 written instrument.

44 “Delegate” means, when used in reference to the Tax
45 Commissioner, any officer or employee of the Tax Division
46 of the Department of Revenue duly authorized by the
47 commissioner directly, or indirectly by one or more
48 redelegations of authority, to perform the functions
49 mentioned or described in this article.

50 “Eligible taxpayer” means any natural gas liquids storer
51 or natural gas liquids transporter that is subject to the taxes
52 imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this
53 code. “Eligible taxpayer” also means and includes those

54 members of an affiliated group of taxpayers engaged in a
55 unitary business, in which one or more members of the
56 affiliated group is a person subject to the tax imposed under
57 §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.
58 Application of the credit against the taxes is limited to the
59 single entity, from among the affiliated group of taxpayers,
60 that earned the credit. Application of the credit against tax
61 is limited to that single entity's proportionate share of
62 taxable income. No tax credit earned by one member of the
63 affiliated group, may be used, in whole or in part, by any
64 other member of the affiliated group or applied, in whole or
65 in part, against the total income of the combined group.

66 "Natural gas liquids" or "NGLs" means hydrocarbons
67 removed from a hydrocarbon stream consisting primarily of
68 natural gas (methane) by condensation, cryogenic cooling
69 or other method and maintained in a liquid state for storage,
70 transportation, use in manufacturing or consumption,
71 including, but not limited to, ethane, propane, butane,
72 isobutane and pentanes, and derivatives thereof including,
73 but not limited to, ethylene and propylene, but do not
74 include natural gas which may include some NGLs as part
75 of the gas stream.

76 "Natural gas liquids inventory and equipment" means,
77 and is limited to, natural gas liquids equipment used in the
78 transport or storage of NGLs by a natural gas liquids
79 transporter or natural gas liquids storer.

80 "Natural gas liquids transporter" means a person who
81 owns or operates pipeline facilities used for the
82 transportation and delivery of NGLs for storage, use in
83 manufacturing or consumption, but does not include
84 pipelines used for the transportation of natural gas that may
85 include some NGLs as part of the gas stream.

86 "Natural gas liquids storer" means a person who owns
87 or operates one or more underground facilities designed and
88 developed for the receipt, storage and subsequent delivery
89 of NGLs for use in manufacturing or consumption.

90 “Natural person” or “individual” means a human being.

91 “Partnership” and “partner” means and includes a
92 syndicate, group, pool, joint venture or other unincorporated
93 organization through or by means of which any business,
94 financial operation or venture is carried on and which is not
95 a trust or estate, a corporation or a sole proprietorship. The
96 term “partner” includes a member in a syndicate, group,
97 pool, joint venture or organization.

98 “Person” means and includes any natural person,
99 corporation, limited liability company or partnership.

100 “Taxpayer” means any person subject to the taxes
101 imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this
102 code.

103 “Tax year” or “taxable year” means the tax year of the
104 taxpayer for federal income tax purposes.

105 “Unitary business” means a unitary business as defined
106 in §11-24-3a of this code.

†§11-13HH-3. Eligibility for tax credits; creation of the credit.

1 There shall be allowed to every eligible taxpayer a credit
2 against the taxes imposed under §11-21-1 *et seq.* or §11-24-
3 1 *et seq.* of this code, as determined under this article.

†§11-13HH-4. Amount of credit allowed.

1 (a) Credit allowed. – Eligible taxpayers are allowed a
2 credit against the tax imposed under §11-21-1 *et seq.* or §11-
3 24-1 *et seq.* of this code, the application of which and the
4 amount of which shall be determined as provided in this
5 article.

6 (b) Amount of credit. – The amount of credit allowed to
7 the eligible taxpayer is the amount of West Virginia ad
8 valorem property tax paid on the value of inventory and
9 equipment of the eligible taxpayer during the personal

10 income tax year and corporate net income tax year, as
11 applicable.

†§11-13HH-5. **Application of annual credit allowance.**

1 (a) Application of credit against personal income tax or
2 corporate net income tax. – The amount of the credit shall
3 be taken against the tax liabilities of the eligible taxpayer
4 for the current taxable year imposed by §11-21-1 *et seq.* or
5 §11-24-1 *et seq.* of this code.

6 (b) Carry forward credit allowed. – Any credit
7 remaining after application of the credit against the tax
8 liabilities specified in subsection (a) of this section for the
9 current taxable year does not carry back to any prior taxable
10 year, but is carried forward to a subsequent taxable year for
11 up to three taxable years. The credit allowed under this
12 article shall be applied after application of all other
13 applicable tax credits allowed for the taxable year against
14 the taxes imposed by §11-21-1 *et seq.* of this code and after
15 application of all other applicable tax credits allowed for the
16 taxable year against the taxes imposed by §11-24-1 *et seq.*
17 of this code.

18 (c) Annual schedule. – For purposes of asserting the
19 credit against tax, the taxpayer must prepare and file an
20 annual schedule showing the amount of tax paid for the
21 taxable year and the amount of credit allowed under this
22 article. The annual schedule shall set forth the information
23 and be in the form prescribed by the Tax Commissioner.

†§11-13HH-6. **Availability of credit to successors.**

1 (a) Transfer or sale of assets. –

2 (1) Where there has been a transfer or sale of the
3 business assets of an eligible taxpayer to a successor which
4 subsequent to the transfer constitutes an eligible taxpayer as
5 defined in this article and which remains subject to the taxes
6 prescribed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this
7 code, the successor eligible taxpayer is entitled to the credit

8 allowed under this article: *Provided*, That the successor
9 taxpayer otherwise remains in compliance with the
10 requirements of this article for entitlement to the credit.

11 (2) For any taxable year during which a transfer, or sale
12 of the business assets of an eligible taxpayer to a successor
13 eligible taxpayer under this section occurs, or a merger
14 occurs pursuant to which credit is allowed under this article,
15 the credit allowed under this article shall be apportioned
16 between the predecessor eligible taxpayer and the successor
17 eligible taxpayer based on the number of days during the
18 taxable year that each taxpayer owned the transferred
19 business assets.

20 (b) Stock purchases. – Where a corporation which is an
21 eligible taxpayer entitled to the credit allowed under this
22 article is purchased through a stock purchase by a new
23 owner and remains a legal entity so as to retain its corporate
24 identity, the entitlement of that corporation to the credit
25 allowed under this article will not be affected by the
26 ownership change: *Provided*, That the corporation
27 otherwise remains in compliance with the requirements of
28 this article for entitlement to the credit.

29 (c) Mergers. –

30 (1) Where a corporation or other entity which is an
31 eligible taxpayer entitled to the credit allowed under this
32 article is merged with another corporation or entity, the
33 surviving corporation or entity is entitled to the credit to
34 which the predecessor eligible taxpayer was originally
35 entitled: *Provided*, That the surviving corporation or entity
36 otherwise complies with the provisions of this article.

37 (2) The amount of credit available in any taxable year
38 during which a merger occurs shall be apportioned between
39 the predecessor eligible taxpayer and the successor eligible
40 taxpayer based on the number of days during the taxable
41 year that each owned the transferred business assets.

42 (d) No provision of this section or of this article may be
43 construed to allow sales or other transfers of the tax credit
44 allowed under this article. The credit allowed under this
45 article can be transferred only in circumstances where there
46 is a valid successorship as described under this section.

†§11-13HH-7. **Credit recapture; interest; penalties; additions to tax; statute of limitations.**

1 (a) If it appears upon audit or otherwise that any person
2 or entity has taken the credit against tax allowed under this
3 article and was not entitled to take the credit, then the credit
4 improperly taken under this article shall be recaptured.
5 Amended returns shall be filed for any tax year for which
6 the credit was improperly taken. Any additional taxes due
7 under this chapter shall be remitted with the amended return
8 or returns filed with the Tax Commissioner, along with
9 interest, as provided in §11-10-17 of this code and such
10 other penalties and additions to tax as may be applicable
11 pursuant to the provisions of §11-10-1 *et seq.* of this code.

12 (b) Notwithstanding the provisions of §11-10-1 *et seq.*
13 of this code to the contrary, penalties and additions to tax
14 imposed under that article may be waived at the discretion
15 of the Tax Commissioner: *Provided*, That interest is not
16 subject to waiver.

17 (c) Notwithstanding the provisions of §11-10-1 *et seq.*
18 of this code to the contrary, the statute of limitations for the
19 issuance of an assessment of tax by the Tax Commissioner
20 is five years from the date of filing of any tax return on
21 which this credit was taken or five years from the date of
22 payment of any tax liability calculated pursuant to the
23 assertion of the credit allowed under this article, whichever
24 is later.

†§11-13HH-8. **Report on credit.**

1 (a) The Tax Commissioner shall provide to the Joint
2 Committee on Government and Finance by July 1, 2022,
3 and on July 1, of each year thereafter, a report detailing the

4 amount of credit claimed pursuant to this article. The report
5 is to include the amount of credit claimed against the
6 personal income tax and the amount of credit claimed
7 against the corporate net income tax.

8 (b) Taxpayers claiming the credit shall provide the
9 information as the Tax Commissioner may require to
10 prepare the report: *Provided*, That the information is subject
11 to the confidentiality and disclosure provisions of §11-10-
12 5d and §11-10-5s of this code.

†§11-13HH-9. **Effective date and expiration date.**

1 (a) This article shall be effective for corporate net
2 income tax years and personal income tax years beginning
3 on or after July 1, 2020.

4 (b) This article shall expire and have no further force or
5 effect for all tax years which begin on or after July 1, 2030,
6 and all accrued but unused credits shall be forfeited upon
7 expiration of this article.

†§11-13HH-10. **Rule-making.**

1 In order to effectuate the purposes of this article, the Tax
2 Commissioner may promulgate legislative rules, including
3 emergency rules, in accordance with §29A-3-1 *et seq.* of
4 this code.

CHAPTER 335

**(Com. Sub. for H. B. 4439 - By Delegates
Householder, Criss, Butler, Anderson, Rowan,
Linville, Graves, Maynard, Barrett, Boggs and
Hartman)**

[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 §11-13EE-1, §11-13EE-2, §11-13EE-3, §11-13EE-4, §11-13EE-5, §11-13EE-6, §11-13EE-7, §11-13EE-8, §11-13EE-9, §11-13EE-10, §11-13EE-11, §11-13EE-12, §11-13EE-13, §11-13EE-14, §11-13EE-15, and §11-13EE-16, all relating generally to Coal Severance Tax Rebate; findings and purpose; defining terms; providing for rebate of severance tax when capital investment made in new machinery and equipment directly used in severance of coal, or in coal preparation and processing plants; providing rules and procedures for claiming rebate and transfer to successors; imposing recapture tax in certain circumstance; providing rules for interpretation and construction; requiring periodic rebate reports; authorizing rulemaking; and providing for severability and effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13EE. COAL SEVERANCE TAX REBATE.

§11-13EE-1. Findings and purpose.

1 The Legislature finds that the encouragement of
2 economic growth and development in this state is in the
3 public interest and promotes the general welfare of the
4 people of this state. In order to encourage capital investment

*NOTE: Article 13EE is an existing article.

5 in the coal industry in this state and thereby increase
6 economic development, there is hereby provided a coal
7 severance tax rebate.

§11-13EE-2. Definitions.

1 (a) General. — When used in this article, or in the
2 administration of this article, terms defined in subsection (b)
3 shall have the meanings ascribed to them by this section,
4 unless a different meaning is clearly required by either the
5 context in which the term is used, or by specific definition,
6 in this article.

7 (b) Terms defined.

8 (1) “Affiliated group” means one or more chains of
9 corporations, limited liability entities, or partnerships, or
10 any combination thereof, connected through the ownership
11 of stock or ownership interests with a common parent which
12 is a corporation, limited liability entity, or partnership, but
13 only if the common parent owns directly, or indirectly, a
14 controlling interest in each of the members of the group.

15 (2) “Business” means and is limited to the activity of
16 producing coal for sale, profit or commercial use including
17 coal preparation and processing.

18 (3) “Capital investment in new machinery and
19 equipment” means:

20 (A) Tangible personal property in the form of
21 machinery and equipment that is purchased on or after the
22 effective date of this article and placed in service for direct
23 use in the production of coal, when the original or first use
24 of the machinery or equipment commences in this State on
25 or after the effective date of this article; and

26 (B) Tangible personal property in the form of machinery
27 and equipment that is leased by the taxpayer and placed in
28 service for direct use in the production of coal by the
29 taxpayer on or after the effective date of this article, if the

30 original or first use of the machinery or equipment
31 commences in this State, with the taxpayer, on or after the
32 effective date of this article and the machinery or equipment
33 is depreciable, or amortizable, for federal income tax
34 purposes and has a useful life of 5 or more years for federal
35 income tax purposes.

36 (4) “Coal mine” or “mine” includes:

37 (A) A “surface mine,” or “surface mining operation”
38 which means:

39 (i) Activities conducted on the surface of lands for the
40 removal of coal, or, subject to the requirements of §11-
41 13EE-14 of this code, surface operations and surface
42 impacts incident to an underground coal mine, including the
43 drainage and discharge from the mine. The activities
44 include: Excavation for the purpose of obtaining coal,
45 including, but not limited to, common methods as contour,
46 strip, auger, mountaintop removal, box cut, open pit and
47 area mining; the uses of explosives and blasting;
48 reclamation; in situ distillation or retorting, leaching or
49 other chemical or physical processing; the cleaning,
50 concentrating or other processing or preparation and loading
51 of coal for commercial purposes at or near the mine site; and

52 (ii) The areas upon which the above activities occur or
53 where the activities disturb the natural land surface. The
54 areas also include any adjacent land, the use of which is
55 incidental to the activities; all lands affected by the
56 construction of new roads or the improvement or use of
57 existing roads to gain access to the site of the activities and
58 for haulage; and excavations, workings, impoundments,
59 dams, ventilation shafts, entryways, refuse banks, dumps,
60 stockpiles, overburden piles, spoil banks, culm banks,
61 tailings, holes or depressions, repair areas, storage areas,
62 processing areas, shipping areas and other areas upon which
63 are sited structures, facilities, or other property or materials
64 on the surface, resulting from or incident to the activities:
65 *Provided*, That the activities do not include the extraction of

66 coal incidental to the extraction of other minerals where coal
67 does not exceed sixteen and two-thirds percent of the
68 tonnage of minerals removed for purposes of commercial
69 use or sale, or coal prospecting. Surface mining does not
70 include any of the following:

71 (I) Coal extraction authorized pursuant to a government-
72 financed reclamation contract;

73 (II) Coal extraction authorized as an incidental part of
74 development of land for commercial, residential, industrial
75 or civic use; or

76 (III) The reclamation of an abandoned or forfeited mine
77 by a no cost reclamation contract; and

78 (B) An “underground mine” which includes the shafts,
79 slopes, drifts or inclines connected with, or intended in the
80 future to be connected with, excavations penetrating coal
81 seams or strata, which excavations are ventilated by one
82 general air current or divisions thereof, and connected by
83 one general system of mine haulage over which coal may be
84 delivered to one or more points outside the mine, and the
85 surface structures or equipment connected or associated
86 therewith which contribute directly or indirectly to the
87 mining, preparation or handling of coal.

88 (5) “Coal mining operation” includes the mine and the
89 coal preparation and processing plant.

90 (6) “Coal preparation and processing plant” means any
91 facility (excluding underground mining operations) which
92 prepares coal by one or more of the following processes:
93 breaking, crushing, screening, wet or dry cleaning, and
94 thermal drying.

95 (7) “Coal production” means the privilege of severing,
96 extracting, reducing to possession and producing coal for
97 sale, profit or commercial use and includes the processing
98 of coal at a coal preparation and processing plant.

199 (8) “Commissioner” or “Tax Commissioner” are used
100 interchangeably herein and mean the Tax Commissioner of
101 the State of West Virginia, or his or her delegate.

102 (9) “Controlled group” means one or more chains of
103 corporations connected through stock ownership with a
104 common parent corporation if stock possessing at least 50
105 percent of the voting power of all classes of stock of each of
106 the corporations is owned, directly or indirectly, by one or
107 more of the corporations; and the common parent owns
108 directly stock possessing at least 50 percent of the voting
109 power of all classes of stock of at least one of the other
110 corporations.

111 (10) “Controlling interest” means:

112 (A) For a corporation, either more than 50 percent
113 ownership, directly or indirectly, of the total combined
114 voting power of all classes of stock of the corporation, or
115 more than 50 percent ownership, directly or indirectly, of
116 the beneficial ownership interest in the voting stock of all
117 classes of stock of the corporation;

118 (B) For a partnership, association, trust or other entity
119 other than a limited liability company, more than 50 percent,
120 ownership, directly or indirectly, of the capital, profits, or
121 beneficial interest in the partnership, association, trust, or
122 other entity;

123 (C) For a limited liability company, either more than 50
124 percent ownership, directly or indirectly, of the total
125 membership interest of the limited liability company, or
126 more than 50 percent ownership, directly or indirectly, of
127 the beneficial ownership interest in the membership interest
128 of the limited liability company.

129 (11) “Corporation” means any corporation, joint-stock
130 company or association, and any business conducted by a
131 trustee or trustees wherein interest or ownership is

132 evidenced by a certificate of interest or ownership or similar
133 written instrument.

134 (12) "Delegate" used in the phrase "or his delegate,"
135 when used in reference to the Tax Commissioner, means
136 any officer or employee of the State Tax Department duly
137 authorized by the Tax Commissioner directly, or indirectly
138 by one or more redelegations of authority, to perform the
139 functions mentioned or described in this article.

140 (13) "Directly used or consumed in the production of
141 coal" means used or consumed in those activities or
142 operations which constitute an integral and essential part of
143 the production of coal, as contrasted with and distinguished
144 from those activities or operations which are simply
145 incidental, convenient or remote to the production of coal.

146 (A) Uses of tangible personal property which constitute
147 direct use or consumption in the production of coal include
148 only:

149 (i) New machinery and equipment that is depreciable, or
150 amortizable, for federal income tax purposes, that has a
151 useful life of 5 or more years for federal income tax
152 purposes, and that are directly used in the production of coal
153 in this state;

154 (ii) Transportation of coal within the coal mine from the
155 coal face or coal deposit to the exterior of the mine or to a
156 point where the extracted coal is transported away from the
157 mine;

158 (iii) Directly and physically recording the flow of coal
159 during the production of coal including those coal treatment
160 processes specified in §11-13A-4 of this code;

161 (iv) Safety equipment and apparatus directly used in the
162 production of coal, or to secure the safety of mine personnel
163 is direct use in the production of coal;

164 (v) Controlling or otherwise regulating atmospheric
165 conditions required for the production of coal;

166 (vi) Transformers, pumps, rock dusting equipment and
167 other property used to supply electricity or water, or to
168 supply or apply rock dust directly used in the production of
169 coal;

170 (vii) Storing, removal or transportation of economic
171 waste, including coal gob, resulting from the production of
172 coal;

173 (viii) Engaging in pollution control or environmental
174 quality or protection activity directly relating to the
175 production of coal; or

176 (ix) Otherwise using as an integral and essential part of
177 the production of coal.

178 (B) Uses of tangible personal property which do not
179 constitute direct use or consumption in the production of
180 coal include, but are not limited to:

181 (i) Heating and illumination of office buildings;

182 (ii) Janitorial or general cleaning activities;

183 (iii) Personal comfort of personnel: *Provided*, That
184 safety equipment and apparatus directly used in the
185 production of coal or to secure the safety of mine personnel
186 is direct use in the production of coal when the tangible
187 personal property is depreciable, or amortizable, for federal
188 income tax purposes and has a useful life of 5 or more years
189 for federal income tax purposes when it is placed in service
190 or use;

191 (iv) Production planning, scheduling of work or
192 inventory control;

193 (v) Marketing, general management, supervision,
194 finance, training, accounting and administration;

195 (vi) Measuring or determining weight, and ash content,
196 water content and other physical and chemical
197 characteristics of the coal after production;

198 (vii) An activity or function incidental or convenient to
199 the production of coal, rather than an integral and essential
200 part of these activities.

201 (14) "Eligible taxpayer" means:

202 (A) Any person who pays the tax imposed by §11-13A-
203 3 of this code on the privilege of producing coal for sale,
204 profit or commercial use for at least 2 years before the
205 capital investment in machinery and equipment is placed in
206 service or use in this state; or

207 (B) A taxpayer that has experienced a change in
208 business composition through merger, acquisition, split-up,
209 spin-off or other ownership changes or changes in the form
210 of the business organization from limited liability company
211 to C corporation, or partnership, or from one form of
212 business organization to a different form of business
213 organization, may constitute an eligible taxpayer if the
214 entity currently operating in this state was operating in a
215 different form of business organization in this state at least
216 2 years before the capital investment in new machinery and
217 equipment is placed in service or use in this state. In the case
218 of business composition change through merger,
219 acquisition, split-up, spin-off or other ownership changes
220 the current business may constitute an eligible taxpayer if at
221 least 50 percent of the business assets of such component
222 were actively and directly used in coal production activity
223 in this state for such two-year period. If less than 50 percent
224 of the assets of the current entity were not actively and
225 directly used in coal production activity in this state for such
226 two-year period, then the current entity resulting from a
227 business composition change through merger, acquisition,
228 split-up, spin-off or other ownership, shall not constitute an
229 eligible taxpayer.

230 (15) “Includes” and “including” when used in a
231 definition contained in this article, shall not be deemed to
232 exclude other things otherwise within the generally
233 understood meaning of the term defined.

234 (16) “Original use” means the first use to which the
235 property is put by anyone.

236 (17) “Partnership” includes a syndicate, group, pool,
237 joint venture or other unincorporated organization through
238 or by means of which any business, operation or venture is
239 carried on, which is taxed under Subchapter K of the
240 Internal Revenue Code, as defined in §11-24-3 of this code,
241 and which is not a trust or estate, a corporation or a sole
242 proprietorship. The term “partner” includes a member in
243 such a syndicate, group, pool, joint venture or other
244 unincorporated organization taxed under Subchapter K of
245 the Internal Revenue Code.

246 (18) “Person” includes any natural person, corporation,
247 partnership, limited liability company or other business
248 entity.

249 (19) “Production of coal” means privilege of severing,
250 extracting, reducing to possession and producing coal for
251 sale, profit or commercial use and includes the processing
252 of coal at the coal preparation and processing plant.

253 (20) “Property” means tangible personal property and is
254 limited to new machinery and equipment that is depreciable
255 or amortizable for federal income tax purposes and that has
256 a useful life of 5 or more years for federal income tax
257 purposes.

258 (21) “Property purchased or leased for business
259 expansion” means:

260 (A) Included property. — Except as provided in
261 subparagraph (B) of this section, the term “property
262 purchased or leased for business expansion” means tangible
263 personal property, but only if the tangible personal property

264 was purchased, or leased and placed in service or use by the
265 taxpayer, for use in West Virginia. This term includes only:

266 (i) Tangible personal property placed in service or use
267 by the taxpayer on or after the effective date of this article,
268 with respect to which depreciation, or amortization in lieu
269 of depreciation, is allowable in determining the personal or
270 corporation net income tax liability of the business, or its
271 equity owners, under §11-21-1 *et seq.* or §11-24-1 *et seq.* of
272 this code, and which has a useful economic life at the time
273 the property is placed in service or use in this state, of 5 or
274 more years.

275 (ii) Tangible personal property acquired by written lease
276 having a primary term of 5 years or more, that is depreciable
277 or amortizable by the lessor, or lessee, for federal income
278 tax purposes and that has a useful life of 5 or more years for
279 federal income purposes when it is placed in service or use,
280 and when the lease commences and was executed by the
281 parties thereto on or after the effective date of this article, if
282 used as a component part of a new or expanded coal mining
283 operation in this state shall be included within this
284 definition.

285 (B) Excluded property. — The term “property
286 purchased or leased for business expansion” shall not
287 include:

288 (i) Machinery and equipment owned or leased by the
289 taxpayer and for which credit was taken or is claimed under
290 any other article of this chapter for capital investment in the
291 new machinery and equipment;

292 (ii) Repair costs, including materials used in the repair,
293 unless for federal income tax purposes, the cost of the repair
294 must be capitalized and not expensed;

295 (iii) Motor vehicles licensed by the West Virginia
296 Division of Motor Vehicles;

297 (iv) Airplanes;

298 (v) Off-premise transportation equipment;

299 (vi) Machinery and equipment that is primarily used
300 outside this state;

301 (vii) Machinery and equipment that is acquired incident
302 to the purchase of the stock or assets of the seller; and

303 (viii) Used machinery and equipment.

304 (C) Purchase date. — New machinery and equipment
305 shall be deemed to have been purchased prior to a specified
306 date only if:

307 (i) The machinery or equipment was owned by the
308 taxpayer prior to the effective date of this article or was
309 acquired by the taxpayer pursuant to a binding purchase
310 contract which was in effect prior to the effective date of
311 this article; or

312 (ii) In the case of leased machinery and equipment, there
313 was a binding written lease or contract to lease identifiable
314 machinery or equipment in effect prior to the effective date
315 of this article.

316 (22) “Purchase” means any acquisition of new
317 machinery or equipment, but only if:

318 (A) The machinery or equipment is not acquired from a
319 person whose relationship to the person acquiring it would
320 result in the disallowance of deductions under Section 267
321 or 707 (b) of the United States Internal Revenue Code, as
322 defined in §11-24-3 of this code;

323 (B) The machinery or equipment is not acquired by one
324 component member of a controlled group from another
325 component member of the same controlled group; and

326 (C) The basis of the machinery or equipment for federal
327 income tax purposes, in the hands of the person acquiring it,
328 is not determined:

329 (i) In whole or in part by reference to the federal
330 adjusted basis of the machinery or equipment in the hands
331 of the person from whom it was acquired; or

332 (ii) Under Section 1014 (e) of the United States Internal
333 Revenue Code.

334 (23) “Qualified coal mining activity” means any
335 business or other activity subject to the tax imposed by §11-
336 13A-3 of this code on the privilege of severing, extracting,
337 reducing to possession and producing coal for sale, profit or
338 commercial use including the treatment process described
339 as mining in §11-13A-4(a)(1) of this code.

340 (24) “Qualified investment” means capital investment
341 in new machinery and equipment directly used in the
342 production of coal in this state that is depreciable, or
343 amortizable, for federal income tax purposes and has a
344 useful life for federal income tax purposes of 5 or more
345 years when it is placed in service or use in this state.

346 (25) “Rebate” means the amount of rebate allowable
347 under §11-13EE-4 of this article.

348 (26) “Related person” means:

349 (A) A corporation, partnership, association or trust
350 controlled by the taxpayer;

351 (B) An individual, corporation, partnership, association
352 or trust that is in control of the taxpayer;

353 (C) A corporation, partnership, association or trust
354 controlled by an individual, corporation, partnership,
355 association or trust that is in control of the taxpayer; or

356 (D) A member of the same controlled group as the
357 taxpayer.

358 For purposes of this subdivision, the term “control,”
359 with respect to a corporation, means ownership, directly or

360 indirectly, of stock possessing 50 percent or more of the
361 total combined voting power of all classes of the stock of
362 the corporation entitled to vote. “Control,” with respect to a
363 trust, means ownership, directly or indirectly, of 50 percent
364 or more of the beneficial interest in the principal or income
365 of the trust. The ownership of stock in a corporation, of a
366 capital or profits interest in a partnership or association or
367 of a beneficial interest in a trust is determined in accordance
368 with the rules for constructive ownership of stock provided
369 in section 267 (c) of the United States Internal Revenue
370 Code, other than paragraph (3) of that section.

371 (27) “State portion of severance taxes paid” means the
372 portion of severance taxes due under §11-13A-3 of this code
373 when computed at the 4.65 percent rate of tax.

374 (28) “Tangible personal property” means and is limited
375 to new machinery and equipment that is depreciable, or
376 amortizable, for federal income tax purposes and that has a
377 useful life of 5 or more years for federal income tax
378 purposes when it is placed in service or use in this state.

379 (29) “Taxpayer” means any person exercising the
380 privilege of severing, extracting, reducing to possession and
381 producing coal for sale, profit or commercial use coal,
382 which privilege is taxable under §11-13A-3 of this code.

383 (30) “This code” means the Code of West Virginia,
384 1931, as amended.

385 (31) “This state” means the State of West Virginia.

386 (32) “United States Internal Revenue Code” or “Internal
387 Revenue Code” means the Internal Revenue Code as
388 defined in §11-24-3 of this code.

§11-13EE-3. Rebate allowable.

1 (a) Rebate allowable. — Eligible taxpayers shall be
2 allowed a rebate for a portion of state severance taxes
3 imposed by §11-13A-3 of this code on the privilege of

4 severing, extracting, reducing to possession and producing
5 coal for sale, profit or commercial use that is attributable to
6 the increase in the production of coal that is attributable to
7 and the consequence of the taxpayer's capital investment in
8 new machinery and equipment used at the coal mine, or coal
9 preparation and processing facility. The amount of this
10 rebate shall be determined and applied as hereinafter
11 provided in this article.

12 (b) Amount of rebate. — The amount of rebate
13 allowable is determined by multiplying the amount of the
14 taxpayer's capital investment in new machinery and
15 equipment directly used in the production of coal at a coal
16 mining operation in this state by 35 percent. The product of
17 this computation establishes the maximum amount of rebate
18 allowable under this article for the capital investment in new
19 machinery and equipment.

20 (c) Application of rebate amount. — The amount of
21 rebate allowable is determined by applying the rebate
22 amount determined in subsection (b) of this section against
23 80 percent of the state portion of the severance tax paid on
24 the privilege of severing, extracting, reducing to possession
25 and producing coal for sale, profit or commercial use that is
26 directly attributable to the increased production of coal at
27 the mine due to taxpayer's capital investment in new
28 machinery and equipment at the mine or coal processing and
29 preparation plant.

30 (d) The amount of severance tax attributable to the
31 increase in coal production at a mine due to the capital
32 investment in new machinery and equipment shall be
33 determined by comparing (1) the state portion of the
34 severance tax due under §11-13A-3 of this code on coal
35 produced from the mine during calendar year 2018, before
36 allowance of any tax credits, except as provided in
37 subsection (e) of this section (d), (2) with the state severance
38 tax due on coal produced at the mine during the then current
39 calendar year in which the capital investment in new mining
40 machinery and equipment is placed in service or use, before

41 allowance for any tax credits. When the amount in
42 subdivision (2) of this section is greater than the amount in
43 subdivision (1) of this section, the difference is the amount
44 of state severance tax due to the increase in coal production
45 at the mine that is attributable to the capital investment in
46 new machinery and equipment: *Provided*, That when the
47 producer of the coal operates more than one mine in this
48 state, or is a member of a controlled or affiliated group that
49 operates one or more coal mines in this state, no credit shall
50 be allowed unless the total coal production from all mines
51 operated by the taxpayer or by members of the affiliated or
52 controlled group in this state has increased by at least the
53 increase in production at the mine at which the capital
54 investment in new machinery and equipment was made:
55 *Provided, however*, That in no case shall the severance tax
56 attributable to any mine other than the specific mine at
57 which capital investment in new machinery and equipment
58 is directly used in a coal mining operation has been placed
59 in service or use be offset by this rebate.

60 (e) When the eligible taxpayer is a new business that has
61 produced coal in this state for 2 years before making the
62 capital investment in new machinery and equipment, then,
63 for purposes of item (1) in subsection (d), the base shall be
64 the amount of state severance tax due under §11-13A-3 of
65 this code on coal produced in this state during the second
66 year of this two-year period.

67 (f) When the operator of the coal mine at which capital
68 investment in new machinery and equipment was made
69 operates one or more other coal mines in this state, the
70 operator may not cease production of coal, or reduce the
71 production of coal, at one or more of those mines during the
72 tax years for which rebate is allowed under this article. The
73 Tax Commissioner shall promulgate a legislative rule
74 providing exceptions to this subsection.

75 (g) When the operator of the coal mine at which capital
76 investment in new machinery and equipment was made is a
77 member of a controlled or affiliated group that operates one

78 or more other coal mines in this state, then the controlled or
79 affiliated group, as the case may be, may not cease
80 production of coal, or reduce the production of coal, at one
81 or more of those mines during the tax years for which rebate
82 is allowed under this article. The Tax Commissioner shall
83 promulgate a legislative rule providing exceptions to this
84 subsection.

85 (h) No rebate shall be allowed under this article when
86 credit is claimed under any other article of this chapter for
87 capital investment in the new machinery and equipment. No
88 credit shall be allowed under any other article of this chapter
89 when rebate is allowed under this article for the capital
90 investment in new machinery and equipment.

**§11-13EE-4. Information required to determine amount of
rebate allowable.**

1 (a) A taxpayer claiming rebate under this article who
2 operates more than one coal mine in this state shall provide
3 a schedule with the annual severance tax return filed under
4 §11-13A-1 *et seq.* of this code that shows, for each coal
5 mine, the number of tons of coal produced and the gross
6 value of the coal produced at each mine during the taxable
7 year.

8 (b) When a taxpayer claiming rebate under this article is
9 a member of an affiliated or controlled group, as the case
10 may be, that operates more than one coal mine in this state
11 the group shall provide a schedule with its annual severance
12 tax return filed under §11-13A-1 *et seq.* of this code for the
13 taxable year that shows for each coal mine operated in this
14 state by the affiliated or controlled group, as the case may
15 be, the number of tons of coal produced at each mine and
16 the gross value of the coal produced at each mine during the
17 taxable year.

§11-13EE-5. Claim for rebate.

1 (a) After the severance taxes due for the taxable year are
2 paid, a taxpayer may file a claim under this article for rebate

3 of up to 80 percent of the state portion of the additional
4 severance taxes paid under §11-13A-3 of this code that are
5 directly attributable to taxpayer's capital investment in new
6 machinery and equipment placed in service or use during
7 that taxable year as set forth in §11-13EE-4.

8 (b) When the amount of rebate claimed exceeds 80
9 percent of the additional state severance tax paid as
10 provided in subsection (a) of this section, the unused portion
11 of the rebate amount may be carried forward and refunded
12 by the Tax Commissioner after severance taxes due in
13 subsequent years are paid: *Provided*, That the carryforward
14 period may not exceed 10 years from the date the capital
15 investment in new machinery and equipment is placed in
16 service or use in this state.

§11-13EE-6. Suspension of payment of rebate.

1 (a) No rebate may be paid under this article when the
2 taxpayer, or any member of the taxpayer's combined or
3 affiliated group, as the case may be, is delinquent in the
4 payment of severance taxes imposed pursuant to §11-13A-
5 3 of this code, and any local, state or federal tax or fee, until
6 such time as the delinquency is cured.

7 (b) For purposes of this section, a taxpayer is not
8 delinquent if the taxpayer is contesting an assessment in the
9 Office of Tax Appeals or in any court of this state, or of the
10 appropriate federal agency or court, or is complying with
11 the terms of any payment plan agreement with the Tax
12 Commissioner.

13 (c) In the case of a taxpayer that files a combined tax
14 return as a member of a unitary group, no rebate under this
15 article that is earned by one member of the combined group,
16 but not fully used by or allowed to that member, may be
17 claimed, in whole or in part, by another member of the
18 group.

§11-13EE-7. Burden of proof; application required; failure to make timely application.

1 (a) Burden of proof. — The burden of proof is on the
2 taxpayer to establish by clear and convincing evidence that
3 the taxpayer is entitled to the benefits allowed by this article.

4 (b) Application for rebate required.

5 (1) Notwithstanding any provision of this article to the
6 contrary, no rebate shall be paid under this article for any
7 capital investment in new machinery and equipment placed
8 in service or use until the person asserting a claim for the
9 allowance of rebate under this article makes written
10 application to the Tax Commissioner for allowance of
11 rebate as provided in this section.

12 (2) An application for rebate shall be filed, in the form
13 prescribed by the Tax Commissioner, no later than the last
14 day for filing the severance tax return, determined by
15 including any authorized extension of time for filing the
16 return, for the taxable year in which the machinery and
17 equipment to which the rebate relates is placed in service or
18 use and all information required by the form is provided.

19 (3) A separate application for rebate is required for each
20 taxable year during which the taxpayer places new
21 machinery and equipment in service or use in a mine or coal
22 preparation and processing facility in this state.

23 (c) Failure to make timely application. — The failure to
24 timely apply for the rebate results in the forfeiture of 25 percent
25 of the rebate amount otherwise allowable under this article.
26 This penalty applies annually until the application is filed.

§11-13EE-8. Identification of capital investment property.

1 Every taxpayer who claims credit under this article shall
2 maintain sufficient records to establish the following facts
3 for each item of qualified investment property:

4 (1) Its identity;

5 (2) Its actual or reasonably determined cost;

- 6 (3) Its useful life for federal income tax purposes;
- 7 (4) The month and taxable year in which it was placed
8 in service;
- 9 (5) The amount of credit taken; and
- 10 (6) The date it was disposed of or otherwise ceased to
11 be qualified investment property.

§11-13EE-9. Failure to keep records of investment credit property.

1 A taxpayer who does not keep the records required for
2 identification of investment credit property is subject to the
3 following rules:

4 (1) A taxpayer is treated as having disposed of, during
5 the taxable year, any machinery and equipment that the
6 taxpayer cannot establish was still on hand, in this state, at
7 the end of that year.

8 (2) If a taxpayer cannot establish when capital investment
9 in new machinery and equipment property was reported for
10 purposes of claiming this credit during the taxable year the
11 machinery or equipment was placed in service or use, the
12 taxpayer is treated as having placed it in service or use in the
13 most recent prior taxable year in which similar machinery
14 and equipment was placed in service or use, unless the
15 taxpayer can establish that the machinery and equipment
16 placed in service or use in the most recent taxable year is still
17 on hand. In that event, the taxpayer will be treated as having
18 placed the returned machinery and equipment in service or
19 use in the next most recent taxable year.

§11-13EE-10. Transfer of qualified investment property to successors.

1 (a) Mere change in form of business. — Machinery and
2 equipment may not be treated as disposed of under §11-
3 13EE-9 of this article, by reason of a mere change in the

4 form of conducting the business as long as the machinery
5 and equipment is retained in the successor business in this
6 state, and the transferor business retains a controlling
7 interest in the successor business. In this event, the
8 successor business is allowed to claim the rebate amount of
9 credit still available with respect to the machinery and
10 equipment transferred, and the transferor business may not
11 be required to redetermine the amount of rebate allowed in
12 earlier years.

13 (b) Transfer or sale to successor. — Machinery and
14 equipment is not treated as disposed of under §11-13EE-11
15 of this article by reason of any transfer or sale to a successor
16 business which continues to operate machinery and
17 equipment at the mine in this state at which the machinery
18 and equipment was first placed in service or use. Upon
19 transfer or sale, the successor shall acquire the amount of
20 rebate, if any, that remains available under this article, and
21 the transferor business is not required to redetermine the
22 amount of rebate allowed in earlier years.

§11-13EE-11. Recapture of rebate; recapture tax imposed.

1 (a) When recapture tax applies. —

2 (1) Any person who places machinery and equipment in
3 service or use for purposes of this credit and who fails to use
4 the machinery and equipment for at least 5 years in the
5 production of coal in this state shall pay the recapture tax
6 imposed by subsection (b) of this section.

7 (2) This section does not apply when §11-13EE-10 of
8 this article applies. However, the successor, or the
9 successors, and the person, or persons, who previously
10 claimed credit under this article with respect to the
11 machinery and equipment, are jointly and severally liable
12 for payment of any recapture tax subsequently imposed
13 under this section with respect to the machinery and
14 equipment used to qualify for rebate under this article.

15 (b) Recapture tax imposed. — The recapture tax
16 imposed by this subsection is the amount determined as
17 follows. If the taxpayer prematurely removes machinery
18 and equipment placed in service (when considered as a
19 class) from economic service in the taxpayer's coal
20 production activity in this state, the taxpayer shall recapture
21 the amount of rebate claimed under this article for the
22 taxable year, and all preceding taxable years, attributable to
23 the machinery and equipment which has been prematurely
24 removed from service. The amount of tax due under this
25 subsection is an amount equal to the amount of rebate that
26 is recaptured under this subsection.

27 (c) Payment of recapture tax. — The amount of tax
28 recaptured under this section is due and payable on the day
29 the person's annual return is due for the taxable year, in
30 which this section applies, under §11-13A-1 *et seq.* of this
31 code. When the employer is a partnership, limited liability
32 company or S corporation for federal income tax purposes,
33 the recapture tax shall be paid by those persons who are
34 partners in the partnership, members in the company, or
35 shareholders in the S corporation, in the taxable year in
36 which recapture tax is imposed under this section.

§11-13EE-12. Interpretation and construction.

1 (a) No inference, implication or presumption of
2 legislative construction or intent may be drawn or made by
3 reason of the location or grouping of any particular section,
4 provision or portion of this article; and no legal effect may
5 be given to any descriptive matter or heading relating to any
6 section, subsection or paragraph of this article.

7 (b) The provisions of this article shall be reasonably
8 construed in order to effectuate the legislative intent recited
9 in §11-13EE-1 of this article.

§11-13EE-13. Rebate report.

1 (a) The Tax Commissioner shall provide to the Joint
2 Committee on Government and Finance by July 1, 2022,

3 and on the first day of July of each year thereafter, a report
4 detailing the amount of rebate claimed pursuant to this
5 article. The report is to include the amount of rebate claimed
6 against the severance tax imposed pursuant to §11-13A-3 of
7 this code.

8 (b) Taxpayers claiming the rebate shall provide the
9 information the Tax Commissioner may require to prepare
10 the report: *Provided*, That the information provided is
11 subject to the confidentiality and disclosure provisions of
12 §11-10-5d and §11-10-5s of this code.

13 (c) The Tax Commissioner shall also identify any issues
14 the Tax Commissioner has in the administration and
15 enforcement of this rebate and make suggestions the
16 Commissioner may have for improving the credit or the
17 administration of the rebate.

§11-13EE-14. Rules.

1 The Tax Commissioner may promulgate such
2 interpretive, legislative and procedural rules as the
3 Commissioner deems to be useful or necessary to carry out
4 the purpose of this article and to implement the intent of the
5 Legislature. The tax commissioner may promulgate
6 emergency rules if they are filed in the West Virginia
7 Register before January 1, 2020. All rules shall be
8 promulgated in accordance with the provisions of §29A-3-
9 1 *et seq.* of this code.

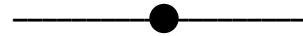
§11-13EE-15. Severability.

1 (a) If any provision of this article or the application
2 thereof is for any reason adjudged by any court of competent
3 jurisdiction to be invalid, the judgment may not affect,
4 impair or invalidate the remainder of the article, but shall be
5 confined in its operation to the provision thereof directly
6 involved in the controversy in which the judgment shall
7 have been rendered, and the applicability of the provision to
8 other persons or circumstances may not be affected thereby.

9 (b) If any provision of this article or the application
10 thereof is made invalid or inapplicable by reason of the
11 repeal or any other invalidation of any statute therein
12 addressed or referred to, such invalidation or inapplicability
13 may not affect, impair or invalidate the remainder of the
14 article, but shall be confined in its operation to the provision
15 thereof directly involved with, pertaining to, addressing or
16 referring to the statute, and the application of the provision
17 with regard to other statutes or in other instances not
18 affected by any such repealed or invalid statute may not be
19 abrogated or diminished in any way.

§11-13EE-16. Effective date.

1 The rebate allowed by this article is allowed for capital
2 investment in new machinery and equipment placed in
3 service or use in this state on or after July 1, 2019.



CHAPTER 336

**(Com. Sub. for H. B. 4452 - By Delegates Maynard,
Hill, Barnhart, Worrell, Westfall, Phillips, J. Jeffries,
Cooper, Hardy, Kessinger and Bibby)**

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

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

AN ACT to amend and reenact §11A-3-18, §11A-3-22, §11A-3-52, and §11A-3-55 of the Code of West Virginia, 1931, as amended, all relating generally to notice requirements on tax collections and sale of delinquent property conducted by the State Auditor; allowing purchaser extension of time for compliance with notice requirements upon written request to State Auditor and payment of fees; requiring State Auditor to pay fees for extensions of time to board of education for county where property is located; revising procedure for

serving or providing notice to certain persons having interest in property to be sold.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED, AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-18. Limitations on tax certificates.

1 (a) No lien upon real property evidenced by a tax
2 certificate of sale issued by a sheriff on account of any
3 delinquent property taxes may remain a lien on the real
4 property for a period longer than 18 months after the
5 original issuance of the tax certificate of sale.

6 (b) All rights of a purchaser to the property, to a lien on
7 the property, or to any other interest in the property,
8 including, but not limited to any right to a tax deed, shall be
9 considered forfeited and expired, and no tax deed is to be
10 issued on any tax sale evidenced by a tax certificate of sale
11 where the certificate has ceased to be a lien pursuant to the
12 provisions of this section and application for the tax deed,
13 pursuant to the provisions of §11A-3-27 of this code, is not
14 pending at the time of the expiration of the limitation period
15 provided in this section.

16 (c) Whenever a lien evidenced by a tax certificate of sale
17 has expired by reason of the provisions of this section, the
18 State Auditor shall immediately issue and record a
19 certificate of cancellation describing the real estate included
20 in the certificate of purchase or tax certificate and giving the
21 date of cancellation, and the State Auditor shall also make
22 proper entries in his or her records. The State Auditor shall
23 also present a copy of every certificate of cancellation to the
24 sheriff, who shall enter it in the sheriff's records, and the
25 certificate and the record are prima facie evidence of the
26 cancellation of the certificate of sale and of the release of
27 the lien of the certificate on the lands described in the

28 certificate. Failure to record the certificate of cancellation
29 does not extend the lien evidenced by the certificate of sale.
30 The sheriff and State Auditor are not entitled to any fees for
31 the issuing of the certificate of cancellation, nor for the
32 entries in their books made under the provisions of this
33 subsection.

34 (d) Whenever a purchaser has complied with the notice
35 requirements provided in §11A-3-19 of this code, but has
36 failed to request a deed within the 18 month deadline
37 provided in this section, thereby forfeiting all rights to a tax
38 deed, the purchaser may recover the amounts paid in excess
39 of the taxes owed and expenses incurred by the State
40 Auditor in the processing of the tax lien if, within 30 days
41 of the expiration of the lien, upon a showing of compliance
42 with the provisions of §11A-3-19 of this code, the purchaser
43 files with the State Auditor a request in writing for the
44 refund. A purchaser who fails to file the request within the
45 30-day period forfeits all rights to the refund.

46 (e) Whenever a purchaser has failed to comply with the
47 notice requirements set forth in §11A-3-19 of this code, the
48 purchaser may receive an additional 30 days to comply with
49 the notice requirements set forth in §11A-3-19 of this code
50 if, by December 1st of the year following the sale, the
51 purchaser files with the State Auditor a request in writing
52 for the extension and makes payment by cash, cashier
53 check, certified check, or money order in the amount of
54 \$100 or 10 percent of the total amount paid on the day of
55 sale set forth in §11A-3-5 of this code, whichever is greater.
56 The fee for issuing the certificate of extension shall be \$25
57 made payable to the State Auditor.

58 (f) The State Auditor shall each month draw his or her
59 warrant upon the Treasury payable to the county board of
60 education of each county for payment received by him or
61 her for the extension of the time period set forth in

62 subsection (e) of this section for property located within
63 each such county.

§11A-3-22. Service of notice.

1 (a) As soon as the State Auditor has prepared the notice
2 provided in §11A-3-21 of this code, he or she shall cause it
3 to be served upon all persons named on the list generated by
4 the purchaser pursuant to the provisions of §11A-3-19 of
5 this code.

6 (b) The notice shall be served upon all persons residing
7 or found in the state in the manner provided for serving
8 process commencing a civil action, or by certified mail,
9 return receipt requested, or other types of delivery service
10 courier that provide a receipt. The notice shall be served on
11 or before the 30th day following the request for the notice.

12 (c) The notice shall be served upon persons not residing
13 or found in the state by certified mail, return receipt
14 requested, or in the manner provided for serving process
15 commencing a civil action, or other types of delivery service
16 courier that provide a receipt. The notice shall be served on
17 or before the 30 days following the request for the notice.

18 (d) If the address of a person is unknown to the
19 purchaser and cannot be discovered by due diligence on the
20 part of the purchaser, the notice shall be served by
21 publication as a Class III-0 legal advertisement in
22 compliance with the provisions of §59-3-1 *et seq.* of this
23 code, and the publication area for the publication shall be
24 the county in which the real property is located. If service
25 by publication is necessary, publication shall be
26 commenced within 60 days following the request for the
27 notice, and a copy of the notice shall, at the same time, be
28 sent pursuant to subsection (b) or (c) of this section, to the
29 last known address of the person to be served. The return of
30 service of the notice and the affidavit of publication, if any,
31 shall be in the manner provided for process generally and
32 shall be filed and preserved by the State Auditor in his or

33 her office, together with any return receipts for notices sent
34 by certified mail.

35 (e) In addition to the other notice requirements set forth
36 in this section, if the real property subject to the tax lien was
37 classified as Class II property at the time of the assessment,
38 at the same time the State Auditor issues the required notices
39 by certified mail, the State Auditor shall forward a copy of
40 the notice sent to the delinquent taxpayer by first class mail,
41 or in the manner provided for serving process commencing
42 a civil action, addressed to "Occupant", to the physical
43 mailing address for the subject property. The physical
44 mailing address for the subject property shall be supplied by
45 the purchaser of the tax lien pursuant to the provisions of
46 §11A-3-19 of this code. Where the mail is not deliverable
47 to an address at the physical location of the subject property,
48 the copy of the notice shall be sent to any other mailing
49 address that exists to which the notice would be delivered to
50 an occupant of the subject property.

**§11A-3-52. What purchaser must do before he or she can
secure a deed.**

1 (a) Within 45 days following the approval of the sale by
2 the auditor pursuant to §11A-3-51 of this code, the
3 purchaser, his or her heirs or assigns, in order to secure a
4 deed for the real estate purchased, shall:

5 (1) Prepare a list of those to be served with notice to
6 redeem and request the deputy commissioner to prepare and
7 serve the notice as provided in §11A-3-54 and §11A-3-55
8 of this code;

9 (2) When the real property subject to the tax lien was
10 classified as Class II property, provide the deputy
11 commissioner with the actual mailing address of the
12 property that is subject to the tax lien or liens purchased; and

13 (3) Deposit, or offer to deposit, with the deputy
14 commissioner a sum sufficient to cover the costs of
15 preparing and serving the notice.

16 (b) If the purchaser fails to fulfill the requirements set
17 forth in subsection (a) of this section, the purchaser shall
18 lose all the benefits of his or her purchase.

19 (c) After the requirements of subsection (a) of this
20 section have been satisfied, the deputy commissioner may
21 then sell the property in the same manner as he sells lands
22 which have been offered for sale at public auction but which
23 remain unsold after such auction, as provided in §11A-3-48
24 of this code.

25 (d) If the person requesting preparation and service of
26 the notice is an assignee of the purchaser, he or she shall, at
27 the time of the request, file with the deputy commissioner a
28 written assignment to him or her of the purchaser's rights,
29 executed, acknowledged, and certified in the manner
30 required to make a valid deed.

31 (e) Whenever a purchaser has failed to comply with the
32 notice requirements set forth in subsection (a) of this
33 section, the purchaser may receive an additional 30 days to
34 comply with the notice requirements set forth in subsection
35 (a) of this section if the purchaser files with the State
36 Auditor a request in writing for the extension before the
37 expiration of the time period set forth in subsection (a) of
38 this section and makes payment by cash, cashier check,
39 certified check, or money order in the amount of \$100 or 10
40 percent of the total amount paid on the day of sale set forth
41 in §11A-3-45 of this code, whichever is greater. The fee for
42 issuing the certificate of extension shall be \$25 made
43 payable to the State Auditor.

44 (f) The State Auditor shall each month draw his or her
45 warrant upon the Treasury payable to the county board of
46 education of each county for payment received by him or
47 her for the extension of the time period set forth in
48 subsection (e) of this section for property located within
49 each such county.

§11A-3-55. Service of notice.

1 (a) As soon as the deputy commissioner has prepared
2 the notice provided for in §11A-3-54 of this code, he or she
3 shall cause it to be served upon all persons named on the list
4 generated by the purchaser pursuant to the provisions of
5 §11A-3- 52 of this code. Such notice shall be mailed and, if
6 necessary, published at least 45 days prior to the first day a
7 deed may be issued following the deputy commissioner's
8 sale.

9 (b) The notice shall be served upon all such persons
10 residing or found in the state in the manner provided for
11 serving process commencing a civil action or by certified
12 mail, return receipt requested or other types of delivery
13 service courier that provide a receipt. The notice shall be
14 served on or before the 30th day following the request for
15 such notice.

16 (c) The notice shall be served upon persons not residing
17 or found in the state by certified mail, return receipt
18 requested, or in the manner provided for serving process
19 commencing a civil action or other types of delivery service
20 courier that provide a receipt. The notice shall be served on
21 or before the 30 days following the request for the notice.

22 (d) If the address of a person is unknown to the
23 purchaser and cannot be discovered by due diligence on the
24 part of the purchaser, the notice shall be served by
25 publication as a Class III-0 legal advertisement in
26 compliance with the provisions of §59-3-1 *et seq.* of this
27 code and the publication area for the publication shall be the
28 county in which the real property is located. If service by
29 publication is necessary, publication shall be commenced
30 within 60 days following the request for the notice, and a
31 copy of the notice shall, at the same time, be sent pursuant
32 to subsection (b) or (c) of this section, to the last known
33 address of the person to be served. The return of service of
34 the notice and the affidavit of publication, if any, shall be in
35 the manner provided for process generally and shall be filed

36 and preserved by the State Auditor in his or her office,
37 together with any return receipts for notices sent by certified
38 mail.

39 (e) In addition to the other notice requirements set forth
40 in this section, if the real property subject to the tax lien was
41 classified as Class II property at the time of the assessment,
42 at the same time the deputy commissioner issues the
43 required notices by certified mail, the deputy commissioner
44 shall forward a copy of the notice sent to the delinquent
45 taxpayer by first class mail, or in the manner provided for
46 serving process commencing a civil action, addressed to
47 “Occupant”, to the physical mailing address for the subject
48 property. The physical mailing address for the subject
49 property shall be supplied by the purchaser of the property,
50 pursuant to the provisions of §11A-3-52 of this code. Where
51 the mail is not deliverable to an address at the physical
52 location of the subject property, the copy of the notice shall
53 be sent to any other mailing address that exists to which the
54 notice would be delivered to an occupant of the subject
55 property.



CHAPTER 337

**(Com. Sub. for H. B. 4558 - By Delegates Maynard,
Householder, Howell, Graves, Rowan, Hardy,
Espinosa, Linville, Hill, Pack and Criss)**

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

AN ACT to amend and reenact §11-10-14a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated †§11-13II-1, †§11-13II-2, †§11-13II-3, †§11-13II-4 and †§11-13II-5; and to amend said code by adding thereto a new article, designated †§11-13JJ-1,

† Redesignated

†§11-13JJ-2, †§11-13JJ-3, †§11-13JJ-4, †§11-13JJ-5, †§11-13JJ-6 and †§11-13JJ-7, all relating generally to taxation; creating various deductions, exemptions and credits, relating to allowing certain deductions to be made from individual personal income tax refunds for specified purpose; providing check-off for nursing home and health care for aged and disabled veterans in the West Virginia Veterans Home; providing check-off for purposes of operating and maintaining the Donel C. Kinnard Memorial State Veterans Cemetery; creating the High-Wage Growth Business Tax Credit Act; defining terms; allowing no more than \$5 million in tax credits from the Development Office; setting out an application process; providing for factors to be considered in granting the application; setting out eligibility requirements; creating a personal income tax credit for volunteer firefighters in West Virginia; providing findings and purpose; providing definitions; providing nonrefundable tax credit for a volunteer firefighter against personal income tax in a taxable year; providing for a tax credit limitation of \$1,000 for a single person; providing for a tax credit limitation of \$2,000 for persons filing tax returns jointly under certain conditions; providing that the tax credit for volunteer firefighters must be used in the taxable year and cannot be carried forward; providing for documentation of eligibility for the tax credit; providing requirements for the documentation evidencing eligibility for the tax credit; providing that documentation must be sent to the Tax Commissioner; providing for reporting at certain time; providing for rule-making authority; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-14a. Tax refund check-off programs.

- 1 (a) Except as otherwise provided in this section, or in
- 2 another section of this code enacted after June 30, 1991, all
- 3 voluntary tax refund check-off programs expire and do not

† Redesignated

4 apply to any personal income tax returns required to be filed
5 after June 30, 1991: *Provided*, That if any such program has
6 an earlier expiration date specifically provided by law, the
7 earlier expiration date applies.

8 (b) The Tax Commissioner shall cause each West
9 Virginia personal income tax return form to contain a
10 provision by which a taxpayer, and his or her spouse if a
11 joint return, may donate a portion or all of his or her tax
12 refund to the West Virginia Department of Veterans
13 Assistance for purposes of providing nursing home and
14 health care for aged and disabled veterans in the West
15 Virginia Veterans Home. The total amount of donations
16 received under this subsection shall be deposited in the State
17 Treasury to the credit of the Department of Veterans
18 Assistance to be used exclusively for purposes of providing
19 nursing home and health care for aged and disabled veterans
20 in the West Virginia Veterans Home.

21 (c) The Tax Commissioner shall cause each West
22 Virginia personal income tax return form to contain a
23 provision by which a taxpayer, and his or her spouse if a
24 joint return, may donate a portion or all of his or her tax
25 refund to the Donel C. Kinnard Memorial State Veterans
26 Cemetery for purposes of operating and maintaining the
27 cemetery. The total amount of donations received under this
28 subsection shall be deposited in the State Treasury to the
29 credit of the Department of Military Affairs and Public
30 Safety to be used exclusively for purposes of operating and
31 maintaining the Donel C. Kinnard Memorial State Veterans
32 Cemetery.

†ARTICLE 13II. THE HIGH-WAGE GROWTH BUSINESS TAX CREDIT ACT.

†§11-13II-1. The High-Wage Growth Business Tax Credit Act.

1 This article shall be known and may be cited as the
2 High-Wage Growth Business Tax Credit Act.

†§11-13II-2. Definitions.

1 As used in this article:

2 “Benefits” means all remuneration for work performed
3 that is provided to an employee in whole or in part by the
4 employer, other than wages, including the employer’s
5 contributions to insurance programs, health care, medical,
6 dental and vision plans, life insurance, employer
7 contributions to pensions, such as a 401(k), and employer-
8 provided services, such as child care, offered by an
9 employer to the employee. “Benefits” does not include the
10 employer’s share of payroll taxes, Social Security or
11 Medicare contributions, federal or state unemployment
12 insurance contributions or workers’ compensation;

13 “Consecutive qualifying period” means each of the
14 three qualifying periods successively following the
15 qualifying period in which the new high-wage job was
16 created;

17 “Division” means the West Virginia State Tax Division;

18 “Domicile” means the sole place where an individual
19 has a true, fixed, permanent home. It is the place where the
20 individual has a voluntary, fixed habitation of self and
21 family with the intention of making a permanent home;

22 “Eligible employee” means an individual who is
23 employed in West Virginia by an eligible employer, who is
24 a resident of West Virginia, and 100 percent of the
25 employee’s income from such employment is West Virginia
26 income. “Eligible employee” does not include an individual
27 who:

28 (1) Bears any of the relationships described in
29 paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to an
30 the employer or, if the employer is a corporation, to an
31 individual who owns, directly or indirectly, more than 50
32 percent in value of the outstanding stock of the corporation
33 or, if the employer is an entity other than a corporation, to
34 an individual who owns, directly or indirectly, more than 50
35 percent of the capital and profits interest in the entity;

36 (2) If the employer is an estate or trust, is a grantor,
37 beneficiary, or fiduciary of the estate or trust or is an
38 individual who bears any of the relationships described in
39 paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a
40 grantor, beneficiary, or fiduciary of the estate or trust;

41 (3) Is a dependent, as that term is described in 26 U.S.C.
42 Section 152(a)(9), of the employer or, if the taxpayer is a
43 corporation, of an individual who owns, directly or
44 indirectly, more than 50 percent in value of the outstanding
45 stock of the corporation or, if the employer is an entity other
46 than a corporation, of an individual who owns, directly or
47 indirectly, more than 50 percent of the capital and profits
48 interest in the entity or, if the employer is an estate or trust,
49 of a grantor, beneficiary, or fiduciary of the estate or trust;
50 or

51 (4) Is working or has worked as an employee or as an
52 independent contractor for an entity that, directly or
53 indirectly, owns stock in a corporation of the eligible
54 employer or other interest of the eligible employer that
55 represents 50 percent or more of the total voting power of
56 that entity or has a value equal to 50 percent or more of the
57 capital and profits interest in the entity;

58 “Eligible employer” means a person whether organized
59 for profit or not, or headquarters of such entity registered to
60 do business in West Virginia that is the owner or operator
61 of a project facility, that offers health benefits to all full-time
62 eligible employees and certifies that it pays at least 50
63 percent of such health benefit premiums.

64 “Health benefits” means coverage for basic hospital
65 care, physician care, prescriptions, and shall be the same
66 coverage as is provided to employees employed in a bona
67 fide executive, administrative, or professional capacity by
68 the employer who are exempt from the minimum wage and
69 maximum hour requirements of the federal Fair Labor
70 Standards Act and the employer pays at least 50 percent of
71 such insurance premiums.

72 “New high-wage job” means a new job created in West
73 Virginia by an eligible employer on or after July 1, 2020,
74 that is occupied for at least 48 weeks of a qualifying period
75 by an eligible employee who is paid wages calculated for
76 the qualifying period to be at least two and twenty-five
77 hundredths times the state median salary;

78 “New job” means a job that is occupied by an employee
79 who was not previously on the employer’s payroll in West
80 Virginia, nor previously on the payroll of such employer’s
81 parent entity, subsidiary, alter ego, or affiliate in West
82 Virginia, or previously on the payroll of any business whose
83 physical plant and employees are substantially the same as
84 those of the employer in West Virginia in the three years
85 prior to the date of hire. “New job” does not mean any job
86 that is a result of job shifts due to the gain or loss of an in-
87 state contract to supply goods and services, nor does it mean
88 an employee who is retained following the acquisition of all
89 or part of an in-state business by an employer;

90 “Qualifying period” means the period of 12 months
91 beginning on the day an eligible employee begins working
92 in a new high-wage job or the period of 12 months
93 beginning on the anniversary of the day an eligible
94 employee began working in a new high-wage job;

95 “Resident” means a natural person whose domicile is in
96 West Virginia at the time of hire or within 180 days of the
97 date of hire;

98 “Threshold job” means a job that is occupied for at least
99 44 weeks of a calendar year by an eligible employee and
100 that meets the wage requirements for a “new high-wage
101 job”; and

102 “Wages” means all compensation paid by an eligible
103 employer to an eligible employee through the employer’s
104 payroll system, including those wages that the employee
105 elects to defer or redirect or the employee’s contribution to
106 a 401(k) or cafeteria plan program, but “wages” does not

107 include benefits or the employer's share of payroll taxes,
108 Social Security or Medicare contributions, federal or state
109 unemployment insurance contributions, or workers'
110 compensation.

†§11-13II-3. High-wage growth business tax credit.

1 (a) The Development Office may authorize no more
2 than \$5 million of the tax credits allowed under this article
3 during any fiscal year and the total amount of tax credit that
4 may be awarded or used in any taxable year by any qualified
5 taxpayer in combination with the owners of the qualified
6 taxpayer may not exceed more than 10 percent of the
7 salaries for the new direct jobs. Depending on the nature of
8 the anticipated benefits to the state, the Development Office
9 may establish a tax credit at a level less than the maximum.
10 Nothing in this article entitles a qualified employer to
11 receive a tax credit under this article and the Development
12 Office has full discretion, subject to annual or ad hoc
13 review, in determining whether and the amount to which to
14 award a tax credit.

15 (b) A taxpayer that is an eligible employer seeking to
16 obtain a tax credit shall make an application to the
17 Development Office prior to the taxable year in which the
18 eligible employer is seeking the credit. The application shall
19 be on a form prescribed by the Development Office and
20 shall contain such information as may be required by the
21 Development Office to determine if the applicant is
22 qualified. The application shall contain a sworn statement
23 by a duly authorized officer of the employer listing the
24 names of persons or other entities who have received or who
25 will receive any payment or other consideration from the
26 employer for the purpose of representing the employer in
27 applying for or receiving the benefits provided for in this
28 article and shall include a certificate of good standing from
29 the State Tax Department.

30 (c) The employer shall certify that during the eligible
31 employer's tax year and that at the end of the eligible

32 employer's tax year it will meet or exceed all of the
33 requirements established in §11-13FF-4 of this code;

34 (d) After the filing of an application by an eligible
35 employer, the Development Office shall undertake an
36 analysis and determine whether, the extent to which, and the
37 conditions upon which an eligible employer may obtain a
38 tax credit if it fulfills the commitments made in the eligible
39 employer's application. In considering whether to approve
40 the eligible employer's application for a tax credit, the
41 Development Office shall consider the following factors:

42 (1) The significance of the eligible employer's need for
43 the tax credit;

44 (2) The amount of projected net fiscal benefit to the state
45 of the project and the period in which the state would realize
46 such net fiscal benefit;

47 (3) The overall size and quality of the proposed project,
48 including the number of new jobs, proposed wages, growth
49 potential of the qualified company, the potential multiplier
50 effect of the project, and similar factors;

51 (4) The financial stability and creditworthiness of the
52 eligible employer;

53 (5) The level of economic distress in the area;

54 (6) An evaluation of the competitiveness of alternative
55 locations for the location of the eligible employer, as
56 applicable;

57 (7) Whether other state incentives are available and
58 have been awarded to the eligible employer; and

59 (8) The amount of local incentives committed.

60 (e) The Development Office may authorize the
61 continued ability to receive the tax credit as long as the
62 employer retains its eligibility by maintaining the number

63 of new direct jobs in successive years, as provided under
64 this article, not to exceed five years.

65 (f) A qualified employer that has qualified pursuant to
66 this article is eligible to receive tax credits under this article
67 only in accordance with the provisions under which it
68 initially applied and was approved. If a qualified employer
69 that is receiving tax credits and creates new direct jobs, it
70 may apply for additional tax credits based on the new direct
71 jobs anticipated from the expansion only, pursuant to this
72 article.

†§11-13II-4. **Obtaining tax credit following tax year.**

1 (a) At the end of the approved employer's tax year, the
2 qualified employer may file an application to use the tax
3 credits previously approved by the Development Office.
4 The application shall contain a sworn statement by a duly
5 authorized officer of the qualified employer concerning
6 with respect to the employer's fiscal year:

7 (1) That the eligible employer remained a qualified
8 employer under the provisions of this article;

9 (2) The total number of and the gross payroll of the new
10 direct jobs, with salary information provided by new direct
11 job and that each new direct job was filled for at least 48
12 weeks during the tax year;

13 (3) That the employer had or maintained a net overall
14 increase in employment statewide for each new direct job
15 and the number of such net overall increase of at least 10
16 new direct jobs, in the case where an employer has contracts
17 covering multiple locations;

18 (4) That employees holding the new direct jobs:

19 (A) Were residents in the State of West Virginia;

20 (B) Were not previously on the employer's payroll;

21 (C) Were not previously on the payroll of the
22 employer's parent entity, subsidiary, or affiliate, alter ego,
23 or previously on the payroll of the business whose physical
24 plant and employees were substantially the same as those of
25 the employer;

26 (D) Did not exist as of the date the employer filed the
27 application for the tax credit;

28 (E) Were not jobs created as a result of job shifts due to
29 the gain or loss of an in-state contract to supply goods and
30 services;

31 (F) Were not jobs retained following the acquisition of
32 all, or part of, an in-state business by the employer;

33 (5) That the employer has offered the health benefits to
34 the eligible employees it employs in new direct jobs; and

35 (6) That the employer:

36 (A) Did not default on or otherwise not repay any loan
37 or other obligation involving public funds;

38 (B) Has not declared bankruptcy under which an
39 obligation of the employer to pay or repay public funds or
40 moneys was discharged as part of such bankruptcy;

41 (C) Is not in default on any filing or payment with or to
42 the state or any of its agencies or political subdivisions in
43 which such assessment or judgment is final, not appealable,
44 and remains outstanding.

45 (b) The division may request such additional
46 information from the employer as may be necessary to
47 determine whether the application is correct and whether the
48 qualified employer is eligible for the annual tax credit for
49 that year, or may request that the qualified employer revise
50 its application.

51 (c) The tax credits authorized in this article shall be
52 authorized after the qualified employer has filed its
53 application for annual tax credit at the end of the qualified
54 employer's tax year with the Development Office pursuant
55 to this section, and the division has determined from the
56 information submitted along with such application that the
57 employer has fulfilled its obligations in original application.

58 (d) Upon approval of the application for use of the tax
59 credit, the application shall be forwarded to the Department
60 of Revenue. The eligible employer may then use such tax
61 credit in filing its tax return.

62 (e) A new high-wage job is not eligible for a credit
63 pursuant to this section for the initial qualifying period
64 unless the eligible employer's total number of employees
65 with threshold jobs on the last day of the initial qualifying
66 period at the location at which the job is performed or based
67 is at least one more than the number of threshold jobs on the
68 day prior to the date the new high-wage job was created. A
69 new high-wage job is not eligible for a credit pursuant to
70 this section for a consecutive qualifying period unless the
71 total number of threshold jobs at a location at which the job
72 is performed or based on the last day of that qualifying
73 period is greater than or equal to the number of threshold
74 jobs at that same location on the last day of the initial
75 qualifying period for the new high-wage job.

76 (f) If a consecutive qualifying period for a new high-
77 wage job does not meet the wage, occupancy and residency
78 requirements, then the qualifying period is ineligible.

79 (g) Except as provided in subsection (h) of this section,
80 a new high-wage job is not eligible for a credit pursuant to
81 this section if:

82 (1) The new high-wage job is created due to a business
83 merger or acquisition or other change in business
84 organization;

85 (2) The eligible employee was terminated from
86 employment in West Virginia by another employer involved
87 in the business merger or acquisition or other change in
88 business organization with the taxpayer; and

89 (3) The new high-wage job is performed by:

90 (A) The person who performed the job or its functional
91 equivalent prior to the business merger or acquisition or
92 other change in business organization; or

93 (B) A person replacing the person who performed the
94 job or its functional equivalent prior to a business merger or
95 acquisition or other change in business organization.

96 (h) A new high-wage job that was created by another
97 employer and for which an application for the high-wage
98 growth business tax credit was received and is under review
99 by the division prior to the time of the business merger or
100 acquisition or other change in business organization shall
101 remain eligible for the high-wage growth business tax credit
102 for the balance of the consecutive qualifying periods. The
103 new employer that results from a business merger or
104 acquisition or other change in business organization may
105 only claim the high-wage growth business tax credit for the
106 balance of the consecutive qualifying periods for which the
107 new high-wage job is otherwise eligible.

108 (i) A new high-wage job is not eligible for a credit
109 pursuant to this section if the job is created due to an eligible
110 employer entering into a contract or becoming a
111 subcontractor to a contract with a governmental entity that
112 replaces one or more entities performing functionally
113 equivalent services for the governmental entity unless the
114 job is a new high-wage job that was not being performed by
115 an employee of the replaced entity.

116 (j) A new high-wage job is not eligible for a credit
117 pursuant to this section if the eligible employer has more
118 than one business location in the state from which it

119 conducts business and the requirements of subsection (e) of
120 this section are satisfied solely by moving the job from one
121 business location of the eligible employer in this state to
122 another business location of the eligible employer in the
123 state.

124 (k) With respect to each annual application for a high-
125 wage growth business tax credit, the employer shall certify
126 and include:

127 (1) The responsibilities and amount of wages paid to
128 each eligible employee in a new high-wage job during the
129 qualifying period;

130 (2) The number of weeks each position was occupied
131 during the qualifying period;

132 (3) Which qualifying period the application pertains to
133 for each eligible employee;

134 (4) The total number of employees employed by the
135 employer at the job location on the day prior to the
136 qualifying period and on the last day of the qualifying
137 period;

138 (5) The total number of threshold jobs performed or
139 based at the eligible employer's location on the day prior to
140 the qualifying period and on the last day of the qualifying
141 period;

142 (6) For an eligible employer that has more than one
143 business location in the state from which it conducts
144 business, the total number of threshold jobs performed or
145 based at each business location of the eligible employer in
146 the state on the day prior to the qualifying period and on the
147 last day of the qualifying period;

148 (7) Whether the eligible employer has ceased business
149 operations at any of its business locations in this state; and

150 (8) Whether the application is precluded by subsection
151 (o) of this section.

152 (l) Any person who willfully submits a false, incorrect,
153 or fraudulent certification required pursuant this section
154 shall be subject to all applicable penalties under §11-9-1 *et*
155 *seq.* and §11-10-1 *et seq.* of this code, except that the
156 amount on which the penalty is based shall be the total
157 amount of credit requested on the application for approval.

158 (m) Except as provided in subsection (o) of this section,
159 an approved high-wage growth business tax credit shall be
160 claimed against the taxpayer's taxes imposed by §11-23-1
161 *et seq.*, §11-24-1 *et seq.*, and §11-21-1 *et seq.* of this code,
162 in that order, as specified in this subsection:

163 (1) Business franchise tax. — The credit is first applied
164 to reduce the taxes imposed by §11-23-1 *et seq.* of this code
165 for the taxable year, determined after application of the
166 credits against tax provided in §11-23-17 of this code, but
167 before application of any other allowable credits against tax.

168 (2) Corporation net income taxes. — After application
169 of subdivision (1) of this subsection, any unused credit is
170 next applied to reduce the taxes imposed by §11-24-1 *et seq.*
171 of this code for the taxable year, determined before
172 application of allowable credits against tax.

173 (A) If the eligible taxpayer is a limited liability
174 company, small business corporation, or a partnership, then
175 any unused credit after application of subdivisions (1) and
176 (2) of this subsection is allowed as a credit against the taxes
177 imposed by §11-24-1 *et seq.* of this code on owners of the
178 eligible taxpayer on the conduit income directly derived
179 from the eligible taxpayer by its owners. Only those
180 portions of the tax imposed by §11-24-1 *et seq.* of this code
181 that are imposed on income directly derived by the owner
182 from the eligible taxpayer are subject to offset by this credit.

183 (B) Small business corporations, limited liability
184 companies, partnerships, and other unincorporated
185 organizations shall allocate the credit allowed by this
186 section among their members in the same manner as profits
187 and losses are allocated for the taxable year.

188 (3) Personal income tax taxes. — After application of
189 subdivisions (1) and (2) of this subsection, any unused
190 credit is next applied to reduce the taxes imposed by §11-
191 21-1 *et seq.* of this code for the taxable year determined
192 before application of allowable credits against tax of the
193 eligible taxpayer.

194 (4) If the eligible taxpayer is a limited liability company,
195 small business corporation, or a partnership, then any
196 unused credit after application of subdivisions (1), (2), and
197 (3) of this subsection is allowed as a credit against the taxes
198 imposed by §11-21-1 *et seq.* of this code on owners of the
199 eligible taxpayer on the conduit income directly derived
200 from the eligible taxpayer by its owners. Only those
201 portions of the tax imposed by §11-21-1 *et seq.* of this code
202 that are imposed on income directly derived by the owner
203 from the eligible taxpayer are subject to offset by this credit.

204 (5) Small business corporations, limited liability
205 companies, partnerships, and other unincorporated
206 organizations shall allocate the credit allowed by this
207 section among their members in the same manner as profits
208 and losses are allocated for the taxable year.

209 (6) No credit is allowed under this section against any
210 withholding tax imposed by, or payable under, §11-21-1 *et*
211 *seq.* of this code.

212 (7) Unused credit carry forward. — Except to the extent
213 excess credit is refunded as provided in subdivision (8) of
214 this subsection, if the credit allowed under this article in any
215 taxable year exceeds the sum of the taxes enumerated in
216 subdivisions (1), (2), and (3) of this subsection for that
217 taxable year, the eligible taxpayer and owners of eligible

218 taxpayers described in subdivisions (4) and (5) of this
219 subsection may apply the excess as a credit against those
220 taxes, in the order and manner stated in this section, for
221 succeeding taxable years until the earlier of the following:

222 (A) The full amount of the excess credit is used; or

223 (B) The expiration of the 10th taxable year after the
224 taxable year in which the annual salaries for the new direct
225 job was paid or incurred. Any credit remaining thereafter is
226 forfeited.

227 (8) If the credit allowed under this section in any taxable
228 year exceeds the sum of taxes enumerated in subdivisions
229 (1), (2), (3), (4), and (5) of this subsection for that taxable
230 year, the eligible taxpayer and owners of the eligible
231 taxpayers described in subdivisions (4) and (5) of this
232 subsection may claim for that year the excess amount as a
233 refundable credit, not to exceed \$100,000 per taxpayer,
234 including owners and the controlled group, if applicable.

235 (9) Tax credits provided under this section may not be
236 transferred, sold, or assigned by filing a notarized
237 endorsement thereof with the division that names the
238 transferee, the amount of tax credit transferred, and the
239 value received for the credit, as well as any other
240 information reasonably requested by the division.

241 (n) If the taxpayer ceases business operations in this
242 state while an application for credit approval is pending or
243 after an application for credit has been approved for any
244 qualifying period for a new high-wage job, the division may
245 not grant an additional high-wage growth business tax credit
246 to that taxpayer except as provided in subsection (m) of this
247 section and shall extinguish any amount of credit approved
248 for that taxpayer that has not already been claimed against
249 the taxpayer's modified combined tax liability.

250 (o) A taxpayer that has received a high-wage growth
251 business tax credit may not submit a new application for the

252 credit for a minimum of two calendar years from the closing
253 date of the last qualifying period for which the taxpayer
254 received the credit if the taxpayer lost eligibility to claim the
255 credit from a previous application pursuant to subsection
256 (m) of this section.

†§11-13II-5. Rules.

1 The division shall propose legislative rules
2 implementing this article in accordance with the provisions
3 of §29A-3-1 *et seq.* of this code.

**†ARTICLE 13JJ. WEST VIRGINIA VOLUNTEER
FIREFIGHTER TAX CREDIT ACT.**

†§11-13JJ-1. Findings and Purpose.

1 The Legislature finds that it is an important public
2 policy to encourage participation in volunteer fire fighting
3 and emergency response by providing tax credits for those
4 who volunteer their time as a vital service to their
5 community.

†§11-13JJ-2. Definitions.

1 As used in this article:

2 “Active member” means an individual that performs the
3 function of fire prevention and suppression, or vehicle and
4 machinery extrications, hazardous materials response and
5 mitigation, technical rescue, emergency medical services,
6 and any other duties that a specialized support member may
7 provide when responding to emergency situations;

8 “Activities” means responses to emergencies, monthly
9 or quarterly meetings, fund raising activities, and fire
10 department management;

11 “Chief” means the highest-ranking fire line officer in
12 charge of a volunteer fire department;

13 “Commission” means the West Virginia State Fire
14 Commission;

15 “Volunteer fire department” means a volunteer fire
16 department in this state, certified and regulated by the
17 commission, and lawfully formed under §8-15-1 *et seq.* of
18 this code;

19 “Volunteer firefighter” means a West Virginia taxpayer
20 who is an active member of a volunteer fire department.

†§11-13JJ-3. Amount of credit; limitation of credit.

1 (a) There is allowed to eligible volunteer firefighters in
2 this state a nonrefundable credit against taxes imposed by
3 §11-21-1 *et seq.* of this code in the amount set forth in
4 subsection (b) of this section.

5 (b) The amount of the credit is \$1,000 during a taxable
6 year or the total amount of tax imposed by §11-21-1 *et seq.*
7 of this code in the year of active membership, whichever is
8 less. If both taxpayers filing a joint tax return are eligible for
9 the credit authorized by this article, the amount of the credit
10 is \$2,000, or \$1,000 for each eligible taxpayer, during a
11 taxable year or the total amount of tax imposed by §11-21-
12 1 *et seq.* of this code in the year of active membership,
13 whichever is less.

14 (c) If the amount of the credit authorized by this article
15 is unused in any tax year, it may not be applied to any other
16 tax year.

†§11-13JJ-4. Qualification for credit.

1 (a) To be an eligible volunteer firefighter under §11-
2 13JJ-3 of this code, he or she shall obtain certification from
3 the chief of the volunteer fire department to demonstrate the
4 following:

5 (1) The volunteer firefighter has been an active member
6 in good standing of the volunteer fire department for the
7 entire year; or

8 (2) Has been an active member in good standing of the
9 volunteer fire department and another volunteer fire
10 department of this state for the entire year; and

11 (3) Has participated as an active member as defined in
12 §11-13JJ-3 of this code on-site at least 30 percent of the
13 volunteer fire department activities during the year; and

14 (4) Has met or exceeded all certification and training for
15 active member firefighters required under the laws of this
16 state.

17 (b) The certification from the chief of the volunteer
18 firefighter department shall demonstrate, at a minimum:

19 (1) The rank or position of the volunteer firefighter;

20 (2) The years of service for the volunteer firefighter;

21 (3) The number of emergency situations the volunteer
22 firefighter responded in the year of active membership; and

23 (4) The number of meetings or training attended by the
24 volunteer firefighter in the year of active membership.

25 (c) To claim the tax credit, a volunteer firefighter shall
26 submit the certification from the chief of the volunteer fire
27 department to the Tax Commissioner.

†§11-13JJ-5. **Legislative rules.**

1 (a) The Tax Commissioner may propose rules for
2 legislative approval in accordance with the provision of
3 §29A-3-1 *et seq.* of this code as may be necessary to carry
4 out the purposes of this article.

5 (b) The commission may propose rules for legislative
6 approval in accordance with the provisions of §29A-3-1 *et*

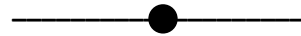
7 *seq.* of this code as may be necessary to carry out the
8 purposes of this article.

†§11-13JJ-6. **Tax credit review report.**

1 Beginning on the first day of the second taxable year
2 after the passage of this article and every two years
3 thereafter, the commission shall submit to the Governor, the
4 President of the Senate, and the Speaker of the House of
5 Delegates a tax credit review and accountability report
6 evaluating the cost effectiveness of the tax credit and
7 donations during the most recent two-year period for which
8 information is available.

†§11-13JJ-7. **Effective date.**

1 The credit allowed by this article shall be allowed for
2 qualifying volunteer firefighters after December 31, 2022.



CHAPTER 338

**(H. B. 4969 - By Delegates Maynard, Hill, Pack,
Williams, Sponaugle, Boggs, Rowan, Pethtel, Skaff
and Sypolt)**

[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 article designated §11-13FF-1, §11-
13FF-2, §11-13FF-3, §11-13FF-4, §11-13FF-5, §11-13FF-6
and §11-13FF-7; all relating to providing a tax credit for the
donation or sale of a vehicle to certain charitable
organizations; defining terms; providing limitations;
providing requirements; providing for applicability of as is

provisions; providing rulemaking authority; requiring reporting; and providing effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13FF. TAX CREDIT FOR DONATION OR SALE OF VEHICLE.

§11-13FF-1. Definitions.

1 As used in this article:

2 (1) “Commissioner” means the Tax Commissioner of
3 the State of West Virginia, or his or her delegate.

4 (2) “Division” means the Tax Division of the
5 Department of Revenue.

6 (3) “Low-Income Worker” means a person living in a
7 household with total income at or below 200 percent of the
8 Federal Poverty Level.

9 (4) “Program Value” means the fair market value of the
10 vehicle less an amount to be determined by the qualifying
11 charitable organization based upon the suitability of the
12 vehicle to its program.

13 (5) “Qualified Charitable Organization” means a
14 nonprofit association which:

15 (A) Is recognized as exempt from federal taxation under
16 §501(c)(3) of the United States Code;

17 (B) Is registered as a charitable organization pursuant to
18 §29-19-1 *et seq.* of this code; and

19 (C) Operates a program that provides the following
20 services:

21 (i) Providing low-income workers in the state with
22 below-market, affordable financing to purchase vehicles
23 through cooperating financial institutions; and

24 (ii) Providing financial counseling and other training
25 and assistance to low-income workers to meet the terms of
26 the loans used to purchase the vehicles through the program.

27 (6) "Vehicle" means a passenger motor vehicle that is
28 suitable for daily commutes for employment purposes and
29 is acceptable to the qualifying charitable organization as to
30 its suitability for its program.

§11-13FF-2. Amount of credit; limitation of credit.

1 (a) There is allowed to taxpayers who make donations
2 of vehicles to qualified charitable organizations in the state
3 a credit against taxes imposed by §11-21-1 *et seq.* and §11-
4 24-1 *et seq.* of this code in an amount equal to 50 percent of
5 the program value of the vehicle or \$2,000, whichever is
6 less.

7 (b) There is allowed to new or used motor vehicle
8 dealers licensed pursuant to §17A-6-3 of this code that sell
9 a vehicle at a reduced sales price to low-income workers
10 through a program administered by a qualified charitable
11 organization, a credit against taxes imposed by §11-21-1 *et*
12 *seq.* and §11-24-1 *et seq.* of this code in an amount equal to
13 no more than 50 percent of the difference between the
14 program value of the vehicle and the reduced sales price, or
15 \$2,000, whichever is less.

16 (c) There shall be no credit allowed pursuant to this
17 article for a new or used motor vehicle dealer unless the
18 dealer certifies that the dealer has no knowledge or reason
19 to believe the vehicle is subject to any unperformed safety
20 recall or was junked or salvaged or should have been
21 branded or reported as junked or salvaged.

22 (d) If any credit remains after application of the credit
23 against tax for any taxable year under this article, the
24 amount thereof is forfeited. No carryback to a prior taxable
25 year is allowed for the amount of any unused portion of this
26 credit.

27 (e) No more than \$300,000 of tax credits may be
28 allocated to the department in any fiscal year. The division
29 shall allocate the tax credits in the order the donation forms
30 are received.

§11-13FF-3. Determination of value of credit.

1 (a) At the time of the donation or sale of the vehicle, the
2 taxpayer shall provide to the qualified charitable
3 organization an estimate of the fair market value of the
4 vehicle.

5 (b) Upon accepting the vehicle to be used in their
6 program, the qualified charitable organization shall provide
7 the taxpayer a signed and dated form prescribed by the
8 division containing at a minimum:

9 (1) The vehicle identification number of the vehicle, its
10 make and model;

11 (2) The name, address and taxpayer identification
12 number of the taxpayer;

13 (3) The name and address of the qualifying charitable
14 organization;

15 (4) The qualifying charitable organization's
16 determination of the program value of the vehicle, based
17 upon the taxpayer's estimate of the fair market value of the
18 vehicle and the suitability of the vehicle for the qualifying
19 charitable organization's programs; and

20 (5) The maximum amount of tax credit authorized for
21 the donation or sale of the vehicle; as calculated by the
22 qualifying charitable organization: *Provided*, That the
23 actual amount of tax credit authorized shall be determined
24 by the tax division as provided in section two of this article.

25 (c) To claim the tax credit, the taxpayer shall send the
26 form provided by the qualified charitable organization to the
27 division for certification.

§11-13FF-4. Applicability to “as is” vehicles.

1 Notwithstanding any other provision of this code to the
2 contrary, the fair market value of the vehicle and not the
3 sales price shall be used to determine the applicability of
4 §46A-6-107a(a)(3)(A) of this code to any vehicle the sale of
5 which qualifies for a tax credit as provided by this article.

§11-13FF-5. Legislative rules.

1 The Tax Commissioner shall propose rules for
2 legislative approval in accordance with the provisions of
3 §29A-3-1 *et seq.* of this code as may be necessary to carry
4 out the purposes of this article.

§11-13FF-6. Tax credit review report.

1 Beginning on the first day of the second taxable year
2 after the passage of this article and every two years
3 thereafter, the division shall submit to the Governor, the
4 President of the Senate and the Speaker of the House of
5 Delegates a tax credit review and accountability report
6 evaluating the cost effectiveness of the tax credit and
7 donations during the most recent two-year period for which
8 information is available.

§11-13FF-7. Effective date.

1 The credit allowed by this article shall be allowed upon
2 donations occurring after December 31, 2020.

●

CHAPTER 339

(Com. Sub. for S. B. 16 - By Senators Azinger, Maynard and Rucker)

[Passed February 13, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 2, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §1-7-1, §1-7-2, §1-7-3, and §1-7-4, all relating generally to protecting an individual's constitutional right to privacy in association; creating the Protect Our Right to Unite Act; declaring legislative purpose; defining terms; providing that a public agency may not require a nonprofit entity to disclose the entity's donor or membership information, subject to certain exceptions; providing that donor or membership information obtained by a public agency may not be released, subject to certain exceptions; providing that membership and donor information is exempt from the disclosure requirements of the state's Freedom of Information Act; permitting disclosure of records when donor or membership information is redacted; permitting compliance with a lawful court order; providing that an individual has a private cause of action to enjoin unlawful disclosure of donor or membership information and to recover actual damages; providing for the payment of attorney's fees and costs in certain circumstances; and providing for treble damages in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. THE PROTECT OUR RIGHT TO UNITE ACT.

§1-7-1. Legislative purpose.

- 1 The purpose of this article is to protect an individual's
- 2 constitutional right to privately associate with advocacy

3 groups that represent his or her beliefs. As the Supreme
4 Court of the United States held in NAACP v. Alabama ex
5 rel. Patterson, 357 U.S. 449 (1958), compelled disclosure of
6 an advocacy group's donor or membership lists, where such
7 disclosure would discourage association, is a trespass upon
8 the fundamental freedoms protected by the Due Process
9 Clause of the Fourteenth Amendment. Therefore, this article
10 should be liberally construed in favor of an individual's
11 right to association, to ensure that private association is not
12 discouraged or suppressed by any actions of the public
13 agencies of this state.

§1-7-2. Definitions.

1 For the purposes of this article:

2 (1) "Donor or membership information" means any
3 record which identifies an individual's membership in, or
4 support of, any tax-exempt entity under 26 U.S.C. §501(c),
5 including information that does not directly identify the
6 individual but which, in combination with other
7 information, would allow a reasonable person to identify the
8 individual. Donor or membership information includes, but
9 is not limited to, a member, donor, or supporter's name,
10 address, occupation, employer, or any electronic or
11 technical data, including social media accounts, email
12 accounts, location data, or other identifying information.

13 (2) "Individual" means a person who is a United States
14 citizen, or who is domiciled in the United States, but does
15 not include a foreign agent, foreign government, or foreign
16 principal.

17 (3) "Public agency" means:

18 (A) Any department, body, office, commission, board,
19 unit, political subdivision, court, or division of state or local
20 government, however designated; and

21 (B) Any official, employee, or agent of an entity
22 described in paragraph (A) of this subdivision.

§1-7-3. Protecting privacy of association.

1 (a) Except as otherwise provided in chapter 3 of this
2 code, chapter 6B of this code, or subsection (e) of this
3 section, a public agency may not require any tax-exempt
4 organization under 26 U.S.C. §501(c) to provide the agency
5 with donor or membership information: *Provided*, That
6 where the public agency nevertheless obtains donor or
7 membership information, such information may not be
8 released unless pursuant to chapter 3 of this code, chapter
9 6B of this code, or subsection (e) of this section.

10 (b) A public agency may not release, permit to be
11 released, nor be compelled to release any record which
12 identifies an individual's association with any tax-exempt
13 organization under 26 U.S.C. §501(c), or which reveals an
14 individual's financial or nonfinancial support for such an
15 entity, without the express written permission of the entity
16 and the citizen, or at the request of the citizen.

17 (c) All donor or membership information is exempt
18 from production or disclosure under the state's Freedom of
19 Information Act, §29B-1-1 *et seq.* of this code.

20 (d) A public agency does not violate subsection (a) of
21 this section if donor or membership information is redacted
22 from a disclosed record.

23 (e) Nothing in this section precludes compliance with a
24 lawful order issued by a court of competent jurisdiction.

§1-7-4. Civil remedies.

1 (a) An individual may bring a civil action to enjoin any
2 violation of this article and to recover actual damages
3 incurred by him or her as a result of the violation.

4 (b) If the plaintiff prevails in a civil action pursuant to
5 this section, he or she is entitled to be reimbursed by the
6 state or public agency for actual costs and such reasonable
7 attorney's fees he or she has incurred in the litigation.

8 (c) If the judge or jury in a civil action brought pursuant
 9 to this section finds that a public agency intentionally
 10 disclosed donor or membership information in violation of
 11 this article, the amount of the judgment, which for this
 12 purpose includes actual damages, costs, and attorney's fees,
 13 may be trebled as exemplary damages.

CHAPTER 340

**(H. B. 4714 - By Delegates Howell, C. Martin and
 Ellington)
 [By Request of the West Virginia Secretary of State]**

[Passed March 4, 2020; in effect ninety days from passage.]
 [Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §29-19-6 of the Code of West Virginia, 1931, as amended, relating to increasing the monetary threshold for requiring nonprofit organizations to register as a charitable organization to be consistent with the United States Internal Revenue Service and other states.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

***§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:

4 (1) Educational institutions, the curriculums of which,
 5 in whole or in part, are registered or approved by the State

***NOTE:** This section was also amended by H. B. 4747 (Chapter 171), which passed subsequent to this act.

6 Board of Education, either directly or by acceptance of
7 accreditation by an accrediting body recognized by the State
8 Board of Education; and any auxiliary associations,
9 foundations and support groups which are directly
10 responsible to the educational institutions;

11 (2) Persons requesting contributions for the relief of any
12 individual specified by name at the time of the solicitation
13 when all of the contributions collected without any
14 deductions whatsoever are turned over to the named
15 beneficiary for his or her use;

16 (3) Hospitals and licensed nursing homes which are
17 nonprofit and charitable;

18 (4) Organizations which solicit only within the
19 membership of the organization by the members thereof:
20 *Provided*, That the term “membership” does not include
21 those persons who are granted a membership upon making
22 a contribution as the result of solicitation. For the purpose
23 of this section, “member” means a person having
24 membership in a nonprofit corporation, or other
25 organization, in accordance with the provisions of its
26 articles of incorporation, bylaws or other instruments
27 creating its form and organization; and having bona fide
28 rights and privileges in the organization, including the right
29 to vote, to elect officers, directors and issues, to hold office
30 or otherwise as ordinarily conferred on members of the
31 organizations;

32 (5) Churches, synagogues, associations or conventions
33 of churches, religious orders or religious organizations that
34 are an integral part of a church which qualifies as tax exempt
35 under the provisions of 26 U.S.C. §501(c)(3) and which
36 qualifies as being exempt from filing an annual return under
37 the provisions of 26 U.S.C. §6033;

38 (6) Any person, firm, corporation or organization that
39 sponsors a single fund-raising event for the benefit of a
40 named charitable organization where all or part of the funds

41 collected are donated to the named charitable organization:
42 *Provided*, That the named charitable organization receiving
43 the funds is registered pursuant to this article, reports each
44 of these donations individually and certifies that no funds
45 were withheld by the organization that solicited the funds;
46 and

47 (7) (A) Any charitable organization that does not
48 employ a professional solicitor or fundraiser and does not
49 intend to solicit and receive and does not actually raise or
50 receive contributions, donations or grants from the public in
51 excess of \$50,000 during a calendar year.

52 (B) Charitable organizations which do not intend to
53 solicit and receive contributions, donations or grants in
54 excess of \$50,000, but do receive in excess of that amount
55 from the public, shall file the annual registration statement
56 within 30 days after contributions are in excess of \$50,000.

CHAPTER 341

**(Com. Sub. for S. B. 6 - By Senators Cline and
Roberts)**

[Passed March 2, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §17C-17-11 of the Code of West Virginia, 1931, as amended, relating to authorizing the Commissioner of the Division of Highways to issue permits for certain tractors with certain trailers that do not exceed specified maximum axle weights.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. SIZE, WEIGHT, AND LOAD.

§17C-17-11. Permits for excess size and weight.

1 (a) The Commissioner of the Division of Highways
2 may, in his or her discretion, upon application in writing and
3 good cause shown, issue a special permit in writing
4 authorizing:

5 (1) The applicant, in crossing any highway of this state,
6 to operate or move a vehicle or combination of vehicles of
7 a size or weight or load exceeding the maximum specified
8 in this chapter or otherwise not in conformity with the
9 provisions of this chapter, whether the operation is
10 continuous or not, provided the applicant agrees to
11 compensate the Commissioner of the Division of Highways
12 for all damages or expenses incurred in connection with the
13 crossing;

14 (2) The applicant to operate or move a vehicle or
15 combination of vehicles of a size or weight of vehicles or
16 nondivisible load exceeding the maximum specified in this
17 chapter or otherwise not in conformity with the provisions
18 of this chapter; and

19 (3) The applicant to move or operate, for limited or
20 continuous operation, a vehicle hauling containerized cargo
21 in a sealed, seagoing container to or from a seaport or inland
22 waterway port that has or will be transported by marine
23 shipment where the vehicle is not, as a result of hauling the
24 container, in conformity with the provisions of this article
25 relating to weight limitations, upon the conditions that:

26 (A) The container be hauled only on the roadways and
27 highways designated by the Commissioner of the Division
28 of Highways;

29 (B) The contents of the container are not changed from
30 the time it is loaded by the consignor or the consignor's
31 agent to the time it is delivered to the consignee or the
32 consignee's agent; and

33 (C) Any additional conditions as the Commissioner of
34 the Division of Highways or the Public Service Commission
35 may impose to otherwise ensure compliance with the
36 provisions of this chapter.

37 (b)(1) The Commissioner of the Division of Highways
38 may issue a special permit to operate or move a vehicle or
39 combination of vehicles of a size or weight of vehicles or
40 nondivisible load exceeding the maximum specified in this
41 chapter or otherwise not in conformity with the provisions
42 of this chapter over routes designated by the Commissioner
43 of the Division of Highways upon terms and restrictions
44 prescribed by the Public Service Commission, together with
45 the Commissioner of the Division of Highways.

46 (2) For purposes of this section, “nondivisible load”
47 means any load exceeding applicable length or weight limits
48 which, if separated into smaller loads or vehicles, would:

49 (A) Compromise the intended use of the vehicle, to the
50 extent that the separation would make it unable to perform
51 the function for which it was intended;

52 (B) Destroy the value of the load or vehicle, to the extent
53 that the separation would make it unusable for its intended
54 purpose; or

55 (C) Require more than eight work hours to dismantle
56 using appropriate equipment: *Provided*, That the applicant
57 for a nondivisible load permit has the burden of proof as to
58 the number of work hours required to dismantle the load.

59 (3) The Commissioner of the Division of Highways
60 may, in his or her discretion, upon application in writing and
61 based upon an engineering analysis, issue a special permit
62 in writing authorizing the applicant, when operating upon
63 any highway of this state designated by the commissioner,
64 to operate or move a vehicle or combination of vehicles,
65 hauling commodities manufactured for interstate
66 commerce, of a size or weight or divisible load exceeding

67 the maximum specified in this chapter or otherwise not in
68 conformity with the provisions of this chapter, whether the
69 operation is continuous or not.

70 (A) The engineering analysis must demonstrate that the
71 vehicle permitted under this subdivision does not adversely
72 affect the designated routes when compared to the size,
73 weight, and load provisions of this chapter.

74 (B) The maximum gross vehicle weight permitted under
75 this subsection is 120,000 pounds.

76 (C) The permit may contain any additional conditions
77 the Commissioner of the Division of Highways or the Public
78 Service Commission may impose to otherwise ensure
79 compliance with the provisions of this chapter.

80 (4) The Commissioner of the Division of Highways
81 may, in his or her discretion, upon application in writing,
82 issue a special permit in writing authorizing the applicant to
83 transport logs, wood chips, timber, other natural raw wood,
84 lumber, paper, wood veneer, wood pellets, or any other
85 wood product of the forest, craft, or manufacturing. The
86 vehicle authorized by the permit shall be a tractor-
87 semitrailer combination with six axles, each axle equipped
88 with brakes, and limited to a maximum gross vehicular
89 weight of 94,000 pounds, without any tolerance. The
90 maximum weight of each axle, beginning with the steering
91 axle commencing rearwards, respectively shall be 15,000
92 pounds, 17,000 pounds, 17,000 pounds, 15,000 pounds,
93 15,000 pounds, and 15,000 pounds. The tractor shall have
94 one steer axle and two drive axles in tandem, and the trailer
95 shall have three trailer axles in tridem. The distance between
96 the last drive axle of the tractor and the first trailer axle shall
97 be a minimum of 29 feet and six inches. The Commissioner
98 of the Division of Highways may issue permits for four-axle
99 tractors with one steering axle and three axles in tridem in
100 combination with dual axle pup trailers: *Provided*, That the
101 maximum weight of each axle for pup-combination vehicles
102 beginning with the steering axle commencing rearward

103 respectively does not exceed 14,500 pounds, 16,613
104 pounds, 16,614 pounds, 16,613 pounds, 14,830 pounds, and
105 14,830 pounds. Permits under this subdivision will not be
106 issued for any vehicle traveling on interstate routes.

107 (c) The application for any permit other than a special
108 annual permit shall specifically describe the vehicle or
109 vehicles and load to be operated or moved along or across
110 the highway and the particular highway or crossing of the
111 highway for which the permit to operate is requested, and
112 whether the permit is requested for a single trip or for a
113 continuous operation.

114 (d) The Public Service Commission is authorized to
115 issue or withhold a permit at its discretion; or, if the permit
116 is issued, to limit the number of trips, or to establish
117 seasonal or other time limitations within which the vehicles
118 described may be operated on or across the highways
119 indicated, or otherwise to limit or prescribe conditions of
120 operation of the vehicle or vehicles, when necessary to
121 assure against undue damage to the road foundations,
122 surface, or structures, and may require the undertaking,
123 bond, or other security considered necessary to compensate
124 for any injury to any roadway structure and to specify the
125 type, number, and the location for escort vehicles for any
126 vehicle: *Provided*, That in establishing limitations on
127 permits issued under this section, the Public Service
128 Commission shall consult with the Commissioner of the
129 Division of Highways, and may not issue, limit, or condition
130 a permit in a manner inconsistent with the authority of the
131 Commissioner of the Division of Highways.

132 The Public Service Commission may charge a fee for
133 the issuance of a permit for a mobile home and a reasonable
134 fee for the issuance of a permit for any other vehicle under
135 the provisions of this section to pay the administrative costs
136 thereof.

137 (e) Every permit shall be carried in the vehicle or
138 combination of vehicles to which it refers and shall be open

139 to inspection by any police officer or authorized agent of the
140 Commissioner of the Division of Highways or the Public
141 Service Commission, and no person shall violate any of the
142 terms or conditions of the special permit.

CHAPTER 342

(Com. Sub. for S. B. 130 - By Senators Trump, Ihlenfeld and Facemire)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §17C-5-2, §17C-5-2a, §17C-5-2b, §17C-5-4, §17C-5-7, and §17C-5-12 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §17C-5-7a; to amend and reenact §17C-5A-1, §17C-5A-1a, and §17C-5A-3 of said code; to amend said code by adding thereto a new section, designated §17C-5A-2b; and to amend said code by adding thereto a new section, designated §17C-5C-1a, all relating generally to offenses involving operating a motor vehicle while under the influence of alcohol, controlled substances, or drugs and the administrative process for revocation or suspension of a person's license to operate a motor vehicle based on such offenses; defining terms; transferring authority for hearing certain matters related to revocations or suspensions of licenses from the Office of Administrative Hearings to the courts; establishing mandatory license revocation or suspension periods for individuals convicted of certain offenses; authorizing alternate revocation or suspension periods conditioned upon participation in Motor Vehicle Alcohol Test and Lock Program for certain offenses; establishing mandatory license revocation or suspension periods for individuals upon second and subsequent

convictions for certain offenses; clarifying what constitutes a second or subsequent offense for purposes of criminal penalties and license revocations and suspensions; clarifying that certain offenses involving driving under the influence take place only when the operator is upon a public highway or private road; clarifying the term “in this state” for purposes of enforcement of certain serious traffic crimes; requiring the Commissioner of the Division of Motor Vehicles to revoke a person’s license upon conviction of certain offenses or for refusal to submit to a secondary chemical test in certain circumstances; requiring individuals whose licenses have been revoked or suspended upon conviction of certain offenses to complete the comprehensive safety and treatment program before the license can be reinstated; requiring driver consent to participation in Motor Vehicle Alcohol Test and Lock Program; requiring deferral program for certain first offenses to be completed within one year; prohibiting a secondary test of blood without consent absent issuance of a search warrant; requiring that a person arrested for driving under the influence be provided with certain verbal and written warnings prior to submitting to a secondary chemical test; requiring an officer to 15 minutes before a refusal to submit to a secondary chemical test is considered final; requiring that, following an individual’s refusal to submit to a secondary chemical test, an arresting officer submit a sworn statement containing certain information to Commissioner of the Division of Motor Vehicles and the court; providing for a hearing before the court to contest a documented refusal to submit to a secondary chemical test; providing minimum license revocation periods for refusal to submit to a secondary chemical test; directing the Bureau for Public Health to make reports and recommendations on the levels of drugs and controlled substances to be used as evidence in certain criminal proceedings; limiting the administrative jurisdiction of Division of Motor Vehicles and Office of Administrative Hearings to offenses occurring on or before June 30, 2020; eliminating all statutory provisions authorizing or requiring the Commissioner of the Division of Motor Vehicles to take administrative action upon an individual’s license on the basis

of driving under the influence or refusal to submit to a secondary test absent direction from court; requiring the Commissioner of the Division of Motor Vehicles to provide certain records to the court following a person's arrest; providing a procedure to correct a license revocation or suspension based on mistaken driver identity; providing that a plea of no contest constitutes a conviction; requiring the clerk of the court to transmit a copy of an order related to revoking or suspending a person's license to the Division of Motor Vehicles; directing that a copy of a license revocation or suspension order to be sent to the person whose license is being revoked or suspended by certified mail; providing that revocation for refusal to submit to secondary chemical test run concurrently with other revocation or suspension imposed as a result of an offense that led to the arrest; making persons convicted of driving under the influence eligible for participation in comprehensive safety and treatment program and related reductions in length of revocation for successful completion thereof; requiring the Office of Administrative Hearings to dispose of all matters pending before it by a certain date; establishing a timeline for jurisdiction of matters currently filed in the Office of Administrative Hearings to transfer to the courts; requiring that matters related to license suspension or revocation for driving under the influence, pending before the Office of Administrative Hearings on its termination, be dismissed; requiring that matters not related to license suspension or revocation for driving under the influence, pending before the Office of Administrative Hearings on its termination, be transferred to a circuit court according to certain procedures; terminating the Office of Administrative Hearings by a certain date; eliminating obsolete language; providing internal effective dates; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances, or drugs; penalties.

1 (a) *Definitions.* —

2 (1) “Impaired state” means a person:

3 (A) Is under the influence of alcohol;

4 (B) Is under the influence of any controlled substance;

5 (C) Is under the influence of any other drug or inhalant
6 substance;

7 (D) Is under the combined influence of alcohol and any
8 controlled substance or any other drug; or

9 (E) Has an alcohol concentration in his or her blood of
10 eight hundredths of one percent or more, by weight.

11 (2) “Bodily injury” means injury that causes substantial
12 physical pain, illness, or any impairment of physical
13 condition.

14 (3) “Controlled substance” has the meaning provided in
15 §60A-1-101 of this code.

16 (4) “Serious bodily injury” means bodily injury that
17 creates a substantial risk of death, that causes serious or
18 prolonged disfigurement, prolonged impairment of health,
19 or prolonged loss or impairment of the function of any
20 bodily organ.

21 (5) “Test and lock program” means the Motor Vehicle
22 Test and Lock Program, established in §17C-5A-3a and
23 administered by the Division of Motor Vehicles.

24 (b) Any person who drives a vehicle in this state while
25 he or she is in an impaired state, and such impaired state
26 proximately causes the death of any person, is guilty of a
27 felony and, upon conviction thereof, shall be imprisoned in
28 a state correctional facility for not less than three nor more
29 than 15 years and shall be fined not less than \$1,000 nor
30 more than \$3,000, and shall have his or her license to
31 operate a motor vehicle revoked by the Commissioner of the

32 Division of Motor Vehicles for a period of 10 years or for a
33 period of time conditioned on participation in the test and
34 lock program in accordance with §17C-5A-3a of this code:
35 *Provided*, That any death charged under this subsection
36 must occur within one year of the offense: *Provided*,
37 *however*, That if the person has previously been convicted
38 under this section, the person shall have his or her license to
39 operate a motor vehicle revoked by the Commissioner of the
40 Division of Motor Vehicles for life or for a period of time
41 conditioned on participation in the test and lock program in
42 accordance with §17C-5A-3a of this code.

43 (c) Any person who drives a vehicle in this state while
44 he or she is in an impaired state, and such impaired state
45 proximately causes serious bodily injury to any person other
46 than himself or herself, is guilty of a felony and, upon
47 conviction thereof, shall be imprisoned in a state
48 correctional facility for not less than two nor more than 10
49 years and shall be fined not less than \$1,000 nor more than
50 \$3,000, and shall have his or her license to operate a motor
51 vehicle revoked by the Commissioner of the Division of
52 Motor Vehicles for a period of five years or for a period of
53 time conditioned on participation in the test and lock
54 program in accordance with §17C-5A-3a of this code:
55 *Provided*, That if the person has previously been convicted
56 under this section, the person shall have his or her license to
57 operate a motor vehicle revoked by the Commissioner of the
58 Division of Motor Vehicles for life or for a period of time
59 conditioned on participation in the test and lock program in
60 accordance with §17C-5A-3a of this code.

61 (d) Any person who drives a vehicle in this state while
62 he or she is in an impaired state, and such impaired state
63 proximately causes a bodily injury to any person other than
64 himself or herself, is guilty of a misdemeanor and, upon
65 conviction thereof, shall be confined in jail for not less than
66 one day nor more than one year and shall be fined not less
67 than \$200 nor more than \$1,000, and shall have his or her
68 license to operate a motor vehicle revoked by the

69 Commissioner of the Division of Motor Vehicles for a
70 period of two years or for a period of time conditioned on
71 participation in the test and lock program in accordance with
72 §17C-5A-3a of this code: *Provided*, That if the person has
73 previously been convicted under this section, the person
74 shall have his or her license to operate a motor vehicle
75 revoked by the Commissioner of the Division of Motor
76 Vehicles for life or for a period of time conditioned on
77 participation in the test and lock program in accordance with
78 §17C-5A-3a of this code. Any jail term imposed pursuant to
79 this subsection shall include actual confinement of not less
80 than 24 hours: *Provided, however*, That a person sentenced
81 pursuant to this subsection shall receive credit for any
82 period of actual confinement he or she served upon arrest
83 for the subject offense.

84 (e) Any person who drives a vehicle on any public
85 highway or private road in this state: (1) while he or she is
86 in an impaired state; or (2) while he or she is in an impaired
87 state but has an alcohol concentration in his or her blood of
88 less than fifteen hundredths of one percent, by weight, is
89 guilty of a misdemeanor and, upon conviction thereof, may
90 be confined in jail for up to six months and shall be fined
91 not less than \$100 nor more than \$500, and shall have his or
92 her license to operate a motor vehicle revoked by the
93 Commissioner of the Division of Motor Vehicles for a
94 period of six months or for a period of time conditioned on
95 participation in the test and lock program in accordance with
96 §17C-5A-3a of this code: *Provided*, That a person sentenced
97 pursuant to this subsection shall receive credit for any
98 period of actual confinement he or she served upon arrest
99 for the subject offense.

100 (f) Any person who drives a vehicle on any public
101 highway or private road in this state while he or she has an
102 alcohol concentration in his or her blood of fifteen
103 hundredths of one percent or more, by weight, is guilty of a
104 misdemeanor and, upon conviction thereof, shall be
105 confined in jail for not less than two days nor more than six

106 months, which jail term is to include actual confinement of
107 not less than 24 hours, and shall be fined not less than \$200
108 nor more than \$1,000, and shall have his or her license to
109 operate a motor vehicle revoked by the Commissioner of the
110 Division of Motor Vehicles for a period of one year or for a
111 period of time conditioned on participation in the test and
112 lock program in accordance with §17C-5A-3a of this code.
113 A person sentenced pursuant to this subsection shall receive
114 credit for any period of actual confinement he or she served
115 upon arrest for the subject offense.

116 (g) Any person who, being a habitual user of narcotic
117 drugs or amphetamines, or any derivative thereof, drives a
118 vehicle on any public highway or private road in this state
119 is guilty of a misdemeanor and, upon conviction thereof,
120 shall be confined in jail for not less than one day nor more
121 than six months, which jail term is to include actual
122 confinement of not less than 24 hours, and shall be fined not
123 less than \$100 nor more than \$500, and shall have his or her
124 license to operate a motor vehicle revoked by the
125 Commissioner of the Division of Motor Vehicles for a
126 period of six months. A person sentenced pursuant to this
127 subsection shall receive credit for any period of actual
128 confinement he or she served upon arrest for the subject
129 offense.

130 (h) Any person who knowingly permits his or her
131 vehicle to be driven on any public highway or private road
132 in this state by any other person who is in an impaired state
133 is guilty of a misdemeanor and, upon conviction thereof,
134 shall be confined in jail for not more than six months and
135 shall be fined not less than \$100 nor more than \$500, and
136 shall have his or her license to operate a motor vehicle
137 revoked by the Commissioner of the Division of Motor
138 Vehicles for a period of six months or for a period of time
139 conditioned on participation in the test and lock program in
140 accordance with §17C-5A-3a of this code.

141 (i) Any person who knowingly permits his or her vehicle
142 to be driven on any public highway or private road in this

143 state by any other person who is a habitual user of narcotic
144 drugs or amphetamines, or any derivative thereof, is guilty
145 of a misdemeanor and, upon conviction thereof, shall be
146 confined in jail for not more than six months and shall be
147 fined not less than \$100 nor more than \$500, and shall have
148 his or her license to operate a motor vehicle revoked by the
149 Commissioner of the Division of Motor Vehicles for a
150 period of six months.

151 (j) (1) Any person under the age of 21 years who drives
152 a vehicle on any public highway or private road in this state
153 while he or she has an alcohol concentration in his or her
154 blood of two hundredths of one percent or more, by weight,
155 but less than eight hundredths of one percent, by weight, for
156 a first offense under this subsection is guilty of a
157 misdemeanor and, upon conviction thereof, shall be fined
158 not less than \$25 nor more than \$100, and have his or her
159 license to operate a motor vehicle suspended by the
160 Commissioner of the Division of Motor Vehicles for a
161 period of 60 days or for a period of time conditioned on
162 participation in the test and lock program in accordance with
163 §17C-5A-3a of this code. For a second or subsequent
164 offense under this subsection, the person is guilty of a
165 misdemeanor and, upon conviction thereof, shall be
166 confined in jail for 24 hours and shall be fined not less than
167 \$100 nor more than \$500, and shall have his or her license
168 to operate a motor vehicle revoked by the Commissioner of
169 the Division of Motor Vehicles for a period of one year or
170 until the person's 21st birthday, whichever period is longer,
171 or for a period of time conditioned on participation in the
172 test and lock program in accordance with §17C-5A-3a of
173 this code. A person who is charged with a first offense under
174 the provisions of this subsection may move for a
175 continuance of the proceedings, from time to time, to allow
176 the person to participate in the test and lock program as
177 provided in §17C-5A-3a of this code. Upon successful
178 completion of the program, the court shall dismiss the
179 charge against the person and expunge the person's record
180 as it relates to the alleged offense. In the event the person

181 fails to successfully complete the program, the court shall
182 proceed to an adjudication of the alleged offense. A motion
183 for a continuance under this subsection may not be
184 construed as an admission or be used as evidence.

185 (2) (A) Notwithstanding subdivision (1) of this
186 subsection, a person shall have his or her license to operate
187 a motor vehicle suspended or revoked for a minimum period
188 of one year or for a period of time conditioned on
189 participation in the test and lock program in accordance with
190 §17C-5A-3a of this code, if the person:

191 (i) Has previously been convicted under this subsection
192 and is subsequently convicted of an offense under another
193 subsection of this section; or

194 (ii) Is convicted under this subsection and has
195 previously been convicted of an offense under another
196 subsection of this section.

197 (B) Nothing in this subdivision permits a shorter period
198 of license revocation, license suspension, or participation in
199 the test and lock program than is mandatory for the specific
200 offense for which the person is convicted.

201 (3) A person arrested and charged with an offense under
202 the provisions of this subsection or subsection (b), (c), (d),
203 (e), (f), (g), (h), or (i) of this section may not also be charged
204 with an offense under this subsection arising out of the same
205 transaction or occurrence.

206 (k) Any person who drives a vehicle on any public
207 highway or private road in this state while he or she is in an
208 impaired state and has within the vehicle one or more other
209 persons who are unemancipated minors who have not yet
210 reached their 16th birthday is guilty of a misdemeanor and,
211 upon conviction thereof, shall be confined in jail for not less
212 than two days nor more than 12 months, and shall be fined
213 not less than \$200 nor more than \$1,000, and shall have his
214 or her license to operate a motor vehicle revoked by the

215 Commissioner of the Division of Motor Vehicles for a
216 period of one year or for a period of time conditioned on
217 participation in the test and lock program in accordance with
218 §17C-5A-3a of this code: *Provided*, That such jail term shall
219 include actual confinement of not less than 48 hours:
220 *Provided, however*, That a person sentenced pursuant to this
221 subsection shall receive credit for any period of actual
222 confinement he or she served upon arrest for the subject
223 offense.

224 (l) A person convicted of an offense under this section,
225 who has previously been convicted of any offense under this
226 section on one occasion, is guilty of a misdemeanor and,
227 upon conviction thereof, shall be confined in jail for not less
228 than six months nor more than one year, may be fined not
229 less than \$1,000 nor more than \$3,000, and shall have his or
230 her license to operate a motor vehicle revoked by the
231 Commissioner of the Division of Motor Vehicles for 10
232 years or for a period of time conditioned on participation in
233 the test and lock program in accordance with §17C-5A-3a
234 of this code: *Provided*, That if the second conviction is for
235 an offense as described in subsections (b), (c), or (d) of this
236 section and the subsection creating the offense requires a
237 period of incarceration, period of license revocation, or fine
238 that is greater than what is required for a conviction under
239 this subsection, the greater period of incarceration, period
240 of revocation, or fine shall be imposed: *Provided, however*,
241 That this section does not apply to a second conviction that
242 is subject to a period of license revocation under subsection
243 (j) of this section.

244 (m) A person convicted of an offense under this section,
245 who has previously been convicted of any offense under this
246 section on two or more occasions, is guilty of a felony and,
247 upon conviction thereof, shall be imprisoned in a state
248 correctional facility for not less than two nor more than five
249 years, shall have his or her license to operate a motor vehicle
250 revoked by the Commissioner of the Division of Motor
251 Vehicles for life or for a period of time conditioned on

252 participation in the test and lock program in accordance with
253 §17C-5A-3a of this code, and the court may, in its
254 discretion, impose a fine of not less than \$3,000 nor more
255 than \$5,000: *Provided*, That if the third or subsequent
256 conviction is for an offense as described in subsections (b),
257 (c), or (d) of this section and the subsection creating the
258 offense requires a period of incarceration, period of license
259 revocation, or fine that is greater than what is required for a
260 conviction under this subsection, the greater period of
261 incarceration, period of revocation, and fine shall be
262 imposed: *Provided, however*, That this section does not
263 apply to a third or subsequent conviction that is subject to a
264 period of license revocation under subsection (j) of this
265 section.

266 (n) For purposes of subsections (l) and (m) of this
267 section relating to second, third, and subsequent offenses,
268 the following events shall be regarded as offenses and
269 convictions under this section:

270 (1) Any conviction under the provisions of subsection
271 (b), (c), (d), (e), (f), (g), (h), or (i) of this section, or under a
272 prior enactment of this section, for an offense which
273 occurred within the 10-year period immediately preceding
274 the date of arrest in the current proceeding;

275 (2) Any conviction under a municipal ordinance of this
276 state or any other state or a statute of the United States or of
277 any other state of an offense which has the same elements
278 as an offense described in subsection (b), (c), (d), (e), (f),
279 (g), (h), or (i) of this section, which offense occurred within
280 the 10-year period immediately preceding the date of arrest
281 in the current proceeding; and

282 (3) Any period of conditional probation imposed
283 pursuant to §17C-5-2b of this code for violation of
284 subsection (e) of this section, which violation occurred
285 within the 10-year period immediately preceding the date of
286 arrest in the current proceeding.

287 (o) A person may be charged in a warrant, indictment,
288 or information for a second or subsequent offense, as
289 described in subsection (j), (l), or (m) of this section, if the
290 person has been previously arrested for, or charged with, a
291 violation of this section which is alleged to have occurred
292 within the applicable time period for prior offenses,
293 notwithstanding the fact that there has not been a final
294 adjudication of the charges for the alleged previous offense.
295 In that case, the warrant or indictment or information must
296 set forth the date, location, and particulars of the previous
297 offense or offenses. No person may be convicted of a second
298 or subsequent offense under this section unless the
299 conviction for the previous offense has become final, or the
300 person has previously had a period of conditional probation
301 imposed pursuant to §17C-5-2b of this code.

302 (p) The fact that any person charged with a violation of
303 subsection (b), (c), (d), (e), (f), or (g) of this section, or any
304 person permitted to drive as described under subsection (h)
305 or (i) of this section, is or has been legally entitled to use
306 alcohol, a controlled substance, or a drug does not constitute
307 a defense against any charge of violating subsection (b), (c),
308 (d), (e), (f), (g), (h), or (i) of this section.

309 (q) The sentences provided in this section upon
310 conviction for a violation of this article are mandatory and
311 are not subject to suspension or probation: *Provided*, That
312 the court may apply the provisions of §62-11A-1 *et seq.* of
313 this code to a person sentenced or committed to a term of
314 one year or less for a first offense under this section:
315 *Provided, however*, That the court may impose a term of
316 conditional probation pursuant to §17C-5-2b of this code to
317 persons adjudicated thereunder. An order for home
318 detention by the court pursuant to the provisions of
319 §62-11B-1 *et seq.* of this code may be used as an alternative
320 sentence to any period of incarceration required by this
321 section for a first or subsequent offense: *Provided further*,
322 That for any period of home incarceration ordered for a
323 person convicted of a second offense under this section,

324 electronic monitoring shall be required for no fewer than
325 five days of the total period of home confinement ordered
326 and the offender may not leave home for those five days
327 notwithstanding the provisions of §62-11B-5 of this code:
328 *And provided further,* That for any period of home
329 incarceration ordered for a person convicted of a third or
330 subsequent violation of this section, electronic monitoring
331 shall be included for no fewer than 10 days of the total
332 period of home confinement ordered and the offender may
333 not leave home for those 10 days notwithstanding
334 §62-11B-5 of this code.

335 (r) A person whose license to operate a motor vehicle
336 has been revoked or suspended by the Commissioner of the
337 Division of Motor Vehicles pursuant to this section must
338 complete a comprehensive safety and treatment program as
339 set forth in §17C-5A-3 of this code before his or her license
340 to operate a motor vehicle can be reinstated and his or her
341 driving privileges restored.

342 (s) For any offense for which an alternative revocation
343 period is permitted conditioned upon participation in the test
344 and lock program, an alternative sentence may not be
345 imposed without the consent of the driver.

346 (t) Upon entering the order of conviction for an offense
347 under this section, or the imposition of conditional
348 probation as provided in §17C-5-2b of this code, the clerk
349 of the court shall immediately transmit the order to the
350 Commissioner of the Division of Motor Vehicles.

351 (u) The amendments made to this section during the
352 2020 regular session of the Legislature shall become
353 effective on July 1, 2020.

**§17C-5-2a. Definition of phrase “in this state”; phrases
synonymous with driving under the influence of alcohol;
validation of warrants and indictments.**

1 (a) For purposes of this article and §17C-5A-1 *et seq.* of
2 this code, the phrase “in this state” shall mean anywhere
3 within the physical boundaries of this state, including, but
4 not limited to, publicly maintained streets and highways,
5 and subdivision streets or other areas not publicly
6 maintained but nonetheless open to the use of the public for
7 purposes of vehicular travel, but as used in §17C-5-2(e),
8 §17C-5-2(f), §17C-5-2(g), §17C-5-2(h), §17C-5-2(i),
9 §17C-5-2(j), and §17C-5-2(k) of this code, the term does not
10 mean or include driving or operating a vehicle solely and
11 exclusively on one’s own property in an area not open to the
12 use of the public for purposes of vehicular travel.

13 (b) When used in this code, the terms or phrases
14 “driving under the influence of intoxicating liquor”,
15 “driving or operating a motor vehicle while intoxicated”,
16 “for any person who is under the influence of intoxicating
17 liquor to drive any vehicle”, or any similar term or phrase
18 shall be construed to mean and be synonymous with the
19 term or phrase “while under the influence of alcohol ...
20 drives a vehicle” as the latter term or phrase is used in §17C-
21 5-2 of this code.

22 (c) From and after the effective date of this section, a
23 warrant or indictment which charges or alleges an offense,
24 prohibited by §17C-5-2 of this code, and which warrant or
25 indictment uses any of the terms or phrases set forth in
26 subsection (b) of this section, shall not thereby be fatally
27 defective if such warrant or indictment otherwise informs
28 the person so accused of the charges against said person.

§17C-5-2b. Deferral of further proceedings for certain first offenses upon condition of participation in Motor Vehicle Alcohol Test and Lock Program; procedure on charge of violation of conditions.

1 (a) (1) Except as provided in subsection (f) of this
2 section, the court, without entering a judgment of guilt and
3 with the consent of the accused, shall defer further
4 proceedings and impose probation, when:

5 (A) The person pleads to or is found guilty of the offense
6 defined in §17C-5-2(e) of this code;

7 (B) The person has not previously been convicted of any
8 offense under this article or under any statute of the United
9 States or of any state relating to driving under the influence
10 of alcohol, any controlled substance, or any other drug; and

11 (C) The person notifies the court within 30 days of his
12 or her arrest of his or her intention to participate in a deferral
13 pursuant to this section.

14 (2) If all the requirements in subdivision (1) of this
15 subsection are met, the court, without entering a judgment
16 of guilt, shall defer further proceedings and place the person
17 on probation, the conditions of which shall include that he
18 or she successfully completes the Motor Vehicle Alcohol
19 Test and Lock Program as provided in §17C-5A-3a of this
20 code. Participation therein shall be for a period of at least
21 165 days after a 15-day suspension of his or her license to
22 operate a motor vehicle and shall be completed within one
23 year thereafter.

24 (b) (1) If the prosecuting attorney files a motion alleging
25 that the defendant during the period of the Motor Vehicle
26 Alcohol Test and Lock Program has been removed
27 therefrom by the Division of Motor Vehicles, or has failed
28 to successfully complete the program before making a
29 motion for dismissal pursuant to subsection (c) of this
30 section, the court may issue such process as is necessary to
31 bring the defendant before the court.

32 (2) A motion alleging a violation filed pursuant in
33 subdivision (1) of this subsection must be filed during the
34 period of the Motor Vehicle Alcohol Test and Lock
35 Program or, if filed thereafter, must be filed within a
36 reasonable time after the alleged violation was committed.

37 (3) When the defendant is brought before the court, the
38 court shall afford the defendant an opportunity to be heard.

39 If the court finds that the defendant has been rightfully
40 removed from the Motor Vehicle Alcohol Test and Lock
41 Program by the Division of Motor Vehicles, the court may
42 order, when appropriate, that the deferral be terminated, and
43 thereupon enter an adjudication of guilt and proceed as
44 otherwise provided.

45 (4) Should the defendant fail to complete or be removed
46 from the Motor Vehicle Alcohol Test and Lock Program,
47 the defendant waives the appropriate statute of limitations
48 and the defendant's right to a speedy trial under any
49 applicable federal or state constitutional provisions,
50 statutes, or rules of court during the period of enrollment in
51 the program.

52 (c) When the defendant shall have completed
53 satisfactorily the Motor Vehicle Alcohol Test and Lock
54 Program and complied with its conditions, the defendant
55 may move the court for an order dismissing the charges.
56 This motion shall be supported by affidavit of the defendant
57 and by certification of the Division of Motor Vehicles that
58 the defendant has successfully completed the Motor Vehicle
59 Alcohol Test and Lock Program. A copy of the motion shall
60 be served on the prosecuting attorney who shall within 30
61 days after service advise the judge of any objections to the
62 motion, serving a copy of such objections on the defendant
63 or the defendant's attorney. If there are no objections filed
64 within the 30-day period, the court shall thereafter dismiss
65 the charges against the defendant. If there are objections
66 filed with regard to the dismissal of charges, the court shall
67 proceed as set forth in subsection (b) of this section.

68 (d) Except as provided herein, unless a defendant
69 adjudicated pursuant to this subsection is convicted of a
70 subsequent violation of this article, discharge and dismissal
71 under this section shall be without adjudication of guilt and
72 is not a conviction for purposes of disqualifications or
73 disabilities imposed by law upon conviction of a crime,
74 except for those provided in §17C-5A-1 *et seq.* of this code.
75 Except as provided in §17C-5-2 of this code regarding

76 subsequent offenses, the effect of the dismissal and
77 discharge shall be to restore the person in contemplation of
78 law to the status he or she occupied prior to arrest and trial.
79 No person as to whom a dismissal and discharge have been
80 effected shall be thereafter held to be guilty of perjury, false
81 swearing, or otherwise giving a false statement by reason of
82 his or her failure to disclose or acknowledge his or her arrest
83 or trial in response to any inquiry made of him or her for any
84 purpose other than any inquiry made in connection with any
85 subsequent offense as provided in §17C-5-2 of this code.

86 (e) There may be only one discharge and dismissal
87 under this section with respect to any person.

88 (f) No person shall be eligible for dismissal and
89 discharge under this section: (1) In any prosecution in which
90 any violation of any other provision of this article has been
91 charged; (2) if the person holds a commercial driver's
92 license or operates commercial motor vehicles; (3) if the
93 person has previously had his or her license to operate a
94 motor vehicle revoked for any offense under a municipal
95 ordinance of this state or any other state or a statute of the
96 United States or of any other state which has the same
97 elements as an offense described in this article; or (4) if a
98 court entered an order finding that the person refused the
99 secondary chemical test pursuant to §17C-5-7a of this code.

100 (g) (1) After a period of not less than one year, which
101 shall begin to run immediately upon the expiration of a term
102 of probation imposed upon any person under this section,
103 the person may apply to the court for an order to expunge
104 all official records of his or her arrest, trial, and conviction,
105 pursuant to this section except for those maintained by the
106 Division of Motor Vehicles: *Provided*, That any person who
107 has previously been convicted of a felony may not make a
108 motion for expungement pursuant to this section.

109 (2) If the prosecuting attorney objects to the
110 expungement, the objections shall be filed with the court
111 within 30 days after service of a motion for expungement,

112 and copies of the objections shall be served on the defendant
113 or the defendant's attorney.

114 (3) If the objections are filed, the court shall hold a
115 hearing on the objections, affording all parties an
116 opportunity to be heard. If the court determines after a
117 hearing that the person during the period of his or her
118 probation and during the period of time prior to his or her
119 application to the court under this subsection has not been
120 guilty of any serious or repeated violation of the conditions
121 of his or her probation, it shall order the expungement.

122 (h) A person prosecuted for an offense under
123 §17C-5-2(e) of this code, whose case is disposed of
124 pursuant to the provisions of this section, shall be required
125 to pay the amount of court costs that could be assessed
126 against a person convicted of the offense. Payment of such
127 costs may be made a condition of probation. The costs
128 assessed pursuant to this subsection, whether as a term of
129 probation or not, shall be distributed as other court costs in
130 accordance with §50-3-2 of this code; §14-2A-4 of this
131 code; §30-29-4 of this code; and §62-5-2, §62-5-7, and
132 §62-5-10 of this code.

133 (i) The amendments made to this section during the
134 2020 regular session of the Legislature shall become
135 effective on July 1, 2020.

**§17C-5-4. Implied consent to test; administration at direction
of law-enforcement officer; designation of type of test;
definition of "law-enforcement officer".**

1 (a) Any person who drives a motor vehicle in this state
2 is considered to have given his or her consent by the
3 operation of the motor vehicle to a preliminary breath
4 analysis and a secondary chemical test of either his or her
5 blood or breath to determine the alcohol concentration in his
6 or her blood, or the concentration in the person's body of a
7 controlled substance, drug, or any combination thereof.

8 (b) A preliminary breath analysis may be administered
9 in accordance with the provisions of §17C-5-5 of this code
10 whenever a law-enforcement officer has reasonable cause to
11 believe a person has committed an offense prohibited by
12 §17C-5-2 of this code or by an ordinance of a municipality
13 of this state which has the same elements as an offense
14 described in §17C-5-2 of this code.

15 (c) A secondary test of blood or breath is incidental to a
16 lawful arrest and is to be administered at the direction of the
17 arresting law-enforcement officer having probable cause to
18 believe the person has committed an offense prohibited by
19 §17C-5-2 of this code or by an ordinance of a municipality
20 of this state which has the same elements as an offense
21 described in said section: *Provided*, That absent written
22 consent of the person, a secondary test of blood may not be
23 performed without issuance of a warrant signed by a
24 magistrate or a circuit judge.

25 (d) The law-enforcement agency that employs the
26 arresting law-enforcement officer shall designate the
27 secondary tests to be administered. Notwithstanding §17C-
28 5-7a of this code, the refusal to submit to a blood test only
29 may not result in the revocation of the arrested person's
30 license to operate a motor vehicle in this state.

31 (e) Any person to whom a preliminary breath test is
32 administered who is arrested shall be advised verbally and
33 given a written statement advising him or her of the
34 following:

35 (1) That the person's refusal to submit to the secondary
36 chemical test, designated pursuant to subsection (d) of this
37 section, will result in the revocation of his or her license to
38 operate a motor vehicle for a period of at least 45 days and
39 up to life;

40 (2) That, if a designated secondary chemical test is
41 taken, the results of the test may be used against him or her
42 in court as evidence of violating §17C-5-2 of this code or an

43 ordinance of a municipality of this state which has the same
44 elements as an offense described in said section; and

45 (3) That, if the person first submits to the requested
46 secondary chemical test, the person has the right to have a
47 test or tests of his or her blood performed as provided in
48 §17C-5-9 of this code.

49 (f) Any law-enforcement officer who has been properly
50 trained in the administration of any secondary chemical test
51 authorized by this article, including, but not limited to,
52 certification by the Bureau for Public Health in the
53 operation of any equipment required for the collection and
54 analysis of a breath sample, may conduct the test at any
55 location in the county wherein the arrest is made: *Provided,*
56 That the law-enforcement officer may conduct the test at the
57 nearest available properly functioning secondary chemical
58 testing device located outside the county in which the arrest
59 was made, if: (1) There is no properly functioning
60 secondary chemical testing device located within the county
61 the arrest was made; or (2) there is no magistrate available
62 within the county the arrest was made for the arraignment
63 of the person arrested. A law-enforcement officer who is
64 directing that a secondary chemical test be conducted has
65 the authority to transport the person arrested to where the
66 secondary chemical testing device is located.

67 (g) If the arresting officer lacks proper training in the
68 administration of a secondary chemical test, then any other
69 law-enforcement officer who has received training in the
70 administration of the secondary chemical test to be
71 administered may, upon the request of the arresting
72 law-enforcement officer and in his or her presence, conduct
73 the secondary test. The results of a test conducted pursuant
74 to this subsection may be used in evidence to the same
75 extent and in the same manner as if the test had been
76 conducted by the arresting law-enforcement officer.

77 (h) Only the person actually administering or
78 conducting a test conducted pursuant to this article is

79 competent to testify as to the results and the veracity of the
80 test.

81 (i) (1) For the purpose of this article, the term
82 “law-enforcement officer” or “police officer” means: (A)
83 Any member of the West Virginia State Police; (B) any
84 sheriff and any deputy sheriff of any county; (C) any
85 member of a police department in any municipality as
86 defined in §8-1-2 of this code; (D) any Natural Resources
87 police officer of the Division of Natural Resources; and (E)
88 any special police officer appointed by the Governor
89 pursuant to the provisions of §61-3-41 of this code who has
90 completed the course of instruction at a law-enforcement
91 training academy as provided for under the provisions of
92 §30-29-9 of this code.

93 (2) In addition to standards promulgated by the
94 Governor’s Committee on Crime, Delinquency, and
95 Correction, pursuant to §30-29-3 of this code, governing the
96 qualification of law-enforcement officers and the
97 entry-level law-enforcement training curricula, the
98 Governor’s Committee on Crime, Delinquency, and
99 Correction shall require the satisfactory completion of a
100 minimum of not less than six hours of training in the
101 recognition of impairment in drivers who are under the
102 influence of controlled substances or drugs other than
103 alcohol.

104 (3) In addition to standards promulgated by the
105 Governor’s Committee on Crime, Delinquency, and
106 Correction, pursuant to §30-29-3 of this code, establishing
107 standards governing in-service law-enforcement officer
108 training curricula and in-service supervisory level training
109 curricula, the Governor’s Committee on Crime,
110 Delinquency, and Correction shall require the satisfactory
111 completion of a minimum of not less than six hours of
112 training in the recognition of impairment in drivers who are
113 under the influence of controlled substances or drugs other
114 than alcohol.

115 (4) A law-enforcement officer who has not satisfactorily
116 completed the minimum number of hours of training in the
117 recognition of impairment in drivers who are under the
118 influence of controlled substances or drugs other than
119 alcohol, required by subdivisions (2) and (3) of this
120 subsection, may not require any person to submit to
121 secondary chemical test of his or her blood for the purposes
122 of determining the concentration in the person's body of a
123 controlled substance, drug, or any combination thereof.

124 (j) A law-enforcement officer who has reasonable cause
125 to believe that a person has committed an offense prohibited
126 by §20-7-18 of this code, relating to the operation of a
127 motorboat, jet ski, or other motorized vessel, shall follow
128 the provisions of this section when administering, or
129 causing to be administered, a preliminary breath analysis
130 and, incidental to a lawful arrest, a secondary chemical test
131 of the accused person's blood or breath to determine the
132 alcohol concentration in his or her blood, or the
133 concentration in the person's body of a controlled
134 substance, drug, or any combination thereof.

**§17C-5-7. Refusal to submit to tests; revocation of license or
privilege; consent not withdrawn if person arrested is
incapable of refusal; hearing.**

1 (a) If any person under arrest, as specified in §17C-5-4
2 of this code, refuses to submit to a secondary chemical test,
3 the test shall not be given.

4 (b) Upon requesting that a person submit to the
5 secondary test, designated pursuant to §17C-5-4 of this
6 code, the person shall be given the written and verbal
7 warnings set forth in §17C-5-4(e) of this code. After the
8 person under arrest is given the required written and verbal
9 warnings, the person shall have the opportunity to submit
10 to, or refuse to submit to, the secondary test. A refusal to
11 submit to the secondary test is considered final after 15
12 minutes have passed since the refusal: *Provided*, That
13 during the 15 minutes following the refusal, the arresting

14 officers shall permit the person under arrest to revoke his or
15 her refusal and shall provide the person with the opportunity
16 to submit to the test upon request. After the 15 minutes have
17 passed following a refusal to submit to the secondary test,
18 the arresting officer has no further duty to provide the
19 person with an opportunity to take the secondary test.

20 (c) The officer shall, within 48 hours of the refusal, sign
21 and submit to the Commissioner of the Division of Motor
22 Vehicles and the court having jurisdiction over the charge
23 filed against the person pursuant to §17C-5-2 of this code, a
24 written statement that: (1) He or she had probable cause to
25 believe the person had been driving a motor vehicle in this
26 state while under the influence of alcohol, controlled
27 substances, or drugs; (2) the person was lawfully placed
28 under arrest for an offense relating to driving a motor
29 vehicle in this state while under the influence of alcohol,
30 controlled substances, or drugs; (3) the person refused to
31 submit to the secondary chemical test designated in the
32 manner provided in §17C-5-4 of this code; and (4) the
33 person was given the verbal warnings and the written
34 statement required by subsection (b) of this section and
35 §17C-5-4 of this code. An officer, by signing the statement
36 required by this subsection, makes an oath or affirmation
37 that the information contained in the statement is true and
38 that any copy of the statement that he or she files is a true
39 copy. The form for the written statement required by this
40 section shall contain, upon its face, a warning to the officer
41 signing that to willfully sign a statement containing false
42 information is false swearing and is a misdemeanor.

43 (d) Any person who is unconscious or who is otherwise
44 in a condition rendering him or her incapable of refusal shall
45 be considered not to have withdrawn his or her consent for
46 a test of his or her blood or breath as provided in §17C-5-4
47 of this code and the test may be administered although the
48 person is not informed that his or her failure to submit to the
49 test will result in the revocation of his or her license to

50 operate a motor vehicle in this state for the period provided
51 for in this section.

52 (e) The amendments made to this section during the
53 2020 regular session of the Legislature shall become
54 effective on July 1, 2020.

**§17C-5-7a. Suspension of license to operate a motor vehicle
for refusal of secondary test; refusal review hearing.**

1 (a) For the purposes of this section, the term “refusal
2 review hearing” refers to a hearing to review a person’s
3 alleged refusal to submit to a secondary chemical test, as
4 documented in a statement submitted to the court by a law-
5 enforcement officer pursuant to §17C-5-7 of this code.

6 (b) Effective July 1, 2020, the court shall enter an order
7 finding that a person charged with a violation of §17C-5-2
8 of this code did refuse to submit to a secondary chemical
9 test, as required by §17C-5-4 of this code, subject to the
10 following:

11 (1) At the person’s first appearance before the court, the
12 court shall advise the person that his or her license to operate
13 a motor vehicle shall be revoked for the applicable period
14 provided in subsection (e) of this section, unless the person
15 requests a refusal review hearing within the 30 days
16 following the first appearance;

17 (2) If the person does not request a refusal review
18 hearing within 30 days following the first appearance, the
19 court shall enter an order finding that a person charged with
20 a violation of §17C-5-2 of this code did refuse to submit to
21 a secondary chemical test; and

22 (3) If the person requests a refusal review hearing within
23 30 days following the first appearance, the court shall
24 conduct the review and enter the appropriate order, as
25 provided in subsection (c) of this section.

26 (c) *Refusal review hearing.* —

27 (1) The court shall schedule and conduct a refusal
28 review hearing if the person, named in a statement
29 submitted to the court by a law-enforcement officer
30 pursuant to §17C-5-7, requests the hearing within 30 days
31 following his or her first appearance before the court.
32 During the refusal review hearing, the court shall review the
33 statement documenting the person's refusal to submit to the
34 secondary chemical test, along with any testimony or
35 evidence presented by the person or law-enforcement
36 officer during the hearing.

37 (2) Based on the hearing, the court shall enter an order
38 finding that the person did refuse to submit to a secondary
39 chemical test, if the court determines, by a preponderance
40 of the evidence, that:

41 (A) The arresting law-enforcement officer had
42 reasonable grounds to believe the arrested person had
43 committed a violation of §17C-5-2 of this code;

44 (B) The law-enforcement officer requested the arrested
45 person to submit to the chemical test or tests designated
46 pursuant to §17C-5-4 of this code;

47 (C) At the time the test was requested, the
48 law-enforcement officer administered the required written
49 and verbal warnings required by §17C-5-4 and §17C-5-7 of
50 this code; and

51 (D) The arrested person refused to submit to the
52 chemical test or tests requested by the law-enforcement
53 officer.

54 (3) If the court determines, by a preponderance of the
55 evidence, that one or more of the required conditions listed
56 in subdivision (2) of this subsection did not occur, the court
57 shall enter an order finding that the person did not refuse to
58 submit to the secondary chemical test. If the court enters
59 such an order, the Commissioner of the Division of Motor
60 Vehicles may not revoke the person's license to operate a

61 motor vehicle based on the alleged refusal to submit to a
62 secondary chemical test.

63 (d) The clerk of the court in which the charges are
64 pending shall immediately transmit any order entered
65 pursuant to this section to the Commissioner of the Division
66 of Motor Vehicles.

67 (e) Upon receipt of an order provided pursuant to this
68 section finding that a person did refuse to submit to a
69 secondary chemical test, the Commissioner of the Division
70 of Motor Vehicles shall revoke the person's license to
71 operate a motor vehicle as follows:

72 (1) For the first refusal to submit to the designated
73 secondary chemical test, the commissioner shall enter an
74 order revoking the person's license to operate a motor
75 vehicle in this state for a period of one year or for a period
76 of 45 days, with an additional one year of participation in
77 the Motor Vehicle Alcohol Test and Lock Program in
78 accordance with the provisions of §17C-5A-3a of this code.

79 (2) If the person's license to operate a motor vehicle has
80 previously been revoked under the provisions of this
81 section, the commissioner shall, for the refusal to submit to
82 the designated secondary chemical test, enter an order
83 revoking the person's license to operate a motor vehicle in
84 this state for a period of 10 years: *Provided*, That the license
85 may be reissued in five years in accordance with the
86 provisions of §17C-5A-3 of this code.

87 (3) If the person's license to operate a motor vehicle has
88 previously been revoked more than once under the
89 provisions of this section, the commissioner shall, for the
90 refusal to submit to the designated secondary chemical test,
91 enter an order revoking the person's license to operate a
92 motor vehicle in this state for a period of life.

93 (f) A copy of each order entered pursuant to this section
94 shall be forwarded to the person by registered or certified

95 mail, return receipt requested, and shall contain the reasons
96 for any revocation and shall specify the revocation period
97 imposed pursuant to this section.

98 (g) A revocation ordered pursuant to this section shall
99 run concurrently with the period of any suspension or
100 revocation imposed in accordance with §17C-5A-2 of this
101 code.

§17C-5-12. Report to the Legislature.

1 On or before December 31, 2020, the Bureau for Public
2 Health shall submit to the Joint Committee on Government
3 and Finance a report that includes the following:

4 (1) Recommendations for the minimum levels of those
5 drugs or controlled substances contained in §17C-5-8(d) of
6 this code, that must be present in a person's blood in order
7 for the test to be admitted as prima facie evidence that the
8 person was under the influence of a controlled substance or
9 drug in a prosecution for the offense of driving a motor
10 vehicle in this state; and

11 (2) Recommendations for the minimum levels of those
12 drugs or controlled substances contained in §17C-5-8(d) of
13 this code, that laboratories approved to test blood for drug
14 or controlled substance content can reliably identify and
15 measure for the concentrations of drugs, controlled
16 substances and their metabolites, in blood.

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES, OR DRUGS.

**§17C-5A-1. Report to be submitted to commissioner following
arrest for driving under the influence of alcohol,
controlled substances, or drugs or refusal to submit to
secondary chemical test; report to the court.**

1 (a) Any law-enforcement officer investigating a person
2 for an offense described in §17C-5-2 of this code, or for an
3 offense described in a municipal ordinance which has the
4 same elements as an offense described in said section, shall
5 report to the Commissioner of the Division of Motor
6 Vehicles by written statement within 48 hours of the
7 conclusion of the investigation the name and address of the
8 person believed to have committed the offense. The report
9 shall include the specific offense with which the person is
10 charged and, if applicable, a copy of the results of any
11 secondary tests of blood, breath, or urine. The signing of the
12 statement required to be signed by this subsection
13 constitutes an oath or affirmation by the person signing the
14 statement that the statements contained in the statement are
15 true and that any copy filed is a true copy. The statement
16 shall contain upon its face a warning to the officer signing
17 that to willfully sign a statement containing false
18 information concerning any matter or thing, material or not
19 material, is false swearing and is a misdemeanor.

20 (b) After receiving the report required by subsection (a)
21 of this section, the Commissioner of the Division of Motor
22 Vehicles shall immediately submit, to the court with
23 jurisdiction over the criminal offense, a full and complete
24 record of the following:

25 (1) Any prior suspensions or revocations of the person's
26 license to operate a motor vehicle under §17C-5-2, §17C-5-
27 2b, or §17C-5-7a of this code; or

28 (2) Any conviction or term of conditional probation
29 imposed under a municipal ordinance of this state or any
30 other state or a statute of the United States or of any other
31 state of an offense which has the same elements as an
32 offense described in §17C-5-2 of this code.

33 (c) The amendments made to this section during the
34 2020 regular session of the Legislature shall become
35 effective on July 1, 2020.

§17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol, controlled substances, or drugs.

1 (a) The Commissioner of the Division of Motor
2 Vehicles shall revoke or suspend a person's license to
3 operate a motor vehicle in any of the following
4 circumstances:

5 (1) The person is convicted of an offense defined in
6 §17C-5-2 of this code, which requires a minimum period of
7 revocation or suspension of the person's license to operate
8 a motor vehicle, and the person does not appeal the
9 conviction;

10 (2) The person is convicted of an offense described in a
11 municipal ordinance which has the same elements as an
12 offense defined in §17C-5-2 of this code, which requires a
13 minimum period of revocation or suspension of the person's
14 license to operate a motor vehicle for the offense with the
15 same elements as the municipal ordinance, and the person
16 does not appeal the conviction;

17 (3) The person has a term of conditional probation
18 imposed pursuant to §17C-5-2b of this code;

19 (4) A court enters an order, pursuant to §17C-5-7a of
20 this code, finding that the person did refuse to submit to a
21 secondary chemical test; or

22 (5) The person is convicted of an offense, as provided
23 in subdivision (1) or (2) of this subsection, the person
24 appeals the conviction, and the conviction is affirmed by the
25 highest appellate court in which an appeal in the matter is
26 filed.

27 (b) The clerk of the court that has jurisdiction over a
28 term of conditional probation or a conviction described in
29 subsection (a) of this section shall forward to the
30 Commissioner of the Division of Motor Vehicles the order
31 imposing conditional probation or the judgment of
32 conviction and any related transcripts. If the conviction is

33 the judgment of a magistrate court, the magistrate court
34 clerk shall forward the order and any related transcript when
35 the person convicted has not filed a notice of appeal within
36 20 days of the sentencing for such conviction. If the term of
37 conditional probation is the act of a magistrate court, the
38 magistrate court clerk shall forward the order and any
39 related transcript when the order imposing the term of
40 conditional probation is entered. If the conviction is the
41 judgment of a mayor or police court judge or municipal
42 court judge, the clerk or recorder shall forward the order and
43 any related transcript when the person convicted has not
44 filed a notice of appeal within 10 days from and after the
45 date upon which the sentence is imposed. If the conviction
46 is the judgment of a circuit court, the circuit clerk shall
47 forward the transcript when the person convicted has not
48 filed a notice of intent to file a petition for appeal or writ of
49 error within 30 days after the judgment was entered.

50 (c) Upon receipt of an order of the court, as described in
51 subsection (b) of this section, the commissioner shall make
52 and enter an order revoking or suspending the person's
53 license to operate a motor vehicle in this state as required by
54 §17C-5-2, §17C-5-2b, or §17C-5-7a of this code. The order
55 of the commissioner, revoking or suspending the license,
56 shall contain the reasons for the revocation or suspension
57 and the statutorily mandated revocation or suspension
58 period for the offense or the suspension period required as a
59 condition of probation.

60 (d) If a person receives an order of the commissioner
61 suspending or revoking his or her license, as provided in
62 subsection (c) of this section, and the person believes that
63 he or she is not the person named in the commissioner's
64 order, the person may notify the commissioner of the
65 alleged error in writing. Upon receipt of this notification,
66 the commissioner shall immediately review the contents of
67 the judgment of conviction and the information provided by
68 the person in question to determine whether or not the
69 alleged error has been made. If the commissioner

70 determines that the alleged error has been made, the
71 commissioner shall: (1) Immediately reverse the suspension
72 or revocation made in error; and (2) take all necessary steps
73 to correctly identify the person who should have been
74 named in the order and suspend or revoke the license of the
75 correctly identified person, as required by this section.

§17C-5A-2b. Administrative hearing, revocation, and review process terminated on July 1, 2020.

1 Notwithstanding any other provision of this code:

2 (1) The provisions of §17C-5A-2 of this code apply only
3 to proceedings arising from offenses occurring on or before
4 June 30, 2020; and

5 (2) The provisions of §17C-5A-2 of this code have no
6 force or effect beginning on the date when the Office of
7 Administrative Hearings terminates, pursuant to
8 §17C-5C-1a of this code.

§17C-5A-3. Safety and treatment program; reissuance of license.

1 (a) The Division of Motor Vehicles shall administer a
2 comprehensive safety and treatment program for persons
3 whose licenses have been suspended or revoked under the
4 provisions of §17B-3-5(6), §17C-5-2, §17C-5-2a, or
5 §17C-5-7a of this code and shall also establish the minimum
6 qualifications for mental health facilities, day report centers,
7 community corrections centers, or other public agencies or
8 private entities conducting the safety and treatment
9 program: *Provided*, That the Division of Motor Vehicles
10 may establish standards whereby the division will accept or
11 approve participation by violators in another treatment
12 program which provides the same or substantially similar
13 benefits as the safety and treatment program established
14 pursuant to this section.

15 (b) The program shall include, but not be limited to,
16 treatment of alcoholism, treatment of alcohol and drug

17 abuse, psychological counseling, educational courses on the
18 dangers of alcohol and drugs as they relate to driving,
19 defensive driving, or other safety driving instruction, and
20 other programs designed to properly educate, train, and
21 rehabilitate the offender: *Provided*, That successful
22 compliance with the substance abuse and counseling
23 program prescribed in §61-11-26a of this code is sufficient
24 to meet the requirements of this section.

25 (c) The Division of Motor Vehicles shall provide for the
26 preparation of an educational and treatment program for
27 each person whose license has been revoked under the
28 provisions of §17B-3-5(6), §17C-5-2, §17C-5-2a, or
29 §17C-5-7a of this code, which shall contain the following:
30 (1) A listing and evaluation of the offender's prior traffic
31 record; (2) the characteristics and history of alcohol or drug
32 use, if any; (3) his or her amenability to rehabilitation
33 through the alcohol safety program; and (4) a
34 recommendation as to treatment or rehabilitation and the
35 terms and conditions of the treatment or rehabilitation. The
36 program shall be prepared by persons knowledgeable in the
37 diagnosis of alcohol or drug abuse and treatment.

38 (d) A special revenue account is created within the State
39 Treasury, known as the Division of Motor Vehicles Safety
40 and Treatment Fund. The Commissioner of the Division of
41 Motor Vehicles shall manage and expend moneys from the
42 account for the purpose of administering the comprehensive
43 safety and treatment program established by subsection (a)
44 of this section. The moneys in the account may be invested
45 and all earnings and interest accruing shall be retained in the
46 account. The Auditor shall conduct an audit of the account
47 at least every three fiscal years.

48 (e) (1) The program provider shall collect the
49 established fee from each participant upon enrollment
50 unless the division has determined that the participant is an
51 indigent based upon criteria established pursuant to
52 legislative rule authorized in this section.

53 (2) If the division determined that a participant is an
54 indigent based upon criteria established pursuant to the
55 legislative rule authorized by this section, the department
56 shall provide the participant with proof of its determination
57 regarding indigency, which proof the participant shall
58 present to the interlock provider as part of the application
59 process provided in §17C-5A-3a of this code and the rules
60 promulgated pursuant thereto.

61 (3) Program providers shall remit to the Division of
62 Motor Vehicles a portion of the fee collected, which shall
63 be deposited by the Commissioner of the Division of Motor
64 Vehicles into the Division of Motor Vehicles Safety and
65 Treatment Fund. The Division of Motor Vehicles shall
66 reimburse enrollment fees to program providers for each
67 eligible indigent offender.

68 (f) On or before January 15 of each year, the
69 Commissioner of the Division of Motor Vehicles shall
70 report to the Legislature on:

71 (1) The total number of offenders participating in the
72 safety and treatment program during the prior year;

73 (2) The total number of indigent offenders participating
74 in the safety and treatment program during the prior year;

75 (3) The total number of program providers during the
76 prior year; and

77 (4) The total amount of reimbursements paid to program
78 providers during the prior year.

79 (g) The Commissioner of the Division of Motor
80 Vehicles, after giving due consideration to the program
81 developed for the offender, shall prescribe the necessary
82 terms and conditions for the reissuance of the license to
83 operate a motor vehicle in this state revoked under
84 §17B-3-5(6), §17C-5-2, §17C-5-2a, or §17C-5-7a of this
85 code which shall include successful completion of the

86 educational, treatment, or rehabilitation program, subject to
87 the following:

88 (1) When the period of revocation is six months, the
89 license to operate a motor vehicle in this state may not be
90 reissued until: (A) At least 90 days have elapsed from the
91 date of the initial revocation, during which time the
92 revocation was actually in effect; (B) the offender has
93 successfully completed the program; (C) all costs of the
94 program and administration have been paid; and (D) all
95 court costs assessed as a result of criminal proceedings have
96 been paid.

97 (2) When the period of revocation is for a period of one
98 year or for more than a year, the license to operate a motor
99 vehicle in this state may not be reissued until: (A) At least
100 one half of the time period has elapsed from the date of the
101 initial revocation, during which time the revocation was
102 actually in effect; (B) the offender has successfully
103 completed the program; (C) all costs of the program and
104 administration have been paid; and (D) all court costs
105 assessed as a result of a criminal proceedings have been
106 paid. Notwithstanding any provision in this code, a person
107 whose license is revoked for refusing to take a chemical test
108 as required by §17C-5-4 of this code for a first offense is not
109 eligible to reduce the revocation period by completing the
110 safety and treatment program.

111 (3) When the period of revocation is for life, the license
112 to operate a motor vehicle in this state may not be reissued
113 until: (A) At least 10 years have elapsed from the date of the
114 initial revocation, during which time the revocation was
115 actually in effect; (B) the offender has successfully
116 completed the program; (C) all costs of the program and
117 administration have been paid; and (D) all court costs
118 assessed as a result of a criminal proceeding have been paid.

119 (4) Notwithstanding any provision of this code or any
120 rule, any mental health facilities or other public agencies or
121 private entities conducting the safety and treatment

122 program, when certifying that a person has successfully
123 completed a safety and treatment program, shall only have
124 to certify that the person has successfully completed the
125 program.

126 (h) (1) The Division of Motor Vehicles shall provide for
127 the preparation of an educational program for each person
128 whose license has been suspended for 60 days pursuant to
129 §17C-5-2(j) of this code. The educational program shall
130 consist of not less than 12 nor more than 18 hours of actual
131 classroom time.

132 (2) When a 60-day period of suspension has been
133 ordered, the license to operate a motor vehicle may not be
134 reinstated until: (A) At least 60 days have elapsed from the
135 date of the initial suspension, during which time the
136 suspension was in effect; (B) the offender has successfully
137 completed the educational program; (C) all costs of the
138 program and administration have been paid; and (D) all
139 costs assessed as a result of a suspension hearing have been
140 paid.

141 (i) As a component of the programs required by
142 subsections (b) and (c) of this section, the offender shall
143 attend a victim impact panel program. The victim impact
144 panel program must provide a forum for victims of alcohol
145 and drug-related offenses and offenders to share first-hand
146 experiences on the impact of alcohol and drug-related
147 offenses in their lives. The Division of Motor Vehicles
148 shall propose and implement a plan for victim impact panels
149 where appropriate numbers of victims are available and
150 willing to participate and shall establish guidelines for other
151 innovative programs which may be substituted where the
152 victims are not available to participate in an impact panel.
153 The plan shall require, at a minimum, discussion and
154 consideration of the following:

155 (1) Economic losses suffered by victims and offenders;

156 (2) Death or physical injuries suffered by victims and
157 offenders;

158 (3) Psychological injuries suffered by victims and
159 offenders;

160 (4) Changes in the personal welfare or familial
161 relationships of victims and offenders; and

162 (5) Other information relating to the impact of alcohol
163 and drug-related offenses upon victims and offenders.

164 The Division of Motor Vehicles shall ensure that any
165 meetings between victims and offenders shall be
166 nonconfrontational and ensure the physical safety of the
167 persons involved.

168 (j) The Commissioner of the Division of Motor Vehicles
169 shall propose a rule for legislative approval in accordance
170 with §29A-3-1 *et seq.* of this code to administer the
171 provisions of this section and establish a fee to be collected
172 from each offender enrolled in the safety and treatment
173 program. The rule shall include: (A) A reimbursement
174 mechanism to program providers of required fees for the
175 safety and treatment program for indigent offenders, criteria
176 for determining eligibility of indigent offenders, and any
177 necessary application forms; and (B) program standards that
178 encompass provider criteria including minimum
179 professional training requirements for providers, curriculum
180 approval, minimum course length requirements, and other
181 items that may be necessary to properly implement the
182 provisions of this section.

183 (k) A day report or community corrections program,
184 authorized pursuant to §62-11C-1 *et seq.* of this code, may
185 provide the comprehensive safety and treatment program
186 pursuant to this section.

ARTICLE 5C. OFFICE OF ADMINISTRATIVE HEARINGS.**§17C-5C-1a. Termination of Office of Administrative Hearings; transfer of jurisdiction.**

1 (a) The Office of Administrative Hearings shall retain
2 jurisdiction over appeals described in §17C-5C-3(3) of this
3 code arising from offenses occurring on or before June 30,
4 2020. The Office of Administrative Hearings has no
5 jurisdiction over appeals described in said subdivision
6 arising from offenses occurring on or after July 1, 2020.

7 (b) Beginning on July 1, 2020, jurisdiction over appeals
8 described in §17C-5C-3 of this code, except for those
9 described in §17C-5C-3(3) of this code, shall be transferred
10 to the circuit court for the circuit in which the event giving
11 rise to the contested decision of the Commissioner of the
12 Division of Motor Vehicles occurred.

13 (c) The Office of Administrative Hearings shall, in an
14 orderly and efficient manner, dispose of all matters pending
15 before it, subject to the following:

16 (1) If any appeal of a revocation or suspension order,
17 described in §17C-5C-3(3) of this code, is pending before
18 the office on or after July 1, 2021, the underlying revocation
19 or suspension order shall be dismissed.

20 (2) If any appeal described in §17C-5C-3 of this code,
21 except for an appeal described in §17C-5C-3(3) of this code,
22 is pending before the Office of Administrative Hearings on
23 or after July 1, 2021, the appeal shall be transferred to the
24 circuit court described in subsection (b) of this section. For
25 any appeal transferred pursuant to this subdivision, the
26 circuit court shall adopt any existing records of evidence
27 and proceedings in the Office of Administrative Hearings,
28 conduct further proceedings as it considers necessary, and
29 issue a final decision or otherwise dispose of the case
30 pursuant to the provisions governing the judicial review of
31 contested administrative cases in §29A-5-1 *et seq.* of this
32 code.

33 (d) Upon resolution of all matters pending before the
34 Office of Administrative Hearings or on July 1, 2021,
35 whichever occurs earlier, the Office of Administrative
36 Hearings shall be terminated.

37 (e) The Secretary of the Department of Transportation
38 may establish interim policies and procedures to aid in the
39 orderly and efficient process during the disposition of
40 remaining cases before the Office of Administrative
41 Hearings during the phase-out period until termination.



CHAPTER 343

**(Com. Sub. for S. B. 660 - By Senators Maynard,
Roberts and Cline)**

[Passed March 6, 2020; in effect ninety days from passage.]

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

AN ACT to amend and reenact §17A-1-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-1-1 of said code; to amend and reenact §17C-1-5a of said code; to amend said code by adding thereto a new section, designated §17C-1-70; and to amend said code by adding thereto a new section, designated §17C-11-8, all relating to electric bicycles; defining terms; excluding electric bicycles from registration, title, financial liability, and driver's license requirements; providing electric bicycle general use regulations; providing the operator of an electric bicycle has the same rights and duties as the operator of a bicycle; providing the use of an electric bicycle may be restricted by an entity having jurisdiction over a bicycle path or trail; and providing for helmet use requirements and class use restrictions for a person under 15 years of age.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE, AND
ANTITHEFT PROVISIONS.**

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17A-1-1. Definitions.

1 Except as otherwise provided in this chapter, the
2 following words and phrases, when used in this chapter,
3 have the meanings respectively ascribed to them in this
4 article:

5 (a) "Vehicle" means every device in, upon, or by which
6 any person or property is or may be transported or drawn
7 upon a highway, excepting devices moved by human power
8 or used exclusively upon stationary rails or tracks.

9 (b) "Motor vehicle" means every vehicle which is self-
10 propelled and every vehicle which is propelled by electric
11 power obtained from overhead trolley wires, but not
12 operated upon rails.

13 (c) "Motorcycle" means every motor vehicle, including
14 motor-driven cycles and mopeds as defined in §17C-1-5 and
15 §17C-1-5a of this code, having a saddle for the use of the
16 rider and designed to travel on not more than three wheels
17 in contact with the ground, but excluding a tractor, and an
18 electric bicycle as defined in §17C-1-70 of this code.

19 (d) "School bus" means every motor vehicle owned by
20 a public governmental agency and operated for the
21 transportation of children to or from school or privately
22 owned and operated for compensation for the transportation
23 of children to or from school.

24 (e) "Bus" means every motor vehicle designed to carry
25 more than seven passengers and used to transport persons;
26 and every motor vehicle, other than a taxicab, designed and
27 used to transport persons for compensation.

28 (f) "Truck tractor" means every motor vehicle designed
29 and used primarily for drawing other vehicles and not
30 constructed to carry a load other than a part of the weight of
31 the vehicle and drawn load.

32 (g) "Farm tractor" means every motor vehicle designed
33 and used primarily as a farm implement for drawing plows,
34 mowing machines, and other implements of husbandry.

35 (h) "Road tractor" means every motor vehicle designed,
36 used, or maintained for drawing other vehicles and not
37 constructed to carry any load thereon either independently
38 or any part of the weight of a vehicle or drawn load.

39 (i) "Truck" means every motor vehicle designed, used,
40 or maintained primarily for the transportation of property.

41 (j) "Trailer" means every vehicle with or without motive
42 power designed for carrying persons or property and for
43 being drawn by a motor vehicle and constructed so that no
44 part of its weight rests upon the towing vehicle but
45 excluding recreational vehicles.

46 (k) "Semitrailer" means every vehicle with or without
47 motive power designed for carrying persons or property and
48 for being drawn by a motor vehicle and constructed so that
49 some part of its weight and that of its load rests upon or is
50 carried by another vehicle.

51 (l) "Pole trailer" means every vehicle without motive
52 power designed to be drawn by another vehicle and attached
53 to the towing vehicle by means of a reach, or pole, or by
54 being boomed or otherwise secured to the towing vehicle
55 and ordinarily used for transporting long or irregularly
56 shaped loads such as poles, pipes, or structural members
57 capable, generally, of sustaining themselves as beams
58 between the supporting connections.

59 (m) "Specially constructed vehicles" means every
60 vehicle of a type required to be registered hereunder not
61 originally constructed under a distinctive name, make,

62 model, or type by a generally recognized manufacturer of
63 vehicles and not materially altered from its original
64 construction.

65 (n) “Reconstructed vehicle” means every vehicle of a
66 type required to be registered hereunder materially altered
67 from its original construction by the removal, addition, or
68 substitution of essential parts, new or used.

69 (o) “Essential parts” means all integral and body parts
70 of a vehicle of a type required to be registered hereunder,
71 the removal, alteration, or substitution of which would tend
72 to conceal the identity of the vehicle or substantially alter its
73 appearance, model, type, or mode of operation.

74 (p) “Foreign vehicle” means every vehicle of a type
75 required to be registered hereunder brought into this state
76 from another state, territory, or country other than in the
77 ordinary course of business by or through a manufacturer or
78 dealer and not registered in this state.

79 (q) “Implement of husbandry” means every vehicle
80 which is designed for or adapted to agricultural purposes
81 and used by the owner thereof primarily in the conduct of
82 his or her agricultural operations, including, but not limited
83 to, trucks used for spraying trees and plants: *Provided*, That
84 the vehicle may not be let for hire at any time.

85 (r) “Special mobile equipment” means every self-
86 propelled vehicle not designed or used primarily for the
87 transportation of persons or property and incidentally
88 operated or moved over the highways, including, without
89 limitation, road construction or maintenance machinery,
90 ditch-digging apparatus, stone crushers, air compressors,
91 power shovels, graders, rollers, well drillers, wood-sawing
92 equipment, asphalt spreaders, bituminous mixers, bucket
93 loaders, ditchers, leveling graders, finishing machines,
94 motor graders, road rollers, scarifiers, earth-moving
95 carryalls, scrapers, drag lines, rock-drilling equipment, and
96 earth-moving equipment. The foregoing enumeration in this

97 subdivision is partial and may not operate to exclude other
98 vehicles which are within the general terms of this
99 subdivision.

100 (s) "Pneumatic tire" means every tire in which
101 compressed air is designed to support the load.

102 (t) "Solid tire" means every tire of rubber or other
103 resilient material which does not depend upon compressed
104 air for the support of the load.

105 (u) "Metal tire" means every tire the surface of which in
106 contact with the highway is wholly or partly of metal or
107 other hard, nonresilient material.

108 (v) "Commissioner" means the Commissioner of the
109 Division of Motor Vehicles of this state.

110 (w) "Division" means the Division of Motor Vehicles
111 of this state acting directly or through its duly authorized
112 officers and agents.

113 (x) "Person" means every natural person, firm,
114 copartnership, association, or corporation.

115 (y) "Owner" means a person who holds the legal title
116 to a vehicle, or in the event a vehicle is the subject of an
117 agreement for the conditional sale or lease thereof with the
118 right of purchase upon performance of the conditions stated
119 in the agreement and with an immediate right of possession
120 vested in the conditional vendee or lessee, or in the event a
121 mortgagor of a vehicle is entitled to possession, then the
122 conditional vendee or lessee or mortgagor shall be
123 considered the owner for the purpose of this chapter.

124 (z) "Nonresident" means every person who is not a
125 resident of this state.

126 (aa) "Dealer" or "dealers" is a general term meaning,
127 depending upon the context in which used, either a new
128 motor vehicle dealer, used motor vehicle dealer, factory-

129 built home dealer, recreational vehicle dealer, trailer dealer
130 or motorcycle dealer, as defined in §17A-6-1* of this code,
131 or all of the dealers or a combination thereof and, in some
132 instances, a new motor vehicle dealer or dealers in another
133 state.

134 (bb) “Registered dealer” or “registered dealers” is a
135 general term meaning, depending upon the context in which
136 used, either a new motor vehicle dealer, used motor vehicle
137 dealer, house trailer dealer, trailer dealer, recreational
138 vehicle dealer, or motorcycle dealer, or all of the dealers or
139 a combination thereof, licensed under the provisions of
140 §17A-6-1 *et seq.* of this code.

141 (cc) “Licensed dealer” or “licensed dealers” is a general
142 term meaning, depending upon the context in which used,
143 either a new motor vehicle dealer, used motor vehicle
144 dealer, house trailer dealer, trailer dealer, recreational
145 vehicle dealer, or motorcycle dealer, or all of the dealers or
146 a combination thereof, licensed under the provisions of
147 §17A-6-1 *et seq.* of this code.

148 (dd) “Transporter” means every person engaged in the
149 business of delivering vehicles of a type required to be
150 registered hereunder from a manufacturing, assembling, or
151 distributing plant to dealers or sales agents of a
152 manufacturer.

153 (ee) “Manufacturer” means every person engaged in the
154 business of constructing or assembling vehicles of a type
155 required to be registered hereunder at a place of business in
156 this state which is actually occupied either continuously or
157 at regular periods by the manufacturer where his or her
158 books and records are kept and a large share of his or her
159 business is transacted.

160 (ff) “Street” or “highway” means the entire width
161 between boundary lines of every way publicly maintained
162 when any part thereof is open to the use of the public for
163 purposes of vehicular travel.

*NOTE: Correction of apparent word to number translation error.

164 (gg) "Motorboat" means any vessel propelled by an
165 electrical, steam, gas, diesel, or other fuel-propelled or -
166 driven motor, whether or not the motor is the principal
167 source of propulsion, but may not include a vessel which
168 has a valid marine document issued by the bureau of
169 customs of the United States government or any federal
170 agency successor thereto.

171 (hh) "Motorboat trailer" means every vehicle designed
172 for or ordinarily used for the transportation of a motorboat.

173 (ii) "All-terrain vehicle" (ATV) means any motor
174 vehicle designed for off-highway use and designed to travel
175 on not less than three low-pressure or nonhighway tires, is
176 50 inches or less in width and intended by the manufacturer
177 to be used by a single operator or is specifically designed by
178 the manufacturer with seating for each passenger. "All-
179 terrain vehicle" and "ATV" does not include mini trucks,
180 golf carts, riding lawnmowers, electric bicycles as defined
181 in §17C-1-70 of this code, or tractors.

182 (jj) "Travel trailer" means every vehicle, mounted on
183 wheels, designed to provide temporary living quarters for
184 recreational, camping, or travel use of such size or weight
185 as not to require special highway movement permits when
186 towed by a motor vehicle and of gross trailer area less than
187 400 square feet.

188 (kk) "Fold-down camping trailer" means every vehicle
189 consisting of a portable unit mounted on wheels and
190 constructed with collapsible partial sidewalls which fold for
191 towing by another vehicle and unfold at the camp site to
192 provide temporary living quarters for recreational, camping,
193 or travel use.

194 (ll) "Motor home" means every vehicle, designed to
195 provide temporary living quarters, built into an integral part
196 of or permanently attached to a self-propelled motor
197 vehicle, chassis or van including: (1) Type A motor home
198 built on an incomplete truck chassis with the truck cab

199 constructed by the second stage manufacturer; (2) Type B
200 motor home consisting of a van-type vehicle which has been
201 altered to provide temporary living quarters; and (3) Type C
202 motor home built on an incomplete van or truck chassis with
203 a cab constructed by the chassis manufacturer.

204 (mm) “Snowmobile” means a self-propelled vehicle
205 intended for travel primarily on snow and driven by a track
206 or tracks in contact with the snow and steered by a ski or
207 skis in contact with the snow.

208 (nn) “Recreational vehicle” means a motorboat,
209 motorboat trailer, all-terrain vehicle, travel trailer, fold-
210 down camping trailer, motor home, or snowmobile.

211 (oo) “Mobile equipment” means every self-propelled
212 vehicle not designed or used primarily for the transportation
213 of persons or property over the highway but which may
214 infrequently or incidentally travel over the highways among
215 job sites, equipment storage sites, or repair sites, including
216 farm equipment, implements of husbandry, well drillers,
217 cranes, and wood-sawing equipment.

218 (pp) “Factory-built home” includes mobile homes,
219 house trailers, and manufactured homes.

220 (qq) “Manufactured home” has the same meaning as the
221 term is defined in §21-9-2* of this code which meets the
222 federal Manufactured Housing Construction and Safety
223 Standards Act of 1974 (42 U. S. C. §5401, *et seq.*), effective
224 on June 15, 1976, and the federal manufactured home
225 construction and safety standards and regulations
226 promulgated by the Secretary of the United States
227 Department of Housing and Urban Development.

228 (rr) “Mobile home” means a transportable structure that
229 is wholly, or in substantial part, made, fabricated, formed,
230 or assembled in manufacturing facilities for installation or
231 assembly and installation on a building site and designed for
232 long-term residential use and built prior to enactment of the

*NOTE: Correction of apparent word to number translation error.

233 federal Manufactured Housing Construction and Safety
234 Standards Act of 1974 (42 U. S. C. §5401, *et seq.*), effective
235 on June 15, 1976, and usually built to the voluntary industry
236 standard of the American National Standards Institute
237 (ANSI) — A119.1 standards for mobile homes.

238 (ss) “House trailers” means all trailers designed and
239 used for human occupancy on a continual nonrecreational
240 basis but may not include fold-down camping and travel
241 trailers, mobile homes, or manufactured homes.

242 (tt) “Parking enforcement vehicle” means a motor
243 vehicle which does not fit into any other classification of
244 vehicle in this chapter, has three or four wheels, and is
245 designed for use in an incorporated municipality by a city,
246 county, state, or other governmental entity primarily for
247 parking enforcement or other governmental purposes with
248 an operator area with sides permanently enclosed with rigid
249 construction and a top which may be convertible, sealed
250 beam headlights, turn signals, brake lights, horn, at least one
251 rearview mirror on each side, and such other equipment that
252 will enable it to pass a standard motorcycle vehicle
253 inspection.

254 (uu) “Low-speed vehicle” means a four-wheeled motor
255 vehicle whose attainable speed in one mile on a paved level
256 surface is more than 20 miles per hour but not more than 25
257 miles per hour.

258 (vv) “Utility terrain vehicle” means any motor vehicle
259 with four or more low-pressure or nonhighway tires
260 designed for off-highway use and is greater than 50 inches
261 in width. “Utility terrain vehicle” does not include mini
262 trucks, golf carts, riding lawnmowers, or tractors.

CHAPTER 17B. MOTOR VEHICLE DRIVER’S LICENSES.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17B-1-1. Definitions.

1 The following words and phrases when used in this
2 chapter, for the purpose of this chapter, have the meanings
3 respectively ascribed to them in this article:

4 *Autocycle.* — Every fully or partially enclosed
5 motorcycle that is equipped with safety belts, rollover
6 protection, a rearview mirror, automotive seating, a steering
7 wheel, and equipment otherwise required on a motorcycle
8 and which has no more than three wheels in contact with the
9 roadway at any one time.

10 *Cancellation.* — Means that a driver's license is
11 annulled and terminated because of some error or defect or
12 because the licensee is no longer entitled to that license, but
13 the cancelation of a license is without prejudice and
14 application for a new license may be made at any time after
15 the cancellation.

16 *Chauffeur.* — Every person who is employed by another
17 for the principal purpose of driving a motor vehicle and
18 every person who drives a school bus transporting school
19 children or any motor vehicle when in use for the
20 transportation of persons or property for compensation.

21 *Commissioner.* — The Commissioner of the Division of
22 Motor Vehicles of this state.

23 *Division.* — The Division of Motor Vehicles of this state
24 acting directly or through its duly authorized officers or
25 agents.

26 *Driver.* — Means any person who drives, operates, or is
27 in physical control of a motor vehicle, in any place open to
28 the general public for purposes of vehicular traffic, or who
29 is required to hold a driver's license.

30 *Driver's license.* — Means any permit or license issued
31 by this state to a person which authorizes the person to drive
32 a motor vehicle of a specific class or classes subject to any
33 restriction or endorsement contained thereon.

34 *Farm tractor.* — Every motor vehicle designed and used
35 primarily as a farm implement for drawing plows, mowing
36 machines, and other implements of husbandry.

37 *Motorcycle.* — Every motor vehicle having a seat or
38 saddle for the use of the rider and designed to travel on not
39 more than three wheels in contact with the ground, but
40 excluding a farm tractor as defined in this section, a moped
41 as defined in §17C-1-5a of this code, a snowmobile as
42 defined in §17A-1-1(mm) of this code, an all-terrain vehicle
43 as defined in §17A-1-1(ii) of this code, and an electric
44 bicycle as defined in §17C-1-70 of this code.

45 *Motor vehicle.* — Every vehicle which is self-propelled
46 and every vehicle which is propelled by electric power
47 obtained from overhead trolley wires, but not operated upon
48 rails.

49 *9-1-1 system.* — Means an emergency telephone system
50 or enhanced emergency telephone system as defined in §24-
51 6-2 of this code.

52 *Nonresident.* — Every person who is not a resident of
53 this state.

54 *Operator.* — Every person, other than a chauffeur, who
55 drives or is in actual physical control of a motor vehicle
56 upon a highway or who is exercising control over or steering
57 a vehicle being towed by a motor vehicle.

58 *Owner.* — A person who holds the legal title of a vehicle
59 or in the event a vehicle is the subject of an agreement for
60 the conditional sale or lease thereof with the right of
61 purchase upon performance of the conditions stated in the
62 agreement and with an immediate right of possession vested
63 in the conditional vendee or lessee, or if a mortgagor of a
64 vehicle is entitled to possession, then the conditional vendee
65 or lessee or mortgagor is the owner for the purpose of this
66 chapter.

67 *Person.* — Every natural person, firm, copartnership,
68 association, or corporation.

69 *Revocation.* — Means that the driver's license and
70 privilege to drive a motor vehicle on the public highways
71 are terminated and shall not be renewed or restored, except
72 that an application for a new license may be presented and
73 acted upon by the division after the expiration of at least one
74 year after the date of revocation, except as otherwise
75 provided in §17C-5A-2 of this code.

76 *School bus.* — Every motor vehicle owned by a public
77 governmental agency and operated for the transportation of
78 children to or from school or privately owned and operated
79 for compensation for the transportation of children to or
80 from school.

81 *Street or highway.* — The entire width between the
82 boundary lines of every way publicly maintained when any
83 part thereof is open to the use of the public for purposes of
84 vehicular travel.

85 *Suspension.* — Suspension means that the driver's
86 license and privilege to drive a motor vehicle on the public
87 highways are temporarily withdrawn but only during the
88 period of the suspension.

89 *Vehicle.* — Every device in, upon, or by which any
90 person or property is or may be transported or drawn upon
91 a public highway, excepting devices moved by human
92 power or used exclusively upon stationary rails or tracks.

93 *Wireless communication device.* — Means a handheld
94 device used to access a wireless telephone service or a text
95 messaging device.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-5a. Moped.

1 “Moped” means every motorcycle or motor-driven
2 cycle unless otherwise specified in this chapter, which is
3 equipped with two or three wheels, foot pedals to permit
4 muscular propulsion, and an independent power source
5 providing a maximum of two-brake horsepower, but
6 excludes electric bicycles as defined in §17C-1-70 of this
7 code. If a combustion engine is used, the maximum piston
8 or rotor displacement shall be 50 cubic centimeters
9 regardless of the number of chambers in the power source.
10 The power source shall be capable of propelling the vehicle,
11 unassisted, at a speed not to exceed 30 miles per hour on a
12 level road surface and shall be equipped with a power drive
13 system that functions directly or automatically only, not
14 requiring clutching or shifting by the operator after the drive
15 system is engaged.

§17C-1-70. Electric bicycles; definitions.

1 “Class 1 electric bicycle” means every electric bicycle
2 equipped with a motor that provides assistance only when
3 the rider is pedaling, and that ceases to provide assistance
4 when the bicycle reaches the speed of 20 miles per hour.

5 “Class 3 electric bicycle” means every bicycle equipped
6 with a motor that provides assistance only when the rider is
7 pedaling, and that ceases to provide assistance when the
8 bicycle reaches the speed of 28 miles per hour.

9 “Electric bicycle” means every two-wheel or three-
10 wheel bicycle equipped with fully operable pedals and an
11 electric motor of less than 750 watts that is a Class 1 electric
12 bicycle or a Class 3 electric bicycle.

ARTICLE 11. OPERATION OF BICYCLES, ELECTRIC BICYCLES, AND PLAY VEHICLES.**§17C-11-8. Electric bicycles; requirements; exclusions; age restrictions.**

1 (a) The operator of an electric bicycle has all of the
2 rights and privileges and is subject to all of the duties
3 applicable to the driver of a vehicle subject to this chapter,
4 except as otherwise provided by this section and except as
5 to those provisions of this chapter which by their nature can
6 have no application.

7 (b) A person owning or operating an electric bicycle is
8 not subject to the provisions of §17A-1-1 *et seq.*, §17B-1-1
9 *et seq.*, or §17D-1-1 *et seq.* of this code, relating to
10 registration, title, driver's license, and financial
11 responsibility requirements.

12 (c) A person may not tamper with or modify an electric
13 bicycle so as to change the motor-powered speed capability
14 or motor engagement between pedal-assist and throttle-
15 assist types of engagement. If a motor on an electric bicycle
16 is modified so that a limit established in §17C-1-70 of this
17 code is exceeded, that vehicle is no longer an electric
18 bicycle. The provisions of this subsection are not applicable
19 to a modified electric bicycle operated solely and
20 exclusively on a person's own property.

21 (d) An electric bicycle must comply with the equipment
22 and manufacturing requirements for bicycles adopted by the
23 United States Consumer Product Safety Commission (16
24 C.F.R. Part 1512).

25 (e) The motor on an electric bicycle must disengage or
26 cease to propel the electric bicycle when the operator stops
27 pedaling, or when the operator applies the brakes and stops
28 pedaling.

29 (f) A Class 3 electric bicycle must be equipped with a
30 speedometer that displays the speed the electric bicycle is
31 traveling in miles per hour.

32 (g) Electric bicycles operated on public roadways,
33 public bicycle paths, public multiuse paths, and other public
34 rights-of-way where bicycles are permitted to travel are
35 subject to the following restrictions:

36 (1) A Class 1 electric bicycle may be used in places
37 where bicycles are permitted to travel, including, but not
38 limited to, public roadways, public bicycle paths, public
39 multiuse trails, and public single-use trails.

40 (2) A Class 3 electric bicycle may not be operated on a
41 bicycle path, multiuse trail, or single-use trail unless it is
42 within a highway or roadway: *Provided*, That the provisions
43 of this subdivision are not applicable to a bicycle path,
44 multiuse trail, or single-use trail if the municipality, local
45 authority, or governing body of a state agency that has
46 jurisdiction over the bicycle path, multiuse trail, or single-
47 use trail expressly permits that operation.

48 (3) This subsection may not be construed to limit the
49 authority of the owner of a private way or the owner of
50 private property to restrict or allow the operation of electric
51 bicycles on the way or property.

52 (h) Age restrictions related to the operation of electric
53 bicycles are as follows:

54 (1) A person under 16 years of age may not operate a
55 Class 3 electric bicycle;

56 (2) A person under 15 years of age may only be a
57 passenger on a Class 3 electric bicycle, including as a
58 passenger within any attachment to the vehicle designed to
59 transport an additional person, including a child, provided
60 the operator of the electric bicycle is 18 years of age or
61 older; and

62 (3) A person under 15 years of age who is an operator
63 or passenger on an electric bicycle shall wear a properly
64 fitted and fastened bicycle helmet, pursuant to the Child
65 Bicycle Safety Act, §17C-11A-1 *et seq.* of this code.

66 (i) A person under the influence of alcohol or controlled
67 substances shall not operate a Class 1 or Class 3 electric
68 bicycle.

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CHAPTER 344

**(Com. Sub. for H. B. 4666 - By Delegates Byrd,
Nelson, Capito, Pushkin, Queen, Skaff, Rowe and
Rohrbach)**

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

AN ACT to amend and reenact §8-27-23 of the Code of West Virginia, 1931, as amended, relating to competitive bids for intergovernmental relations and urban mass transportation systems; increasing the contract sum that requires competitive bidding; and providing that competitive bidding is not required by certain urban transit authorities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. INTERGOVERNMENTAL RELATIONS — URBAN MASS TRANSPORTATION SYSTEMS.

§8-27-23. Competitive bids; publication of solicitation for sealed bids.

1 (a) Any contract for the construction of facilities by any
2 authority, when the expenditure required exceeds the sum
3 of \$25,000, shall be based solely on competitive sealed bids.

4 (b) Except as provided in subsections (c) or (d) of this
5 section, the procurement of all supplies, equipment and
6 materials, where the expenditure required exceeds the sum
7 of \$25,000, shall be based on the competitive procedure that
8 is best suited under the circumstances of the procurement.

9 (c) In determining the competitive bid procedure that is
10 best suited under the circumstances, an authority shall
11 conduct:

12 (1) Competitive sealed bidding if:

13 (A) Time permits a competitive bid process to be used;

14 (B) The award of the bid will be made primarily on price
15 and price-related factors;

16 (C) It is likely to be unnecessary to conduct discussions
17 with suppliers regarding bids, including discussions
18 regarding price; and

19 (D) There is a reasonable expectation of receiving more
20 than one sealed bid; or

21 (2) Competitive negotiation where competitive sealed
22 bidding is not best suited under the circumstances.

23 (d) Notwithstanding the provisions of subsections (b)
24 and (c) of this section, an authority may provide for the
25 procurement of property or services covered by this section
26 using other than competitive procedures only when:

27 (1) The property or services needed are available only
28 from one responsible source and no other type of property
29 or service will satisfy the authority's needs;

30 (2) The authority's need for the property or service is
31 urgent, unusual and compelling because the authority would
32 be seriously injured unless the authority is permitted to limit
33 the number of sources from which it solicits;

34 (3) It is necessary to award a contract to a particular
35 source or sources in order to maintain a facility, producer,
36 manufacturer or other supplier in case of emergency;

37 (4) It is necessary to establish or maintain an alternative
38 source or sources of supply for the property or service to
39 increase or maintain competition; or

40 (5) The authority is using the Federal Transit
41 Administration Third Party Procurement Guidance circular,
42 as may be amended by the Federal Transit Administration,

43 when spending federal appropriations as a designated
44 recipient of 49 U.S.C. §5307 and 49 U.S.C. §5340 -
45 Urbanized Area Formula Appropriations - to finance its
46 procurements or contracts.

47 (e) All sealed bids or competitive negotiated proposals
48 received in response to a solicitation or request for bid may
49 be rejected if an authority determines that the action is in the
50 public interest.

51 (f) Sealed bids shall be opened publicly at the time and
52 place stated in the solicitation and the authority shall
53 evaluate the bids without discussions with bidders and
54 award a contract with reasonable promptness to the
55 responsible source whose bid conforms to the solicitation
56 and is most advantageous to the authority, considering only
57 price and other price-related factors included in the
58 solicitation.

59 (g) The evaluation of competitive proposals may
60 include written or oral discussions conducted with all
61 responsible bidders or suppliers at any time after receipt of
62 the proposals and before the award or may be made without
63 discussions. In either event, the award shall be made to the
64 lowest responsible bidder or supplier.

65 (h) Adequate public notice of the solicitation of bids and
66 proposals shall be given. Public notice shall be given not
67 less than seven days before the date set for bid opening or,
68 in the case of competitive negotiation, not less than seven
69 days before the due date for receipt of proposals: *Provided,*
70 That bids for the construction of facilities shall be obtained
71 by public notice published as a Class I legal advertisement
72 in compliance with §59-3-1 *et seq.* of this code, with the
73 publication being made at least 14 days before the final date
74 for submitting bids.

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CHAPTER 345

**(Com. Sub. for S. B. 551 - By Senators Smith,
Clements, Jeffries, Sypolt, Hamilton, Romano,
Lindsay and Woelfel)**

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

AN ACT to amend and reenact §8-12-17 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §24-2-4g, all relating generally to the Water and Wastewater Investment and Infrastructure Improvement Act to encourage investment in water and wastewater utilities; describing and expanding permissible uses for proceeds of a sale or lease of a municipal utility; making legislative findings; providing for use of negotiated sales price in certain filings; providing for rate based addition using negotiated sales price under certain circumstances; providing for additional approvals under certain circumstances; specifying preliminary agreements and commitments not requiring prior approval; authorizing the Public Service Commission to combine water and wastewater revenue requirements or allocate a portion of wastewater revenue requirement to water customers under certain circumstances; and setting forth defined terms.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

**ARTICLE 12. GENERAL AND SPECIFIC POWERS,
DUTIES AND ALLIED RELATIONS OF
MUNICIPALITIES, GOVERNING BODIES AND
MUNICIPAL OFFICERS AND EMPLOYEES, SUITS
AGAINST MUNICIPALITIES.**

***§8-12-17. Sale or lease of municipal public utility.**

1 In any case where a municipality owns a gas system, an
2 electric system, a waterworks system, a sewer system, or
3 other public utility and a majority of not less than 60 percent
4 of the members of the governing body thereof shall deem it
5 for the best interest of such municipality that such utility be
6 sold or leased, the governing body may so sell or lease such
7 gas system, electric system, waterworks system, sewer
8 system, or other public utility upon such terms and
9 conditions as said governing body in its discretion considers
10 in the best interest of the municipality: *Provided*, That such
11 sale or lease may be made only upon: (1) The publication of
12 notice of a hearing before the governing body of the
13 municipality, as a Class I legal advertisement in compliance
14 with the provisions of §59-3-1 *et seq.* of this code, in a
15 newspaper published and of general circulation in the
16 municipality, such publication to be made not earlier than
17 20 days and not later than seven days prior to the hearing;
18 and (2) the approval by the Public Service Commission of
19 West Virginia. The governing body, upon the approval of
20 the sale or lease by a majority of its members of not less
21 than 60 percent of the members of the governing body, shall
22 have full power and authority to proceed to execute or effect
23 such sale or lease in accordance with the terms and
24 conditions prescribed in the ordinance approved as
25 aforesaid, and shall have power to do any and all things
26 necessary or incident thereto: *Provided, however*, That if at
27 any time after such approval and before the execution of the
28 authority under the ordinance, any person should present to
29 the governing body an offer to buy such public utility at a
30 price which exceeds by at least five percent the sale price
31 which shall have been so approved and authorized or to
32 lease the same upon terms which the governing body, in its
33 discretion, shall consider more advantageous to the
34 municipality than the terms of the lease which shall have
35 been previously approved as aforesaid, the governing body
36 shall have the power to accept such subsequent offer, and to

*NOTE: This section was also amended by S. B. 739 (Chapter 347), which passed prior to this act.

37 make such sale or such lease to the person making the offer,
38 upon approval of the offer by a majority of not less than 60
39 percent of the members of the governing body; but, if a sale
40 shall have been approved by the governing body as
41 aforesaid, and the subsequent proposition be for a lease, or,
42 if a lease shall have been approved by the governing body,
43 and the subsequent proposition shall be for a sale, the
44 governing body shall have the authority to accept the same
45 upon approval of the offer by a majority of not less than 60
46 percent of the members of the governing body. The person
47 making such proposition shall furnish bond, with security to
48 be approved by the governing body, in a penalty of not less
49 than 25 percent of such proposed bid, conditioned to carry
50 such proposition into execution, if the same shall be
51 approved by the governing body. In any case where any
52 such public utility shall be sold or leased by the governing
53 body as hereinabove provided, no part of the moneys
54 derived from such sale or lease shall be applied to the
55 payment of current expenses of the municipality, but the
56 proceeds of such sale or lease shall be applied in payment
57 and discharge of any indebtedness created in respect to such
58 public utility, and in case there be no indebtedness, the
59 governing body, in its discretion, shall have the power and
60 authority to expend all such moneys when received for the
61 purchase or construction of firefighting equipment and
62 buildings for housing such equipment, a municipal building
63 or city hall, and the necessary land upon which to locate the
64 same, for capital investments in public works projects,
65 vehicles and equipment, including without limitation law-
66 enforcement vehicles and equipment, for the demolition of
67 dilapidated and abandoned buildings, for the construction of
68 paved streets, avenues, roads, alleys, ways, sidewalks,
69 sewers, stormwater systems, floodwalls, and other like
70 permanent improvements, for fulfilling municipal pension
71 and other post-employment benefit obligations, for reducing
72 taxes, and for no other purposes. In case there be a surplus
73 after the payment of such indebtedness, the surplus shall be
74 used as aforesaid.

75 The requirements of this section shall not apply to the
76 sale or lease of any part of the properties of any such public
77 utility determined by the governing body to be unnecessary
78 for the efficient rendering of the service of such utility.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4g. Establishing the value of utility assets in the context of the acquisition of a utility or utility assets and providing for the combination or allocation of water and wastewater revenue requirements.

1 (a) The Legislature finds that:

2 (1) Many West Virginia publicly owned municipal,
3 public service district-owned, and investor-owned water
4 and wastewater utilities face substantial capital investment
5 needs to replace aging utility infrastructure and to maintain
6 compliance with regulatory requirements, and many
7 municipalities that own and operate utility systems are
8 confronted with additional financial challenges arising from
9 diminishing tax bases, the need to repair streets and other
10 municipally owned facilities, and unfunded or underfunded
11 liabilities for pension and other post-employment benefit
12 programs;

13 (2) Given these challenges, some of these utilities may
14 be unable to continue to provide acceptable levels of utility
15 service at reasonable rates, and may wish to consider the
16 sale of their utility assets, and this decision will require
17 those utilities to consider the expected valuation of their
18 utility assets, the manner in which the post-acquisition rates
19 of their customers will be established and moderated, and
20 the purposes to which the proceeds of any sale of utility
21 assets by a municipality may be devoted under state law;

22 (3) For utilities considering the sale of their utility
23 assets, a valuation of the utility assets that is primarily based

24 on the original cost of those assets less depreciation and less
25 the value of contributed property will: (A) Understate the
26 actual fair value of those assets to an acquiring party; (B)
27 fail to account for potential income that could be generated
28 from those assets; (C) reduce the financial benefit to utilities
29 considering selling those assets; and (D) thereby
30 disincentivize those utilities from selling those assets;

31 (4) To assist utilities considering the sale of their utility
32 assets in making informed decisions on whether to sell their
33 utility assets, the commission will permit acquiring and
34 selling parties to negotiate a value for those assets, permit
35 the acquiring party to include the negotiated sale price of the
36 assets in post-acquisition rate base for rate-making
37 purposes, and make its post-acquisition rate-base
38 determination based on the valuation approach specified in
39 this section;

40 (5) To assist utilities that provide both water and
41 wastewater utility service in moderating the rate impact of
42 wastewater service investment on wastewater system
43 customers, it is appropriate to authorize the combination of
44 water and wastewater revenue requirements or the
45 allocation of a portion of a wastewater revenue requirement
46 to water customers if such a combination or allocation is just
47 and reasonable and results in water and wastewater rates
48 that are based primarily on the cost of providing service;

49 (6) Expanding the permissible uses by a municipality of
50 the proceeds of a sale of utility assets as provided for in §8-
51 12-17 of this code will also facilitate and encourage a
52 municipality's ability to sell its utility assets, should it
53 choose to do so; and

54 (7) The enactment of these regulatory improvements
55 will facilitate the repair and replacement of utility
56 infrastructure by improving access to investment capital and
57 moderating the rate impact to customers of investments in
58 utility infrastructure, and thereby enhancing the state of
59 water and wastewater utility infrastructure assets and the

60 service provided by those assets, all of which are in the best
61 interest of West Virginia and its citizens.

62 (b) *Value of utility assets; rate-base addition; ancillary*
63 *approvals.* —

64 (1) In any case filed pursuant to §24-2-12 of this code
65 seeking the commission's prior consent and approval of the
66 acquisition by an acquiring utility of the utility assets of a
67 selling utility, the applicants may propose a negotiated sale
68 price for the utility assets that is in accordance with utility
69 asset valuation methodologies, such as depreciated original
70 cost, or reproduction cost new less depreciation, or other
71 industry standard utility asset valuation methods, excluding
72 the use of fair market appraisal valuation methods:
73 *Provided*, That the applicants will present evidence of those
74 asset values in the application: *Provided, however*, That the
75 utility asset valuation methodologies and definitions
76 referenced in §24-2-4g(d) of this code apply solely to cases
77 filed pursuant to chapter 24 of this code.

78 (2) If the commission finds that the proposed
79 acquisition, including the negotiated sale price, satisfies the
80 requirements for approval in §24-2-12 of this code,
81 including a finding that the terms and conditions of the
82 acquisition are reasonable and that neither party thereto is
83 given an undue advantage over the other, and does not
84 adversely affect the public in this state, then the commission
85 will establish the rate based addition at the negotiated sale
86 price, as determined and in accordance with subdivision (1)
87 of this subsection.

88 (3) In its order granting, denying, or modifying the relief
89 requested in an application described in subdivision (1) of
90 this subsection, the commission may also approve any rate
91 stabilization plan, tariff change or provision, or surcharge
92 mechanism proposed by the applicants and that the
93 commission finds reasonable in view of the proposed
94 transaction and the acquiring utility's proposed post-
95 acquisition improvements to the utility assets.

96 (4) In any application described in subdivision (1) of
97 this subsection, the commission will issue a final order
98 granting, denying, or granting in part and denying in part the
99 relief requested in the application.

100 (5) Nothing in this section or §24-2-12 of this code
101 requires an acquiring utility or a selling utility to obtain the
102 prior consent and approval of the commission to enter into
103 agreements or undertake commitments incident to the
104 negotiation, due diligence, or finalization of an agreement
105 to purchase and sell utility assets, including, without
106 limitation, agreements and commitments relating to:

107 (A) The exclusivity of negotiations for a defined period;

108 (B) The confidentiality of negotiations and
109 nondisclosure of facts relevant to the negotiations;

110 (C) The payment of transaction costs as between the
111 parties, the reimbursement of those costs upon closing of an
112 acquisition of utility assets, or the allocation of costs in the
113 event the acquisition is not consummated;

114 (D) The acquiring utility's completion of post-
115 acquisition additions or improvements to the utility assets
116 or its commitments as to post-acquisition rates and charges
117 for utility service; or

118 (E) Any other commercial term reasonably necessary to
119 facilitate the negotiation, due diligence, or finalization of
120 the purchase and sale agreement.

121 (c) *Request for revenue requirement combination or*
122 *allocation.* —

123 (1) A single utility that provides both water and
124 wastewater utility services may request a combination of the
125 revenue requirements of the water and wastewater utility
126 services or an allocation of a portion of the wastewater
127 revenue requirement to water customers. Such a request
128 may be made as a separate filing with the commission or as

129 part of a base rate case, a tariff filing, a statutory consent
130 case under §24-2-12 of this code, or another proceeding
131 before the commission.

132 (2) If the commission finds that a combination or
133 allocation requested under subdivision (1) of this
134 subsection: (A) Will enable the acquisition and construction
135 of wastewater infrastructure improvements or compliance
136 with regulatory requirements at a more moderate rate
137 impact for wastewater customers; and (B) will result in a
138 combined water and wastewater rate, or separate water and
139 wastewater rates that are just, reasonable, and based
140 primarily on the cost of providing service, then the
141 commission may authorize the utility to implement the
142 combination or allocation, subject to such modifications as
143 the commission may determine to be appropriate.

144 (d) *Definitions.* — The following words and phrases
145 when used in this section will have the meanings given to
146 them in this section unless the context clearly indicates
147 otherwise:

148 (1) “Acquiring utility” means: (A) A water, sewer, or
149 stormwater utility subject to the provisions of this chapter
150 that has entered into an agreement with a selling utility to
151 acquire utility assets of the selling utility; or (B) any person
152 or business entity that has entered into such an agreement
153 and that, upon commission approval of the acquisition of
154 those utility assets, will become a water, sewer, or
155 stormwater utility subject to the provisions of this chapter.

156 (2) “Depreciated original cost” means the original cost
157 of utility assets net of accumulated depreciation.

158 (3) “Negotiated sale price” means the purchase price of
159 utility assets that the acquiring utility and the selling utility
160 agree upon through voluntary, arm’s-length negotiations.

161 (4) “Original sources of funding” means all methods
162 used to fund the utility assets, including, but not limited to,

163 loan funding, grant funding, and property otherwise
164 contributed to the utility.

165 (5) “Rate-base addition” means the dollar amount of
166 utility rate base associated with the utility assets that the
167 acquiring utility may include in the calculation of its post-
168 acquisition rate base for rate-making purposes.

169 (6) “Reproduction cost new less depreciation” means an
170 estimate of the cost to construct, at current prices, an exact
171 duplicate or replica of the utility assets, without regard to
172 the original sources of funding for those assets, using the
173 same materials, construction standards, design, layout, and
174 quality without adjustment for deficiencies, super-
175 adequacies, and obsolescence of those assets, net of
176 depreciation.

177 (7) “Selling utility” means a water, sewer, or stormwater
178 utility subject to the provisions of this chapter that has
179 entered into an agreement to sell utility assets to an
180 acquiring utility.

181 (8) “Utility assets” or “assets” mean all or substantially
182 all of the tangible and intangible assets of a selling utility
183 that: (A) The selling utility has used in the provision of
184 utility service or held for the future provision of such
185 service; and (B) the acquiring utility will reasonably require
186 to provide utility service after the acquisition to facilitate its
187 plans for the provision of utility service after the acquisition.

188 (9) “Utility asset valuation” means industry standard
189 valuation methods of determining the value of utility assets,
190 regardless of original sources of funding.

191 (e) This section, together with the amendments to §8-
192 12-17 of this code, made during the 2020 regular session of
193 the West Virginia Legislature, shall be known and referred
194 to as the Water and Wastewater Investment Facilitation Act.

●

CHAPTER 346

**(Com. Sub. for S. B. 589 - By Senators Prezioso,
Baldwin, Beach, Facemire, Hardesty, Ihlenfeld,
Jeffries, Lindsay, Palumbo, Plymale, Romano,
Stollings, Unger and Woelfel)**

[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 §31-15A-17c, relating to critical needs in state water and sewer systems; creating a Critical Needs/Failing Systems Sub Account; funding the sub account with excess uncommitted loan balances; authorizing loans or grants to address a critical immediate need of water or sewer services; and exempting the sub account from certain grant limitations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-17c. Critical Needs and Failing Systems Sub Account.

1 Notwithstanding any provision of this article to the
2 contrary:

3 (a) The Water Development Authority shall establish a
4 separate and segregated sub account in the Infrastructure
5 Fund designated the Critical Needs and Failing Systems Sub
6 Account into which the council may instruct the Water
7 Development Authority to transfer from the uncommitted

8 loan balances for each congressional district on June 30
9 each year up to \$4 million per congressional district.

10 (b) The council shall direct the Water Development
11 Authority to make loans or grants from the Critical Needs
12 and Failing Systems Sub Account when the council
13 determines that a project will address a critical immediate
14 need by:

15 (1) The continuation of water or wastewater services;

16 (2) Addressing water facility or wastewater facility
17 failure due to the age of the facility or facilities; or

18 (3) Providing extensions to a water facility or
19 wastewater facility that will add customers with a total
20 project cost of less than \$1 million.

21 (c) Grant limitations and allocations contained in §31-
22 15A-10(b) and §31-15A-10(c) of this code do not apply to
23 grants made from the Critical Needs and Failing Systems
24 Sub Account.



CHAPTER 347

**(Com. Sub. for S. B. 739 - By Senators Swope,
Clements, 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 §8-12-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-16-18 of said code; to amend and reenact §8-19-4 of said code; to amend and reenact §8-20-10 of said code; to amend and reenact §16-13-16 of said code; to amend and reenact §16-13A-9 of said code; to amend and reenact §24-2-1, §24-2-4a,

and §24-2-11 of said code; to amend said code by adding thereto a new article, designated §24-2H-1, §24-2H-2, §24-2H-3, §24-2H-4, §24-2H-5, §24-2H-6, §24-2H-7, §24-2H-8, and §24-2H-9; and to amend and reenact §31-15A-9 of said code, all relating to authorizing the Public Service Commission to protect the consumers of distressed and failing water and wastewater utilities by ordering various corrective measures up to and including acquisition of a failing utility by a capable water or wastewater utility; clarifying Public Service Commission jurisdiction over water and sewer utilities owned by political subdivisions; establishing uniformity in the class of publications required by municipalities and public service districts for the revision in rates; providing a time period for the filing of and resolution of complaints filed at the Public Service Commission regarding actions of public service districts and municipalities; cleaning up language regarding reference to other sections of the code regarding notice requirements for municipal utilities; regarding time period pertaining to the filing of appeals and the resolution of appeals for rate and construction projects decided by county commissions; adding language to allow the commission to order the acquisition of failing water and wastewater utilities; and allowing water and/or wastewater utilities access to public funds at below market-rates and grants to repair, replace, and improve acquired failing utilities.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

***§8-12-17. Sale or lease of municipal public utility.**

1 In any case where a municipality owns a gas system, an
2 electric system, a waterworks system, a sewer system, or

*NOTE: This section was also amended by S. B. 551 (Chapter 345), which passed subsequent to this act.

3 other public utility and a majority of not less than 60 percent
4 of the members of the governing body thereof determines it
5 for the best interest of the municipality that the utility be
6 sold or leased, the governing body may so sell or lease the
7 gas system, electric system, waterworks system, sewer
8 system, or other public utility upon such terms and
9 conditions as the governing body in its discretion considers
10 in the best interest of the municipality: *Provided*, That the
11 sale or lease may be made only upon: (1) The publication of
12 notice of a hearing before the governing body of the
13 municipality, as a Class I legal advertisement in compliance
14 with §59-3-1 *et seq.* of this code, in a newspaper published
15 and of general circulation in the municipality, the
16 publication to be made not earlier than 20 days and not later
17 than seven days prior to the hearing; and (2) the approval by
18 the Public Service Commission of West Virginia. The
19 governing body, upon the approval of the sale or lease by a
20 majority of its members of not less than 60 percent of the
21 members of the governing body, shall have full power and
22 authority to proceed to execute or effect the sale or lease in
23 accordance with the terms and conditions prescribed in the
24 ordinance approved as aforesaid, and shall have power to do
25 any and all things necessary or incident thereto: *Provided*,
26 *however*, That if at any time after the approval and before
27 the execution of the authority under the ordinance, any
28 person should present to the governing body an offer to buy
29 the public utility at a price which exceeds by at least five
30 percent the sale price which shall have been so approved
31 and authorized or to lease the same upon terms which the
32 governing body, in its discretion, shall consider more
33 advantageous to the municipality than the terms of the lease
34 which shall have been previously approved as aforesaid, the
35 governing body shall have the power to accept the
36 subsequent offer, and to make the sale or the lease to the
37 person making the offer, upon approval of the offer by a
38 majority of not less than 60 percent of the members of the
39 governing body; but, if a sale shall have been approved by
40 the governing body as aforesaid, and the subsequent

41 proposition be for a lease, or, if a lease shall have been
42 approved by the governing body, and the subsequent
43 proposition shall be for a sale, the governing body shall have
44 the authority to accept the same upon approval of the offer
45 by a majority of not less than 60 percent of the members of
46 the governing body. The person making the proposition
47 shall furnish bond, with security to be approved by the
48 governing body, in a penalty of not less than 25 percent of
49 the proposed bid, conditioned to carry the proposition into
50 execution, if the same shall be approved by the governing
51 body. In any case where any such public utility shall be sold
52 or leased by the governing body as hereinabove provided,
53 no part of the moneys derived from the sale or lease shall be
54 applied to the payment of current expenses of the
55 municipality, but the proceeds of the sale or lease may be
56 applied in payment and discharge of any indebtedness
57 created in respect to the public utility, and in case there be
58 no indebtedness, the governing body, in its discretion, shall
59 have the power and authority to expend all such moneys
60 when received for the purchase or construction of
61 firefighting equipment and buildings for housing the
62 equipment, a municipal building, or city hall, and the
63 necessary land upon which to locate the same, for capital
64 investments in public works projects, vehicles and
65 equipment and law-enforcement vehicles and equipment,
66 for the demolition of dilapidated and abandoned buildings,
67 or for the construction of paved streets, avenues, roads,
68 alleys, ways, sidewalks, sewers, storm water systems,
69 floodwalls, and other like permanent improvements, for
70 fulfilling municipal pension and other post-employment
71 benefit obligations, or for reducing taxes, and for no other
72 purposes. In case there be a surplus after the payment of the
73 indebtedness, the surplus shall be used as aforesaid.

74 The requirements of this section shall not apply to the
75 sale or lease of any part of the properties of any such public
76 utility determined by the governing body to be unnecessary
77 for the efficient rendering of the service of the utility.

**ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE
BOND FINANCING.**

PART VI. IMPOSITION OF RATES, FEES, OR CHARGES.

**§8-16-18. Rates, fees, or charges for services rendered by
works.**

1 The governing body shall have plenary power and
2 authority and it shall be its duty, by ordinance, to establish
3 and maintain just and equitable rates, fees, or charges for the
4 use and services rendered, or the improvement or protection
5 of property, not to include highways, road and drainage
6 easements, and/or stormwater facilities constructed, owned
7 and/or operated by the West Virginia Division of Highways,
8 provided or afforded, by such works, to be paid by the
9 person using the same, receiving the services thereof, or
10 owning the property improved or protected thereby, and
11 may readjust rates, fees, or charges from time to time.

12 When two or more municipalities take joint action under
13 the provisions of this article, the rates, fees, or charges shall
14 be established by each participating municipality, with the
15 concurrence of the other participating municipality or
16 municipalities as to the amount of the rates, fees or charges,
17 and such rates, fees, or charges may be the same with
18 respect to each municipality, or they may be different.

19 Rates, fees, or charges heretofore or hereafter
20 established and maintained for the improvement or
21 protection of property, not to include highways, road and
22 drainage easements, and/or stormwater facilities
23 constructed, owned and/or operated by the West Virginia
24 Division of Highways, provided or afforded by a municipal
25 flood control system or flood walls, to be paid by the person
26 owning the property improved or protected thereby, shall be
27 collectible and enforceable from the time provided in any
28 such ordinance, any provision of this or any other law to the
29 contrary notwithstanding, if, at such time, such works,
30 though not yet fully completed, are nearing completion and

31 the governing body is reasonably assured that the works will
32 be completed and placed in operation without unreasonable
33 delay.

34 All rates, fees, or charges shall be sufficient in each year
35 for the payment of the proper and reasonable expenses of
36 repair (including replacements), maintenance and operation
37 of the works, and for the payment of the sums herein
38 required to be paid into the sinking fund. Revenues
39 collected pursuant to the provisions of this section are
40 considered the revenues of the works. No such rates, fees,
41 or charges may be established until after a public hearing at
42 which all the users of the works and owners of the property
43 served, or to be served thereby, and others interested, shall
44 have an opportunity to be heard concerning the proposed
45 rates, fees or charges.

46 After introduction of the proposed ordinance fixing the
47 rates, fees, or charges and before the same is finally adopted,
48 notice of such hearing, setting forth the proposed schedule
49 of such rates, fees or charges, shall be given by publishing
50 the same as a Class I legal advertisement in compliance with
51 §59-3-1 *et seq.* of this code, and the publication area for the
52 publication shall be such municipality or each such
53 municipality, as the case may be. Said notice shall be
54 published at least five days before the date fixed in such
55 notice for the hearing, which hearing may be adjourned
56 from time to time. No other or further notice to parties in
57 interest is required.

58 After such hearing the ordinance establishing rates, fees
59 or charges, either as originally proposed or introduced, or as
60 modified and amended, shall be adopted and put into effect.
61 A copy of the schedule of such rates, fees and charges so
62 established shall be kept on file in the office of the board
63 having charge of such works, and also in the office of the
64 governing body or bodies, and shall be open to inspection
65 by all parties in interest.

66 The rates, fees, or charges so established for any class
67 of users or property served shall be extended to cover any
68 additional class of users or property thereafter served which
69 fall within the same class, without the necessity of any
70 hearing or notice. Any change or adjustment of rates, fees,
71 or charges may be made in the same manner as such rates,
72 fees, or charges were originally established as provided in
73 this section. The aggregate of the rates, fees, or charges shall
74 always be sufficient for the expenses of repair (including
75 replacements), maintenance and operation, and for the
76 sinking fund payments.

77 If any rate, fee or charge so established is not paid within
78 30 days after the same is due, the amount thereof, together
79 with a penalty of 10 percent and reasonable attorney's fees,
80 may be recovered by the board in a civil action in the name
81 of the municipality or municipalities, and in the case of
82 rates, fees, or charges due for services rendered, such rates,
83 fees or charges, if not paid when due, may, if the governing
84 body so provide in the ordinance provided for under §8-16-
85 7 of this code, constitute a lien upon the premises served by
86 such works, which lien may be foreclosed against such lot,
87 parcel of land or building so served, in accordance with the
88 laws relating to the foreclosure of liens on real property.
89 Upon failure of any person receiving any such service to pay
90 for the same when due, the board may discontinue such
91 service without notice.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation.

1 Whenever a municipality or county commission, under
2 the provisions of this article, decides to acquire, by purchase
3 or otherwise, construct, establish, extend or equip a
4 waterworks system or an electric power system, or to
5 construct any additions, betterments, or improvements to

6 any waterworks or electric power system, it shall cause an
7 estimate to be made of the cost thereof, and may, by
8 ordinance or order, provide for the issuance of revenue
9 bonds under the provisions of this article, which ordinance
10 or order shall set forth a brief description of the
11 contemplated undertaking, the estimated cost thereof, the
12 amount, rate or rates of interest, the time and place of
13 payment and other details in connection with the issuance
14 of the bonds. The bonds shall be in such form and shall be
15 negotiated and sold in such manner and upon such terms as
16 the governing body of such municipality or county
17 commission may, by ordinance or order, specify. All the
18 bonds and the interest thereon shall be exempt from all
19 taxation by this state, or any county, municipality or county
20 commission, political subdivision or agency thereof.
21 Notwithstanding any other provision of this code to the
22 contrary, the real and personal property which a
23 municipality or county has acquired and constructed
24 according to the provisions of this article, and any leasehold
25 interest therein held by other persons, shall be considered
26 public property and shall be exempt from taxation by the
27 state, or any county, municipality or other levying body, so
28 long as the same is owned by the municipality or county:
29 *Provided*, That with respect to electric power systems, this
30 exemption for real and personal property shall be applicable
31 only for the real and personal property: (1) Physically
32 situate within the municipal or county boundaries of the
33 municipality or county which acquired or constructed the
34 electric power system and there was in place prior to the
35 effective date of the amendments to this section made in the
36 year 1992 an agreement between the municipality and the
37 county commission for payments in lieu of tax; or (2)
38 acquired or constructed with the written agreement of the
39 county school board, county commission, and any
40 municipal authority within whose jurisdiction the electric
41 power system is or is to be physically situate.
42 Notwithstanding anything contained in this statute to the
43 contrary, this exemption shall be applicable to any leasehold
44 or similar interest held by persons other than a municipality

45 or county only if acquired or constructed with the written
46 agreement of the county school board, county commission
47 and any municipal authority within whose jurisdiction the
48 electric power system is or is to be physically situate:
49 *Provided, however,* That payments made to any county
50 commission, county school board or municipality in lieu of
51 tax pursuant to such an agreement shall be distributed as if
52 the payments resulted from ad valorem property taxation.
53 The bonds shall bear interest at a rate per annum set by the
54 municipality or county commission, payable at such times,
55 and shall be payable as to principal at such times, not
56 exceeding 50 years from their date, and at such place or
57 places, within or without the state, as shall be prescribed in
58 the ordinance or order providing for their issuance. Unless
59 the governing body of the municipality or county
60 commission shall otherwise determine, the ordinance or
61 order shall also declare that a statutory mortgage lien shall
62 exist upon the property so to be acquired, constructed,
63 established, extended or equipped, fix minimum rates or
64 charges for water or electricity to be collected prior to the
65 payment of all of said bonds and shall pledge the revenues
66 derived from the waterworks or electric power system for
67 the purpose of paying the bonds and interest thereon, which
68 pledge shall definitely fix and determine the amount of
69 revenues which shall be necessary to be set apart and
70 applied to the payment of the principal of and interest upon
71 the bonds and the proportion of the balance of the revenues,
72 which are to be set aside as a proper and adequate
73 depreciation account, and the remainder shall be set aside
74 for the reasonable and proper maintenance and operation
75 thereof. The rates or charges to be charged for the services
76 from the waterworks or electric power system shall be
77 sufficient at all times to provide for the payment of interest
78 upon all bonds and to create a sinking fund to pay the
79 principal thereof as and when the same become due, and
80 reasonable reserves therefor, and to provide for the repair,
81 maintenance and operation of the waterworks or electric
82 power system, and to provide an adequate depreciation
83 fund, and to make any other payments which shall be

84 required or provided for in the ordinance or order
85 authorizing the issuance of said bonds: *Provided further*,
86 That the notice given by the municipality or county
87 commission for a change in rates or charges to be charged
88 for the services from the waterworks or electric power
89 system shall be provided by Class I legal advertisement in a
90 newspaper of general circulation in its service territory not
91 less than one week prior to the public hearing of the
92 governing body of the municipality or the county
93 commission required for the approval of the change in rates
94 or charges.

ARTICLE 20. COMBINED SYSTEMS.

§8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees, or charges; deposit required for new customers; change in rates, fees, or charges; failure to cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

1 (a)(1) The governing body of a municipality availing
2 itself of the provisions of this article shall have plenary
3 power and authority to make, enact, and enforce all
4 necessary rules for the repair, maintenance, operation, and
5 management of the combined system of the municipality
6 and for the use thereof. The governing body of a
7 municipality also has the plenary power and authority to
8 make, enact, and enforce all necessary rules and ordinances
9 for the care and protection of any such system for the health,
10 comfort, and convenience of the public, to provide a clean
11 water supply, to provide properly treated sewage insofar as
12 it is reasonably possible to do and, if applicable, properly
13 collecting and controlling the stormwater as is reasonably
14 possible to do: *Provided*, That no municipality may make,
15 enact, or enforce any rule, regulation, or ordinance
16 regulating any highways, road or drainage easements, or

17 storm water facilities constructed, owned or operated by the
18 West Virginia Division of Highways.

19 (2) A municipality has the plenary power and authority
20 to charge the users for the use and service of a combined
21 system and to establish required deposits, rates, fees, or
22 charges for such purpose. Separate deposits, rates, fees, or
23 charges may be fixed for the water and sewer services
24 respectively and, if applicable, the stormwater services, or
25 combined rates, fees or for the combined water and sewer
26 services, and, if applicable, the storm water services. Such
27 deposits, rates, fees or charges, whether separate or
28 combined, shall be sufficient at all times to pay the cost of
29 repair, maintenance, and operation of the combined system,
30 provide an adequate reserve fund, an adequate depreciation
31 fund and pay the principal and interest upon all revenue
32 bonds issued under this article. Deposits, rates, fees, or
33 charges shall be established, revised, and maintained by
34 ordinance and become payable as the governing body may
35 determine by ordinance. The rates, fees, or charges shall be
36 changed, from time to time, as necessary, consistent with
37 the provisions of this article: *Provided*, That the notice
38 given by the municipality for a change in rates or charges to
39 be charged for the services from the waterworks or electric
40 power system, shall be provided by Class I legal
41 advertisement in a newspaper of general circulation in its
42 service territory not less than one week prior to the public
43 hearing of the governing body of the municipality required
44 for the approval of the change in rates or charges.

45 (3) All new applicants for service shall indicate to the
46 municipality or governing body whether they are an owner
47 or tenant with respect to the service location. An entity
48 providing stormwater service shall provide a tenant a report
49 of the stormwater fee charged for the entire property and, if
50 appropriate, that portion of the fee to be assessed to the
51 tenant.

52 (4) The municipality or governing body, but only one of
53 them, may collect from all new applicants for service a

54 deposit of \$100 or two twelfths of the average annual usage
55 of the applicant's specific customer class, whichever is
56 greater, to secure the payment of water and sewage service
57 rates, fees and charges in the event they become delinquent
58 as provided in this section. In any case where a deposit is
59 forfeited to pay service rates, fees and charges which were
60 delinquent and the user's service is disconnected or
61 terminated, service may not be reconnected or reinstated by
62 the municipality or governing body until another deposit
63 equal to \$100 or a sum equal to two twelfths of the average
64 usage for the applicant's specific customer class, whichever
65 is greater, is remitted to the municipality or governing body.
66 After 12 months of prompt payment history, the
67 municipality or governing body shall return the deposit to
68 the customer or credit the customer's account with interest
69 at a rate to be set by the Public Service Commission:
70 *Provided*, That where the customer is a tenant, the
71 municipality or governing body is not required to return the
72 deposit until the time the tenant discontinues service with
73 the municipality governing body. Whenever any rates, fees,
74 rentals, or charges for services or facilities furnished remain
75 unpaid for a period of 20 days after they become due, the
76 user of the services and facilities provided is delinquent and
77 the user is liable at law until all rates, fees and charges are
78 fully paid. The municipality or governing body may
79 terminate water services to a delinquent user of either water
80 or sewage facilities, or both, 10 days after the water or
81 sewage services become delinquent regardless of whether
82 the governing body utilizes the security deposit to satisfy
83 any delinquent payments: *Provided, however*, That any
84 termination of water service must comply with all rules and
85 orders of the Public Service Commission: *Provided further*,
86 That nothing contained within the rules of the Public
87 Service Commission requires agents or employees of the
88 municipality or governing body to accept payment at the
89 customer's premises in lieu of discontinuing service for a
90 delinquent bill.

91 (b) Whenever any rates, fees, or charges for services or
92 facilities furnished remain unpaid for a period of 20 days
93 after they become due, the user of the services and facilities
94 provided shall be delinquent and the municipality or
95 governing body may apply any deposit against any
96 delinquent fee. The user is liable until such time as all rates,
97 fees and charges are fully paid.

98 (c) All rates, fees, or charges for water service, sewer
99 service and, if applicable, stormwater service, whenever
100 delinquent, as provided by ordinance of the municipality,
101 shall be liens of equal dignity, rank, and priority with the
102 lien on such premises of state, county, school, and
103 municipal taxes for the amount thereof upon the real
104 property served. The municipality has the plenary power
105 and authority to enforce such lien in a civil action to recover
106 the money due for services rendered plus court fees and
107 costs and reasonable attorney's fees: *Provided*, That an
108 owner of real property may not be held liable for the
109 delinquent rates, fees, or charges for services or facilities of
110 a tenant, nor shall any lien attach to real property for the
111 reason of delinquent rates, fees, or charges for services or
112 facilities of a tenant of the real property, unless the owner
113 has contracted directly with the municipality to purchase
114 such services or facilities.

115 (d) Municipalities are hereby granted a deferral of filing
116 fees or other fees and costs incidental to filing an action in
117 magistrate court for collection of the delinquent rates and
118 charges. If the municipality collects the delinquent account,
119 plus fees and costs, from its customer or other responsible
120 party, the municipality shall pay to the magistrate court the
121 filing fees or other fees and costs which were previously
122 deferred.

123 (e) No municipality may foreclose upon the premises
124 served by it for delinquent rates, fees, or charges for which
125 a lien is authorized by this section except through a civil
126 action in the circuit court of the county wherein the
127 municipality lies. In every such action, the court shall be

128 required to make a finding based upon the evidence and
129 facts presented that the municipality has exhausted all other
130 remedies for collection of debts with respect to such
131 delinquencies prior to bringing the action. In no event shall
132 foreclosure procedures be instituted by any municipality or
133 on its behalf unless the delinquency has been in existence or
134 continued for a period of two years from the date of the first
135 delinquency for which foreclosure is being sought.

136 (f) Notwithstanding any other provision contained in
137 this article, a municipality which has been designated by the
138 Environmental Protection Agency as an entity to serve a
139 West Virginia Separate Storm Sewer System community, as
140 defined in 40 C.F.R. §122.26, has the authority to enact
141 ordinances or regulations which allow for the issuance of
142 orders, the right to enter properties and the right to impose
143 reasonable fines and penalties regarding correction of
144 violations of municipal stormwater ordinances or
145 regulations within the municipal watershed served by the
146 municipal stormwater system, as long as such rules,
147 regulations, fines, or acts are not contrary to any rules or
148 orders of the Public Service Commission.

149 (g) Notice of a violation of a municipal stormwater
150 ordinance or regulation shall be served in person to the
151 alleged violator or by certified mail, return receipt
152 requested. The notice shall state the nature of the violation,
153 the potential penalty, the action required to correct the
154 violation and the time limit for making the correction.
155 Should a person, after receipt of proper notice, fail to correct
156 violation of the municipal stormwater ordinance or
157 regulation, the municipality may correct or have the
158 corrections of the violation made and bring the party into
159 compliance with the applicable stormwater ordinance or
160 regulation. The municipality may collect the costs of
161 correcting the violation from the person by instituting a civil
162 action, as long as such actions are not contrary to any rules
163 or orders of the Public Service Commission.

164 (h) A municipality which has been designated by the
165 Environmental Protection Agency as an entity to serve a
166 West Virginia Separate Storm Sewer System community
167 shall prepare an annual report detailing the collection and
168 expenditure of rates, fees, or charges and make it available
169 for public review at the place of business of the governing
170 body and the stormwater utility main office.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

§16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or readjustment; hearing; lien and recovery; discontinuance of services.

1 A governing body has the power and duty, by ordinance,
2 to establish and maintain just and equitable rates, fees, or
3 charges for the use of and the service rendered by:

4 (a) Sewerage works, to be paid by the owner of each lot,
5 parcel of real estate or building that is connected with and
6 uses the works by or through any part of the sewerage
7 system of the municipality or that in any way uses or is
8 served by the works; and

9 (b) Stormwater works, to be paid by the owner of each
10 lot, parcel of real estate or building that in any way uses or
11 is served by the stormwater works or whose property is
12 improved or protected by the stormwater works or any user
13 of such stormwater works.

14 (c) The governing body may change and readjust the
15 rates, fees, or charges from time to time. However, no rates,
16 fees, or charges for stormwater services may be assessed
17 against highways, road and drainage easements or
18 stormwater facilities constructed, owned or operated by the
19 West Virginia Division of Highways.

20 (d) All new applicants for service shall indicate to the
21 governing body whether they are an owner or tenant with
22 respect to the service location. An entity providing
23 stormwater service shall provide a tenant a report of the
24 stormwater fee charged for the entire property and, if
25 appropriate, that portion of the fee to be assessed to the
26 tenant.

27 (e) The governing body may collect from all new
28 applicants for service a deposit of \$50 or two twelfths of the
29 average annual usage of the applicant's specific customer
30 class, whichever is greater, to secure the payment of service
31 rates, fees, and charges in the event they become delinquent
32 as provided in this section. In any case where a deposit is
33 forfeited to pay service rates, fees, and charges which were
34 delinquent at the time of disconnection or termination of
35 service, service may not be reconnected or reinstated by the
36 governing body until another deposit equal to \$50 or a sum
37 equal to two twelfths of the average usage for the applicant's
38 specific customer class, whichever is greater, is remitted to
39 the governing body. After 12 months of prompt payment
40 history, the governing body shall return the deposit to the
41 customer or credit the customer's account with interest at a
42 rate as the Public Service Commission may prescribe:
43 *Provided*, That where the customer is a tenant, the
44 governing body is not required to return the deposit until the
45 time the tenant discontinues service with the governing
46 body. Whenever any rates, fees, rentals, or charges for
47 services or facilities furnished remain unpaid for a period of
48 20 days after they become due, the user of the services and
49 facilities provided is delinquent. The user is liable until all
50 rates, fees, and charges are fully paid. The governing body
51 may, under reasonable rules promulgated by the Public
52 Service Commission, shut off and discontinue water
53 services to a delinquent user of sewer facilities 10 days after
54 the sewer services become delinquent regardless of whether
55 the governing body utilizes the security deposit to satisfy
56 any delinquent payments: *Provided, however*, That nothing
57 contained within the rules of the Public Service

58 Commission may require agents or employees of the
59 governing body to accept payment at the customer's
60 premises in lieu of discontinuing service for a delinquent
61 bill.

62 (f) The rates, fees, or charges shall be sufficient in each
63 year for the payment of the proper and reasonable expense
64 of operation, repair, replacements and maintenance of the
65 works and for the payment of the sums herein required to be
66 paid into the sinking fund. Revenues collected pursuant to
67 this section shall be considered the revenues of the works.

68 (g) No such rates, fees, or charges may be established
69 until after a public hearing, at which all the users of the
70 works and owners of property served or to be served thereby
71 and others interested shall have an opportunity to be heard
72 concerning the proposed rates, fees, or charges.

73 (h) After introduction of the ordinance fixing the rates,
74 fees, or charges, and before the same is finally enacted,
75 notice of the hearing, setting forth the proposed schedule of
76 rates, fees, or charges, shall be given by publication as a
77 Class I legal advertisement in compliance with §59-3-1 *et*
78 *seq.* of this code and the publication area for the publication
79 shall be the municipality. The first publication shall be made
80 at least five days before the date fixed in the notice for the
81 hearing.

82 (i) After the hearing, which may be adjourned, from
83 time to time, the ordinance establishing rates, fees, or
84 charges, either as originally introduced or as modified and
85 amended, shall be passed and put into effect. A copy of the
86 schedule of the rates, fees, and charges shall be kept on file
87 in the office of the board having charge of the operation of
88 the works, and also in the office of the clerk of the
89 municipality, and shall be open to inspection by all parties
90 interested. The rates, fees, or charges established for any
91 class of users or property served shall be extended to cover
92 any additional premises thereafter served which fall within

93 the same class, without the necessity of any hearing or
94 notice.

95 (j) Any change or readjustment of the rates, fees, or
96 charges may be made in the same manner as the rates, fees,
97 or charges were originally established as hereinbefore
98 provided: *Provided*, That if a change or readjustment be
99 made substantially pro rata, as to all classes of service, no
100 hearing or notice shall be required. The aggregate of the
101 rates, fees, or charges shall always be sufficient for the
102 expense of operation, repair and maintenance and for the
103 sinking fund payments.

104 (k) All rates, fees, or charges, if not paid when due, shall
105 constitute a lien upon the premises served by the works. If
106 any service rate, fee, or charge is not paid within 20 days
107 after it is due, the amount thereof, together with a penalty of
108 10 percent and a reasonable attorney's fee, may be
109 recovered by the board in a civil action in the name of the
110 municipality. The lien may be foreclosed against the lot,
111 parcel of land or building in accordance with the laws
112 relating thereto. Where both water and sewer services are
113 furnished by any municipality to any premises, the schedule
114 of charges may be billed as a single amount or individually
115 itemized and billed for the aggregate thereof.

116 (l) Whenever any rates, rentals, fees or charges for
117 services or facilities furnished shall remain unpaid for a
118 period of 20 days after they become due, the property and
119 the owner thereof, as well as the user of the services and
120 facilities shall be delinquent until such time as all rates, fees
121 and charges are fully paid. When any payment for rates,
122 rentals, fees or charges becomes delinquent, the governing
123 body may use the security deposit to satisfy the delinquent
124 payment.

125 (m) The board collecting the rates, fees, or charges shall
126 be obligated under reasonable rules to shut off and
127 discontinue both water and sewer services to all delinquent
128 users of water, sewer or stormwater facilities and shall not

129 restore either water facilities or sewer facilities to any
130 delinquent user of any such facilities until all delinquent
131 rates, fees, or charges for water, sewer, and stormwater
132 facilities, including reasonable interest and penalty charges,
133 have been paid in full, as long as the actions are not contrary
134 to any rules or orders of the Public Service Commission:
135 *Provided*, That nothing contained within the rules of the
136 Public Service Commission may be considered to require
137 any agents or employees of the municipality or governing
138 body to accept payment at the customer's premises in lieu
139 of discontinuing service for a delinquent bill.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

1 (a)(1) The board may make, enact, and enforce all
2 needful rules in connection with the acquisition,
3 construction, improvement, extension, management,
4 maintenance, operation, care, protection, and the use of any
5 public service properties owned or controlled by the district.
6 The board shall establish, in accordance with this article,
7 rates, fees, and charges for the services and facilities it
8 furnishes, which shall be sufficient at all times,
9 notwithstanding the provisions of any other law or laws, to
10 pay the cost of maintenance, operation, and depreciation of
11 the public service properties and principal of and interest on
12 all bonds issued, other obligations incurred under the
13 provisions of this article, and all reserve or other payments
14 provided for in the proceedings which authorized the
15 issuance of any bonds under this article. The schedule of the
16 rates, fees, and charges may be based upon:

17 (A) The consumption of water or gas on premises
18 connected with the facilities, taking into consideration
19 domestic, commercial, industrial, and public use of water
20 and gas;

21 (B) The number and kind of fixtures connected with the
22 facilities located on the various premises;

23 (C) The number of persons served by the facilities;

24 (D) Any combination of paragraphs (A), (B), and (C) of
25 this subdivision; or

26 (E) Any other basis or classification which the board
27 may determine to be fair and reasonable, taking into
28 consideration the location of the premises served and the
29 nature and extent of the services and facilities furnished.
30 However, no rates, fees, or charges for stormwater services
31 may be assessed against highways, road, and drainage
32 easements or stormwater facilities constructed, owned, or
33 operated by the West Virginia Division of Highways.

34 (2) The board of a public service district with at least
35 4,500 customers and annual combined gross revenue of \$3
36 million providing water or sewer service separately or in
37 combination may make, enact, and enforce all needful rules
38 in connection with the enactment or amendment of rates,
39 fees, and charges of the district. At a minimum, these rules
40 shall provide for:

41 (A) Adequate prior public notice of the contemplated
42 rates, fees, and charges by causing a notice of intent to effect
43 such a change to be provided to the customers of the district
44 for the month immediately preceding the month in which
45 the contemplated change is to be considered at a hearing by
46 the board. The notice shall include a statement that a change
47 in rates, fees, and charges is being considered, the time,
48 date, and location of the hearing of the board at which the
49 change will be considered and that the proposed rates, fees,
50 and charges are on file at the office of the district for review
51 during regular business hours. The notice shall be printed
52 on, or mailed with, the monthly billing statement, or
53 provided in a separate mailing.

54 (B) Adequate prior public notice of the contemplated
55 rates, fees, and charges by causing to be published, after the
56 first reading and approval of a resolution of the board
57 considering the revised rates, fees, and charges but not less
58 than one week prior to the public hearing of the board on the
59 resolution, as a Class I legal advertisement, of the proposed
60 action, in compliance with the provisions of §59-3-1 *et seq.*
61 of this code. The publication area for publication shall be all
62 territory served by the district. If the district provides
63 service in more than one county, publication shall be made
64 in a newspaper of general circulation in each county that the
65 district provides service.

66 (C) The public notice of the proposed action shall
67 summarize the current rates, fees, and charges and the
68 proposed changes to said rates, fees, and charges; the date,
69 time, and place of the public hearing on the resolution
70 approving the revised rates, fees, and charges and the place
71 or places within the district where the proposed resolution
72 approving the revised rates, fees, and charges may be
73 inspected by the public. A reasonable number of copies of
74 the proposed resolution shall be kept at the place or places
75 and be made available for public inspection. The notice
76 shall also advise that interested parties may appear at the
77 public hearing before the board and be heard with respect to
78 the proposed revised rates, fees, and charges.

79 (D) The resolution proposing the revised rates, fees, and
80 charges shall be read at two meetings of the board with at
81 least two weeks intervening between each meeting. The
82 public hearing may be conducted by the board prior to, or
83 at, the meeting at which the resolution is considered for
84 adoption on the second reading.

85 (E) Rates, fees, and charges approved by resolution of
86 the board shall be forwarded in writing to the county
87 commission with the authority to appoint the members of
88 the board. The county commission shall publish notice of
89 the proposed revised rates, fees, and charges by a Class I
90 legal advertisement in compliance with the provisions of

91 §59-3-1 *et seq.* of this code. Within 45 days of receipt of the
92 proposed rates, fees, and charges, the county commission
93 shall take action to approve, modify, or reject the proposed
94 rates, fees, and charges, in its sole discretion. If, after 45
95 days, the county commission has not taken final action to
96 approve, modify, or reject the proposed rates, fees, and
97 charges, as presented to the county commission, shall be
98 effective with no further action by the board or county
99 commission. In any event, this 45-day period shall be
100 mandatory unless extended by the official action of both the
101 board proposing the rates, fees, and charges, and the
102 appointing county commission.

103 (F) Enactment of the proposed or modified rates, fees,
104 and charges shall follow an affirmative vote by the county
105 commission and shall be effective no sooner than 45 days
106 following action. The 45-day waiting period may be waived
107 by public vote of the county commission only if the
108 commission finds and declares the district to be in financial
109 distress such that the 45-day waiting period would be
110 detrimental to the ability of the district to deliver continued
111 and compliant public services.

112 (G) The public service district, or a customer aggrieved
113 by the changed rates or charges who presents to the circuit
114 court a petition signed by at least 750 customers or 25
115 percent of the customers served by the public service
116 district, whichever is fewer, when dissatisfied by the
117 approval, modification, or rejection by the county
118 commission of the proposed rates, fees, and charges under
119 the provisions of this subdivision may file a complaint
120 regarding the rates, fees, and charges resulting from the
121 action of, or failure to act by, the county commission in the
122 circuit court of the county in which the county commission
123 sits: *Provided*, That any complaint or petition filed
124 hereunder shall be filed within 30 days of the county
125 commission's final action approving, modifying, or
126 rejecting the rates, fees, and charges, or the expiration of the
127 45-day period from the receipt by the county commission,

128 in writing, of the rates, fees, and charges approved by
129 resolution of the board, without final action by the county
130 commission to approve, modify, or reject the rates, fees, and
131 charges, and the circuit court shall resolve the complaint:
132 *Provided, however,* That the rates, fees, and charges so fixed
133 by the county commission, or those adopted by the district
134 upon which the county commission failed to act, shall
135 remain in full force and effect, until set aside, altered, or
136 amended by the circuit court in an order to be followed in
137 the future.

138 (3) Where water, sewer, stormwater, or gas services, or
139 any combination thereof, are all furnished to any premises,
140 the schedule of charges may be billed as a single amount for
141 the aggregate of the charges. The board shall require all
142 users of services and facilities furnished by the district to
143 designate on every application for service whether the
144 applicant is a tenant or an owner of the premises to be
145 served. If the applicant is a tenant, he or she shall state the
146 name and address of the owner or owners of the premises to
147 be served by the district. Notwithstanding the provisions of
148 §24-3-8 of this code to the contrary, all new applicants for
149 service shall deposit the greater of a sum equal to two
150 twelfths of the average annual usage of the applicant's
151 specific customer class or \$50 with the district to secure the
152 payment of service rates, fees, and charges in the event they
153 become delinquent as provided in this section. If a district
154 provides both water and sewer service, all new applicants
155 for service shall deposit the greater of a sum equal to two
156 twelfths of the average annual usage for water service or \$50
157 and the greater of a sum equal to two twelfths of the average
158 annual usage for wastewater service of the applicant's
159 specific customer class or \$50. In any case where a deposit
160 is forfeited to pay service rates, fees, and charges which
161 were delinquent at the time of disconnection or termination
162 of service, no reconnection or reinstatement of service may
163 be made by the district until another deposit equal to the
164 greater of a sum equal to two twelfths of the average usage
165 for the applicant's specific customer class or \$50 has been

166 remitted to the district. After 12 months of prompt payment
167 history, the district shall return the deposit to the customer
168 or credit the customer's account at a rate as the Public
169 Service Commission may prescribe: *Provided*, That where
170 the customer is a tenant, the district is not required to return
171 the deposit until the time the tenant discontinues service
172 with the district. Whenever any rates, fees, rentals, or
173 charges for services or facilities furnished remain unpaid for
174 a period of 20 days after the same become due and payable,
175 the user of the services and facilities provided is delinquent
176 and the user is liable at law until all rates, fees, and charges
177 are fully paid. The board may, under reasonable rules
178 promulgated by the Public Service Commission, shut off
179 and discontinue water or gas services to all delinquent users
180 of either water or gas facilities, or both, 10 days after the
181 water or gas services become delinquent: *Provided*,
182 *however*, That nothing contained within the rules of the
183 Public Service Commission may be considered to require
184 any agents or employees of the board to accept payment at
185 the customer's premises in lieu of discontinuing service for
186 a delinquent bill.

187 (b) If any publicly or privately owned utility, city,
188 incorporated town, other municipal corporation or other
189 public service district included within the district owns and
190 operates separate water facilities, sewer facilities, or
191 stormwater facilities, and the district owns and operates
192 another kind of facility, either water or sewer, or both, as the
193 case may be, then the district and the publicly or privately
194 owned utility, city, incorporated town or other municipal
195 corporation or other public service district shall covenant
196 and contract with each other to shut off and discontinue the
197 supplying of water service for the nonpayment of sewer or
198 stormwater service fees and charges: *Provided*, That any
199 contracts entered into by a public service district pursuant
200 to this section shall be submitted to the Public Service
201 Commission for approval. Any public service district which
202 provides water and sewer service, water and stormwater
203 service or water, sewer, and stormwater service has the right

204 to terminate water service for delinquency in payment of
205 water, sewer, or stormwater bills. Where one public service
206 district is providing sewer service and another public
207 service district or a municipality included within the
208 boundaries of the sewer or stormwater district is providing
209 water service and the district providing sewer or stormwater
210 service experiences a delinquency in payment, the district
211 or the municipality included within the boundaries of the
212 sewer or stormwater district that is providing water service,
213 upon the request of the district providing sewer or
214 stormwater service to the delinquent account, shall
215 terminate its water service to the customer having the
216 delinquent sewer or stormwater account: *Provided*,
217 *however*, That any termination of water service must
218 comply with all rules and orders of the Public Service
219 Commission: *Provided further*, That nothing contained
220 within the rules of the Public Service Commission shall be
221 deemed to require any agents or employees of the public
222 service districts to accept payment at the customer's
223 premises in lieu of discontinuing service for a delinquent
224 bill.

225 (c) Any district furnishing sewer facilities within the
226 district may require or may, by petition to the circuit court
227 of the county in which the property is located, compel or
228 may require the Bureau for Public Health to compel all
229 owners, tenants, or occupants of any houses, dwellings, and
230 buildings located near any sewer facilities where sewage
231 will flow by gravity or be transported by other methods
232 approved by the Bureau for Public Health, including, but not
233 limited to, vacuum and pressure systems, approved under
234 the provisions of §16-1-9 of this code, from the houses,
235 dwellings, or buildings into the sewer facilities, to connect
236 with and use the sewer facilities and to cease the use of all
237 other means for the collection, treatment, and disposal of
238 sewage and waste matters from the houses, dwellings, and
239 buildings where there is gravity flow or transportation by
240 any other methods approved by the Bureau for Public
241 Health, including, but not limited to, vacuum and pressure

242 systems, approved under the provisions of §16-1-9 of this
243 code and the houses, dwellings, and buildings can be
244 adequately served by the sewer facilities of the district and
245 it is declared that the mandatory use of the sewer facilities
246 provided for in this subsection is necessary and essential for
247 the health and welfare of the inhabitants and residents of the
248 districts and of the state. If the public service district
249 requires the property owner to connect with the sewer
250 facilities even when sewage from dwellings may not flow
251 to the main line by gravity and the property owner incurs
252 costs for any changes in the existing dwellings' exterior
253 plumbing in order to connect to the main sewer line, the
254 public service district board shall authorize the district to
255 pay all reasonable costs for the changes in the exterior
256 plumbing, including, but not limited to, installation,
257 operation, maintenance, and purchase of a pump or any
258 other method approved by the Bureau for Public Health.
259 Maintenance and operation costs for the extra installation
260 should be reflected in the users charge for approval of the
261 Public Service Commission. The circuit court shall
262 adjudicate the merits of the petition by summary hearing to
263 be held not later than 30 days after service of petition to the
264 appropriate owners, tenants, or occupants.

265 (d) Whenever any district has made available sewer
266 facilities to any owner, tenant, or occupant of any house,
267 dwelling, or building located near the sewer facility and the
268 engineer for the district has certified that the sewer facilities
269 are available to and are adequate to serve the owner, tenant,
270 or occupant and sewage will flow by gravity or be
271 transported by other methods approved by the Bureau for
272 Public Health from the house, dwelling, or building into the
273 sewer facilities, the district may charge, and the owner,
274 tenant, or occupant shall pay, the rates and charges for
275 services established under this article only after 30 days'
276 notice of the availability of the facilities has been received
277 by the owner, tenant, or occupant. Rates and charges for
278 sewage services shall be based upon actual water
279 consumption or the average monthly water consumption

280 based upon the owner's, tenant's, or occupant's specific
281 customer class.

282 (e) The owner, tenant, or occupant of any real property
283 may be determined and declared to be served by a
284 stormwater system only after each of the following
285 conditions is met: (1) The district has been designated by
286 the Environmental Protection Agency as an entity to serve
287 a West Virginia Separate Storm Sewer System community,
288 as defined in 40 C. F. R. §122.26; (2) the district's authority
289 has been properly expanded to operate and maintain a
290 stormwater system; (3) the district has made available a
291 stormwater system where stormwater from the real property
292 affects or drains into the stormwater system; and (4) the real
293 property is located in the Municipal Separate Storm Sewer
294 System's designated service area. It is further hereby found,
295 determined, and declared that the mandatory use of the
296 stormwater system is necessary and essential for the health
297 and welfare of the inhabitants and residents of the district
298 and of the state. The district may charge and the owner,
299 tenant, or occupant shall pay the rates, fees, and charges for
300 stormwater services established under this article only after
301 30 days' notice of the availability of the stormwater system
302 has been received by the owner. An entity providing
303 stormwater service shall provide a tenant a report of the
304 stormwater fee charged for the entire property and, if
305 appropriate, that portion of the fee to be assessed to the
306 tenant.

307 (f) All delinquent fees, rates, and charges of the district
308 for either water facilities, sewer facilities, gas facilities, or
309 stormwater systems or stormwater management programs
310 are liens on the premises served of equal dignity, rank, and
311 priority with the lien on the premises of state, county,
312 school, and municipal taxes. Nothing contained within the
313 rules of the Public Service Commission may require agents
314 or employees of the public service districts to accept
315 payment at the customer's premises in lieu of discontinuing
316 service for a delinquent bill. In addition to the other

317 remedies provided in this section, public service districts are
318 granted a deferral of filing fees or other fees and costs
319 incidental to the bringing and maintenance of an action in
320 magistrate court for the collection of delinquent water,
321 sewer, stormwater, or gas bills. If the district collects the
322 delinquent account, plus reasonable costs, from its customer
323 or other responsible party, the district shall pay to the
324 magistrate the normal filing fee and reasonable costs which
325 were previously deferred. In addition, each public service
326 district may exchange with other public service districts a
327 list of delinquent accounts: *Provided*, That an owner of real
328 property may not be held liable for the delinquent rates or
329 charges for services or facilities of a tenant, nor may any
330 lien attach to real property for the reason of delinquent rates
331 or charges for services or facilities of a tenant of the real
332 property unless the owner has contracted directly with the
333 public service district to purchase the services or facilities.

334 (g) Anything in this section to the contrary
335 notwithstanding, any establishment, as defined in §22-11-3
336 of this code, now or hereafter operating its own sewage
337 disposal system pursuant to a permit issued by the
338 Department of Environmental Protection, as prescribed by
339 §22-11-11 of this code, is exempt from the provisions of this
340 section.

341 (h) Notwithstanding any code provision to the contrary,
342 a public service district may accept payment for all fees and
343 charges due, in the form of a payment by a credit or check
344 card transaction or a direct withdrawal from a bank account.
345 The public service district may set a fee to be added to each
346 transaction equal to the charge paid by the public service
347 district for use of the credit or check card or direct
348 withdrawal by the payor. The amount of the fee shall be
349 disclosed to the payor prior to the transaction and no other
350 fees for the use of a credit or check card or direct withdrawal
351 may be imposed upon the payor and the whole of the charge
352 or convenience fee shall be borne by the payor: *Provided*,
353 That to the extent a public service district desires to accept

354 payments in the forms described in this subsection and does
355 not have access to the equipment or receive the services
356 necessary to do so, the public service district shall first
357 obtain three bids for services and equipment necessary to
358 affect the forms of transactions described in this subsection
359 and use the lowest qualified bid received. Acceptance of a
360 credit or check card or direct withdrawal as a form of
361 payment shall comport with the rules and requirements set
362 forth by the credit or check card provider or banking
363 institution.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

1 (a) The jurisdiction of the commission shall extend to
2 all public utilities in this state and shall include any utility
3 engaged in any of the following public services:

4 Common carriage of passengers or goods, whether by
5 air, railroad, street railroad, motor, or otherwise, by express
6 or otherwise, by land, water, or air, whether wholly or partly
7 by land, water, or air; transportation of oil, gas, or water by
8 pipeline; transportation of coal and its derivatives and all
9 mixtures and combinations thereof with other substances by
10 pipeline; sleeping car or parlor car services; transmission of
11 messages by telephone, telegraph, or radio; generation and
12 transmission of electrical energy by hydroelectric or other
13 utilities for service to the public, whether directly or through
14 a distributing utility; supplying water, gas, or electricity by
15 municipalities or others; sewer systems servicing 25 or
16 more persons or firms other than the owner of the sewer
17 systems: *Provided*, That if a public utility other than a
18 political subdivision intends to provide sewer service by an
19 innovative, alternative method, as defined by the federal
20 Environmental Protection Agency, the innovative,
21 alternative method is a public utility function and subject to

22 the jurisdiction of the Public Service Commission
23 regardless of the number of customers served by the
24 innovative, alternative method; any public service district
25 created under the provisions of §16-13A-1 *et seq.* of this
26 code, except that the Public Service Commission will have
27 no jurisdiction over the provision of stormwater services by
28 a public service district; toll bridges, wharves, ferries; solid
29 waste facilities; and any other public service: *Provided,*
30 *however,* That natural gas producers who provide natural
31 gas service to not more than 25 residential customers are
32 exempt from the jurisdiction of the commission with regard
33 to the provisions of the residential service: *Provided further,*
34 That upon request of any of the customers of the natural gas
35 producers, the commission may, upon good cause being
36 shown, exercise such authority as the commission may
37 deem appropriate over the operation, rates, and charges of
38 the producer and for such length of time as the commission
39 may consider to be proper.

40 (b) The jurisdiction of the commission over political
41 subdivisions of this state providing separate or combined
42 water and/or sewer services and having at least 4,500
43 customers and annual combined gross revenues of \$3
44 million or more that are political subdivisions of the state is
45 limited to:

46 (1) General supervision of public utilities, as granted
47 and described in §24-2-5 of this code;

48 (2) Regulation of measurements, practices, acts, or
49 services, as granted and described in §24-2-7 of this code;

50 (3) Regulation of a system of accounts to be kept by a
51 public utility that is a political subdivision of the state, as
52 granted and described in §24-2-8 of this code;

53 (4) Submission of information to the commission
54 regarding rates, tolls, charges, or practices, as granted and
55 described in §24-2-9 of this code;

56 (5) Authority to subpoena witnesses, take testimony,
57 and administer oaths to any witness in any proceeding
58 before or conducted by the commission, as granted and
59 described in §24-2-10 of this code; and

60 (6) Investigation and resolution of disputes between a
61 political subdivision of the state providing wholesale water
62 and/or wastewater treatment or other services, whether by
63 contract or through a tariff, and its customer or customers,
64 including, but not limited to, rates, fees, and charges, service
65 areas and contested utility combinations: *Provided*, That
66 any request for an investigation related to such a dispute that
67 is based on the act or omission of the political subdivision
68 shall be filed within 30 days of the act or omission of the
69 political subdivision and the commission shall resolve said
70 dispute within 120 days of filing. The 120-day period for
71 resolution of the dispute may be tolled by the commission
72 until the necessary information showing the basis of the
73 rates, fees, and charges or other information as the
74 commission considers necessary is filed: *Provided*,
75 *however*, That the disputed rates, fees, and charges so fixed
76 by the political subdivision providing separate or combined
77 water and/or sewer services shall remain in full force and
78 effect until set aside, altered or, amended by the commission
79 in an order to be followed in the future.

80 (7) Customers of water and sewer utilities operated by a
81 political subdivision of the state may bring formal or
82 informal complaints regarding the commission's exercise of
83 the powers enumerated in this section and the commission
84 shall resolve these complaints: *Provided*, That any formal
85 complaint filed under this section that is based on the act or
86 omission of the political subdivision shall be filed within 30
87 days of the act or omission complained of and the
88 commission shall resolve the complaint within 180 days of
89 filing. The 180-day period for resolution of the dispute may
90 be tolled by the commission until the necessary information
91 showing the basis of the matter complained of is filed by the
92 political subdivision: *Provided, however*, That whenever

93 the commission finds any regulations, measurements,
94 practices, acts or service to be unjust, unreasonable,
95 insufficient or unjustly discriminatory, or otherwise in
96 violation of any provisions of this chapter, or finds that any
97 service is inadequate, or that any service which is demanded
98 cannot be reasonably obtained, the commission shall
99 determine and declare, and by order fix reasonable
100 measurement, regulations, acts, practices or services, to be
101 furnished, imposed, observed and followed in lieu of those
102 found to be unjust, unreasonable, insufficient, or unjustly
103 discriminatory, inadequate or otherwise in violation of this
104 chapter, and shall make such other order respecting the
105 same as shall be just and reasonable: *Provided further*, That
106 if the matter complained of would affect rates, fees, and
107 charges so fixed by the political subdivision providing
108 separate or combined water and/or sewer services, the rates,
109 fees, or charges shall remain in full force and effect until set
110 aside, altered or amended by the commission in an order to
111 be followed in the future.

112 (8) If a political subdivision has a deficiency in either its
113 bond revenue or bond reserve accounts, or is otherwise in
114 breach of a bond covenant, any bond holder may petition
115 the Public Service Commission for such redress as will
116 bring the accounts to current status or otherwise resolve the
117 breached covenant, and the commission shall have
118 jurisdiction to fully resolve the alleged deficiency or breach.

119 (c) The commission may, upon application, waive its
120 jurisdiction and allow a utility operating in an adjoining
121 state to provide service in West Virginia when:

122 (1) An area of West Virginia cannot be practicably and
123 economically served by a utility licensed to operate within
124 the State of West Virginia;

125 (2) The area can be provided with utility service by a
126 utility which operates in a state adjoining West Virginia;

127 (3) The utility operating in the adjoining state is
128 regulated by a regulatory agency or commission of the
129 adjoining state; and

130 (4) The number of customers to be served is not
131 substantial. The rates the out-of-state utility charges West
132 Virginia customers shall be the same as the rate the utility is
133 duly authorized to charge in the adjoining jurisdiction. The
134 commission, in the case of any such utility, may revoke its
135 waiver of jurisdiction for good cause.

136 (d) Any other provisions of this chapter to the contrary
137 notwithstanding:

138 (1) An owner or operator of an electric generating
139 facility located or to be located in this state that has been
140 designated as an exempt wholesale generator under
141 applicable federal law, or will be so designated prior to
142 commercial operation of the facility, and for which such
143 facility the owner or operator holds a certificate of public
144 convenience and necessity issued by the commission on or
145 before July 1, 2003, is subject to §24-2-11c(e) through §24-
146 2-11c(j) of this code as if the certificate of public
147 convenience and necessity for the facility were a siting
148 certificate issued under §24-2-11c of this code and is not
149 otherwise subject to the jurisdiction of the commission or to
150 the provisions of this chapter with respect to the facility
151 except for the making or constructing of a material
152 modification thereof as provided in §24-2-1(d)(5) of this
153 code.

154 (2) Any person, corporation, or other entity that intends
155 to construct or construct and operate an electric generating
156 facility to be located in this state that has been designated as
157 an exempt wholesale generator under applicable federal
158 law, or will be so designated prior to commercial operation
159 of the facility, and for which facility the owner or operator
160 does not hold a certificate of public convenience and
161 necessity issued by the commission on or before July 1,
162 2003, shall, prior to commencement of construction of the

163 facility, obtain a siting certificate from the commission
164 pursuant to the provisions of §24-2-11c of this code in lieu
165 of a certificate of public convenience and necessity pursuant
166 to the provisions of §24-2-11 of this code. An owner or
167 operator of an electric generating facility as is described in
168 this subdivision for which a siting certificate has been issued
169 by the commission is subject to §24-2-11c(e) through §24-
170 2-11c(j) of this code and is not otherwise subject to the
171 jurisdiction of the commission or to the provisions of this
172 chapter with respect to the facility except for the making or
173 constructing of a material modification thereof as provided
174 in §24-2-1(d)(5) of this code.

175 (3) An owner or operator of an electric generating
176 facility located in this state that had not been designated as
177 an exempt wholesale generator under applicable federal law
178 prior to commercial operation of the facility that generates
179 electric energy solely for sale at retail outside this state or
180 solely for sale at wholesale in accordance with any
181 applicable federal law that preempts state law or solely for
182 both sales at retail and sales at wholesale and that had been
183 constructed and had engaged in commercial operation on or
184 before July 1, 2003, is not subject to the jurisdiction of the
185 commission or to the provisions of this chapter with respect
186 to the facility, regardless of whether the facility subsequent
187 to its construction has been or will be designated as an
188 exempt wholesale generator under applicable federal law:
189 *Provided*, That the owner or operator is subject to §24-2-
190 1(d)(5) of this code if a material modification of the facility
191 is made or constructed.

192 (4) Any person, corporation, or other entity that intends
193 to construct or construct and operate an electric generating
194 facility to be located in this state that has not been or will
195 not be designated as an exempt wholesale generator under
196 applicable federal law prior to commercial operation of the
197 facility that will generate electric energy solely for sale at
198 retail outside this state or solely for sale at wholesale in
199 accordance with any applicable federal law that preempts

200 state law or solely for both sales at retail and sales at
201 wholesale and that had not been constructed and had not
202 been engaged in commercial operation on or before July 1,
203 2003, shall, prior to commencement of construction of the
204 facility, obtain a siting certificate from the commission
205 pursuant to the provisions of §24-2-11c of this code in lieu
206 of a certificate of public convenience and necessity pursuant
207 to the provisions of §24-2-11 of this code. An owner or
208 operator of an electric generating facility as is described in
209 this subdivision for which a siting certificate has been issued
210 by the commission is subject to §24-2-11c(e) through §24-
211 2-11c(j) of this code and is not otherwise subject to the
212 jurisdiction of the commission or to the provisions of this
213 chapter with respect to the facility except for the making or
214 constructing of a material modification thereof as provided
215 in §24-2-1(d)(5) of this code.

216 (5) An owner or operator of an electric generating
217 facility described in this subsection shall, before making or
218 constructing a material modification of the facility that is
219 not within the terms of any certificate of public convenience
220 and necessity or siting certificate previously issued for the
221 facility or an earlier material modification thereof, obtain a
222 siting certificate for the modification from the commission
223 pursuant to the provisions of §24-2-11c of this code in lieu
224 of a certificate of public convenience and necessity for the
225 modification pursuant to the provisions of §24-2-11 of this
226 code and, except for the provisions of §24-2-11c of this
227 code, is not otherwise subject to the jurisdiction of the
228 commission or to the provisions of this chapter with respect
229 to the modification.

230 (6) The commission shall consider an application for a
231 certificate of public convenience and necessity filed
232 pursuant to §24-2-11 of this code to construct an electric
233 generating facility described in this subsection or to make
234 or construct a material modification of the electric
235 generating facility as an application for a siting certificate
236 pursuant to §24-2-11c of this code if the application for the

237 certificate of public convenience and necessity was filed
238 with the commission prior to July 1, 2003, and if the
239 commission has not issued a final order thereon as of that
240 date.

241 (7) The limitations on the jurisdiction of the commission
242 over, and on the applicability of the provisions of this
243 chapter to, the owner or operator of an electric generating
244 facility as imposed by and described in this subsection do
245 not affect or limit the commission's jurisdiction over
246 contracts or arrangements between the owner or operator of
247 the facility and any affiliated public utility subject to the
248 provisions of this chapter.

249 (e) The commission does not have jurisdiction of
250 Internet protocol-enabled service or voice-over Internet
251 protocol-enabled service. As used in this subsection:

252 (1) "Internet protocol-enabled service" means any
253 service, capability, functionality, or application provided
254 using Internet protocol, or any successor protocol, that
255 enables an end user to send or receive a communication in
256 Internet protocol format, or any successor format, regardless
257 of whether the communication is voice, data, or video.

258 (2) "Voice-over Internet protocol service" means any
259 service that:

260 (i) Enables real-time two-way voice communications
261 that originate or terminate from the user's location using
262 Internet protocol or a successor protocol; and

263 (ii) Uses a broadband connection from the user's
264 location.

265 (3) The term "voice-over Internet protocol service"
266 includes any service that permits users to receive calls that
267 originate on the public-switched telephone network and to
268 terminate calls on the public-switched telephone network.

269 (f) Notwithstanding any other provisions of this article,
270 the commission has jurisdiction to review or approve any
271 transaction involving a telephone company otherwise
272 subject to §24-2-12 and §24-2-12a of this code if all entities
273 involved in the transaction are under common ownership.

274 (g) The Legislature finds that the rates, fees, charges,
275 and ratemaking of municipal power systems are most fairly
276 and effectively regulated by the local governing body.
277 Therefore, notwithstanding any other provisions of this
278 article, the commission has jurisdiction over the setting or
279 adjustment of rates, fees, and charges of municipal power
280 systems. Further, the jurisdiction of the Public Service
281 Commission over municipal power systems is limited to
282 that granted specifically in this code.

***§24-2-4a. Procedure for changing rates after June 30, 1981.**

1 (a) After June 30, 1981, no public utility subject to this
2 chapter, except for water and/or sewer utilities that are
3 political subdivisions of the state providing separate or
4 combined services and having at least 4,500 customers and
5 annual gross revenue of \$3 million or more from its separate
6 or combined services, shall change, suspend, or annul any
7 rate, joint rate, charge, rental, or classification except after
8 30 days' notice to the commission and the public, which
9 notice shall plainly state the changes proposed to be made
10 in the schedule then in force and the time when the changed
11 rates or charges shall go into effect; but the commission may
12 enter an order suspending the proposed rate as hereinafter
13 provided. The proposed changes shall be shown by printing
14 new schedules, or shall be plainly indicated upon the
15 schedules in force at the time, and kept open to public
16 inspection: *Provided*, That the commission may, in its
17 discretion, and for good cause shown, allow changes upon
18 less time than the notice herein specified, or may modify the
19 requirements of this section in respect to publishing, posting
20 and filing of tariffs, either by particular instructions or by
21 general order.

*NOTE: This section was also amended by H. B. 4587 (Chapter 306),
which passed subsequent to this act.

22 (b) Whenever there is filed with the commission any
23 schedule stating a change in the rates or charges, or joint
24 rates or charges, or stating a new individual or joint rate or
25 charge or joint classification or any new individual or joint
26 regulation or practice affecting any rate or charge, the
27 commission may, either upon complaint or upon its own
28 initiative without complaint, enter upon a hearing
29 concerning the propriety of the rate, charge, classification,
30 regulation, or practice; and, if the commission so orders, it
31 may proceed without answer or other form of pleading by
32 the interested parties, but upon reasonable notice, and,
33 pending the hearing and the decisions thereon, the
34 commission, upon filing with the schedule and delivering to
35 the public utility affected thereby a statement in writing of
36 its reasons for the suspension, may suspend the operation of
37 the schedule and defer the use of the rate, charge,
38 classification, regulation, or practice, but not for a longer
39 period than 270 days beyond the time when the rate, charge,
40 classification, regulation, or practice would otherwise go
41 into effect; and after full hearing, whether completed before
42 or after the rate, charge, classification, regulation, or
43 practice goes into effect, the commission may make the
44 order in reference to the rate, charge, classification,
45 regulation, or practice as would be proper in a proceeding
46 initiated after the rate, charge, classification, regulation, or
47 practice had become effective: *Provided*, That in the case of
48 a public utility having 2,500 customers or less and which is
49 not a political subdivision and which is not principally
50 owned by any other public utility corporation or public
51 utility holding corporation, the commission may suspend
52 the operation of the schedule and defer the use of the rate,
53 charge, classification, regulation, or practice, but not for a
54 longer period than 120 days beyond the time when the rate,
55 charge, classification, regulation, or practice would
56 otherwise go into effect; and in the case of a public utility
57 having more than 2,500 customers, but not more than 5,000
58 customers, and which is not a political subdivision and
59 which is not principally owned by any other public utility
60 corporation or public utility holding corporation, the

61 commission may suspend the operation of the schedule and
62 defer the use of the rate, charge, classification, regulation,
63 or practice, but not for a longer period than 150 days beyond
64 the time when the rate, charge, classification, regulation, or
65 practice would otherwise go into effect; and in the case of a
66 public utility having more than 5,000 customers, but not
67 more than 7,500 customers, and which is not a political
68 subdivision and which is not principally owned by any other
69 public utility corporation or public utility holding
70 corporation, the commission may suspend the operation of
71 the schedule and defer the use of the rate, charge,
72 classification, regulation, or practice, but not for a longer
73 period than 180 days beyond the time when the rate, charge,
74 classification, regulation, or practice would otherwise go
75 into effect; and after full hearing, whether completed before
76 or after the rate, charge, classification, regulation, or
77 practice goes into effect, the commission may make the
78 order in reference to the rate, charge, classification,
79 regulation, or practice as would be proper in a proceeding
80 initiated after the rate, charge, classification, regulation, or
81 practice had become effective: *Provided, however,* That, in
82 the case of rates established or proposed that increase by less
83 than 25 percent of the gross revenue of the regulated public
84 service district, there shall be no suspension period in the
85 case of rates established by a public service district pursuant
86 to §16-13A-9 of this code and the proposed rates of public
87 service districts shall go into effect upon the date of filing
88 with the commission, subject to refund modification at the
89 conclusion of the commission proceeding. In the case of
90 rates established or proposed that increase by more than 25
91 percent of the gross revenue of the public service district,
92 the district may apply for, and the commission may grant, a
93 waiver of the suspension period and allow rates to be
94 effective upon the date of filing with the commission.
95 Notwithstanding the provisions of subsection (e) of this
96 section, the public service district shall provide notice by
97 Class I legal advertisement in a newspaper of general
98 circulation in its service territory of the percentage increase
99 in rates at least 14 days prior to the effective date of the

100 increased rates. Any refund determined to be due and owing
101 as a result of any difference between any final rates
102 approved by the commission and the rates placed into effect
103 subject to refund shall be refunded by the public service
104 district as a credit against each customer's account for a
105 period of up to six months after entry of the commission's
106 final order. Any remaining balance which is not fully
107 credited by credit within six months after entry of the
108 commission's final order shall be directly refunded to the
109 customer by check: *Provided further*, That if any such
110 hearing and decision thereon is not concluded within the
111 periods of suspension, as above stated, the rate, charge,
112 classification, regulation, or practice shall go into effect at
113 the end of the period not subject to refund: *And provided*
114 *further*, That if any such rate, charge, classification,
115 regulation, or practice goes into effect because of the failure
116 of the commission to reach a decision, the same shall not
117 preclude the commission from rendering a decision with
118 respect thereto which would disapprove, reduce, or modify
119 any such proposed rate, charge, classification, regulation, or
120 practice, in whole or in part, but any such disapproval,
121 reduction, or modification shall not be deemed to require a
122 refund to the customers of the utility as to any rate, charge,
123 classification, regulation, or practice so disapproved,
124 reduced, or modified. The fact of any rate, charge,
125 classification, regulation, or practice going into effect by
126 reason of the commission's failure to act thereon does not
127 affect the commission's power and authority to
128 subsequently act with respect to any such application or
129 change in any rate, charge, classification, regulation, or
130 practice. Any rate, charge, classification, regulation, or
131 practice which shall be approved, disapproved, modified or
132 changed, in whole or in part, by decision of the commission
133 shall remain in effect as so approved, disapproved,
134 modified, or changed during the period or pendency of any
135 subsequent hearing thereon or appeal therefrom. Orders of
136 the commission affecting rates, charges, classifications,
137 regulations, or practices which have gone into effect

138 automatically at the end of the of the suspension period are
139 prospective in effect.

140 (c) At any hearing involving a rate sought to be
141 increased or involving the change of any rate, charge,
142 classification, regulation, or practice, the burden of proof to
143 show the justness and reasonableness of the increased rate
144 or proposed increased rate, or the proposed change of rate,
145 charge, classification, regulation, or practice shall be upon
146 the public utility making application for the change. The
147 commission shall, whenever practicable and within
148 budgetary constraints, conduct one or more public hearings
149 within the area served by the public utility making
150 application for the increase or change, for the purpose of
151 obtaining comments and evidence on the matter from local
152 ratepayers.

153 (d) Each public utility subject to the provisions of this
154 section shall be required to establish, in a written report
155 which shall be incorporated into each general rate case
156 application, that it has thoroughly investigated and
157 considered the emerging and state-of-the-art concepts in the
158 utility management, rate design, and conservation as
159 reported by the commission under §24-1-1(c) of this code
160 as alternatives to, or in mitigation of, any rate increase. The
161 utility report shall contain as to each concept considered the
162 reasons for adoption or rejection of each. When in any case
163 pending before the commission all evidence shall have been
164 taken and the hearing completed, the commission shall
165 render a decision in the case. The failure of the commission
166 to render a decision with respect to any such proposed
167 change in any such rate, charge, classification, regulation,
168 or practice within the various time periods specified in this
169 section after the application therefor shall constitute neglect
170 of duty on the part of the commission and each member
171 thereof.

172 (e) Other than as provided in subsection (b) of this
173 section relating to public service districts, where more than
174 20 members of the public are affected by a proposed change

175 in rates, it shall be a sufficient notice to the public within the
176 meaning of this section if the notice is published as a Class
177 II legal advertisement in compliance with §59-3-1 *et seq.* of
178 this code and the publication area for the publication shall
179 be the community where the majority of the resident
180 members of the public affected by the change reside or, in
181 case of nonresidents, have their principal place of business
182 within this state.

183 (f) The commission may order rates into effect subject
184 to refund, plus interest in the discretion of the commission,
185 in cases in which the commission determines that a
186 temporary or interim rate increase is necessary for the utility
187 to avoid financial distress, or in which the costs upon which
188 these rates are based are subject to modification by the
189 commission or another regulatory commission and to refund
190 to the public utility. In that case the commission may require
191 the public utility to enter into a bond in an amount deemed
192 by the commission to be reasonable and conditioned upon
193 the refund to the persons or parties entitled thereto of the
194 amount of the excess if the rates so put into effect are
195 subsequently determined to be higher than those finally
196 fixed for the utility.

197 (g) No utility regulated under the provisions of this
198 section may make application for a general rate increase
199 while another general rate application is pending before the
200 commission and not finally acted upon, except pursuant to
201 the provisions of subsection (f) of this section. The
202 provisions of this subsection shall not be construed so as to
203 prohibit any such rate application from being made while a
204 previous application which has been finally acted upon by
205 the commission is pending before or upon appeal to the
206 West Virginia Supreme Court of Appeals.

§24-2-11. Requirements for certificate of public convenience and necessity.

1 (a) A public utility, person or corporation other than a
2 political subdivision of the state providing water or sewer

3 services and having at least 4,500 customers and annual
4 gross combined revenues of \$3 million dollars or more may
5 not begin the construction of any plant, equipment, property
6 or facility for furnishing to the public any of the services
7 enumerated in section one, article two of this chapter, nor
8 apply for, nor obtain any franchise, license or permit from
9 any municipality or other governmental agency, except
10 ordinary extensions of existing systems in the usual course
11 of business, unless and until it shall obtain from the Public
12 Service Commission a certificate of public convenience and
13 necessity authorizing the construction franchise, license or
14 permit.

15 (b) Upon the filing of any application for the certificate,
16 and after hearing, the commission may, in its discretion,
17 issue or refuse to issue, or issue in part and refuse in part,
18 the certificate of convenience and necessity: *Provided*, That
19 the commission, after it gives proper notice and if no
20 substantial protest is received within 30 days after the notice
21 is given, may waive formal hearing on the application.
22 Notice shall be given by publication which shall state that a
23 formal hearing may be waived in the absence of substantial
24 protest, made within 30 days, to the application. The notice
25 shall be published as a Class I legal advertisement in
26 compliance with §59-3-1 *et seq.* of this code. The
27 publication area shall be the proposed area of operation.

28 (c) Any public utility, person or corporation subject to
29 the provisions of this section other than a political
30 subdivision of the state providing water and/or sewer
31 services having at least 4,500 customers and combined
32 annual gross revenue of \$3 million dollars or more shall give
33 the commission at least 30 days' notice of the filing of any
34 application for a certificate of public convenience and
35 necessity under this section: *Provided*, That the commission
36 may modify or waive the 30-day notice requirement and
37 shall waive the 30-day notice requirement for projects
38 approved by the Infrastructure and Jobs Development
39 Council.

40 (d) The commission shall render its final decision on
41 any application filed under the provisions of this section or
42 §24-2-11a of this code within 270 days of the filing of the
43 application and within 90 days after final submission of any
44 such application for decision following a hearing: *Provided*,
45 That if the application is for authority to construct a water
46 and sewer project and the projected total cost is less than
47 \$10 million, the commission shall render its final decision
48 within 225 days of the filing of the application.

49 (e) The commission shall render its final decision on any
50 application filed under the provisions of this section that has
51 received the approval of the Infrastructure and Jobs
52 Development Council pursuant to §31-15A-1 *et seq.* of this
53 code within 180 days after filing of the application:
54 *Provided*, That if a substantial protest is received within 30
55 days after the notice is provided pursuant to subsection (b)
56 of this section, the commission shall render its final decision
57 within 270 days or 225 days of the filing of the application,
58 whichever is applicable as determined in subsection (d) of
59 this section.

60 (f) If the projected total cost of a project which is the
61 subject of an application filed pursuant to this section or
62 §24-2-11a of this code is greater than \$50 million, the
63 commission shall render its final decision on any such
64 application filed under the provisions of this section or §24-
65 2-11a of this code within 400 days of the filing of the
66 application and within 90 days after final submission of any
67 such application for decision after a hearing.

68 (g) If a decision is not rendered within the time frames
69 established in this section, the commission shall issue a
70 certificate of convenience and necessity as applied for in the
71 application.

72 (h) The commission shall prescribe rules it considers
73 proper for the enforcement of the provisions of this section;
74 and, in establishing that public convenience and necessity
75 do exist, the burden of proof shall be upon the applicant.

76 (i) Pursuant to the requirements of this section, the
77 commission may issue a certificate of public convenience
78 and necessity to any intrastate pipeline, interstate pipeline
79 or local distribution company for the transportation in
80 intrastate commerce of natural gas used by any person for
81 one or more uses, as defined by rule, by the commission in
82 the case of:

83 (1) Natural gas sold by a producer, pipeline, or other
84 seller to the person; or

85 (2) Natural gas produced by the person.

86 (j) A public utility, including a public service district,
87 which has received a certificate of public convenience and
88 necessity after July 8, 2005, from the commission and has
89 been approved by the Infrastructure and Jobs Development
90 Council is not required to, and cannot be compelled to,
91 reopen the proceeding if the cost of the project changes but
92 the change does not affect the rates established for the
93 project.

94 (k) Any public utility, person, or corporation proposing
95 any electric power project that requires a certificate under
96 this section is not required to obtain the certificate before
97 applying for or obtaining any franchise, license, or permit
98 from any municipality or other governmental agency.

99 (l) Water or sewer utilities that are political subdivisions
100 of the state and having at least 4,500 customers and
101 combined gross revenues of \$3 million dollars or more
102 desiring to pursue construction projects that are not in the
103 ordinary course of business shall provide adequate prior
104 public notice of the contemplated construction and proposed
105 changes to rates, fees and charges, if any, as a result of the
106 construction to both current customers and those persons
107 who will be affected by the proposed construction as
108 follows:

109 (1) Adequate prior public notice of the contemplated
110 construction by causing a notice of intent to pursue a project
111 that is not in the ordinary course of business to be specified
112 on the monthly billing statement of the customers of the
113 utility for the month immediately preceding the month in
114 which an ordinance or resolution approving the proposed
115 construction and proposed changes to rates, fees, and
116 charges, if any, is to be before the governing body for the
117 public hearing on the ordinance or resolution approving the
118 proposed construction and proposed changes to rates, fees,
119 and charges, if any.

120 (2) Adequate prior public notice of the contemplated
121 construction by causing to be published as a Class I legal
122 advertisement of the proposed public hearing on the
123 ordinance or resolution approving the proposed
124 construction and proposed changes to rates, fees, and
125 charges, if any, in compliance with §59-3-1 *et seq.* of this
126 code. The publication area for publication shall be all
127 territory served by the political subdivision. If the political
128 subdivision provides service in more than one county,
129 publication shall be made in a newspaper of general
130 circulation in each county that the political subdivision
131 provides service.

132 (3) The public notice of the proposed construction shall
133 state the scope of the proposed construction; a summary of
134 the current rates, fees, and charges, and proposed changes
135 to said rates, fees, and charges, if any; the date, time and
136 place of the public hearing on the ordinance or resolution
137 approving the proposed construction and proposed changes
138 to rates, fees, and charges, if any; and the place or places
139 within the political subdivision where the ordinance or
140 resolution approving the proposed construction and
141 proposed changes to rates, fees, and charges, if any, may be
142 inspected by the public. A reasonable number of copies of
143 the ordinance or resolution shall be kept at the place or
144 places and be made available for public inspection. The
145 notice shall also advise that interested parties may appear at

146 the public hearing before the political subdivision and be
147 heard with respect to the proposed construction and the
148 proposed rates, fees, and charges, if any.

149 (4) The ordinance or resolution on the proposed
150 construction and the proposed rates, fees, and charges shall
151 be read at two meetings of the governing body with at least
152 two weeks intervening between each meeting. The public
153 hearing may be conducted prior to, or at, the meeting of the
154 governing body at which the ordinance or resolution
155 approving the proposed construction is considered on
156 second reading.

157 (5) Enactment or adoption of the ordinance or resolution
158 approving the proposed construction and the proposed rates,
159 fees, and charges shall follow an affirmative vote of the
160 governing body and the approved rates shall go into effect
161 no sooner than 45 days following the action of the governing
162 body. If the political subdivision proposes rates that will go
163 into effect prior to the completion of construction of the
164 proposed project, the 45-day waiting period may be waived
165 by public vote of the governing body only if the political
166 subdivision finds and declares the political subdivision to be
167 in financial distress such that the 45-day waiting period
168 would be detrimental to the ability of the political
169 subdivision to deliver continued and compliant public
170 services: *Provided*, That, if the political subdivision is a
171 public service district, in no event may the rate become
172 effective prior to the date that the county commission has
173 entered an order approving or modifying the action of the
174 public service district board.

175 (6) Rates, fees, and charges approved by an affirmative
176 vote of the public service district board shall be forwarded
177 in writing to the county commission with the authority to
178 appoint the members of the public service board of the
179 public service district. The county commission shall, within
180 45 days of receipt of the proposed rates, fees, and charges,
181 take action to approve, modify, or reject the proposed rates,
182 fees, and charges, in its sole discretion. If, after 45 days, the

183 county commission has not taken final action to approve,
184 modify, or reject the proposed rates, fees, and charges, the
185 proposed rates, fees, and charges, as presented to the county
186 commission, shall be effective with no further action by the
187 board or county commission. In any event this 45-day
188 period may be extended by official action of both the board
189 proposing the rates, fees, and charges and the appointing
190 county commission.

191 (7) The county commission shall provide notice to the
192 public by a Class I legal advertisement of the proposed
193 action, in compliance with §59-3-1 *et seq.* of this code, of
194 the meeting where it shall consider the proposed increases
195 in rates, fees, and charges no later than one week prior to the
196 meeting date.

197 (8) A public service district, or a customer aggrieved by
198 the changed rates or charges who presents to the circuit
199 court a petition signed by 25 percent of the customers served
200 by the public service district when dissatisfied by the
201 approval, modification, or rejection by the county
202 commission of the proposed rates, fees, and charges under
203 the provisions of this subsection may file a complaint
204 regarding the rates, fees, and charges resulting from the
205 action of, or failure to act by, the county commission in the
206 circuit court of the county in which the county commission
207 sits: *Provided*, That any complaint or petition filed
208 hereunder shall be filed within 30 days of the county
209 commission's final action approving, modifying or rejecting
210 the rates, fees, and charges, or the expiration of the 45-day
211 period from the receipt by the county commission, in
212 writing, of the rates, fees, and charges approved by
213 resolution of the board, without final action by the county
214 commission to approve, modify or reject the rates, fees, and
215 charges, and the circuit court shall resolve said complaint:
216 *Provided, however*, That the rates, fees, and charges so fixed
217 by the county commission, or those adopted by the district
218 upon which the county commission failed to act, shall
219 remain in full force and effect, until set aside, altered, or

220 amended by the circuit court in an order to be followed in
221 the future.

**ARTICLE 2H. POWER OF COMMISSION TO ORDER
MEASURES UP TO AND INCLUDING THE
ACQUISITION OF DISTRESSED AND FAILING
WATER AND WASTEWATER UTILITIES.**

§24-2H-1. Short title.

1 This article shall be known and cited as the Distressed
2 and Failing Utilities Improvement Act.

§24-2H-2. Legislative findings.

1 (a) The provision of safe drinking water and the
2 collection and treatment of wastewater has resulted in a
3 drastic reduction in the incidence of disease, increase in life
4 expectancy, and other major public health advancements.

5 (b) Development of water and wastewater infrastructure
6 has advanced economic development through increased
7 production and productivity within West Virginia's
8 economic sectors and commercial expansion
9 geographically throughout the state.

10 (c) A number of water and wastewater utilities face
11 substantial capital investment needs to maintain and replace
12 aging infrastructure with limited financial resources.

13 (d) For some water and wastewater utilities, adequately
14 addressing infrastructure needs may adversely affect their
15 ability to maintain reasonable rates and ability to borrow
16 funds to address such needs.

17 (e) Many water and wastewater utilities have
18 experienced a loss of customers resulting from decline in
19 populations served which has created an additional rate
20 burden on the remaining population.

21 (f) Failure to timely address infrastructure needs has
22 resulted in the inability of water and wastewater utilities to

23 adequately serve customers and maintain regulatory
24 compliance, thereby threatening human health and
25 hindering economic growth.

26 (g) West Virginia needs a comprehensive plan to
27 confront the financial, organizational, and regulatory
28 challenges faced by water and wastewater utilities in the
29 state to ensure that all citizens of West Virginia have access
30 to safe drinking water and adequate and safe wastewater
31 treatment.

§24-2H-3. Definitions.

1 A “distressed utility” is a water or wastewater utility,
2 that for financial, operational or managerial reasons:

3 (1) (A) Is in continual violation of statutory or
4 regulatory standards of the Bureau for Public Health, the
5 Department of Environmental Protection or the
6 commission, which affect the water quality, safety,
7 adequacy, efficiency or reasonableness of the service
8 provided by the water or wastewater utility;

9 (B) Fails to comply within a reasonable period of time
10 with any final, nonappealable order of the Department of
11 Environmental Protection, Bureau for Public Health or the
12 commission concerning the safety, adequacy, efficiency or
13 reasonableness of service, including, but not limited to, the
14 availability of water, the potability of water, the palatability
15 of water or the provision of water at adequate volume and
16 pressure and the collection and treatment of wastewater;

17 (2) Is no longer able to provide adequate, efficient, safe
18 and reasonable utility services; or

19 (3) Fails to timely pay some or all of its financial
20 obligations, including, but not limited to, its federal and
21 state tax obligations and its bond payments to the West
22 Virginia Water Development Authority, the United States
23 Department of Agriculture (USDA) or other bondholders;
24 fails to maintain its debt service reserve; or fails to submit

25 an audit as required by its bond or loan documents or state
26 law.

27 “Failing water or wastewater utility” means a public
28 utility that:

29 (1) Meets the definition of a distressed water or
30 wastewater utility; and either:

31 (2) Has not, after a reasonable time period, been
32 stabilized and improved by corrective measures put in place
33 under §24-2H-4 of this code; or

34 (3) Has had the requirements of §24-2H-4 of this code
35 suspended for good cause shown by an order of the
36 commission.

37 “Capable proximate water or wastewater utility” means
38 a public utility which regularly provides adequate, safe and
39 reasonable service of the same type as the distressed utility
40 and is situated close enough to the facilities of a distressed
41 utility that operational management is reasonable,
42 financially viable, and nonadverse to the interests of the
43 current customers of the nondistressed utility.

§24-2H-4. Preparation of list of potentially unstable water and wastewater utilities.

1 Annually, the commission shall prepare a list of water
2 and wastewater utilities that appear to be financially
3 unstable by reviewing annual reports, rate case filings and
4 other financial data available to it. Commission staff shall
5 contact each utility placed on the list and provide advice and
6 assistance in resolving any financial instability or
7 managerial or operational issues that are contributing to the
8 utility’s financial instability.

§24-2H-5. Determination of whether a utility qualifies as a “distressed utility”, “failing utility”, or a “capable proximate utility”.

1 (a) In determining whether a utility is distressed or
2 failing, the commission shall consider the following factors:

3 (1) The financial, managerial and technical ability of the
4 utility;

5 (2) The level of expenditures necessary to make
6 improvements to the water or wastewater utility to assure
7 compliance with applicable statutory and regulatory
8 standards concerning the adequacy, efficiency, safety or
9 reasonableness of utility service and the impact of those
10 expenditures on customer rates;

11 (3) The opinion and advice, if any, of the Department of
12 Environmental Protection and the Bureau for Public Health
13 as to steps that may be necessary to assure compliance with
14 applicable statutory or regulatory standards concerning the
15 adequacy, efficiency, safety or reasonableness of utility
16 service;

17 (4) The status of the utility's bond payments and other
18 financial obligations;

19 (5) The status and result of any corrective measures
20 previously put into place under §24-2H-4 of this code; and

21 (6) Any other relevant matter.

22 (b) In determining whether a utility is a capable
23 proximate utility, the commission shall consider the
24 following factors:

25 (1) The financial, managerial and technical ability of all
26 proximate public utilities providing the same type of
27 service;

28 (2) Expansion of the franchise or operating area of the
29 acquiring utility to include the service area of the distressed
30 utility;

31 (3) The financial, managerial, operational and rate
32 demands that may result from the current proceeding and
33 the cumulative impact of other demands where the utility
34 has been identified as a capable proximate utility; and

35 (4) Any other relevant matter.

§24-2H-6. Notice to distressed or failing utility and formal proceeding.

1 (a) A proceeding under this article may be initiated by
2 the commission on its own motion, or by the staff of the
3 commission, or any other person or entity having a legal
4 interest in the financial, managerial or operational condition
5 of the utility, by filing a petition with the commission. In
6 any such petition, the utility shall be named as the
7 respondent. The commission shall include as additional
8 parties any capable proximate public and private utilities
9 that may be able to acquire the utility.

10 (b) The commission shall hold an evidentiary and public
11 hearing(s) in the utility's service area. The commission shall
12 give notice of the time, place and subject matter of the
13 hearing as follows:

14 (1) A Class I legal publication in a qualified newspaper
15 pursuant to §59-3-2(a) of this code in the county or counties
16 where the utility is located to take place no more than 10
17 days before the date of the hearing;

18 (2) Issuance of a press release;

19 (3) Written notice by certified mail or registered mail to:

20 (A) The utility;

21 (B) The Consumer Advocate Division;

22 (C) Capable proximate public or private utility(s) that
23 were made parties to the proceeding; and

24 (D) The county commission if the utility is a public
25 service district; or

26 (E) The municipality if the utility is owned and operated
27 by the municipality.

28 (4) The utility shall give notice to its customers of the
29 time, place and subject matter of the hearing either as a bill

30 insert or printed on its monthly bill statement as ordered by
31 the commission.

32 (c) The public hearing shall be conducted to receive
33 public comments, including, but not limited to, comments
34 regarding possible options available to bring the distressed
35 or failing utility into compliance with appropriate statutory
36 and regulatory standards concerning actual or imminent
37 public health problems or unreasonable quality and
38 reliability service standards. At the evidentiary hearing, the
39 commission shall receive evidence to determine if the utility
40 is a distressed or failing utility and whether a capable
41 proximate utility should acquire the utility. If there is more
42 than one capable proximate utility, then sufficient evidence
43 should be presented to allow the commission to determine
44 the appropriate capable proximate utility to acquire the
45 distressed or failing utility.

**§24-2H-7. Commission order for acquisition of failing utility;
list of distressed and failing utilities to Legislature.**

1 (a) Following the evidentiary hearing, the commission
2 shall enter a final order stating whether the utility is a
3 distressed or failing utility and identifying the capable
4 proximate utilities, if any, as defined in §24-2H-3 of this
5 code. If the commission determines that a utility is a
6 distressed utility, then the commission may make an order
7 consistent with subsection (b) of this section. If the
8 commission determines that the utility is a failing utility,
9 then the commission may order the acquisition of the failing
10 utility by the most suitable capable proximate water or
11 wastewater utility, if there is more than one.

12 (b) Before the commission may designate a water or
13 wastewater utility as failing and order acquisition by a
14 capable proximate utility it shall determine whether there
15 are any alternatives to an ordered acquisition. If the
16 commission determines that an alternative to designating a
17 utility as failing and ordering an acquisition is reasonable
18 and cost effective, it may order the distressed utility and, if

19 applicable to the alternative a capable proximate utility, to
20 implement the alternative. Commission staff shall work
21 with the utility to implement the alternative, as necessary.
22 Alternatives that the commission may consider include, but
23 are not limited to, the following:

24 (1) Reorganization of the utility under new management
25 or a new board, subject to the approval of the applicable
26 county commission(s) or municipal government;

27 (2) Operation of the distressed utility by another public
28 utility or management or service company under a mutually
29 agreed arms-length contract;

30 (3) Appointment of a receiver to assure the provision of
31 adequate, efficient, safe and reasonable service and facilities
32 to the public pursuant to §24-2-7(b) of this code;

33 (4) Merger of the water or wastewater utility with one
34 or more other public utilities, subject to the approval of the
35 applicable county commission(s) or municipal government;

36 (5) The acquisition of the distressed utility through a
37 mutual agreement made at arms-length; and

38 (6) Any viable alternative other than an ordered
39 acquisition by a capable proximate utility.

40 (c) The commission shall provide a list of utilities
41 designated by a final order of the commission as a distressed
42 or failing utility to the Legislature as part of its annual
43 Management Summary Report beginning in the 2021
44 reporting period and annually thereafter. The commission
45 shall provide the same list to the Water Development
46 Authority and the Infrastructure and Jobs Development
47 Council on or before January 31 of each year beginning in
48 2021.

**§24-2H-8. Commission approval of operating agreement,
acquisition price; rates for distressed and failing utilities;
improvement plan; debt obligations; cost recovery.**

1 (a) After an order has been entered pursuant to §24-2H-
2 4 of this code, the distressed utility and acquiring utility
3 shall file a petition with the commission under §24-2-12 of
4 this code to approve the necessary operating agreement if
5 such alternative is directed by the commission. After an
6 order has been entered pursuant to §24-2H-7 of this code,
7 the failing utility and acquiring utility shall file a petition
8 with the commission under §24-2-12 of this code, to
9 approve the purchase price of the acquisition. Where the
10 parties are unable to agree on an acquisition price, the filing
11 may request that an evidentiary hearing be held so that the
12 commission may determine the acquisition price and any
13 other issues related to the acquisition. The acquisition price
14 must, at a minimum, satisfy all outstanding loans, tax
15 obligations, required grant repayment, liens and
16 indebtedness owed by the failing utility or the acquiring
17 utility must agree to assume the indebtednesses if legally
18 permitted. The acquiring utility shall consult with the
19 lenders or lienholders regarding payment in full or the
20 assumption, to the extent legally permissible, of any
21 outstanding obligations of the failing utility.

22 (b) The parties to an acquisition may propose to the
23 commission other methods of determining the acquisition
24 price.

25 (c) As part of the proceeding, the acquiring utility may
26 propose to the commission that it be permitted for a
27 reasonable period of time after the date of acquisition, to
28 charge and collect rates from the customers of the failing
29 utility pursuant to a separate tariff which may be higher or
30 lower than the existing tariff of the distressed or failing
31 utility or may allow a surcharge on both the acquired and
32 existing customers. A separate tariff or rate filing must be
33 made by the acquiring utility before the commission will
34 consider any increase in rates or allow a surcharge to be
35 placed on the acquiring utility's acquired or existing
36 ratepayers.

37 (d) As part of this proceeding, the acquiring utility shall
38 submit to the commission for approval a plan, including a
39 timetable for bringing the failing utility into compliance
40 with applicable statutory and regulatory standards,
41 including, but not limited to, plans for regionalization. The
42 acquiring utility shall have previously obtained the approval
43 of the plan from the Department of Environmental
44 Protection and the Bureau for Public Health, as applicable,
45 and those agencies are directed to use their full discretion in
46 working towards long-term solutions that will support
47 compliance. The failing utility shall cooperate with the
48 acquiring utility in negotiating agreements with state and
49 federal agencies, including, but not limited to, negotiation
50 of hold harmless agreements, consent orders or enforcement
51 moratoria during any period of remediation. In addition, the
52 failing utility shall cooperate with the acquiring utility in
53 obtaining the consent of the failing utility's and the
54 acquiring utility's bondholder(s) to the acquisition. The
55 acquiring utility must present to the commission as part of
56 its financing plan, documentation on how the failing
57 utility's indebtedness will be paid or assumed.

58 (e) A nonprofit acquiring public utility may seek grant
59 funding from the Distressed Utilities Account established
60 pursuant to §31-15A-9(i) of this code to repair, maintain and
61 replace the distressed water and wastewater utilities
62 facilities as needed. The reasonably and prudently incurred
63 costs of the acquiring utility shall be recoverable in rates as
64 provided in §24-2H-9 of this code.

65 (f) If the distressed or failing utility is a public service
66 district, then the commission shall make a recommendation
67 to the respective county commission(s) with regard to the
68 acquisition of distressed or failing utilities as provided in
69 §16-13A-2(a)(2) of this code. If the distressed or failing
70 utility is a municipal corporation, then the commission shall
71 make a recommendation to the respective municipal council
72 with regard to the acquisition of distressed or failing utilities
73 as provided in §8-12-17 of this code.

74 (g) The capable proximate utility may propose one or
75 more of the cost recovery methods or incentives set forth in
76 §24-2H-9 of this code as part of its petition for approval
77 from the commission.

**§24-2H-9. Recovery of costs for acquisition, operation, repairs
and improvements to distressed or failing utility facilities.**

1 The commission may approve an appropriate and
2 reasonable cost recovery mechanism to allow the capable
3 proximate utility to recover its acquisition costs and
4 projected cost of service of operating, maintaining and
5 improving the facilities of the failing water or wastewater
6 utility or its net costs incurred for operating, maintaining
7 and improving the distressed utility under an operating
8 agreement. The cost recovery mechanism may include a
9 surcharge or surcharges on both acquired and existing
10 customers if approved by the commission in a separate rate
11 or tariff proceeding which shall be considered by the
12 commission on an expedited basis without the need for a full
13 base rate proceeding. Rate increments and surcharges
14 established pursuant to this section shall be subject to
15 adjustment on an annual basis to reflect changes in costs,
16 additional projected capital and operating costs and true-up
17 of any over or under recoveries of costs. Cost recovery
18 mechanisms may also include:

19 (1) A surcharge above existing rates that allows
20 recovery of additional incremental cost increases, net of
21 contributions necessary to operate, maintain and improve
22 the failing utility's service level to an acceptable level and
23 into compliance with all applicable regulatory standards;

24 (2) An acquisition adjustment to private for-profit
25 utilities as an incentive to acquire a failing utility;

26 (3) An increased return on investment as an incentive to
27 acquire a failing utility; or

28 (4) Any other incentive method proposed by the
29 acquiring utility if the method is determined by the

30 commission to be appropriate, reasonable and in the public
31 interest.

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

**§31-15A-9. Infrastructure fund; deposits in fund;
disbursements to provide loans, loan guarantees, grants
and other assistance; loans, loan guarantees, grants and
other assistance shall be subject to assistance agreements;
West Virginia Infrastructure Lottery Revenue Debt
Service Fund; use of funds for projects.**

1 (a) The Water Development Authority shall create and
2 establish a special revolving fund of moneys made available
3 by appropriation, grant, contribution or loan to be known as
4 the West Virginia Infrastructure Fund. This fund shall be
5 governed, administered and accounted for by the directors,
6 officers and managerial staff of the Water Development
7 Authority as a special purpose account separate and distinct
8 from any other moneys, funds or funds owned and managed
9 by the Water Development Authority. The infrastructure
10 fund shall consist of sub-accounts, as deemed necessary by
11 the council or the Water Development Authority, for the
12 deposit of: (1) Infrastructure revenues; (2) any
13 appropriations, grants, gifts, contributions, loan proceeds, or
14 other revenues received by the infrastructure fund from any
15 source, public or private; (3) amounts received as payments
16 on any loans made by the Water Development Authority to
17 pay for the cost of a project or infrastructure project; (4)
18 insurance proceeds payable to the Water Development
19 Authority or the infrastructure fund in connection with any
20 infrastructure project or project; (5) all income earned on
21 moneys held in the infrastructure fund; (6) all funds
22 deposited in accordance with §31-15B-4 of this code; and
23 (7) all proceeds derived from the sale of bonds issued
24 pursuant to §31-15B-1 *et seq.* of this code.

25 Any money collected pursuant to this section shall be
26 paid into the West Virginia Infrastructure Fund by the state
27 agent or entity charged with the collection of the same,
28 credited to the infrastructure fund, and used only for
29 purposes set forth in this article or §31-15B-1 *et seq.* of this
30 code.

31 Amounts in the infrastructure fund shall be segregated
32 and administered by the Water Development Authority
33 separate and apart from its other assets and programs.
34 Amounts in the infrastructure fund may not be transferred
35 to any other fund or account or used, other than indirectly,
36 for the purposes of any other program of the Water
37 Development Authority, except that the Water
38 Development Authority may use funds in the infrastructure
39 fund to reimburse itself for any administrative costs
40 incurred by it and approved by the council in connection
41 with any loan, loan guarantee, grant or other funding
42 assistance made by the Water Development Authority
43 pursuant to this article.

44 (b) Notwithstanding any provision of this code to the
45 contrary, amounts in the infrastructure fund shall be
46 deposited by the Water Development Authority in one or
47 more banking institutions: *Provided*, That any moneys so
48 deposited shall be deposited in a banking institution located
49 in this state. The banking institution shall be selected by the
50 Water Development Authority by competitive bid. Pending
51 the disbursement of any money from the infrastructure fund
52 as authorized under this section, the Water Development
53 Authority shall invest and reinvest the moneys subject to the
54 limitations set forth in §31-18-1 *et seq.* of this code.

55 (c) To further accomplish the purposes and intent of this
56 article and §31-15B-1 *et seq.* of this code, the Water
57 Development Authority may pledge infrastructure revenues
58 and from time to time establish one or more restricted
59 accounts within the infrastructure fund for the purpose of
60 providing funds to guarantee loans for infrastructure
61 projects or projects: *Provided*, That for any fiscal year the

62 Water Development Authority may not deposit into the
63 restricted accounts more than 20 percent of the aggregate
64 amount of infrastructure revenues deposited into the
65 infrastructure fund during the fiscal year. No loan guarantee
66 shall be made pursuant to this article unless recourse under
67 the loan guarantee is limited solely to amounts in the
68 restricted account or accounts. No person shall have any
69 recourse to any restricted accounts established pursuant to
70 this subsection other than those persons to whom the loan
71 guarantee or guarantees have been made.

72 (d) Each loan, loan guarantee, grant or other assistance
73 made or provided by the Water Development Authority
74 shall be evidenced by a loan, loan guarantee, grant or
75 assistance agreement between the Water Development
76 Authority and the project sponsor to which the loan, loan
77 guarantee, grant or assistance shall be made or provided,
78 which agreement shall include, without limitation and to the
79 extent applicable, the following provisions:

80 (1) The estimated cost of the infrastructure project or
81 project, the amount of the loan, loan guarantee or grant or
82 the nature of the assistance, and in the case of a loan or loan
83 guarantee, the terms of repayment and the security therefor,
84 if any;

85 (2) The specific purposes for which the loan or grant
86 proceed shall be expended or the benefits to accrue from the
87 loan guarantee or other assistance, and the conditions and
88 procedure for disbursing loan or grant proceeds;

89 (3) The duties and obligations imposed regarding the
90 acquisition, construction, improvement, or operation of the
91 project or infrastructure project; and

92 (4) The agreement of the governmental agency to
93 comply with all applicable federal and state laws, and all
94 rules and regulations issued or imposed by the Water
95 Development Authority or other state, federal, or local
96 bodies regarding the acquisition, construction,

97 improvement, or operation of the infrastructure project or
98 project and granting the Water Development Authority the
99 right to appoint a receiver for the project or infrastructure if
100 the project sponsor should default on any terms of the
101 agreement.

102 (e) Any resolution of the Water Development Authority
103 approving loan, loan guarantee, grant, or other assistance
104 shall include a finding and determination that the
105 requirements of this section have been met.

106 (f) The interest rate on any loan to governmental, quasi-
107 governmental, or not-for-profit project sponsors for projects
108 made pursuant to this article shall not exceed three percent
109 per annum. Due to the limited availability of funds available
110 for loans for projects, it is the public policy of this state to
111 prioritize funding needs to first meet the needs of
112 governmental, quasi- governmental and not-for-profit
113 project sponsors and to require that loans made to for-profit
114 entities shall bear interest at the current market rates.
115 Therefore, no loan may be made by the council to a for-
116 profit entity at an interest rate which is less than the current
117 market rate at the time of the loan agreement.

118 (g) The Water Development Authority shall cause an
119 annual audit to be made by an independent certified public
120 accountant of its books, accounts, and records, with respect
121 to the receipts, disbursements, contracts, leases,
122 assignments, loans, grants, and all other matters relating to
123 the financial operation of the infrastructure fund, including
124 the operating of any sub-account within the infrastructure
125 fund. The person performing such audit shall furnish copies
126 of the audit report to the Commissioner of Finance and
127 Administration, where they shall be placed on file and made
128 available for inspection by the general public. The person
129 performing such audit shall also furnish copies of the audit
130 report to the Legislature's Joint Committee on Government
131 and Finance.

132 (h) There is hereby created in the Water Development
133 Authority a separate, special account which shall be
134 designated and known as the West Virginia Infrastructure
135 Lottery Revenue Debt Service Fund, into which shall be
136 deposited annually for the fiscal year beginning July 1,
137 2011, and each fiscal year thereafter, the first \$6 million
138 transferred pursuant to §29-22-18d of this code and any
139 other funds provided therefor: *Provided*, That such deposits
140 and transfers are not subject to the reservations of funds or
141 requirements for distributions of funds established by §31-
142 15A-10 and §31-15A-11 of this code. Moneys in the West
143 Virginia Infrastructure Lottery Revenue Debt Service Fund
144 shall be used to pay debt service on bonds or notes issued
145 by the Water Development Authority for watershed
146 compliance projects as provided in §31-15A-17b of this
147 code, and to the extent not needed to pay debt service, for
148 the design or construction of improvements for watershed
149 compliance projects. Moneys in the West Virginia
150 Infrastructure Lottery Revenue Debt Service Fund not
151 expended at the close of the fiscal year do not lapse or revert
152 to the General Fund but are carried forward to the next fiscal
153 year.

154 (i) The Water Development Authority shall establish a
155 separate restricted account within the infrastructure fund to
156 be expended for the repair and improvement of failing water
157 and wastewater systems by nonprofit public utilities from
158 grants approved by the council and supported by
159 recommendations from the Public Service Commission in
160 accordance with the plan developed under §24-2H-1 *et seq.*
161 of this code. The restricted account shall be known as the
162 Distressed Utilities Account. Annually, the council may
163 request the Water Development Authority to transfer from
164 the uncommitted loan balances for each year a total amount
165 not to exceed \$5 million to the restricted account to fund the
166 grants approved by the council during that fiscal year.
167 Notwithstanding the provisions of §31-15A-10(b) of this
168 code, the council may approve grants from this account for
169 up to 100 percent of the cost of failing utility repairs,

170 replacements and improvements and such grant along with
171 other grants awarded by the council may exceed 50 percent
172 of the total project cost: *Provided*, That at no time may the
173 balance of the restricted account exceed \$5 million.

CHAPTER 348

**(S. B. 289 - By Senators Weld, Baldwin and
Hamilton)**

[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 article, designated §15-3E-1, §15-3E-2, §15-3E-3, §15-3E-4, §15-3E-5, §15-3E-6, and §15-3E-7, all relating to the establishment of an alert system for missing at-risk veterans by Superintendent of West Virginia State Police; providing legislative findings and declarations relative to the Green Alert Plan; establishment of the Green Alert Plan; defining a term; activation of a Green Alert; notice to participating media; broadcasting of a Green Alert; notification to the Department of Transportation, the Division of Highways, and the West Virginia Turnpike Commission of the Green Alert; termination of the Green Alert; immunity from criminal or civil liability; and authorizing superintendent to promulgate guidelines and procedural rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3E. CREATION OF A STATEWIDE GREEN ALERT PLAN.

§15-3E-1. Short title.

1 This article shall be known and may be cited as the
2 Green Alert Plan.

§15-3E-2. Findings and declarations relative to Green Alert Plan.

1 (a) The Legislature finds that:

2 (1) According to the U.S. Department of Veterans
3 Affairs, 20 veterans commit suicide each day across the
4 country;

5 (2) While veterans make up less than nine percent of the
6 total U.S. population, tragically, they account for 19 percent
7 of all suicides in America;

8 (3) By establishing the Green Alert Plan, law
9 enforcement will be provided with additional tools that will
10 help them in responding to an at-risk veteran's
11 disappearance and place an emphasis on the risk of suicide
12 for veterans with a service-related condition;

13 (4) The Green Alert Plan would also allow for a more
14 rapid dissemination of information on the missing at-risk
15 veteran to the public, who, having been alerted to the
16 situation, now become an extensive network of eyes and
17 ears serving to assist law enforcement in quickly locating
18 and safely recovering a missing at-risk veteran, and
19 potentially saving them serious injury or suicide; and

20 (5) Given the success of both the Amber and Silver
21 Alert systems, expanding the program to include at-risk
22 veterans is imperative to help those who have served.

23 (b) The Legislature declares that creating a Green Alert
24 is a way to prevent more tragedies and help ensure our
25 veterans get back home safely.

§15-3E-3. Establishment of Green Alert Plan.

1 (a) The Superintendent of the West Virginia State Police
2 shall establish the Green Alert Plan authorizing the

3 broadcast media, upon notice from the West Virginia State
4 Police, to broadcast an alert to inform the public of a missing
5 at-risk veteran, subject to the criteria established in §15-3E-
6 4 of this code. The program shall be a voluntary, cooperative
7 effort between state law enforcement and the broadcast
8 media.

9 (b) As used in this article, "at-risk veteran" means a
10 person who is currently serving in the armed forces on
11 active duty, reserve status, or in the National Guard, or a
12 person who served in the active military, or who was
13 discharged or released under conditions other than
14 dishonorable who is known, based on the information
15 provided by the person making the report, to have a physical
16 or mental health condition that is related to his or her
17 service.

18 (c) The superintendent shall notify the broadcast media
19 serving the State of West Virginia of the establishment the
20 Green Alert Plan and invite their voluntary participation.

21 (d) The superintendent shall submit a plan to the Joint
22 Committee on Government and Finance no later than
23 December 1, 2020. The plan shall include Green Alert
24 activation protocols, evaluation of first responder training
25 requirements and needs as related to at-risk veterans,
26 coordination and use of established programs, and analysis
27 of any costs. The superintendent shall also make
28 recommendations for any additional legislation or actions
29 necessary to further facilitate the implementation of the
30 Green Alert Plan.

§15-3E-4. Activation of Green Alert.

1 The following criteria shall be met before the West
2 Virginia State Police activate the Green Alert:

3 (1) An individual who has knowledge that the at-risk
4 veteran is missing has submitted a missing person's report
5 to the West Virginia State Police or other appropriate law-
6 enforcement agency;

7 (2) The at-risk veteran is believed to be missing,
8 regardless of circumstance;

9 (3) Based upon information provided by the individual
10 who has submitted the missing person's report, law
11 enforcement has reason to believe that the at-risk veteran
12 has a physical or mental health condition that is related to
13 his or her service;

14 (4) The missing at-risk veteran may be in danger of
15 death or serious bodily injury;

16 (5) The missing at-risk veteran is domiciled or believed
17 to be located in the state of West Virginia;

18 (6) The missing at-risk veteran is, or is believed to be,
19 at a location that cannot be determined by an individual
20 familiar with the missing at-risk veteran, and the missing at-
21 risk veteran is incapable of returning to his or her residence
22 without assistance; and

23 (7) There is sufficient information available to indicate
24 that a Green Alert would assist in locating the missing at-
25 risk veteran.

§15-3E-5. Notice to participating media; broadcast of alert.

1 (a) To participate, the media may agree, upon notice
2 from the West Virginia State Police via email or facsimile,
3 to transmit information to the public about a missing at-risk
4 veteran that has occurred within their broadcast service
5 region.

6 (b) The alerts shall include a description of the missing
7 at-risk veteran, such details of the circumstance surrounding
8 him or her becoming missing, as may be known, and such
9 other information as the West Virginia State Police may
10 deem pertinent and appropriate. The West Virginia State
11 Police shall, in a timely manner, update the broadcast media
12 with new information when appropriate concerning the
13 missing at-risk veteran.

14 (c) The alerts also shall provide information concerning
15 how those members of the public who have information
16 relating to the missing at-risk veteran may contact the West
17 Virginia State Police or other appropriate law-enforcement
18 agency.

19 (d) Concurrent with the notice provided to the broadcast
20 media, the West Virginia State Police shall also notify the
21 Department of Transportation, the Division of Highways,
22 and the West Virginia Turnpike Commission of the Green
23 Alert so that the department and the affected authorities
24 may, if possible, through the use of their variable message
25 signs, inform the motoring public that a Green Alert is in
26 progress and may provide information relating to the
27 missing at-risk veteran and how motorists may report any
28 information they have to the West Virginia State Police or
29 other appropriate law-enforcement agency.

30 (e) The alerts shall terminate upon notice from the West
31 Virginia State Police.

32 (f) The superintendent shall develop and undertake a
33 campaign to inform law-enforcement agencies about the
34 Green Alert Plan established under this article.

§15-3E-6. Aid to missing at-risk veteran; immunity from civil or criminal liability.

1 No person or entity who, in good faith, follows and
2 abides by the provisions of this article is liable for any civil
3 or criminal penalty as the result of any act or omission in the
4 furtherance thereof unless it is alleged and proven that the
5 information disclosed was false and disclosed with the
6 knowledge that the information was false.

§15-3E-7. Guidelines; procedural rules.

1 The superintendent may adopt guidelines and
2 procedural rules to effectuate the purposes of this article.

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CHAPTER 349

**(Com. Sub. for S. B. 705 - By Senators Maynard,
Blair, Clements, Cline and Rucker)**

[Passed March 3, 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 §21-14-3a; to amend said code by adding thereto a new section, designated §29-3B-4a; and to amend said code by adding thereto a new section, designated §29-3D-4a, all relating to allowing military veterans with certain experience to qualify for examination for licensure as a plumber, electrician, sprinkler fitter, and sprinkler fitter in training; providing the qualifications to sit for a plumber's examination; providing qualifications to sit for an electrician's examination; and providing qualifications to sit for an examination of a sprinkler fitter in training or a journeyman sprinkler fitter.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

ARTICLE 14. SUPERVISION OF PLUMBING WORK.

§21-14-3a. Veteran qualification for examination for license as a plumber.

1 Any person who has served as a member of the United
2 States armed forces, National Guard, or reserve, and who
3 has successfully completed the course of instruction
4 required to qualify him or her for rating as a plumber,
5 utilities worker, or other equivalent rating in his or her
6 particular branch of the armed forces, and whose service in
7 the armed forces was under honorable conditions, may

8 submit to the West Virginia Commissioner of Labor a
9 photostatic copy of the certificate issued to him or her
10 certifying successful completion of such course of
11 instruction, a photostatic copy of his or her discharge from
12 the armed forces, an application for a certification as a
13 plumber, and the prescribed license fee.

14 If the certificate and discharge, as evidenced by the
15 photostatic copies thereof, and the application and
16 prescribed license fee are in order, and if the veteran meets
17 all of the requirements of this article, the veteran shall be
18 permitted to take the same examination or examinations as
19 are required under this article for applicants who do not
20 apply for a license under the provisions of this article:
21 *Provided*, That the veteran may be required to attend
22 additional training courses prior to taking the examination
23 if more than 30 years have passed from his or her successful
24 completion of the course of instruction and date of
25 application. If the veteran passes the examination or
26 examinations, he or she shall be licensed as a plumber and
27 shall thereafter be subject to all of the provisions of this
28 article. If the veteran does not pass the examination or
29 examinations, any provisions of this article relating to
30 reexaminations shall apply to the veteran the same as they
31 apply to a person who does not apply for a license under the
32 provisions of this article.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-4a. Veteran qualification for examination for license as an electrician.

1 Any person who has served as a member of the United
2 States armed forces, National Guard, or reserve, and who
3 has successfully completed the course of instruction
4 required to qualify him or her for rating as an electrician,
5 electrician's mate, or other equivalent rating in his or her

6 particular branch of the armed forces, and whose service in
7 the armed forces was under honorable conditions, may
8 submit to the State Fire Marshal a photostatic copy of the
9 certificate issued to him or her certifying successful
10 completion of such course of instruction, a photostatic copy
11 of his or her discharge from the armed forces, an application
12 for a certification as an electrician, and the prescribed
13 license fee.

14 If the certificate and discharge, as evidenced by the
15 photostatic copies thereof, and the application and
16 prescribed license fee are in order, and if the veteran meets
17 all of the requirements of this article, the veteran shall be
18 permitted to take the same examination or examinations as
19 are required under this article for applicants who do not
20 apply for a license under the provisions of this article:
21 *Provided*, That the veteran may be required to attend
22 additional training courses prior to taking the examination
23 if more than 30 years have passed from his or her successful
24 completion of the course of instruction and date of
25 application. If the veteran passes the examination or
26 examinations, he or she shall be licensed as an electrician
27 and shall thereafter be subject to all of the provisions of this
28 article. If the veteran does not pass the examination or
29 examinations, any provisions of this article relating to
30 reexaminations shall apply to the veteran the same as they
31 apply to a person who does not apply for a license under the
32 provisions of this article.

ARTICLE 3D. SUPERVISION OF FIRE PROTECTION WORK.

§29-3D-4a. Veteran qualification for license as a journeyman sprinkler fitter or a sprinkler fitter in training.

1 Any person who has served as a member of the United
2 States armed forces, National Guard, or reserve, and who
3 has successfully completed the course of instruction
4 required to qualify him or her for rating as a fire protection
5 officer or other equivalent rating in his or her particular

6 branch of the armed forces, which provided the veteran
7 direct experience installing, adjusting, repairing, and
8 dismantling fire protection systems, and whose service in
9 the armed forces was under honorable conditions, may
10 submit to the State Fire Marshal a photostatic copy of a
11 certificate issued to him or her certifying successful
12 completion of such course of instruction and documentation
13 evidencing the number of hours of experience the veteran
14 possesses, a photostatic copy of his or her discharge from
15 the armed forces, an application for a certification as a
16 journeyman sprinkler fitter or sprinkler fitter in training, and
17 the prescribed license fee.

18 If the certificate and discharge, as evidenced by the
19 photostatic copies thereof, documentation of hours of
20 training and experience, and prescribed license fee are in
21 order, and if the veteran meets all of the requirements of this
22 article, the veteran shall be permitted to take the same
23 examination or examinations as are required under this
24 article for applicants who do not apply for a license under
25 the provisions of this article: *Provided*, That the veteran
26 may be required to attend additional training courses prior
27 to taking the examination if more than 30 years have passed
28 from his or her successful completion of the course of
29 instruction and date of application. If the veteran passes the
30 examination or examinations, he or she shall be licensed as
31 a sprinkler fitter in training or a journeyman sprinkler fitter
32 and shall thereafter be subject to all of the provisions of this
33 article. If the veteran does not pass the examination or
34 examinations, any provisions of this article relating to
35 reexaminations shall apply to the veteran the same as they
36 apply to a person who does not apply for a license under the
37 provisions of this article.

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CHAPTER 350

**(H. B. 4030 - By Delegates J. Jeffries, Wilson,
Maynard, Waxman, Summers, Kessinger, Graves, D.
Jeffries and Porterfield)**

[Passed February 17, 2020; in effect from passage.]
[Approved by the Governor on February 27, 2020.]

AN ACT to amend and reenact §8-15-17 of the Code of West Virginia, 1931, as amended, relating to increasing the age limit of an honorably discharged veteran of the United States armed forces, armed service reserves, or National Guard to 40 years of age for an application for original appointment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-17. Form of application; age and residency requirements; exceptions.

1 (a) The Firemen's Civil Service Commission in each
2 municipality shall require individuals applying for
3 admission to any competitive examination provided for
4 under the civil service provisions of this article or under the
5 rules of the commission to file in its office, within a
6 reasonable time prior to the proposed examination, a formal
7 application in which the applicant shall state under oath or
8 affirmation:

9 (1) His or her full name, residence, and post office
10 address;

11 (2) His or her United States citizenship, age, and the
12 place and date of his or her birth;

13 (3) His or her state of health, and his or her physical
14 capacity for the public service;

15 (4) His or her business and employments and residences
16 for at least three previous years; and

17 (5) Any other information reasonably required,
18 touching upon the applicant's qualifications and fitness for
19 the public service.

20 (b) Blank forms for the applications shall be furnished
21 by the commission, without charge, to all individuals
22 requesting the same.

23 (c) The commission may require, in connection with the
24 application, certificates of citizens, physicians, and others,
25 having pertinent knowledge concerning the applicant, as the
26 good of the service requires.

27 (d) Except as provided in subsections (e), (f), and (g) of
28 this section, the commission may not accept an application
29 for original appointment if the individual applying is less
30 than 18 years of age or more than 35 years of age at the date
31 of his or her application.

32 (e) If any applicant is an honorably discharged veteran
33 of any branch of the United States armed forces, armed
34 services reserve, or National Guard, then the individual may
35 apply for an original appointment if the applicant is not
36 more than 40 years of age.

37 (f) If any applicant formerly served upon the paid fire
38 department of the municipality to which he or she makes
39 application for a period of more than one year, and resigned
40 from the department at a time when there were no charges
41 of misconduct or other misfeasance pending against the
42 applicant within a period of two years next preceding the
43 date of his or her application, and at the time of his or her

44 application resides within the corporate limits of the
45 municipality in which the paid fire department to which he
46 or she seeks appointment by reinstatement is located, then
47 the individual is eligible for appointment by reinstatement
48 in the discretion of the Firemen's Civil Service
49 Commission, even though the applicant is over the age of
50 35 years, and the applicant, providing his or her former term
51 of service so justifies, may be appointed by reinstatement to
52 the paid fire department without a competitive examination.
53 The applicant shall undergo a medical examination; and if
54 the individual is so appointed by reinstatement to the paid
55 fire department, he or she shall be the lowest in rank in the
56 department next above the probationers of the department
57 and may not be entitled to seniority considerations.

58 (g) If an individual is presently employed by one paid
59 fire department and is over the age of 35, he or she may
60 make an application to another paid fire department if:

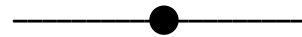
61 (1) The paid fire department to which he or she is
62 applying is serving a municipality that has elected to
63 participate in the West Virginia Municipal Police Officers
64 and Firefighters Retirement System created in §8-22A-1 *et*
65 *seq.* of this code: *Provided*, That any individual applying
66 pursuant to this subdivision is to be classified as a new
67 employee for retirement purposes and prior employment
68 service may not be transferred to the West Virginia
69 Municipal Police Officers and Firefighters Retirement
70 System; or

71 (2) The paid fire department to which he or she is
72 applying is serving a municipality that has elected to
73 participate in the West Virginia Public Employees
74 Retirement System created in §5-10-1 *et seq.* of this code:
75 *Provided*, That any individual applying pursuant to this
76 subdivision is to be classified as a new employee for
77 retirement purposes and prior employment service may not
78 be transferred to the West Virginia Public Employees
79 Retirement System, except for individuals and their prior
80 employment service already credited to them in the West

81 Virginia Public Employees Retirement System pursuant to
82 §5-10-1 *et seq.* of this code.

83 (h) Individuals who are authorized to apply to a paid fire
84 department pursuant to subsection (f) of this section shall be
85 in the lowest rank of the department and are not entitled to
86 seniority considerations.

87 (i) Notwithstanding charter provisions to the contrary,
88 any applicant for original appointment need not be a
89 resident of the municipality or the county in which he or she
90 seeks to become a member of the paid fire department.



CHAPTER 351

**(H. B. 4589 - By Delegates Pushkin, D. Jeffries,
Jennings, Robinson, Butler, Estep-Burton, Pyles,
Bartlett and D. Kelly)**

[Passed March 6, 2020; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §29-1-3 of the Code of West Virginia, 1931, as amended, relating to eliminating the requirement that the Commission on the Arts prioritize a women's veterans memorial statue, and causing and requiring a study and recommendations by the Commission on the Arts on the construction and design of a memorial to honor West Virginians killed in the United States War on Terror.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-3. Commission on the Arts.

1 (a) The Commission on the Arts is continued and shall
2 be composed of 15 appointed voting members and the ex
3 officio nonvoting members set forth or authorized for
4 appointment in this section.

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

10 (2) No more than eight voting members may be of the
11 same political party. Effective July 1, 2004, no more than
12 three voting members may be from the same regional
13 educational service agency district created in §18-2-26 of
14 this code. Voting members of the commission shall be
15 appointed so as to fairly represent both sexes, the ethnic and
16 cultural diversity of the state, and the geographic regions of
17 the state.

18 (3) The commission shall elect one of its members as
19 chair. It shall meet at the times specified by the chair. Notice
20 of each meeting shall be given to each member by the chair
21 in compliance with the open meetings laws of the state. A
22 majority of the voting members constitute a quorum for the
23 transaction of business. The director of the arts section shall
24 be an ex officio nonvoting member of the commission and
25 shall serve as secretary. The director or a majority of the
26 members also may call a meeting upon notice as provided
27 in this section.

28 (4) Each voting member or ex officio nonvoting
29 member of the commission shall serve without
30 compensation, but shall be reimbursed for all reasonable
31 and necessary expenses actually incurred in the
32 performance of the duties of the office; except that in the
33 event the expenses are paid, or are to be paid, by a third
34 party, the member or ex officio member, as the case may be,
35 shall not be reimbursed by the state.

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

40 (c) The commission may:

41 (1) Advise the commissioner and the director of the arts
42 section concerning the accomplishment of the purposes of
43 that section and establish a state plan with respect to the arts
44 section;

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

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

53 (4) Otherwise encourage and promote the purposes of
54 the arts section;

55 (5) Approve rules concerning the professional policies
56 and functions of the section as promulgated by the director
57 of the arts section; and

58 (6) Advise and consent to the appointment of the
59 director by the commissioner.

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

66 (1) Fifty percent of the moneys deposited in the fund
67 shall be expended by the Commission on the Arts for capital

68 improvements, preservation, and operations of cultural
69 facilities: *Provided*, That the Commission on the Arts may
70 use no more than 25 percent of the funding for operations of
71 cultural facilities pursuant to the rule required by this
72 subdivision. The Commission on the Arts shall propose
73 rules for legislative approval in accordance with the
74 provisions of §29A-3-1 *et seq.* of this code to create a
75 matching grant program for cultural facilities and capital
76 resources; and

77 (2) Fifty percent of the moneys deposited in the fund
78 shall be expended by the Division of Culture and History
79 for:

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

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

84 (e) The commission shall undertake a study, solicit
85 designs, and make recommendations for the establishment
86 of an appropriate memorial on state capitol grounds for
87 soldiers killed in the conflicts in Iraq, Afghanistan, and
88 other locations who died fighting the United States War on
89 Terror, and to recognize and honor the West Virginians who
90 lost their lives in these conflicts. The commission shall
91 consult with the Capitol Building Commission and state
92 veterans, including veterans groups and Gold Star mothers
93 of those lost in these conflicts, prior to adoption of a
94 proposal for the memorial. The commission shall provide a
95 report to the Legislature's Joint Committee on Government
96 and Finance by January 1, 2022, including
97 recommendations for design and location of the memorial
98 and estimated construction costs.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2019

CHAPTER 1

**(H. B. 119 - By Delegates Hanshaw (Mr. Speaker) and
Miley)**

[By Request of the Executive]

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

AN ACT supplementing, amending, decreasing, and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2019, organization 0803, for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 2019, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2018, and further included the estimate of revenues for the fiscal year 2019, less regular appropriations for the fiscal year 2019; and

Whereas, It appears from the Statement of 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, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 9017, fiscal year 2019, organization 0803, be

supplemented and amended by decreasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

III – Division of Highways –

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2019 Org 0803

			Appropriation	State Road Fund
1	1	Debt Service.....	04000	\$ 9,500,000
2	8	Other Federal Aid Programs	27900	10,000,000
3	9	Appalachian Programs.....	28000	15,000,000

4 And, That the total appropriation for the fiscal year
5 ending June 30, 2019, to fund 9017, fiscal year 2019,
6 organization 0803, be supplemented and amended by
7 increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

III – Division of Highways –

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2019 Org 0803

			Appropriation	State Road Fund
1	2	Maintenance.....	23700	\$ 34,500,000



CHAPTER 2

**(H. B. 132 - By Delegates Hanshaw (Mr. Speaker) and
Miley)
[By Request of the Executive]**

[Passed July 22, 2019; in effect from passage.]
[Approved by the Governor on July 29, 2019.]

AN ACT supplementing and amending by increasing and decreasing existing items of appropriations of public moneys out of the Treasury in the State Fund, General Revenue, from the Department of Health and Human Resources, Division of Health, fund 0407, fiscal year 2020, organization 0506 to the Department of Agriculture, fund 0131, fiscal year 2020, organization 1400, by supplementing, amending, increasing and decreasing items of appropriation for the fiscal year ending June 30, 2020.

Whereas, The Legislature passed Senate Bill 496, Regular Session, 2019, transferring the regulation of milk and milk products previously established within the West Virginia Department of Health and Human Resources to the Department of Agriculture; and

Whereas, Based upon the passage of Senate Bill 496, Regular Session, 2019, the Governor has established there are now funds available for expenditure in the Department of Health and Human Resources, fund 0407, fiscal year 2020, organization 0506 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 0407, fiscal year 2020, organization 0506, be supplemented and amended by decreasing existing items 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	1	Personal Services and	
2		Employee Benefits	00100 \$ 251,555
3	3	Current Expenses.....	13000 406,155

4 And, That the total appropriation for the fiscal year
5 ending June 30, 2020, to fund 0131, fiscal year 2020,
6 organization 1400, be supplemented and amended by
7 increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

10 –Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2020 Org 1400

		Appropriation	General Revenue Fund
1	1	Personnel Services and	
2		Employee Benefits	00100 \$ 251,555
3	3	Current Expenses.....	13000 406,155



CHAPTER 3

**(H. B. 148 - By Delegates Hanshaw (Mr. Speaker) and Miley)
[By Request of the Executive]**

[Passed June 24, 2019; in effect from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Executive, Governor’s Office, fund 0101, fiscal year 2019, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated March 5, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated May 20, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 17, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and Executive messages, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0101, fiscal year 2019, organization 0100, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

5 - Governor's Office –

(WV Code Chapter 5)

Fund 0101 FY 2019 Org 0100

		Appro- priation	General Revenue Fund
1	5a Federal Reimbursement/Repayment		
2	- Surplus	13499 \$	244,200



CHAPTER 4

**(H. B. 149 - By Delegates Hanshaw (Mr. Speaker),
Miley, Linville, Mandt and Hornbuckle)
[By Request of the Executive]**

[Passed June 24, 2019; in effect from passage.]

[Approved by the Governor on June 28, 2019.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Executive, Governor's Office, Civil Contingent Fund, fund 0105, fiscal year 2019, organization 0100, by supplementing and amending by adding a new item of appropriation for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated March 5, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated May 20, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 17, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and Executive messages, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0105, fiscal year 2019, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

7 – Governor’s Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2019 Org 0100

	Appropriation	General Revenue Fund
1 1a Milton Flood Wall (R).....	XXXXXX \$	8,000,000
2 Any unexpended balance remaining in the appropriation		
3 for Milton Flood Wall, (fund 0105, appropriation XXXXX) at		
4 the close of the fiscal year 2019 is hereby reappropriated for		
5 expenditure during the fiscal year 2020.		

●

CHAPTER 5

**(H. B. 150 - By Delegates Hanshaw (Mr. Speaker)
and Miley)
[By Request of the Executive]**

[Passed June 24, 2019; in effect from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2020, to the Department of Revenue, Office of the Secretary, Home Rule Board Operations Fund, fund 7010, fiscal year 2020, organization 0701 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 Revenue, Office of the Secretary, Home Rule Board Operations Fund, fund 7010, fiscal year 2020, organization 0701, that is available for expenditure 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 adding to Title II, section three thereof, the following:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF REVENUE

239a – Home Rule Board Operations Fund

(WV Code Chapter 8)

Fund 7010 FY 2020 Org 0701

		Appropriation	Other Funds
1	1	Personal Services and	
2		Employee Benefits	25,000
3	2	Current Expenses.....	42,000
4	3	Repairs and Alterations	120
5	4	Equipment.....	200
6	5	Unclassified	<u>680</u>
7	6	Total.....	\$ 68,000

CHAPTER 6

**(H. B. 151 - By Delegates Hanshaw (Mr. Speaker)
and Miley)
[By Request of the Executive]**

[Passed June 24, 2019; in effect from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT making a supplementary appropriation of Lottery Net Profits by increasing existing items of appropriation from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Department of Arts, Culture and History, Division of Culture and History, Lottery Education Fund, fund 3534, fiscal year 2020, organization 0432, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor submitted to the Legislature the Executive Budget Document to the Legislature on January 9, 2019, which included a Statement of the Lottery Fund setting forth therein the unappropriated cash balance as of July 1, 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 3534, fiscal year 2020, organization 0432 be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 4. Appropriations from lottery net profits.

294 – Division of Culture and History –

Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2020 Org 0432

		Appropriation		Excess Lottery Funds
1	6	Historic Preservation		
2		Grants (R).....	31100	\$ 10,000
3	11	Grants for Competitive		
4		Arts Program (R).....	62400	\$ 46,000
5	13	Save the Music.....	68000	\$ 14,000



CHAPTER 7

**(H. B. 152 - By Delegates Hanshaw (Mr. Speaker)
and Miley)
[By Request of the Executive]**

[Passed June 24, 2019; in effect from passage.]

[Approved by the Governor on June 28, 2019.]

AN ACT making a supplementary appropriation by adding a new item and increasing the expenditure of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Revenue, State Budget Office, fund 0595, fiscal year 2019, organization 0703, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated March 5, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated May 20, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a

statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 17, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and Executive messages, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0595, fiscal year 2019, organization 0703, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF REVENUE

76 – State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2019 Org 0703

	Appropriation	General Revenue Fund
1 2b Revenue Shortfall		
2 Reserve Fund – Transfer	59000	\$ 39,000,000

3 The above appropriation for Revenue Shortfall Reserve
4 Fund - Transfer (fund, 0595, appropriation 59000) shall be
5 transferred to the Department of Revenue, Office of the
6 Secretary, Revenue Shortfall Reserve Fund (fund 7005).

CHAPTER 8

**(H. B. 153 - By Delegates Hanshaw (Mr. Speaker)
and Miley)
[By Request of the Executive]**

[Passed June 24, 2019; in effect from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health, Central Office, fund 0407, fiscal year 2019, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated March 5, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated May 20, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 17, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and Executive messages, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0407, fiscal year 2019, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

57 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2019 Org 0506

		Appropriation	General Revenue Fund
1	17a Directed Transfer - Surplus	70099	\$ 2,000,000
2	The above appropriation for Directed Transfer - Surplus		
3	(fund, 0407, appropriation 70099) shall be transferred to the		
4	Department of Health and Human Resources, Division of		
5	Health, Ryan Brown Addiction Prevention and Recovery		
6	Fund (fund 5111).		

CHAPTER 9

**(H. B. 154 - By Delegates Hanshaw (Mr. Speaker)
and Miley)**

[By Request of the Executive]

[Passed June 24, 2019; in effect from passage.]

[Approved by the Governor on June 28, 2019.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Transportation, Division of Highways, fund 0620, fiscal year 2019, organization 0803, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated March 5, 2019, which included a

revised estimate of revenues for the State Fund, General Revenue, for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated May 20, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 17, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and Executive messages, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0620, fiscal year 2019, organization 0803, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TRANSPORTATION

78a – Division of Highways

(WV Code Chapters 17 and 17C)

Fund 0620 FY 2019 Org 0803

		Appropriation	General Revenue Fund
1	1	Directed Transfer.....	70000 \$ 50,200,917
2		The above appropriation shall be transferred to the cash	
3		balance of the State Road Fund, to be utilized by the	
4		Division of Highways.	

CHAPTER 10

**(Com. Sub. for H. B. 155 - By Delegates Hanshaw
(Mr. Speaker) and Miley)
[By Request of the Executive]**

[Passed June 24, 2019; in effect from passage.]

[Approved by the Governor on June 28, 2019.]

AN ACT supplementing, amending and increasing an item of existing appropriation from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2020, organization 0803, for the fiscal year ending June 30, 2020.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 2019, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2018, and further included the estimate of revenues for the fiscal year 2019, less regular appropriations for the fiscal year 2019 and that also sets forth therein, the estimated cash balance and investments as of July 1, 2019, and further included the estimate of revenues for the fiscal year 2020, less regular appropriations for the fiscal year 2020; and

Whereas, The Governor submitted to the Legislature an Executive Message, dated May 20, 2019, which included a revised estimate of revenues for the State Road Fund and a

statement of the State Fund, State Road Fund for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message, dated June 17, 2019, which included a revised estimate of revenues for the State Road Fund and a statement of the State Fund, State Road Fund for the fiscal year 2019 and fiscal year 2020; and

Whereas, It appears from the Statement of 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 effective December 1, 2019, the total appropriation for the fiscal year ending June 30, 2020, to fund 9017, fiscal year 2020, organization 0803, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

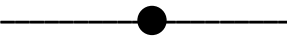
DEPARTMENT OF TRANSPORTATION

III – Division of Highways –

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2020 Org 0803

	Appro- priation	State Road Fund
1 2 Maintenance.....	23700	\$ 50,200,917



CHAPTER 11

**(H. B. 156 - By Delegates Hanshaw (Mr. Speaker)
and Miley)**

[By Request of the Executive]

[Passed June 24, 2019; in effect from passage.]

[Approved by the Governor on June 28, 2019.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Environmental Protection, Division of Environmental Protection, fund 0273, fiscal year 2019, organization 0313, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated March 5, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated May 20, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 17, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and Executive messages, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0273, fiscal year 2019, organization 0313, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

54 – Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2019 Org 0313

	Appropriation	General Revenue Fund
1 8a Federal Reimbursement/Repayment		
2 - Surplus	13499	\$ 1,000,000
3 The above appropriation for Federal		
4 Reimbursement/Repayment – Surplus (fund 0273,		
5 appropriation 13499) shall be transferred to the Department		

- 6 of Environmental Protection, Division of Environmental
7 Protection, Air Pollution Control Fund (fund 3336).

●

CHAPTER 12

**(H. B. 157 - By Delegates Hanshaw (Mr. Speaker)
and Miley)
[By Request of the Executive]**

[Passed June 24, 2019; in effect from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Military Affairs and Public Safety, Division of Homeland Security and Emergency Management, fund 0443, fiscal year 2019, organization 0606, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 9, 2019, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated March 5, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated May 20, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a

statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated June 17, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, It appears from the Statement of the State Fund, General Revenue, and Executive messages, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0443, fiscal year 2019, organization 0606, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS

AND PUBLIC SAFETY

66 – Division of Homeland Security

and Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2019 Org 0606

		Appro- priation	General Revenue Fund
1	10 Early Warning		
2	Flood System (R)	87700	\$ 800,000

CHAPTER 13

**(S. B. 1015 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed June 18, 2019; in effect from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2020, to the Secretary of State – General Administrative Fees Account, fund 1617, fiscal year 2020, organization 1600, 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 Secretary of State - General Administrative Fees Account, fund 1617, fiscal year 2020, organization 1600, 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 1617, fiscal year 2020, organization 1600, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

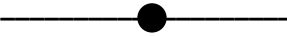
EXECUTIVE

*139 – Secretary of State –**General Administrative Fees Account*

(WV Code Chapters 3, 5, and 59)

Fund 1617 FY 2020 Org 1600

		Appro- priation	Other Funds
1 4	Technology Improvements	59900	\$ 1,500,000

**CHAPTER 14**

**(S. B. 1016 - By Senators Carmichael (Mr. President)
and Prezioso)**

[By Request of the Executive]

[Passed May 20, 2019; in effect from passage.]

[Approved by the Governor on May 28, 2019.]

AN ACT making a supplementary appropriation by adding a new item and increasing the expenditure of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund - General Revenue, to the Department of Transportation - Division of Highways, fund 0620, fiscal year 2019, organization 0803, by supplementing and amending Chapter 12, Acts of the Legislature, Regular Session, 2018, known as the Budget Bill for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 2019, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019,

less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message, dated March 5, 2019, which included a revised estimate of revenues for the State Fund, General Revenue, for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message, dated May 20, 2019, which included a revised estimate of revenues for the State Fund, General Revenue and a statement of the State Fund, General Revenue for the fiscal year 2019; and

Whereas, It appears from the Executive Budget Document, statement of the State Fund, General Revenue, and Executive Messages, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That Chapter 12, Acts of the Legislature, Regular Session, 2018, known as the Budget Bill, be supplemented and amended by adding a new item of appropriation to Title II, Section 1 thereof, the following:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

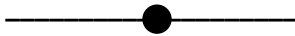
DEPARTMENT OF TRANSPORTATION

78a – Division of Highways

(WV Code Chapters 17 and 17C)

Fund 0620 FY 2019 Org 0803

		Appropriation	General Revenue Fund
1	1	Directed Transfer.....	70000 \$ 54,000,000
2		The above appropriation shall be transferred to the cash	
3		balance of the State Road Fund, to be utilized by the	
4		Division of Highways.	



CHAPTER 15

**(S. B. 1017 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed June 18, 2019; in effect from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT supplementing and amending by decreasing and increasing existing items of appropriation of public moneys out of the Treasury in the State Fund-General Revenue, to the Department of Arts, Culture, and History-Educational Broadcasting Authority, fund 0300, fiscal year 2020, organization 0439, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 2019, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2019, and further included an estimate of revenues for the fiscal year 2020, less net appropriation balances forwarded and regular appropriations for the fiscal year 2020; and

Whereas, It appears from the Executive Budget Document, statement of the State Fund, General Revenue, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 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 0300, fiscal year 2020, organization 0439, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

52 – Educational Broadcasting Authority –

(WV Code Chapter 10)

Fund 0300 FY 2020 Org 0439

		Appropriation	General Revenue Fund
1	3	Current Expenses.....	13000 \$ 1,471,659

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2019, to fund 0300, fiscal year 2020,
4 organization 0439, be supplemented and amended by
5 increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

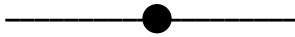
DEPARTMENT OF ARTS, CULTURE, AND HISTORY

52 – Educational Broadcasting Authority –

(WV Code Chapter 10)

Fund 0300 FY 2020 Org 0439

		Appropriation	General Revenue Fund
1	1	Personal Services and	
2		Employee Benefits	0100 \$ 1,471,659



CHAPTER 16

**(S. B. 1019 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

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

AN ACT supplementing, amending, decreasing, and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation - Division of Highways, fund 9017, fiscal year 2020, organization 0803, for the fiscal year ending June 30, 2020.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 2019, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2018, and further included the estimate of revenues for the fiscal year 2019, less regular appropriations for the fiscal year 2019 and that also sets forth therein, the estimated cash balance and investments as of July 1, 2019, and further included the estimate of revenues for the fiscal year 2020, less regular appropriations for the fiscal year 2020; and

Whereas, The Governor submitted to the Legislature an Executive Message, dated May 20, 2019, which included a revised estimate of revenues for the State Road Fund and a

statement of the State Fund, State Road Fund for the fiscal year 2019; and

Whereas, It appears from the statement of 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 the total appropriation for the fiscal year ending June 30, 2020, to fund 9017, fiscal year 2020, organization 0803, be supplemented and amended by decreasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

III – Division of Highways –

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2020 Org 0803

			Appro-	State
			priation	Road
				Fund
1	1	Debt Service	04000	\$ 9,500,000
2	3	Nonfederal Improvements	23701	224,046,854

3 And, That the total appropriation for the fiscal year
4 ending June 30, 2020, to fund 9017, fiscal year 2020,
5 organization 0803, be supplemented and amended by
6 increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

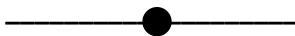
DEPARTMENT OF TRANSPORTATION

III – Division of Highways –

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2020 Org 0803

			Appro- priation	State Road Fund
1	2	Maintenance.....	23700	\$ 274,046,854
2	5	Equipment Revolving.....	27600	13,500,000



CHAPTER 17

**(S. B. 1020 - By Senators Carmichael (Mr. President)
and Prezioso)**

[By Request of the Executive]

[Passed June 18, 2019; in effect from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT supplementing and amending Chapter 31, Acts of the Legislature, Regular Session, 2019, known as the Budget Bill, by supplementing and amending the appropriation for the fiscal year ending June 30, 2020.

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 creating Title II, Section 9 for the fiscal year ending June 30, 2020, to read as follows:

Sec. 9. Appropriations from general revenue fund surplus accrued. — The following item is hereby appropriated from the State Fund, General Revenue, and is to be available for expenditure during the fiscal year 2020 out of surplus funds only, accrued from the fiscal year ending June 30, 2019, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus as of July 31, 2019, from the fiscal year ending June 30, 2019, only after first meeting requirements of W.Va. Code §11B-2-20(b).

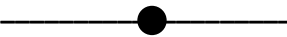
In the event that surplus revenues available on July 31, 2019, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available as of the date mandated to meet the appropriation in this section and shall be allocated first to provide the necessary funds to meet the first appropriation of this section and each subsequent appropriation in the order listed in this section.

378 – Division of Human Services –

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2020 Org 0511

1	Medical Services – Surplus.....	63300	\$ 53,000,000
2	Total TITLE II, Section 9 –		
3	Surplus Accrued.....		<u>\$ 53,000,000</u>



CHAPTER 18

**(S. B. 1021 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed June 18, 2019; in effect from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT supplementing and amending by decreasing an existing appropriation and adding a new appropriation of federal funds out of the Treasury to the Department of Veterans' Assistance, fund 8858, fiscal year 2020, organization 0613, by supplementing, amending, decreasing, and adding an 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 the total appropriation for the fiscal year ending June 30, 2020, to fund 8858, fiscal year 2020, organization 0613, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF VETERANS' ASSISTANCE

361 – Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 8858 FY 2020 Org 0613

	Appropriation	Federal Funds
1 2 Current Expenses.....	13000 \$	175,000

2 And, That the total appropriation for the fiscal year
 3 ending June 30, 2020, to fund 8858, fiscal year 2020,
 4 organization 0613, be supplemented and amended by
 5 adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

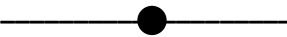
Sec. 6. Appropriations of federal funds.

DEPARTMENT OF VETERANS' ASSISTANCE*361 – Department of Veterans' Assistance*

(WV Code Chapter 9A)

Fund 8858 FY 2020 Org 0613

	Appropriation	Federal Funds
1 4a Veterans' Cemetery	80800 \$	175,000



CHAPTER 19

**(S. B. 1023 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed June 18, 2019; in effect from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT supplementing, amending, increasing, and adding new items of appropriations to the Executive, Attorney General, Consolidated Federal Fund, fund 8882, fiscal year 2020, organization 1500, in the amount of \$1,533,581, by supplementing and amending Chapter 31, Acts of the Legislature, Regular Session, 2019, known as the Budget Bill.

Whereas, The Legislature passed Senate Bill 318, Regular Session, 2019, transferring the Medicaid Fraud Control Unit previously established within the West Virginia Department of Health and Human Resources to the Office of the Attorney General; and

Whereas, Based upon the passage of Senate Bill 318, Regular Session, 2019, the Governor has established there will be funds available for expenditure in the Attorney General, Consolidated Federal Fund, fund 8882, fiscal year 2020, organization 1500, during the fiscal year ending June 30, 2020; and

Whereas, West Virginia Code, Chapter 4, Article 11, Section 3 of the code requires the Governor to itemize in the State Budget and in the Budget Bill, on a line-item basis, separately, for each spending unit, the amount and purpose of all federal funds received or anticipated for expenditure; 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 to Title II, Section 6 thereof, the following:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

EXECUTIVE

137a – Attorney General –

Consolidated Federal Fund

(WV Code Chapter 9)

Fund 8882 FY 2020 Org 1500

		Appro-	Other
		priation	Funds
1	1		
2			
	Employee Benefits	00100	\$ 1,038,458
3	2		
	Current Expenses	13000	456,638
4	3		
	Repairs and Alterations	06400	4,313
5	4		
	Equipment.....	07000	7,500
6	5		
	Unclassified	09900	15,336
7	6		
	Other Assets.....	69000	<u>11,336</u>
8	7		
	Total		\$ 1,533,581

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CHAPTER 20

**(S. B. 1024 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed June 18, 2019; in effect from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2020, to the Department of Agriculture, Department of Agriculture Capital Improvements Fund, fund 1413, fiscal year 2020, organization 1400, 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 Agriculture, Department of Agriculture Capital Improvements Fund, fund 1413, fiscal year 2020, organization 1400, that is available for expenditure 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 adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF AGRICULTURE

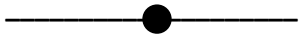
135a – Department of Agriculture –

Capital Improvements Fund

(WV Code Chapter 19)

Fund 1413 FY 2020 Org 1400

		Appropriation	Other Funds
1	1	Repairs and Alterations	06400 \$ 250,000
2	2	Equipment.....	07000 350,000
3	3	Building Improvements	25800 390,000
4	4	Unclassified	09900 <u>10,000</u>
5		Total	\$ 1,000,000



CHAPTER 21

**(S. B. 1025 - By Senators Carmichael (Mr. President)
and Prezioso)**

[By Request of the Executive]

[Passed June 18, 2019; in effect from passage.]

[Approved by the Governor on June 28, 2019.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2019, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 2019, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019,

less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated March 5, 2019, which included a revised estimate of revenues for the State Fund, General Revenue, for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated May 20, 2019, which included a revised estimate of revenues for the State Fund, General Revenue, and a statement of the State Fund, General Revenue, for the fiscal year 2019; and

Whereas, It appears from the statement of the State Fund, General Revenue, and Executive Messages, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0403, fiscal year 2019, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

61 – Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2019 Org 0511

		Appropriation	General Revenue Fund
1	11 I/DD Waiver – Surplus (R).....	xxxxx	\$ 1,500,000
2	Any unexpended balance remaining in the appropriation		
3	for I/DD Waiver – Surplus (fund 0403, appropriation xxxxx)		
4	at the close of the fiscal year 2019 is hereby reappropriated for		
5	expenditure during the fiscal year 2020.		
6	Funding of the above appropriation for I/DD Waiver –		
7	Surplus shall be dedicated to provider staff compensation.		

CHAPTER 22

**(S. B. 1026 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed May 20, 2019; in effect from passage.]
[Approved by the Governor on May 29, 2019.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2019 in the amount of \$4,705,000 from the Treasurer's Office, Unclaimed Property Fund, fund 1324, fiscal year 2019, organization 1300, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Executive, Governor's Office, fund 0101, fiscal year 2019, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

Whereas, The Governor finds that the account balance in the Treasurer's Office, Unclaimed Property Fund, fund 1324, fiscal year 2019, organization 1300, 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 the funds available for expenditure in the fiscal year ending June 30, 2019, in the Treasurer’s Office, Unclaimed Property Fund, fund 1324, fiscal year 2019, organization 1300, be decreased by expiring the amount of \$4,705,000 to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2019.

And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 0101, fiscal year 2019, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

5 – *Governor’s Office* -

(WV Code Chapter 5)

Fund 0101 FY 2019 Org 0100

	Appro- priation	General Revenue Fund
1 5a Federal Reimbursement/Repayment		
2 - Surplus	xxxxx	\$ 4,705,000

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CHAPTER 23

**(S. B. 1027 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed June 24, 2019; in effect from passage.]

[Approved by the Governor on June 28, 2019.]

AN ACT making a supplementary appropriation by adding new items and increasing existing items for expenditure of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Executive, Department of Agriculture, fund 0131, fiscal year 2019, organization 1400, to the Department of Commerce, West Virginia Tourism Office, fund 0246, fiscal year 2019, organization 0304, to the Department of Education, State Board of Education, State Department of Education, fund 0313, fiscal year 2019, organization 0402, to the Department of Education, State Board of Education, Vocational Division, fund 0390, fiscal year 2019, organization 0402, to the Department of Health of Human Resources, Division of Health, Central Office, fund 0407, fiscal year 2019, organization 0506, to the Department of Health and Human Resources, Division of Health, Consolidated Medical Services Fund, fund 0525, fiscal year 2019, organization 0506, to the West Virginia Council for Community and Technical College Education, Blue Ridge Community and Technical College, fund 0601, fiscal year 2019, organization 0447, to the West Virginia Council for Community and Technical College Education, West Virginia University at Parkersburg, fund 0351, fiscal year 2019, organization 0464, to the West Virginia Council for Community and Technical College Education, Eastern West Virginia Community and Technical College, fund 0587, fiscal

year 2019, organization 0492, to the Higher Education Policy Commission, Glenville State College, fund 0363, fiscal year 2019, organization 0485, and to the Higher Education Policy Commission, Shepherd University, fund 0366, fiscal year 2019, organization 0486, by supplementing and amending Chapter 12, Acts of the Legislature, Regular Session, 2018, known as the Budget Bill for the fiscal year ending June 30, 2019.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 2019, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2018, and further included a revised estimate of revenues for the fiscal year 2019, less net appropriation balances forwarded and regular appropriations for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated March 5, 2019, which included a revised estimate of revenues for the State Fund, General Revenue, and a statement of the State Fund, General Revenue, for the fiscal year 2019; and

Whereas, The Governor submitted to the Legislature an Executive Message dated May 20, 2019, which included a revised estimate of revenues for the State Fund, General Revenue, and a statement of the State Fund, General Revenue, for the fiscal year 2019; and

Whereas, It appears from the statement of the State Fund, General Revenue, and Executive Messages, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2019; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2019, to fund 0131, fiscal year 2019, organization 1400, be

supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

10 - Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2019 Org 1400

1 19 WV Food Banks 96900 \$ 300,000

2 Any unexpended balance remaining in the appropriation
3 for WV Food Banks (fund 0131, appropriation 96900) at the
4 end of the close of the fiscal year 2019 is hereby
5 reappropriated for expenditure during the fiscal year 2020.

6 And, That Chapter 12, Acts of the Legislature, Regular
7 Session, 2018, known as the Budget Bill, be supplemented
8 and amended by adding new items of appropriations to Title
9 II, Section 1 thereof, to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF COMMERCE

31a - West Virginia Tourism Office

(WV Code Chapter 5B)

Fund 0246 FY 2019 Org 0304

1 Tourism – Brand Promotion (R).... ### \$ 5,000,000
2 Tourism – Public Relations (R) ##### 750,000
3 Tourism – Events and
4 Sponsorships (R) ##### 250,000

5	Tourism – Industry		
6	Development (R)	#####	250,000
7	State Parks and Recreation		
8	Advertising (R).....	61900	<u>750,000</u>
9	Total.....		\$ 7,000,000

10 Any unexpended balances remaining in the
 11 appropriations for Tourism – Brand Promotion (fund 0246,
 12 appropriation xxxxx), Tourism – Public Relations (fund
 13 0246, appropriation xxxxx), Tourism – Events and
 14 Sponsorships (fund 0246, appropriation xxxxx), Tourism –
 15 Industry Development (fund 0246, appropriation xxxxx),
 16 and State Parks and Recreation Advertising (fund 0246,
 17 appropriation 61900) at the close of the fiscal year 2019 are
 18 hereby reappropriated for expenditure during the fiscal year
 19 2020.

20 And, That the total appropriation for the fiscal year
 21 ending June 30, 2019, to fund 0313, fiscal year 2019,
 22 organization 0402, be supplemented and amended by
 23 increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

43 - State Board of Education -

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2019 Org 0402

1	7	Safe Schools	14300	\$ 3,500,000
2		Any unexpended balance remaining in the appropriation		
3		for Safe Schools (fund 0313, appropriation 14300) at the		
4		end of the close of the fiscal year 2019 is hereby		
5		reappropriated for expenditure during the fiscal year 2020.		

6 And, That the total appropriation for the fiscal year
 7 ending June 30, 2019, to fund 0390, fiscal year 2019,
 8 organization 0402, be supplemented and amended by
 9 adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

46 - State Board of Education -

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2019 Org 0402

1	7a	Jim’s Dream (R)	14901	\$	4,000,000
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2 Any unexpended balance remaining in the appropriation
 3 for Jim’s Dream (fund 0390, appropriation 14901) at the
 4 close of the fiscal year 2019 is hereby reappropriated for
 5 expenditure during the fiscal year 2020.

6 And, That the total appropriation for the fiscal year
 7 ending June 30, 2019, to fund 0407, fiscal year 2019,
 8 organization 0506, be supplemented and amended by
 9 increasing an existing item and adding a new item of
 10 appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

57 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2019 Org 0506

1	18 Sexual Assault Intervention			
2	and Prevention.....	72300	\$	125,000
3	24a New Born Screening Testing	#####	\$	200,000

4 Any unexpended balances remaining in the
5 appropriations for Sexual Assault Intervention and
6 Prevention (fund 0407, appropriation 72300) and New Born
7 Screening and Testing (fund 0407, appropriation #####) at
8 the end of the close of the fiscal year 2019 are hereby
9 reappropriated for expenditure during the fiscal year 2020.

10 And, That the total appropriation for the fiscal year
11 ending June 30, 2019, to fund 0525, fiscal year 2019,
12 organization 0506, be supplemented and amended by
13 adding a new item of 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 2019 Org 0506

1	9a Jim’s Dream (R)	14901	\$	1,000,000
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2 Any unexpended balance remaining in the appropriation
3 for Jim’s Dream (fund 0525, appropriation 14901) at the
4 close of the fiscal year 2019 is hereby reappropriated for
5 expenditure during the fiscal year 2020.

6 And, That the total appropriation for the fiscal year
7 ending June 30, 2019, to fund 0601, fiscal year 2019,

8 organization 0447, be supplemented and amended by
9 increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

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

90 - Blue Ridge Community and Technical College

(WV Code Chapter 18B)

Fund 0601 FY 2019 Org 0447

1 1 Blue Ridge Community and
2 Technical College..... 88500 \$ 500,000

3 Any unexpended balance remaining in the appropriation
4 for Blue Ridge Community and Technical College (fund
5 0601, appropriation 88500) at the end of the close of the
6 fiscal year 2019 is hereby reappropriated for expenditure
7 during the fiscal year 2020.

8 And, That the total appropriation for the fiscal year
9 ending June 30, 2019, to fund 0351, fiscal year 2019,
10 organization 0464, be supplemented and amended by
11 increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

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

91 - West Virginia University at Parkersburg

(WV Code Chapter 18B)

Fund 0351 FY 2019 Org 0464

1	1	West Virginia University -	
2		Parkersburg.....	47100 \$ 500,000

3 Any unexpended balance remaining in the appropriation
 4 for West Virginia University - Parkersburg (fund 0351,
 5 appropriation 47100) at the end of the close of the fiscal year
 6 2019 is hereby reappropriated for expenditure during the
 7 fiscal year 2020.

8 And, That the total appropriation for the fiscal year
 9 ending June 30, 2019, to fund 0587, fiscal year 2019,
 10 organization 0492, be supplemented and amended by
 11 increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

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

*94 - Eastern West Virginia Community and
 Technical College*

(WV Code Chapter 18B)

Fund 0587 FY 2019 Org 0492

1	1	Eastern West Virginia Community	
2		and Technical College.....	41200 \$ 500,000

3 Any unexpended balance remaining in the appropriation
 4 for Eastern West Virginia Community and Technical
 5 College (fund 0587, appropriation 41200) at the end of the
 6 close of the fiscal year 2019 is hereby reappropriated for
 7 expenditure during the fiscal year 2020.

8 And, That the total appropriation for the fiscal year
 9 ending June 30, 2019, to fund 0363, fiscal year 2019,
 10 organization 0485, be supplemented and amended by
 11 increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

106 - Glenville State College

(WV Code Chapter 18B)

Fund 0363 FY 2019 Org 0485

1 1 Glenville State College..... 42800 \$ 500,000

2 Any unexpended balance remaining in the appropriation
3 for Glenville State College (fund 0363, appropriation
4 42800) at the end of the close of the fiscal year 2019 is
5 hereby reappropriated for expenditure during the fiscal year
6 2020.

7 And, That the total appropriation for the fiscal year
8 ending June 30, 2019, to fund 0366, fiscal year 2019,
9 organization 0486, be supplemented and amended by
10 increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

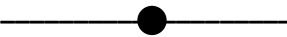
107 - Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2019 Org 0486

1 1 Shepherd University 43200 \$ 500,000

2 Any unexpended balance remaining in the appropriation
3 for Shepherd University (fund 0366, appropriation 43200)
4 at the end of the close of the fiscal year 2019 is hereby
5 reappropriated for expenditure during the fiscal year 2020.



CHAPTER 24

**(S. B. 1038 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed June 18, 2019; in effect from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 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 Medicaid 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 requires the ability to transfer General Revenue funded appropriations to its Special Revenue funded appropriation for proper administration of the Medical Cannabis Program; 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

			Appro- priation		General Revenue Fund
1	1	Personal Services and			
2		Employee Benefits	00100	\$	12,946,328
3	2	Chief Medical Examiner.....	04500		9,666,347
4	3	Unclassified	09900		671,795
5	4	Current Expenses.....	13000		4,877,059
6	5	State Aid for Local and Basic			
7		Public Health Services.....	18400		14,160,490
8	6	Safe Drinking			
9		Water Program (R).....	18700		2,211,323
10	7	Women, Infants and Children ...	21000		38,621
11	8	Early Intervention.....	22300		8,134,060
12	9	Cancer Registry	22500		206,306
13	10	Office of Drug			
14		Control Policy (R)	35401		567,953
15	11	Statewide EMS			
16		Program Support (R)	38300		1,845,271
17	12	Office of Medical Cannabis.....	42001		2,380,489
18	13	Black Lung Clinics.....	46700		170,885
19	14	Vaccine for Children	55100		338,235
20	15	Tuberculosis Control	55300		379,256
21	16	Maternal and Child Health Clinics,			
22		Clinicians Medical			
23		Contracts and Fees (R)	57500		6,342,707
24	17	Epidemiology Support.....	62600		1,547,192
25	18	Primary Care Support.....	62800		4,263,706
26	19	Sexual Assault Intervention			
27		and Prevention.....	72300		125,000

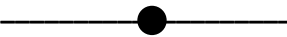
28	20	Health Right Free Clinics	72700	3,750,000
29	21	Capital Outlay		
30		and Maintenance (R)	75500	100,000
31	22	Healthy Lifestyles.....	77800	1,000,000
32	23	Maternal Mortality Review	83400	49,933
33	24	Diabetes Education		
34		and Prevention.....	87300	97,125
35	25	BRIM Premium	91300	169,791
36	26	State Trauma and		
37		Emergency Care System ...	91800	2,021,322
38	27	WVU Charleston		
39		Poison Control Hotline.....	91800	<u>712,942</u>
40		Total		<u>\$ 78,774,136</u>

41 Any unexpended balances remaining in the
42 appropriations for Safe Drinking Water Program (fund
43 0407, appropriation 18700), Office of Drug Control Policy
44 (fund 0407, appropriation 35401), Office of Drug Control
45 Policy – Surplus (fund 0407, appropriation 35402),
46 Statewide EMS Program Support (fund 0407, appropriation
47 38300), Maternal and Child Health Clinics, Clinicians and
48 Medical Contracts and Fees (fund 0407, appropriation
49 57500), Capital Outlay and Maintenance (fund 0407,
50 appropriation 75500), Emergency Response Entities –
51 Special Projects (fund 0407, appropriation 82200), and
52 Tobacco Education Program (fund 0407, appropriation
53 90600) at the close of the fiscal year 2019 are hereby
54 reappropriated for expenditure during the fiscal 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 is
62 for Hospital Hospitality House of Huntington; and \$200,000
63 is for Potomac Center Inc. of Romney, West Virginia.

64 The above appropriation for Office of Medical Cannabis
65 (fund 0407, appropriation 42001) shall be transferred to the
66 Division of Health, Medical Cannabis Fund, fund 5420,
67 organization 0506.

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



CHAPTER 25

**(S. B. 1056 - By Senators Carmichael (Mr. President)
and Prezioso)**

[By Request of the Executive]

[Passed July 22, 2019; in effect from passage.]
[Approved by the Governor on July 29, 2019.]

AN ACT supplementing and amending items of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to Department of Education, State Board of Education – State Aid to Schools, fund 0317, fiscal year 2020, organization 0402, by increasing and decreasing existing items of appropriation for the fiscal year ending June 30, 2020.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 2019, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2019, and further included an estimate of revenues for the fiscal year 2020, less net appropriation balances forwarded and regular appropriations for the fiscal year 2020; and

Whereas, The Governor submitted to the Legislature an Executive Message, dated June 17, 2019, which included a revised estimate of revenues for the fiscal year ending June 30, 2020, and a statement of the State Fund, General Revenue, for the fiscal year 2020; and

Whereas, It appears from the Executive Budget Document, statement of the State Fund, General Revenue, and the Executive Message, 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, fund 0317, fiscal year 2020, organization 0402, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

47 – State Board of Education –

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2020 Org 0402

			Appro- priation	General Revenue Fund
1	1	Other Current Expenses.....	02200	\$ 162,583,490
2	2	Advanced Placement	05300	644,087
3	3	Professional Educators	15100	911,031,520
4	4	Service Personnel	15200	305,981,816
5	5	Fixed Charges	15300	108,941,390

6	6	Transportation.....	15400	75,457,864
7	7	Professional Student		
8		Support Services.....	65500	63,144,004
9	8	Improved Instructional		
10		Programs.....	15600	49,544,683
11	9	21 st Century Strategic Technology		
12		Learning Growth	93600	21,584,131
13	10	Teacher and Leader Induction .	93601	619,250
14	11	Basic Foundation Allowances		1,699,532,235
15	12	Less Local Share.....		(451,962,610)
16	13	Adjustments		(2,681,318)
17	14	Total Basic State Aid.....		1,244,888,307
18	15	Public Employees'		
19		Insurance Matching	01200	228,267,791
20	16	Teachers' Retirement System..	01900	69,501,000
21	17	School Building Authority.....	45300	24,000,000
22	18	Retirement Systems –		
23		Unfunded Liability	77500	<u>338,192,000</u>
24	19	Total		\$ 1,904,849,098

CHAPTER 26

**(S. B. 1057 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed July 22, 2019; in effect from passage.]
[Approved by the Governor on July 29, 2019.]

AN ACT supplementing and amending items of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the State Board of Education - State Department of Education, fund 0313, fiscal year 2020, organization 0402, by adding a new item of appropriation for the fiscal year ending June 30, 2020.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 2019, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2019, and further included an estimate of revenues for the fiscal year 2020, less net appropriation balances forwarded and regular appropriations for the fiscal year 2020; and

Whereas, The Governor submitted to the Legislature an Executive Message, dated June 17, 2019, which included a revised estimate of revenues for the fiscal year ending June 30, 2020, and a statement of the State Fund, General Revenue, for the fiscal year 2020; and

Whereas, It appears from the Executive Budget Document, statement of the State Fund, General Revenue, and the Executive Message, 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 the total appropriation for the fiscal year ending June 30, 2020, to fund 0313, fiscal year 2020, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

45 – State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2020 Org 0402

		Appropriation	General Revenue Fund
1	8a Attendance Incentive Bonus....	15001	\$ 2,056,717

CHAPTER 27

**(S. B. 1058 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed July 22, 2019; in effect from passage.]
[Approved by the Governor on July 29, 2019.]

AN ACT supplementing and amending an item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Higher Education Policy Commission, Administration - Control Account, fund 0589, fiscal year 2020, organization 0441, by increasing an existing item of appropriation for the fiscal year ending June 30, 2020.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 2019, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2019, and further included an estimate of revenues for the fiscal year 2020, less net appropriation balances forwarded and regular appropriations for the fiscal year 2020; and

Whereas, The Governor submitted to the Legislature an Executive Message, dated June 17, 2019, which included a revised estimate of revenues for the fiscal year ending June 30, 2020, and a statement of the State Fund, General Revenue, for the fiscal year 2020; and

Whereas, It appears from the Executive Budget Document, statement of the State Fund, General Revenue, and the Executive Message, 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 the total appropriation for the fiscal year ending June 30, 2020, to fund 0589, fiscal year 2020, organization 0441, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

96 – Higher Education Policy Commission –

Administration –

Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2020 Org 0441

	Appropriation	General Revenue Fund
1 5 Underwood-Smith Scholarship Program –		
2 Student Awards	16700 \$	300,000

●

CHAPTER 28

**(H. B. 115 – By Delegates Hanshaw (Mr. Speaker)
and Miley)
[By Request of the Executive]**

[Passed May 20, 2019; in effect from passage.]
[Approved by the Governor on May 29, 2019.]

AN ACT to amend and reenact §49-4-601 of the Code of West Virginia, 1931, as amended, relating generally to court actions in abuse and neglect proceedings and appointment of counsel in such proceedings; requiring a petition to include the names of all parents, guardians, custodians and other persons standing in loco parentis with the child who is the subject of the petition as well as an express statement as to whether each person named is alleged to have abused or neglected the child; requiring courts to appoint counsel for the child and any other named person who is without counsel prior to the initial hearing; clarifying when a court may and may not appoint counsel; and establishing criteria for appointment of counsel for unrepresented persons when necessary to ensure fundamental fairness.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

PART VI.

PROCEDURES IN CASES OF CHILD NEGLECT OR ABUSE.

§49-4-601. Petition to court when child believed neglected or abused; venue; notice; right to counsel; continuing legal education; findings; proceedings; procedure.

1 (a) *Petitioner and venue.* — If the department or a
2 reputable person believes that a child is neglected or abused,
3 the department or the person may present a petition setting
4 forth the facts to the circuit court in the county in which the
5 child resides, or if the petition is being brought by the
6 department, in the county in which the custodial respondent
7 or other named party abuser resides, or in which the abuse
8 or neglect occurred, or to the judge of the court in vacation.
9 Under no circumstance may a party file a petition in more
10 than one county based on the same set of facts.

11 (b) *Contents of Petition.* — The petition shall be verified
12 by the oath of some credible person having knowledge of
13 the facts. The petition shall allege specific conduct
14 including time and place, how the conduct comes within the
15 statutory definition of neglect or abuse with references to
16 the statute, any supportive services provided by the
17 department to remedy the alleged circumstances, and the
18 relief sought. Each petition shall name as a party each
19 parent, guardian, custodian, other person standing in loco
20 parentis of or to the child allegedly neglected or abused and
21 state with specificity whether each parent, guardian,
22 custodian, or person standing in loco parentis is alleged to
23 have abused or neglected the child.

24 (c) *Court action upon filing of petition.* — Upon filing of
25 the petition, the court shall set a time and place for a hearing
26 and shall appoint counsel for the child. When there is an
27 order for temporary custody pursuant to this article, the
28 preliminary hearing shall be held within 10 days of the order
29 continuing or transferring custody, unless a continuance for
30 a reasonable time is granted to a date certain, for good cause
31 shown.

32 (d) *Department action upon filing of the petition.* — At
33 the time of the institution of any proceeding under this
34 article, the department shall provide supportive services in
35 an effort to remedy circumstances detrimental to a child.

36 (e) *Notice of hearing.* —

37 (1) The petition and notice of the hearing shall be served
38 upon both parents and any other guardian, custodian, or
39 person standing in loco parentis, giving to those persons at
40 least five days' actual notice of a preliminary hearing and at
41 least 10 days' notice of any other hearing.

42 (2) Notice shall be given to the department, any foster
43 or pre-adoptive parent, and any relative providing care for
44 the child.

45 (3) In cases where personal service within West
46 Virginia cannot be obtained after due diligence upon any
47 parent or other custodian, a copy of the petition and notice
48 of the hearing shall be mailed to the person by certified mail,
49 addressee only, return receipt requested, to the last known
50 address of the person. If the person signs the certificate,
51 service is complete and the certificate shall be filed as proof
52 of the service with the clerk of the circuit court.

53 (4) If service cannot be obtained by personal service or
54 by certified mail, notice shall be by publication as a Class II
55 legal advertisement in compliance with §59-3-1 *et seq.* of
56 this code.

57 (5) A notice of hearing shall specify the time and place
58 of hearings, the right to counsel of the child, parents, and
59 other guardians, custodians, and other persons standing in
60 loco parentis with the child and the fact that the proceedings
61 can result in the permanent termination of the parental
62 rights.

63 (6) Failure to object to defects in the petition and notice
64 may not be construed as a waiver.

65 (f) *Right to counsel.* —

66 (1) In any proceeding under this article, the child shall
67 have counsel to represent his or her interests at all stages of
68 the proceedings.

69 (2) The court's initial order shall appoint counsel for the
70 child and for any parent, guardian, custodian, or other
71 person standing in loco parentis with the child if such person
72 is without retained counsel.

73 (3) The court shall, at the initial hearing in the matter,
74 determine whether persons other than the child for whom
75 counsel has been appointed:

76 (A) Have retained counsel; and

77 (B) Are financially able to retain counsel.

78 (4) A parent, guardian, custodian, or other person
79 standing in loco parentis with the child who is alleged to
80 have neglected or abused the child and who has not retained
81 counsel and is financially unable to retain counsel beyond
82 the initial hearing, shall be afforded appointed counsel at
83 every stage of the proceedings.

84 (5) Under no circumstances may the same attorney
85 represent both the child and another party. The same
86 attorney may not represent more than one parent or
87 custodian: *Provided*, That one attorney may represent both
88 parents or custodians where both parents or custodians
89 consent to this representation after the attorney fully
90 discloses to the client the possible conflict and where the
91 attorney advises the court that she or he is able to represent
92 each client without impairing her or his professional
93 judgment. If more than one child from a family is involved
94 in the proceeding, one attorney may represent all the
95 children.

96 (6) A parent who is a co-petitioner is entitled to his or
97 her own attorney.

98 (7) The court may allow to each attorney appointed
99 pursuant to this section a fee in the same amount which
100 appointed counsel can receive in felony cases.

101 (8) The court shall, sua sponte or upon motion, appoint
102 counsel to any unrepresented party if, at any stage of the
103 proceedings, the court determines doing so is necessary to
104 satisfy the requirements of fundamental fairness.

105 (g) *Continuing education for counsel.* — Any attorney
106 representing a party under this article shall receive a
107 minimum of eight hours of continuing legal education
108 training per reporting period on child abuse and neglect
109 procedure and practice. In addition to this requirement, any
110 attorney appointed to represent a child must first complete
111 training on representation of children that is approved by the
112 administrative office of the Supreme Court of Appeals. The
113 Supreme Court of Appeals shall develop procedures for
114 approval and certification of training required under this
115 section. Where no attorney has completed the training
116 required by this subsection, the court shall appoint a
117 competent attorney with demonstrated knowledge of child
118 welfare law to represent the parent or child. Any attorney
119 appointed pursuant to this section shall perform all duties
120 required of an attorney licensed to practice law in the State
121 of West Virginia.

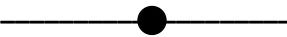
122 (h) *Right to be heard.* — In any proceeding pursuant to
123 this article, the party or parties having custodial or other
124 parental rights or responsibilities to the child shall be
125 afforded a meaningful opportunity to be heard, including the
126 opportunity to testify and to present and cross-examine
127 witnesses. Foster parents, pre-adoptive parents, and relative
128 caregivers shall also have a meaningful opportunity to be
129 heard.

130 (i) *Findings of the court.* — Where relevant, the court
131 shall consider the efforts of the department to remedy the
132 alleged circumstances. At the conclusion of the adjudicatory
133 hearing, the court shall make a determination based upon
134 the evidence and shall make findings of fact and conclusions
135 of law as to whether the child is abused or neglected and
136 whether the respondent is abusing, neglecting, or, if
137 applicable, a battered parent, all of which shall be

138 incorporated into the order of the court. The findings must
139 be based upon conditions existing at the time of the filing of
140 the petition and proven by clear and convincing evidence.

141 (j) *Priority of proceedings.* — Any petition filed and any
142 proceeding held under this article shall, to the extent
143 practicable, be given priority over any other civil action
144 before the court, except proceedings under §48-27-309 of
145 this code and actions in which trial is in progress. Any
146 petition filed under this article shall be docketed
147 immediately upon filing. Any hearing to be held at the end
148 of an improvement period and any other hearing to be held
149 during any proceedings under this article shall be held as
150 nearly as practicable on successive days and, with respect to
151 the hearing to be held at the end of an improvement period,
152 shall be held as close in time as possible after the end of the
153 improvement period and shall be held within 30 days of the
154 termination of the improvement period.

155 (k) *Procedural safeguards.* — The petition may not be
156 taken as confessed. A transcript or recording shall be made
157 of all proceedings unless waived by all parties to the
158 proceeding. The rules of evidence apply. Following the
159 court's determination, it shall ask the parents or custodians
160 whether or not appeal is desired and the response
161 transcribed. A negative response may not be construed as a
162 waiver. The evidence shall be transcribed and made
163 available to the parties or their counsel as soon as
164 practicable, if the transcript is required for purposes of
165 further proceedings. If an indigent person intends to pursue
166 further proceedings, the court reporter shall furnish a
167 transcript of the hearing without cost to the indigent person
168 if an affidavit is filed stating that he or she cannot pay for
169 the transcript.



CHAPTER 29

**(H. B. 116 - By Delegates Hanshaw (Mr. Speaker)
and Miley)**

[By Request of the Executive]

[Passed May 20, 2019; in effect from passage.]

[Approved by the Governor on May 29, 2019.]

AN ACT to amend and reenact §49-4-722 of the Code of West Virginia, 1931, as amended, relating generally to persons eighteen years of age and older in the custody of the Bureau of Juvenile Services; directing notice between courts in criminal actions involving adults under the juvenile jurisdiction of the circuit court when such adults are charged or convicted of crimes while in custody of the Bureau of Juvenile Services; requiring notice of pending disposition to the circuit court with juvenile jurisdiction; prohibiting release of persons until after the court with juvenile jurisdiction holds a hearing as to future treatment of the person; and authorizing the Commissioner of the Division of Corrections and Rehabilitation to designate one or more units under his or her management to ensure that persons eighteen years of age or older under the juvenile jurisdiction of the circuit court are housed out of sight and sound of detained juveniles and incarcerated adult offenders.

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 in
26 subsection (c) of this section, the circuit court having
27 jurisdiction over the underlying juvenile matter shall conduct
28 a hearing to determine whether the person who has turned 18
29 years of age shall remain in the regional jail during pendency
30 of the underlying juvenile matter or if another disposition or
31 pretrial placement is appropriate and available: *Provided*, That
32 the court may not remand a child who reached the age of 18
33 years to a juvenile facility or placement during the pendency
34 of the underlying juvenile matter.

35 (e) Notwithstanding the provisions of §15A-3-12(i) of
36 this code, the Commissioner of the Division of Corrections
37 and Rehabilitation is authorized to designate a unit in one or
38 more institutions, either juvenile facilities, jails, or prisons,
39 under his or her management to house adults remaining
40 under the juvenile jurisdiction of the circuit court to ensure
41 that such persons are not within sight or sound of juvenile
42 detainees or adult inmates.

CHAPTER 30

**(S. B. 1001 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed May 20, 2019; in effect ninety days from passage.]
[Approved by the Governor on May 29, 2019.]

AN ACT to amend and reenact §5B-2-15 of the Code of West Virginia, 1931, as amended, relating to the Upper Kanawha Valley Resiliency and Revitalization Program; modifying the definition of “Upper Kanawha Valley”; requiring the council to waive its discretionary program guidelines to allow funding requests that may fall outside of the program’s guidelines but address the Upper Kanawha Valley communities’ goals for revitalization; extending the program to June 30, 2024; and providing that the annual report due under the program shall be delivered to the Joint Committee on Government and Finance with copies being provided to the county commissions and mayors of the Upper Kanawha Valley.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-15. Upper Kanawha Valley Resiliency and Revitalization Program.

1 (a) *Definitions.* —

2 (1) *General.* — Terms defined in this section have the
3 meanings ascribed to them by this section, unless a different
4 meaning is clearly required by either the context in which
5 the term is used, or by specific definition in this section.

6 (2) *Terms Defined.* —

7 (A) “Contributing partners” means those entities or their
8 representatives described in subsection (f) of this section.

9 (B) “Prioritize” means, with regard to resources,
10 planning, and technical assistance, that the members of the
11 revitalization council are required to waive their
12 discretionary program guidelines to allow funding requests
13 that may fall outside of the program’s guidelines but address
14 the Upper Kanawha Valley communities’ goals for
15 revitalization: *Provided*, That properly filed funding
16 applications by Upper Kanawha Valley communities shall
17 be given preferential treatment.

18 (C) “Program” means the Upper Kanawha Valley
19 Resiliency and Revitalization Program established in this
20 section.

21 (D) “Revitalization council” means those entities or
22 their representatives described in subsection (d) of this
23 section.

24 (E) “Technical assistance” means resources provided by
25 the state, revitalization council, contributing partners, or any
26 other individuals or entities providing programming,
27 funding, or other support to benefit the Upper Kanawha
28 Valley under the program.

29 (F) “Upper Kanawha Valley” means an area historically
30 known as the Upper Kanawha Valley including
31 municipalities and surrounding areas from the Charleston
32 city limits to Gauley Bridge or other communities in the
33 vicinity of the West Virginia University Institute of
34 Technology.

35 (G) “Upper Kanawha Valley Resiliency and
36 Revitalization Program” means the entire process
37 undertaken to further the goals of this section, including
38 collaboration development and implementation between the
39 members, contributors, and technical assistance resource
40 providers.

41 (b) *Legislative purpose, findings, and intent.* —

42 (1) The decision to relocate the historic campus of the
43 West Virginia University Institute of Technology from
44 Montgomery, West Virginia, to Beckley, West Virginia,
45 will have a dramatic economic impact on the Upper
46 Kanawha Valley.

47 (2) The purpose of this section is to establish the Upper
48 Kanawha Valley Resiliency and Revitalization Program. To
49 further this purpose, this program creates a collaboration
50 among state government, higher education, and private and
51 nonprofit sectors to streamline technical assistance capacity,
52 existing services, and other resources to facilitate
53 community revitalization in the Upper Kanawha Valley.

54 (3) It is the intent of the Legislature to identify existing
55 state resources that can be prioritized to support the Upper
56 Kanawha Valley, generate thoughtful and responsible ideas
57 to mitigate the negative effects of the departure of the West
58 Virginia Institute of Technology from the Upper Kanawha
59 Valley, and help chart a new course and prosperous future
60 for the Upper Kanawha Valley.

61 (c) *Upper Kanawha Valley Resiliency and Revitalization*
62 *Program established; duration of program.* —

63 (1) The Development Office shall establish the Upper
64 Kanawha Valley Resiliency and Revitalization Program in
65 accordance with the provisions of this section. The program
66 shall inventory existing assets and resources, prioritize
67 planning and technical assistance, and determine such other
68 assistance as might be available to revitalize communities
69 in the Upper Kanawha Valley.

70 (2) The program shall remain active until it concludes
71 its work on June 30, 2024, and delivers a final report to the
72 Joint Committee on Government and Finance no later than
73 October 1, 2024.

74 (d) *Revitalization council created.* — There is hereby
75 created a revitalization council to fulfill the purposes of this
76 section. The revitalization council shall be coordinated by
77 the Development Office in the Department of Commerce
78 and be subject to oversight by the secretary of the
79 department. The following entities shall serve as members
80 of the revitalization council:

81 (1) The Executive Director of the Development Office
82 or their designee, who shall serve as chairperson of the
83 council;

84 (2) The Secretary of the Department of Health and
85 Human Resources or their designee;

86 (3) The Commissioner of the Department of Agriculture
87 or their designee;

88 (4) The Executive Director of the West Virginia
89 Housing Development Fund or their designee;

90 (5) A representative from the Kanawha County
91 Commission;

92 (6) A representative from the Fayette County
93 Commission;

94 (7) The mayor, or their designee, from the
95 municipalities of Montgomery, Smithers, Pratt, and Gauley
96 Bridge;

97 (8) A representative from Bridge Valley Community
98 and Technical College; and

99 (9) A representative from West Virginia University.

100 (e) *Duties of the revitalization council.* —

101 (1) The council shall identify existing state resources
102 that can be prioritized to support economic development
103 efforts in the Upper Kanawha Valley.

104 (2) The council shall direct existing resources in a
105 unified effort and in conjunction with contributing partners,
106 as applicable, to support the Upper Kanawha Valley.

107 (3) The council shall develop a rapid response strategy
108 to attract or develop new enterprises and job-creating
109 opportunities in the Upper Kanawha Valley.

110 (4) The council shall conduct or commission a
111 comprehensive assessment of assets available at the campus
112 of the West Virginia Institute of Technology and determine
113 how those assets will be preserved and repurposed.

114 (5) The council shall assist communities in the Upper
115 Kanawha Valley by developing an economic plan to
116 diversify and advance the community.

117 (6) Members of the council shall support both the
118 planning and implementation for the program and shall give
119 priority wherever possible to programmatic activity and
120 discretionary, noncompetitive funding during the period the
121 program remains in effect.

122 (7) Members of the council shall work together to
123 leverage funding or other agency resources to benefit efforts
124 to revitalize the Upper Kanawha Valley.

125 (f) *Contributing partners.* — To the extent possible, the
126 revitalization council shall incorporate the resources and
127 expertise of additional providers of technical assistance to
128 support the program, which shall include but not be limited
129 to:

130 (1) The West Virginia Small Business Development
131 Center;

132 (2) The Center for Rural Health Development;

133 (3) The West Virginia University Brickstreet Center for
134 Entrepreneurship;

135 (4) The West Virginia University Land Use and
136 Sustainability Law Clinic;

137 (5) The West Virginia University Center for Big Ideas;

138 (6) The New River Gorge Regional Development
139 Authority;

140 (7) The Appalachian Transportation Institute;

141 (8) The Marshall University Center for Business and
142 Economic Research;

143 (9) TechConnect;

144 (10) The West Virginia Community Development Hub;

145 (11) The West Virginia University Northern
146 Brownfields Assistance Center;

147 (12) West Virginia State University Extension Service;
148 and

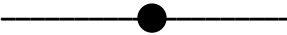
149 (13) West Virginia University Extension Service,
150 Community, Economic and Workforce Development.

151 (g) *Reporting and agency accountability.* — The
152 revitalization council, in coordination with its contributing
153 partners, as applicable, shall report annually to the Governor
154 and the Legislature detailing the progress of the technical
155 assistance support provided by the program, the strategic
156 plan for the Upper Kanawha Valley, and the results of these
157 efforts. The annual report to the Legislature shall be made
158 to the Joint Committee on Government and Finance
159 regarding the previous fiscal year no later than October 1 of
160 each year. Copies of the annual report to the Legislature
161 shall be provided to the county commissions and the mayors
162 of the Upper Kanawha Valley.

163 (h) *Economic incentives for businesses investing in the*
164 *Upper Kanawha Valley.* — The Development Office and the
165 revitalization council, as applicable, will work to educate

166 businesses investing, or interested in investing, in the Upper
167 Kanawha Valley, about the availability of, and access to,
168 economic development assistance, including but not limited
169 to, the economic opportunity tax credit provided in §11-
170 13Q-19 of this code; the manufacturing investment tax
171 credit provided under §11-13S-1 *et seq.* of this code; and
172 any other applicable tax credit or development assistance.

173 (i) *Use of state property and equipment; faculty.* — The
174 Development Office or other owner of state property and
175 equipment in the Upper Kanawha Valley is authorized to
176 provide for the low cost and economical use and sharing of
177 state property and equipment, including computers,
178 research labs, and other scientific and necessary equipment
179 to assist any business within the Upper Kanawha Valley at
180 a nominal or reduced-cost reimbursements to the state for
181 such use.



CHAPTER 31

**(H. B. 206 - By Delegates Espinosa, Wilson, Bibby,
Foster, Hardy, Householder, D. Jeffries, Little,
Malcolm, Phillips and Waxman)**

[Passed June 24, 2019; in effect from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT to amend and reenact §5-16-2 and §5-16-22 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-15-9s; to amend and reenact §15-1B-24 of said code; to amend said code by adding thereto a new section, designated §18-2E-12; to amend and reenact §18-5-14, §18-5-16, §18-5-16a, §18-5-18a, §18-5-18b, and §18-5-46 of said code; to amend said code by adding thereto a new section, designated §18-5-49; to amend and reenact §18-5A-2, §18-5A-3 and §18-5A-5 of said code;

to amend said code by adding thereto a new article, designated §18-5G-1, §18-5G-2, §18-5G-3, §18-5G-4, §18-5G-5, §18-5G-6, §18-5G-7, §18-5G-8, §18-5G-9, §18-5G-10, §18-5G-11 and §18-5G-12; to amend and reenact §18-7A-3 of said code; to amend and reenact §18-7B-2 of said code; to amend and reenact §18-8-4 of said code; to amend and reenact §18-9A-2, §18-9A-8 and §18-9A-9 of said code; to amend said code by adding thereto a new section, designated §18-9A-19; to amend said code by adding thereto a new section, designated §18-9B-22; to amend and reenact §18-20-5 of said code; to amend and reenact §18A-4-2, §18A-4-5, §18A-4-5a, §18A-4-7a, §18A-4-8a, and §18A-4-10 of said code; to amend and reenact §18C-4-1, §18C-4-2, §18C-4-3, §18C-4-4, and §18C-4-5 of said code; to amend and reenact §18C-4A-1, §18C-4A-2, and §18C-4A-3 of said code; and to amend and reenact §29-12-5a of said code, all relating to public education; allowing public charter schools to participate in the Public Employees Insurance Agency insurance program; exempting the purchase of certain goods from sales tax for a period of time; requiring the Governor to expand Mountaineer Challenge Academy at its existing location; permitting creation of a new Mountaineer Challenge Academy location subject to agreement required under federal law; requiring the State Board of Education to implement the Mountain State Digital Literacy Project as a pilot project; modifying requirements for policies to promote school board effectiveness and eliminating requirement for filing and refiling policies with state board; limiting meetings with improvement councils to those at low performing schools; modifying agenda for meeting with school improvement council; eliminating reporting requirement; permitting county boards to establish attendance zones; replacing existing provisions pertaining to student transfers with requirement for county boards to establish an open enrollment policy; requiring appeal process whereby a parent or guardian can appeal the refusal of a county board to accept the transfer of the student; requiring the county to which a student is transferred include the student in its net enrollment in certain instances; providing that certain transfer provisions do not

supersede eligibility requirements for participation in extracurricular activities established by the Secondary School Activities Commission; modifying student-teacher ratios; requiring the West Virginia Department of Education to survey districts to determine where overcrowding is impeding student achievement and requiring considerations therefore; increasing percentage of work time school counselors are required to spend in a direct counseling relationship with pupils; providing that the teacher's recommendation is a primary consideration in determining student promotion; authorizing county board to establish by policy an exceptional needs fund from certain surpluses and listing provisions that may be included; modifying membership of improvement councils; increasing prior notice of local school improvement council meetings; removing term limits for chair of council; removing council duty for meeting on student discipline issues and reporting to countywide council on productive and safe schools; requiring at least one council meeting annually for dialogue with parents and others on school's academic performance and standing; requiring meeting of certain council members of low performing school with county board and providing minimum issues to be addressed; referencing council authority to propose alternatives and request waivers of rules, policies, interpretations and state statutes; expanding issues on which school required to cooperate with council to promote innovations and improvements; removing reporting requirements; authorizing county boards to designate innovation schools and provide funding; reorganizing and clarifying authority and procedures for local school improvement councils to propose alternatives to the operation of school including request of waiver to rules, policies, interpretations and state statutes; preserving primary authority of county board to approve alternatives subject to grant of necessary waivers by other bodies; authorizing off-site classrooms; increasing faculty senate allotment to classroom teachers and librarians; stating legislative intent and purpose of public charter school provisions; providing for liberal interpretation; prohibiting interpretation to allow conversion of private schools to public charter school; prohibiting elected

official from profit or compensation except continued employment at school converted; limiting total number of public charter school authorized and in operation under an approved contract with periodic increases following reports by the State Board to the Legislative Oversight Commission on Education Accountability; providing that the Mountain Challenge Academy does not count toward total public charter schools: defining terms; specifying required general criteria that public charter schools must meet; establishing general provisions for public charter school governing boards; enumerating laws, policies, and codes that charter schools must comply with; providing powers and duties of state board for implementation, general supervision and support for public charter schools; requiring best practices catalogue, provision of forms, and training programs; authorizing receipt and expenditure of gifts, grants and donations and application for federal funds; reporting requirements and reports to Governor and Legislature; requiring state board as authorizer in certain instances; requiring state board rules related to funding, authorizer oversight funding, and other necessary issues; authorizing state board rule for ensuring accountability; specifying local education agency status; providing for authorizer powers and duties with respect applications, contracts to oversight and authorization; requiring appropriate corrective action or sanctions in response to deficiencies; providing authorization to require reports; requiring payment of oversight fee; prohibiting attachment of civil liability to authorizer, members or employees for acts or omissions of public charter school; limiting regulation of public charter schools by state and county boards to powers and duties as authorizers; establishing public charter school governing board membership, qualifications, status as public corporate body and authorized powers; listing governing board responsibilities for operation of public charter school; authorizing participation in cocurricular and extracurricular activities; mandating compliance with freedom of information and open governmental proceedings; providing for contents of application to form public charter school; specifying items to

be addressed in charter contracts, contract term and execution; providing process for contract renewal, performance report and time frame for final determination; providing that failure of authorizer to act to be deemed approval; providing for revocation of charter contracts and specifying grounds; declaring authorizer responsibilities for closure when contract not renewed or revoked; providing for closure protocol and removal of governing board members; providing for processes for student enrollment in public charter schools; requiring publication of enrollment option by school and county board; prohibiting mandated enrollment or departures of students at a public charter school; requiring designation of primary recruitment area, its effect and basis; prohibiting discrimination in enrollment with allowance for program focus on students with special needs; authorizing establishment of enrollment preferences; establishing effect of enrollment preference on enrollment, excess capacity and random lottery when capacity exceeded; providing for student transfers to noncharter schools; requiring access to electronic information system for reporting student and school performance, certification of enrollment, attendance and other student information to Department of Education; providing process for public charter school use or lease of public facilities; allowing public charter schools to elect to participate in certain state retirement systems; modifying requirements applicable after certain numbers of unexcused student absences; including professional personnel providing direct social and emotional support services to students and professional personnel addressing chronic absenteeism within the definition of “professional student support personnel”; modifying definition of net enrollment; increasing calculated net enrollment for the purposes of determining a county’s basic foundation program of certain counties with an actual net enrollment of less than 1,400; decreasing the percent of the levy rate used to calculate local share; basing the basic foundation allowance for professional student support personnel on a ratio of positions per students and providing that nothing in section precludes public-private partnerships or contracts to provide services; providing one year hold-

harmless on number of positions funded; increasing the percentage used to calculate each county's allowance for current expense; increasing allotment for academic materials, supplies and equipment; requiring that each county board receive its allocated state aid share of the county's basic foundation program in the form of block grants; requiring the State Superintendent to provide the State Auditor with the required data for use by the searchable budget data website; including public charter schools in the provisions pertaining to an appropriation to serve certain exceptional children; increasing teacher salaries; providing that certain math and special education teachers be considered to have three additional years of experience for the purposes of the salary schedule; providing equivalent amount in teacher's experience exceeds salary schedule maximum years; removing definition of salary equity among the counties; removing requirement that Department of Education include in its budget request a request for funding sufficient to meet the objective of salary equity; adding to exceptions to requirement that county salary schedules be uniform; providing for determination of seniority by random lottery within thirty days of employment for teachers employed on same date; requiring county board to base all decisions on reductions in force and reemployment on seniority, certification, licensure and performance evaluations; listing criteria county board must consider; requiring consideration of performance evaluations; modifying provisions pertaining to the preferred recall list and posting of position openings; removing requirement for county board to annually make available a list of all professional personnel employed, their areas of certification, and their seniority; providing that all personnel in a public charter school accrue seniority for the purpose of employment in noncharter public schools; increasing monthly pay for service personnel; increasing leave without cause days from three to four; requiring a bonus for classroom teachers who have not used more than four days of personal leave during the employment term; renaming the Underwood-Smith Teacher Scholarship and Loan Assistance programs the Underwood-Smith Teaching Scholars Program

and the Teacher Education Loan Repayment Program; modifying requirements for Higher Education Policy Commission rules providing for administration of the programs; requiring that Underwood-Smith Teaching Scholars award recipients receive additional academic support and training from mentors in their academic field; continuing the Underwood-Smith Teacher Scholarship and Loan Assistance Fund as the Underwood-Smith Teaching Scholars Program Fund; requiring each award recipient to be distinguished as an Underwood-Smith Teaching Scholar; establishing uses for moneys in the Underwood-Smith Teaching Scholars Program Fund; providing for continuation of certain terms, conditions, requirements, and agreements; requiring the Vice Chancellor for Administration to appoint a selection panel to select Underwood-Smith Teaching Scholars; modifying eligibility criteria for Underwood-Smith Teaching Scholars; modifying Underwood-Smith Teaching Scholars award agreement requirements; modifying renewal requirements for an Underwood-Smith Teaching Scholars award; modifying conditions under which a recipient is not in violation of the agreement; requiring Underwood-Smith Teaching Scholars award to be used in preparation for becoming a teacher in a critical shortage field in the public schools of this state; increasing the amount of the annual award; requiring as a condition of loan repayment award eligibility an applicant to be currently employed in a public school in this state in a critical teacher shortage field or as a school counselor in a school or geographic area of the state identified as an area of critical need for such field; requiring as a condition of eligibility an applicant to agree to be employed full time for two school years in a critical teacher shortage field or as a school counselor in a school or geographic area of critical need for such field for each year for which a loan repayment assistance award is received; modifying provisions pertaining to the amount of loan assistance and the requirements for eligibility; modifying eligibility requirements for renewal of scholarship award and loan repayment assistance award; removing accumulated limit on loan repayment awards; increasing minimum Board of

Risk and Insurance Management coverage; requiring at least annual written notice of Board of Risk and Insurance Management insurance coverages by county boards to employee insureds; allowing public charter schools to obtain insurance coverage from the Board of Risk and Insurance Management; providing effective dates and making technical changes.

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.**

§5-16-2. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the
3 context, have the following meanings:

4 (1) “Agency” means the Public Employees Insurance
5 Agency created by this article.

6 (2) “Director” means the Director of the Public
7 Employees Insurance Agency created by this article.

8 (3) “Employee” means any person, including an elected
9 officer, who works regularly full-time in the service of the
10 State of West Virginia and, for the purpose of this article
11 only, the term “employee” also means any person, including
12 an elected officer, who works regularly full-time in the
13 service of a county board of education; a public charter
14 school established pursuant to §18-5G-1 *et seq.* of this code
15 if the charter school includes in its charter contract entered
16 into pursuant to §18-5G-7 of this code a determination to
17 participate in the Public Employees Insurance program; a

18 county, city, or town in the State; any separate corporation
19 or instrumentality established by one or more counties,
20 cities, or towns, as permitted by law; any corporation or
21 instrumentality supported in most part by counties, cities, or
22 towns; any public corporation charged by law with the
23 performance of a governmental function and whose
24 jurisdiction is coextensive with one or more counties, cities,
25 or towns; any comprehensive community mental health
26 center or intellectually and developmentally
27 disabled facility established, operated, or licensed by the
28 Secretary of Health and Human Resources pursuant to §27-
29 2A-1 of this code and which is supported in part by state,
30 county, or municipal funds; any person who works regularly
31 full-time in the service of the Higher Education Policy
32 Commission, the West Virginia Council for Community
33 and Technical College Education or a governing board, as
34 defined in §18B-1-2 of this code; any person who works
35 regularly full-time in the service of a combined city-county
36 health department created pursuant to §16-2-1 *et seq.* of this
37 code; any person designated as a 21st Century Learner
38 Fellow pursuant to §18A-3-11 of this code; and any person
39 who works as a long-term substitute as defined in §18A-1-
40 1 of this code in the service of a county board of
41 education: *Provided*, That a long-term substitute who is
42 continuously employed for at least 133 instructional days
43 during an instructional term, and, until the end of that
44 instructional term, is eligible for the benefits provided in
45 this article until September 1 following that instructional
46 term: *Provided, however*, That a long-term substitute
47 employed fewer than 133 instructional days during an
48 instructional term is eligible for the benefits provided in this
49 article only during such time as he or she is actually
50 employed as a long-term substitute. On and after January 1,
51 1994, and upon election by a county board of education to
52 allow elected board members to participate in the Public
53 Employees Insurance Program pursuant to this article, any
54 person elected to a county board of education shall be
55 considered to be an “employee” during the term of office of
56 the elected member. Upon election by the state Board of

57 Education to allow appointed board members to participate
58 in the Public Employees Insurance Program pursuant to this
59 article, any person appointed to the state Board of Education
60 is considered an “employee” during the term of office of the
61 appointed member: *Provided further*, That the elected
62 member of a county board of education and the appointed
63 member of the state Board of Education shall pay the entire
64 cost of the premium if he or she elects to be covered under
65 this article. Any matters of doubt as to who is an employee
66 within the meaning of this article shall be decided by the
67 director.

68 On or after July 1, 1997, a person shall be considered an
69 “employee” if that person meets the following criteria:

70 (A) Participates in a job-sharing arrangement as defined
71 in §18A-1-1 of this code;

72 (B) Has been designated, in writing, by all other
73 participants in that job-sharing arrangement as the
74 “employee” for purposes of this section; and

75 (C) Works at least one-third of the time required for a
76 full-time employee.

77 (4) “Employer” means the State of West Virginia, its
78 boards, agencies, commissions, departments, institutions, or
79 spending units; a county board of education; a public charter
80 school established pursuant to §18-5G-1 *et seq.* of this code
81 if the charter school includes in its charter contract entered
82 into pursuant to §18-5G-7 of this code a determination to
83 participate in the Public Employees Insurance Program; a
84 county, city, or town in the state; any separate corporation
85 or instrumentality established by one or more counties,
86 cities, or towns, as permitted by law; any corporation or
87 instrumentality supported in most part by counties, cities, or
88 towns; any public corporation charged by law with the
89 performance of a governmental function and whose
90 jurisdiction is coextensive with one or more counties, cities
91 or towns; any comprehensive community mental health

92 center or intellectually and developmentally disabled
93 facility established, operated or licensed by the Secretary of
94 Health and Human Resources pursuant to §27-2A-1 of this
95 code and which is supported in part by state, county or
96 municipal funds; a combined city-county health department
97 created pursuant to §16-2-1 *et seq.* of this code; and a
98 corporation meeting the description set forth in §18B-12-3
99 of this code that is employing a 21st Century Learner Fellow
100 pursuant to §18A-3-11 of this code but the corporation is
101 not considered an employer with respect to any employee
102 other than a 21st Century Learner Fellow. Any matters of
103 doubt as to who is an “employer” within the meaning of this
104 article shall be decided by the director. The term “employer”
105 does not include within its meaning the National Guard.

106 (5) “Finance board” means the Public Employees
107 Insurance Agency finance board created by this article.

108 (6) “Person” means any individual, company,
109 association, organization, corporation or other legal entity,
110 including, but not limited to, hospital, medical or dental
111 service corporations; health maintenance organizations or
112 similar organization providing prepaid health benefits; or
113 individuals entitled to benefits under the provisions of this
114 article.

115 (7) “Plan”, unless the context indicates otherwise,
116 means the medical indemnity plan, the managed care plan
117 option, or the group life insurance plan offered by the
118 agency.

119 (8) “Retired employee” means an employee of the state
120 who retired after April 29, 1971, and an employee of the
121 Higher Education Policy Commission, the Council for
122 Community and Technical College Education, a state
123 institution of higher education or a county board of
124 education who retires on or after April 21, 1972, and all
125 additional eligible employees who retire on or after the
126 effective date of this article, meet the minimum eligibility
127 requirements for their respective state retirement system and

128 whose last employer immediately prior to retirement under
129 the state retirement system is a participating employer in the
130 state retirement system and in the Public Employees
131 Insurance Agency: *Provided*, That for the purposes of this
132 article, the employees who are not covered by a state
133 retirement system, but who are covered by a state-approved
134 or state-contracted retirement program or a system approved
135 by the director, shall, in the case of education employees,
136 meet the minimum eligibility requirements of the State
137 Teachers Retirement System and in all other cases, meet the
138 minimum eligibility requirements of the Public Employees
139 Retirement System and may participate in the Public
140 Employees Insurance Agency as retired employees upon
141 terms as the director sets by rule as authorized in this article.
142 Employers with employees who are, or who are eligible to
143 become, retired employees under this article shall be
144 mandatory participants in the Retiree Health Benefit Trust
145 Fund created pursuant to §5-16D-1 *et seq.* of this code.
146 Nonstate employers may opt out of the West Virginia other
147 post-employment benefits plan of the Retiree Health Benefit
148 Trust Fund and elect to not provide benefits under the Public
149 Employees Insurance Agency to retirees of the nonstate
150 employer, but may do so only upon the written certification,
151 under oath, of an authorized officer of the employer that the
152 employer has no employees who are, or who are eligible to
153 become, retired employees and that the employer will
154 defend and hold harmless the Public Employees Insurance
155 Agency from any claim by one of the employer's past,
156 present, or future employees for eligibility to participate in
157 the Public Employees Insurance Agency as a retired
158 employee. As a matter of law, the Public Employees
159 Insurance Agency shall not be liable in any respect to
160 provide plan benefits to a retired employee of a nonstate
161 employer which has opted out of the West Virginia other
162 post-employment benefits plan of the Retiree Health Benefit
163 Trust Fund pursuant to this section.

§5-16-22. Permissive participation; exemptions.

1 The provisions of this article are not mandatory upon
2 any employee or employer who is not an employee of, or is

3 not, the State of West Virginia, its boards, agencies,
4 commissions, departments, institutions or spending
5 units, or a county board of education, and nothing contained
6 in this article compels any employee or employer to enroll
7 in or subscribe to any insurance plan authorized by the
8 provisions of this article: *Provided*, That nothing in this
9 section requires a public charter school to participate in the
10 Public Employees Insurance Agency program.

11 Those employees enrolled in the insurance program
12 authorized under the provisions of §21A-2B-1 *et seq.* of this
13 code are not required to enroll in or subscribe to an
14 insurance plan or plans authorized by the provisions of this
15 article, and the employees of any department which has an
16 existing insurance program for its employees to which the
17 government of the United States contributes any part or all
18 of the premium or cost of the premium may be exempted
19 from the provisions of this article. Any employee or
20 employer exempted under the provisions of this paragraph
21 may enroll in any insurance program authorized by the
22 provisions of this article at any time, to the same extent as
23 any other qualified employee or employer, but employee or
24 employer may not remain enrolled in both programs.

25 Any plan established or administered by the Public
26 Employees Insurance Agency pursuant to this article is
27 exempt from the provisions of chapter 33 of this code unless
28 explicitly stated. Notwithstanding any provision of this code
29 to the contrary, the Public Employees Insurance Agency is
30 not an insurer or engaged in the business of insurance as
31 defined in chapter 33 of this code.

32 Employers, other than the State of West Virginia, its
33 boards, agencies, commissions, departments, institutions,
34 spending units, or a county board of education, are exempt
35 from participating in the insurance program provided for by
36 the provisions of this article unless participation by the
37 employer has been approved by a majority vote of the
38 employer's governing body. It is the duty of the clerk or
39 secretary of the governing body of an employer who by

40 majority vote becomes a participant in the insurance
41 program to notify the director not later than 10 days after
42 the vote.

43 Any employer, whether the employer participates in the
44 Public Employees Insurance Agency insurance program as
45 a group or not, which has retired employees, their
46 dependents or surviving dependents of deceased retired
47 employees who participate in the Public Employees
48 Insurance Agency insurance program as authorized by this
49 article, shall pay to the agency the same contribution toward
50 the cost of coverage for its retired employees, their
51 dependents or surviving dependents of deceased retired
52 employees as the State of West Virginia, its boards,
53 agencies, commissions, departments, institutions, spending
54 units, or a county board of education pay for their retired
55 employees, their dependents and surviving dependents of
56 deceased retired employees, as determined by the finance
57 board: *Provided*, That after June 30, 1996, an employer not
58 mandated to participate in the plan is only required to pay a
59 contribution toward the cost of coverage for its retired
60 employees, their dependents or the surviving dependents of
61 deceased retired employees who elect coverage when the
62 retired employee participated in the plan as an active
63 employee of the employer for at least five years: *Provided*,
64 *however*, That those retired employees of an employer not
65 participating in the plan who retire on or after July 1, 2010,
66 who have participated in the plan as active employees of the
67 employer for less than five years are responsible for the
68 entire premium cost for coverage and the Public Employees
69 Insurance Agency shall bill for and collect the entire
70 premium from the retired employees, unless the employer
71 elects to pay the employer share of the premium. Each
72 employer is hereby authorized and required to budget for
73 and make such payments as are required by this section.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9s. Exemption for certain school supplies, school instructional materials, laptop and tablet computers, and sports equipment.

1 (a) Effective July 1, 2021, the items identified in
2 subdivisions (1) through (5) of this subsection are exempt
3 from the tax imposed by this article and §11-15A-1 *et seq.*
4 of this code, if the sale or purchase occurs on the first
5 Sunday of August, or the previous Friday and Saturday, or
6 the following Monday. The items exempt are:

7 (1) An item of clothing, the price of which is \$125 or
8 less;

9 (2) An item of school supplies, the price of which is \$50
10 or less;

11 (3) An item of school instructional material, the price of
12 which is \$20 or less;

13 (4) Laptop and tablet computers, not purchased for use
14 in a trade or business, the price of which is \$500 or less; and

15 (5) Sports equipment, not purchased for use in a trade or
16 business, the price of which is \$150 or less.

17 (b) For purposes of this section:

18 (1) “Clothing” means all human wearing apparel
19 suitable for general use. “Clothing” includes, but is not
20 limited to, aprons, household and shop; athletic supporters;
21 baby receiving blankets; bathing suits and caps; beach capes
22 and coats; belts and suspenders; boots; coats and jackets;
23 costumes; diapers, children and adult, including disposable
24 diapers; ear muffs; footlets; formal wear; garters and garter
25 belts; girdles; gloves and mittens for general use; hats and
26 caps; hosiery; insoles for shoes; lab coats; neckties;
27 overshoes; pantyhose; rainwear; rubber pants; sandals;
28 scarves; shoes and shoe laces; slippers; sneakers; socks and
29 stockings; steel-toed shoes; underwear; uniforms, athletic
30 and nonathletic; and wedding apparel. “Clothing” does not

31 include items purchased for use in a trade or business;
32 clothing accessories or equipment; protective equipment;
33 sports or recreational equipment; belt buckles sold
34 separately; costume masks sold separately; patches and
35 emblems sold separately; sewing equipment and supplies
36 including, but not limited to, knitting needles, patterns, pins,
37 scissors, sewing machines, sewing needles, tape measures,
38 and thimbles; and sewing materials that become part of
39 “clothing” including, but not limited to, buttons, fabric, lace,
40 thread, yarn, and zippers.

41 (2) “School supplies” means items commonly used by a
42 student in a course of study. “School supplies” includes only
43 the following items: Binders; book bags; calculators;
44 cellophane tape; blackboard chalk; compasses; composition
45 books; crayons; erasers; folders, expandable, pocket,
46 plastic, and manila; glue, paste, and paste sticks;
47 highlighters; index cards; index card boxes; legal pads;
48 lunch boxes; markers; notebooks; paper, loose-leaf ruled
49 notebook paper, copy paper, graph paper, tracing paper,
50 manila paper, colored paper, poster board, and construction
51 paper; pencil boxes and other school supply boxes; pencil
52 sharpeners; pencils; pens; protractors; rulers; scissors; and
53 writing tablets. “School supplies” does not include any item
54 purchased for use in a trade or business.

55 (3) “School instructional material” means written
56 material commonly used by a student in a course of study as
57 a reference and to learn the subject being taught. “School
58 instructional material” includes only the following items:
59 reference books, reference maps and globes, textbooks, and
60 workbooks. “School instructional material” does not
61 include any material purchased for use in a trade or
62 business.

63 (c) The tax commissioner shall promulgate emergency
64 rules and shall propose rules for legislative approval in
65 accordance with the provisions of §29A-3-1 *et seq.* of this
66 code to establish eligibility requirements for the exemptions
67 established by this section.

CHAPTER 15. PUBLIC SAFETY.**ARTICLE 1B. NATIONAL GUARD.****§15-1B-24. Mountaineer Challenge Academy; expansion; cooperation of state executive agencies.**

1 (a) Subject to the agreement entered into between the
2 United States Secretary of Defense and the Governor to
3 establish, organize, and administer the Mountaineer
4 Challenge Academy pursuant to 32 U.S.C. § 509, the
5 Governor shall:

6 (1) Expand the capacity of the Mountaineer Challenge
7 Academy location in Preston County to accept cadets up to
8 its maximum capacity;

9 (2) Expand the Mountaineer Challenge Academy to a
10 second location in Fayette County; and

11 (3) To the extent necessary to accomplish the
12 requirements set forth in this subsection and to maximize
13 the use of federal funds, pursue an amendment to the
14 agreement entered into with the United States Secretary of
15 Defense pursuant to 32 U.S.C. § 509.

16 (b) The Mountaineer Challenge Academy, operated by
17 the Adjutant General at Camp Dawson, is hereby
18 acknowledged to be a program of great value in meeting the
19 educational needs of at-risk youth throughout the state.
20 Further, the Mountaineer Challenge Academy is hereby
21 designated as a special alternative education program as is
22 further provided pursuant to section §18-2-6 of this code. It
23 is, therefore, the intent of the Legislature that the
24 Mountaineer Challenge Academy should enjoy the full
25 cooperation of the executive agencies of state government
26 in carrying out its program.

27 To this end, the State Board of Education shall,
28 notwithstanding any other provision in this code to the
29 contrary:

30 (1) Include the Mountaineer Challenge Academy in the
31 child nutrition program;

32 (2) Provide the names and mailing addresses of all high
33 school dropouts in the state to the director of the
34 Mountaineer Challenge Academy annually; and

35 (3) Provide for Mountaineer Challenge Academy
36 graduates to participate in the adult basic education
37 program.

38 (c) Further cooperation with the Mountaineer Challenge
39 Academy is encouraged by the Legislature for the purpose
40 of assisting the Mountaineer Challenge Academy to achieve
41 its mission and help prepare young people for productive
42 adulthood.

CHAPTER 18. EDUCATION.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-12. Mountain State Digital Literacy Project.

1 (a) Beginning for the school year 2020-2021, the state
2 board shall implement a pilot project, hereby designated the
3 Mountain State Digital Literacy Project. The state board
4 shall determine the number of schools eligible to participate
5 in the pilot project and may adjust that number on a yearly
6 basis. The state board shall select the schools to participate
7 in the project, but selected schools shall possess varying
8 geographic and demographic characteristics and serve
9 students in grades K-8.

10 (b) Subject to legislative appropriation for this purpose,
11 schools participating in the project shall be provided with
12 instructional resources for students and teachers that feature
13 an extensive curriculum related to digital literacy, online
14 assessment preparation, and internet safety. Administrators
15 and teachers at the participating schools shall be provided

16 access to online digital literacy related professional
17 development and support.

18 (c) The project shall be designed and implemented to
19 compliment and build upon the digital literacy standards
20 and assessments established pursuant to §18-2-12, §18-2E-
21 5(c)(16), and §18-2E-5(d)(5) of this code.

22 (d) The state board may contract with a third-party to
23 facilitate the project. Any such third-party shall satisfy the
24 following qualifications:

25 (1) Possesses demonstrable experience facilitating
26 similar digital literacy initiatives with public school
27 systems;

28 (2) Provides extensive digital literacy content over the
29 internet that may be adapted to age or grade specific users
30 and assessment tools, and integrates with widely used
31 platforms; and

32 (3) Provides digital literacy-related professional
33 development and support resources for administrators and
34 teachers.

35 (e) On or before January 1, 2020, the state board shall
36 submit to the Governor and the Legislative Oversight
37 Committee on Education Accountability a report that
38 provides information on the development, structure, and
39 fiscal estimate of the Mountain State Digital Literacy
40 Project.

41 (f) On or before January 1, 2025, the state board shall
42 submit to the Governor and the Legislative Oversight
43 Committee on Education Accountability an evaluation of
44 the pilot project's impact on the performance and progress
45 of students at the participating schools. The evaluation shall
46 include a recommendation for pilot project continuation,
47 expansion or termination and, if recommended for
48 continuation or expansion, any recommendations for
49 program modifications and utilization of the successful

50 participating schools as demonstration sites to facilitate
51 program expansion.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-14. Policies to promote school board effectiveness.

1 (a) No later than January, 2020, each county board shall
2 adopt policies that promote school board effectiveness and
3 may modify the policies as necessary. The policies shall
4 address the following objectives:

5 (1) Establishing direct links between the county board
6 and its local school improvement councils and between the
7 county board and its faculty senates for the purpose of
8 enabling the county board to receive information, comments
9 and suggestions directly from the councils and faculty
10 senates regarding the broad guidelines for oversight
11 procedures, standards of accountability and planning for
12 future needs as required by this section. To further
13 development of these linkages, each county board shall:

14 (A) Meet at least annually with the local school
15 improvement council of each school deemed to be low
16 performing under the accountability system established by
17 the state board. The meeting or meetings shall be held at a
18 time and in a manner to be determined by the county board;

19 (B) At least 30 days before a meeting with the local
20 school improvement council of a school deemed to be low
21 performing, develop and submit to the council an agenda for
22 the meeting which requires the school principal and council
23 chair or a member designated by the chair, to address the
24 dialogue of its meeting or meetings at which the parents,
25 students, school employees, business partners and other
26 interested parties were given the opportunity to make
27 specific suggestions on how to address issues which are
28 seen to affect the school's academic performance. The
29 principal, council chair or other designated member shall
30 also address any reports by the county superintendent with
31 respect to the school's performance and progress, and any

32 one or more of the following issues as determined by the
33 county board:

34 (i) School performance;

35 (ii) Curriculum;

36 (iii) Status of the school in meeting the school's
37 strategic improvement plan established pursuant to §18-2E-
38 5 of this code; and

39 (iv) Status of the school in meeting the relevant parts of
40 the county's strategic improvement plan established
41 pursuant to §18-2E-5 of this code;

42 (C) Make written requests for information from the
43 local school improvement council throughout the year or
44 hold community forums to receive input from the affected
45 community as the county board considers necessary; and

46 (D) Nothing in this subdivision prohibits a county board
47 from meeting with and requesting information from
48 representatives of any of its local school improvement
49 councils such times and in such manner determined by the
50 county board.

51 (2) Providing for the development of direct links
52 between the county board and the community at large
53 allowing for community involvement at regular county
54 board meetings and specifying how the county board will
55 communicate regularly with the public regarding important
56 issues;

57 (3) Providing for the periodic review of personnel
58 policies of the district in order to determine their
59 effectiveness;

60 (4) Setting broad guidelines for the school district,
61 including the establishment of specific oversight
62 procedures, the development and implementation of
63 standards of accountability and the development of long-

64 range plans to meet future needs as required by this section;
65 and

66 (5) Using school-based accountability and performance
67 data provided by the state board and other available data in
68 county board decision-making to meet the education goals
69 of the state and other goals as the county board may
70 establish.

71 (b) On or before August 1, of each year, county school
72 boards shall review the policies listed in subsection (a) of
73 this section and may modify these policies as necessary.

§18-5-16. Student transfers; definitions; appeals; calculating net enrollment; fees for transfer.

1 (a) *Establishment of attendance zones within counties.* –
2 The county board may establish attendance zones within the
3 county to designate the schools that its resident students
4 shall attend. Upon the written request of any parent or
5 guardian, or person legally responsible for any student, or
6 for reasons affecting the best interests of the schools, the
7 superintendent may transfer students from one school to
8 another within the county. Any aggrieved person may
9 appeal the decision of the county superintendent to the
10 county board, and the decision of the county board is final.

11 (b) *Definitions.* – For the purposes of this section, unless
12 a different meaning clearly appears from the context:

13 “Nonresident student” means a student who resides in
14 this state and who is enrolled in or is seeking enrollment in
15 a county school district other than the county school district
16 in which the student resides.

17 “Open enrollment” means a policy adopted and
18 implemented by a county board to allow nonresident
19 students to enroll in any school within the district. Open
20 enrollment is distinct from a mutual agreement of two
21 county boards regarding mass transfer of students, as
22 contemplated in §18-5-13(f)(1)(C) of this code.

23 (c) *Enrollment policies.* – County boards shall establish
24 and implement an open enrollment policy without charging
25 tuition and without obtaining approval from the board of the
26 county in which a student resides and transfers. These
27 policies shall clearly articulate any admission criteria,
28 application procedures, transportation provisions, timelines
29 for open enrollment periods, and restrictions on transfers
30 due to building capacity constraints. Enrollment policies are
31 subject to the following:

32 (1) A county board may give enrollment preference to:

33 (A) Siblings of students already enrolled through the
34 open enrollment policy;

35 (B) Secondary students who have completed 10th grade
36 and, due to family relocation, become nonresident students,
37 but express the desire to remain in a specific school to
38 complete their education;

39 (C) Students who are children, grandchildren, or legal
40 wards of employees;

41 (D) Students whose legal residences, though
42 geographically within another county, are more proximate
43 to a school within the receiving county, whether calculated
44 by miles or transportation time; and

45 (E) Students who reside in a portion of a county where
46 topography, impassable roads, long bus rides, or other
47 conditions prevent the practicable transportation of the
48 student to a school within the county, and a school within a
49 contiguous county is more easily accessible.

50 (2) A county must comply with all enrollment
51 requirements for children who are in foster care or who meet
52 the definition of unaccompanied youth prescribed in the
53 McKinney-Vento Homeless Assistance Act (42 U.S.C. §
54 11434a(6)).

55 (3) The county board for the county educating the
56 nonresident student may provide an adequate means of
57 transportation to nonresident students when students have
58 complied with the procedure for obtaining authorization to
59 attend school outside their county of residence, subject to
60 the following:

61 (A) County boards of education are not required to
62 uniformly provide nonresident student transportation, and
63 may consider whether a nonresident student meets the
64 eligibility criteria for free or reduced price lunch and milk
65 established within the Richard B. Russell National School
66 Lunch Act (42 U.S.C. § 1758); and

67 (B) The county board for the county educating the
68 nonresident student shall provide transportation to and from
69 the school of attendance, or to and from an agreed pickup
70 point on a regular transportation route, or for the total miles
71 traveled each day for the nonresident student to reach the
72 school of enrollment if the nonresident student is a student
73 with disabilities and has an individualized education
74 program that specifies that transportation is necessary for
75 fulfillment of the program.

76 (d) *Appeal.* – The state board of education shall
77 establish a process whereby a parent or guardian of a student
78 may appeal the refusal of a county board to accept the
79 transfer of the student. If during the appeal process, the State
80 Superintendent discovers that the education and the welfare
81 of the student could be enhanced, the State Superintended
82 may direct that the student may be permitted to attend a
83 school in the receiving county.

84 (e) *Net enrollment.* – For purposes of net enrollment as
85 defined in §18-9A-2 of this code, whenever a student is
86 transferred on a full-time basis from one school district to
87 another district pursuant to the provisions of this section, the
88 county to which the student is transferred shall include the
89 student in its net enrollment: *Provided*, That if, after
90 transferring to another county, a student chooses to return to

91 a school in his or her county of residence after the second
92 month of any school year, the following applies:

93 (1) The county of residence may issue an invoice to the
94 county from which the student transferred for the amount,
95 determined on a pro rata basis, that the county of residence
96 otherwise would have received under the state basic
97 foundation program established in §18-9A-1 *et seq.* of this
98 code; and

99 (2) The county from which the student transferred shall
100 reimburse the county of residence for the amount of the
101 invoice.

102 (f) *Transfers between states.* — Transfer of students
103 from this state to another state shall be upon such terms,
104 including payment of tuition, as shall be mutually agreed
105 upon by the board of the receiving county and the authorities
106 of the school or district from which the transfer is made.

107 (g) No parent, guardian, or person acting as parent or
108 guardian is required to pay for the transfer of a student or
109 for the tuition of the student after the transfer when the
110 transfer is carried out under the terms of this section.

111 (h) Nothing in this section supersedes the eligibility
112 requirements for participation in extra-curricular activities
113 established by the Secondary Schools Activities
114 Commission.

115 (i) The amendments to this section during the 2019 First
116 Extraordinary Session of the Legislature shall be effective
117 for school years beginning on or after July 1, 2020, and the
118 provisions of this section existing immediately prior to the
119 2019 First Extraordinary Session of the Legislature remain
120 in effect for school years beginning prior to July 1, 2020.

§18-5-16a. Authorization to transfer pupils from one district to another; mandatory transfer; payment of tuition; net enrollment.

1 (a) The provisions of this section expire effective July
2 1, 2020: *Provided*, That any agreement made pursuant to
3 this section prior to July 1, 2020, shall remain in effect.

4 (b) Whenever, in the opinion of the board of education
5 of any county, the education and welfare of a pupil will be
6 enhanced, the board of education of such county shall have
7 the authority to transfer any such pupil or pupils on a part-
8 time or full-time basis from one school district to another
9 school district within the state: *Provided*, That the boards of
10 education of both the transferor and the transferee districts
11 agree to the same by official action of both boards as
12 reflected in the minutes of their respective meetings.

13 (c) Any pupil attending a school in a district of this state
14 adjacent to the district of residence during the school year
15 1984-1985, is authorized to continue such attendance in the
16 adjacent district, and, upon written request therefor by the
17 parent or guardian, any person who is entitled to attend the
18 public schools of this state and who resides in the same
19 household and is a member of the immediate family of such
20 pupil is authorized to enroll in such adjacent district. The
21 transferor and transferee school districts shall effectuate any
22 transfer herein authorized in accordance with the provisions
23 of this section.

24 (d) Whenever a pupil is transferred from one school
25 district to another district on a full-time or part-time basis,
26 the board of education of the school district in which the
27 pupil is a bona fide resident shall pay to the board of
28 education of the school district to which the pupil is
29 transferred a tuition that is agreed upon by both such boards.
30 Tuition for each full-time pupil shall not exceed the
31 difference between the state aid per pupil received by the
32 county to which the pupil is transferred and the county cost
33 per pupil in the county to which said pupil is transferred.

34 (e) For purposes of net enrollment as defined in §18-9A-
35 2 of this code: (1) Whenever a pupil is transferred on a full-
36 time basis from one school district to another district

37 pursuant to the provisions of this section, the county to
38 which the pupil is transferred shall include such pupil in its
39 net enrollment; and (2) whenever a pupil is transferred on a
40 part-time basis from one school district to another school
41 district pursuant to the provisions of this section, the county
42 in which the student is a bona fide resident shall count the
43 pupil in its net enrollment.

§18-5-18a. Maximum teacher-pupil ratio.

1 (a) County boards of education shall provide sufficient
2 personnel, equipment, and facilities as will ensure that each
3 first through sixth grade classroom, or classrooms having
4 two or more grades that include one or more of the first
5 through sixth grades shall not have more than 25 pupils for
6 each teacher of the grade or grades and shall not have more
7 than 20 pupils for each kindergarten teacher per session,
8 unless the state superintendent has excepted a specific
9 classroom upon application therefor by a county board.

10 (b) County school boards may not maintain a greater
11 number of classrooms having two or more grades that
12 include one or more of the grade levels referred to in this
13 section than were in existence in said county as of January
14 1, 1983.

15 (c) The state superintendent is authorized, consistent
16 with sound educational policy, to:

17 (1) Permit on a statewide basis, in grades four through
18 six, more than 25 pupils per teacher in a classroom for the
19 purposes of instruction in physical education; and

20 (2) Permit more than 20 pupils per teacher in a specific
21 kindergarten classroom and 25 pupils per teacher in a
22 specific classroom in grades four through six during a
23 school year in the event of extraordinary circumstances as
24 determined by the state superintendent after application by
25 a county board of education.

26 (d) The state board shall establish guidelines for the
27 exceptions authorized in this section, but in no event shall
28 the superintendent except classrooms having more than
29 three pupils above the pupil-teacher ratio as set forth in this
30 section.

31 (e) The requirement for approval of an exception to
32 exceed the 20 pupils per kindergarten teacher per session
33 limit or the 25 pupils per teacher limit in grades one through
34 six is waived in schools where the schoolwide pupil-teacher
35 ratio is 25 or less in grades one through six: *Provided*, That
36 a teacher shall not have more than three pupils above the
37 teacher/pupil ratio as set forth in this section. Any
38 kindergarten teacher who has more than 20 pupils per
39 session and any classroom teacher of grades one through six
40 who has more than 25 pupils, shall be paid additional
41 compensation based on the affected classroom teacher's
42 average daily salary divided by 20 for kindergarten teachers,
43 or 25 for teachers of grades one through six, for every day
44 times the number of additional pupils enrolled up to the
45 maximum pupils permitted in the teacher's classroom. All
46 such additional compensation shall be paid from county
47 funds exclusively.

48 Notwithstanding any other provision of this section to
49 the contrary, commencing with the school year beginning
50 on July 1, 1994, a teacher in grades one, two or three or
51 classrooms having two or more such grade levels, shall not
52 have more than two pupils above the teacher/pupil ratio as
53 set forth in this section: *Provided*, That commencing with
54 the school year beginning on July 1, 1995, such teacher shall
55 not have more than one pupil above the teacher/pupil ratio
56 as set forth in this section: *Provided, however*, That
57 commencing with the school year beginning on July 1,
58 1996, such teacher shall not have any pupils above the
59 teacher/pupil ratio as set forth in this section.

60 (f) No provision of this section is intended to limit the
61 number of pupils per teacher in a classroom for the purpose
62 of instruction in choral, band or orchestra music.

63 (g) Each school principal shall assign students equitably
64 among the classroom teachers, taking into consideration
65 reasonable differences due to subject areas and/or grade
66 levels.

67 (h) The state board shall collect from each county board
68 of education information on class size and the number of
69 pupils per teacher for all classes in grades seven through 12.
70 The state board shall report such information to the
71 Legislative Oversight Commission on Education
72 Accountability before January 1, of each year.

73 (i) The West Virginia Department of Education shall
74 survey districts to determine those grade levels, content
75 areas, and geographic locations where class overcrowding
76 is impeding student achievement and report to the
77 Legislature by July 1, 2020 a tailored plan for reducing class
78 overcrowding in such areas.

79 The study shall include, but is not limited to, an
80 examination of the following issues:

81 (1) The effect on student learning of limits on the number
82 of pupils per teacher in a classroom in elementary classes and
83 in a middle and high school format in which students have
84 different teachers for different subject matter instruction;

85 (2) The effect on the equity among teachers in a middle
86 school in which the number of pupils per teacher in a
87 classroom is limited for some teachers and not for others,
88 including the additional pay for certain teachers in whose
89 classrooms the limits are exceeded; and

90 (3) The effect limits on the number of pupils per teacher
91 in a classroom have on the ability of school systems to offer
92 elective courses in secondary schools.

§18-5-18b. School counselors in public schools.

1 (a) A school counselor means a professional educator
2 who holds a valid school counselor's certificate in
3 accordance with §18A-1-1 of this code.

4 (b) Each county board shall provide counseling services
5 for each pupil enrolled in the public schools of the county.

6 (c) The school counselor shall work with individual
7 pupils and groups of pupils in providing developmental,
8 preventive and remedial guidance and counseling programs
9 to meet academic, social, emotional, and physical needs;
10 including programs to identify and address the problem of
11 potential school dropouts. The school counselor also may
12 provide consultant services for parents, teachers, and
13 administrators and may use outside referral services, when
14 appropriate, if no additional cost is incurred by the county
15 board.

16 (d) The state board may adopt rules consistent with the
17 provisions of this section that define the role of a school
18 counselor based on the "National Standards for School
19 Counseling Programs" of the American School Counselor
20 Association. A school counselor is authorized to perform
21 such services as are not inconsistent with the provisions of
22 the rule as adopted by the state board. To the extent that any
23 funds are made available for this purpose, county boards
24 shall provide training for counselors and administrators to
25 implement the rule as adopted by the state board.

26 (e) Each county board shall develop a comprehensive
27 drop-out prevention program utilizing the expertise of
28 school counselors and any other appropriate resources
29 available.

30 (f) School counselors shall be full-time professional
31 personnel, shall spend at least 80 percent of work time in a
32 direct counseling relationship with pupils, and shall devote
33 no more than 20 percent of the work day to administrative
34 activities: *Provided*, That such activities are counselor
35 related.

36 (g) Nothing in this section prohibits a county board from
37 exceeding the provisions of this section, or requires any
38 specific level of funding by the Legislature.

§18-5-46. Requiring teacher to change grade prohibited; teacher recommendation relating to promotion.

1 (a) No teacher may be required by a principal or any
2 other person to change a student's grade on either an
3 individual assignment or a report card unless there is clear
4 and convincing evidence that there was a mathematical
5 error in calculating the student's grade.

6 (b) The teacher's recommendation relating to whether a
7 student should be promoted to the next grade level shall be
8 a primary consideration when making such a determination.

§18-5-49. County board exceptional needs expenditures from surplus funds.

1 Each county board may by policy establish an
2 exceptional needs fund from surpluses for students who are
3 likely to perform better outside of the public school setting.
4 The policy may include:

5 (1) Allowing the county board to use excess funds or
6 donated funds for expenditures related to services and
7 materials necessary for that student's educational success
8 that are not met within the public education school district;

9 (2) The amount of funds that is to be deposited into the
10 fund each year which may vary based on availability of
11 surpluses;

12 (3) The qualifying expenses that funds in the fund may
13 be used for;

14 (4) Measures for protecting against improper use of the
15 funds which may include auditing all expenditures related
16 to an individual student for services outside of the public
17 education district;

18 (5) The conditions under which payments from the
19 Exceptional Needs Success Fund are to cease;

20 (6) Eligibility requirements for education service
21 providers that can accept payments from the fund;

22 (7) A requirement that any overpayments recaptured
23 from refunded expenditures revert to the Exceptional
24 Student Success Fund; and

25 (8) Any other provision the county board determines
26 appropriate.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-2. Local school improvement councils; election and appointment of members and officers; meetings; required meetings with county board; assistance from state board.

1 (a) A local school improvement council shall be
2 established at every school consisting of the following:

3 (1) The principal, who serves as an ex officio member
4 of the council and is entitled to vote;

5 (2) Three teachers elected by the faculty senate of the
6 school;

7 (3) Two service persons elected by the service personnel
8 employed at the school, one of whom shall be a bus operator
9 who transports students enrolled at the school;

10 (4) Three parent(s), guardian(s) or custodian(s) of
11 students enrolled at the school elected by the parent(s),
12 guardian(s) or custodian(s) members of the school's parent
13 teacher organization. If there is no parent teacher
14 organization, the parent(s), guardian(s) or custodian(s)
15 members shall be elected by the parent(s), guardian(s) or
16 custodian(s) of students enrolled at the school in such
17 manner as may be determined by the principal. Under no
18 circumstances may a parent member of the council be then
19 employed at that school in any capacity;

20 (5) Three at-large members appointed by the principal,
21 at least one of whom resides in the school's attendance area,

22 and at least one of whom represents business or industry,
23 neither of whom are eligible for any local school
24 improvement council membership under any of the other
25 elected classes of members;

26 (6) In the case of vocational-technical schools,
27 comprehensive middle schools and comprehensive high
28 schools, the vocational director or principal, as applicable,
29 shall appoint up to four additional members from any one
30 or more of the following categories: Employer; employer
31 sponsored training program; apprenticeship program; and
32 post-secondary education; and

33 (7) In the case of a school with students in grade seven
34 or higher, the student body president or other student in
35 grade seven or higher elected by the student body in those
36 grades.

37 (b) The principal shall arrange for the election of
38 members to the local school improvement council to be held
39 prior to September 15, of each school year to elect a council
40 and shall give notice of the elections at least one week prior
41 to the elections being held. To the extent practicable, all
42 elections to select council members shall be held within the
43 same week.

44 (c) Parent(s), guardian(s) or custodian(s), teachers and
45 service personnel elected to the council shall serve a two-
46 year term and elections shall be arranged in such a manner
47 that no more than two teachers, no more than two parent(s),
48 guardian(s) or custodian(s) and no more than one service
49 person are elected in a given year. All other nonex officio
50 members shall serve one-year terms.

51 (d) Council members may only be replaced upon death,
52 resignation, failure to appear at three consecutive meetings
53 of the council for which notice was given, or a change in
54 personal circumstances so that the person is no longer
55 representative of the class of members from which
56 appointed. In the case of a vacancy in an elected position,

57 the chair of the council shall appoint another qualified
58 person to serve the unexpired term of the person being
59 replaced or, in the case of an appointed member of the
60 council, the principal shall appoint a replacement as soon as
61 practicable.

62 (e) As soon as practicable after the election of council
63 members, and no later than October 1, of each school year,
64 the principal shall convene an organizational meeting of the
65 school improvement council. The principal shall notify each
66 member by written or electronic means at least five
67 employment days in advance of the organizational meeting.
68 At this meeting, the principal shall provide each member
69 with the following:

70 (1) A copy of the current applicable sections of this
71 code;

72 (2) Any state board rule or regulation promulgated
73 pursuant to the operation of these councils; and

74 (3) Any information as may be developed by the
75 Department of Education on the operation and powers of
76 local school improvement councils and their important role
77 in improving student and school performance and progress.

78 (f) The council shall elect from its membership a chair
79 and two members to assist the chair in setting the agenda for
80 each council meeting. The chair shall serve a term of one
81 year. If the chair's position becomes vacant for any reason,
82 the principal shall call a meeting of the council to elect
83 another qualified person to serve the unexpired term. Once
84 elected, the chair is responsible for notifying each member
85 of the school improvement council in writing five
86 employment days in advance of any council meeting.

87 (g) School improvement councils shall meet at least
88 once every nine weeks or equivalent grading period at the
89 call of the chair or by the petition of three fourths of its
90 members. The principal shall notify each member by written

91 or electronic means at least five employment days in
92 advance of the organizational meeting.

93 (h) The school improvement council annually shall
94 conduct at least one meeting to engage parents, students,
95 school employees, business partners and other interested
96 parties in a positive and interactive dialogue regarding the
97 school's academic performance and standing as determined
98 by measures adopted by the state board. The dialogue shall
99 include an opportunity for the parents, students, school
100 employees, business partners and other interested parties to
101 make specific suggestions on how to address issues which
102 are seen to affect the school's academic performance which
103 may include, but not limited to, parent and community
104 involvement, the learning environment, student
105 engagement, attendance, supports for at-risk students,
106 curricular offerings, resources and the capacity for school
107 improvement. The council shall announce any such meeting
108 ten employment days in advance.

109 (i) The local school improvement council of each school
110 deemed to be low performing under the accountability
111 system established by the state board shall meet at least
112 annually with the county board. At any such meeting, the
113 principal and local school improvement council chair, or
114 another member designated by the chair, shall be prepared
115 to address the dialogue at its meeting or meetings to give the
116 parents, students, school employees, business partners and
117 other interested parties an opportunity to make specific
118 suggestions on how to address issues which are seen to
119 affect the school's academic performance and any other
120 matters as may be requested by the county board as
121 specified in the meeting agenda provided to the council and
122 may further provide any other information, comments or
123 suggestions the local school improvement council wishes to
124 bring to the county board's attention. Anything presented
125 under this subsection shall be submitted to the county board
126 in writing.

127 (j) Local school improvement councils shall be
128 considered for the receipt of school of excellence awards
129 and competitive grant awards and may receive and expend
130 such grants for the purposes provided. Local school
131 improvement councils may propose alternatives to the
132 operation of the school in accordance with §18-5A-3 of this
133 code and may include in the proposal a request for a waiver
134 of rules and policies of the county board and state board,
135 state superintendent interpretations, and state statutes if
136 necessary to implement the proposal.

137 (k) In any and all matters which may fall within the
138 scope of both the school improvement councils and the
139 school curriculum teams authorized in section five of this
140 article, the school curriculum teams have jurisdiction.

141 (l) In order to promote innovations and improvements
142 in the environment for teaching and learning at the school,
143 a school improvement council shall receive cooperation
144 from the school in implementing policies and programs it
145 may adopt to:

146 (1) Encourage the involvement of parent(s), guardian(s)
147 or custodian(s) in their child's educational process and in
148 the school;

149 (2) Encourage businesses to provide time for their
150 employees who are parent(s), guardian(s) or custodian(s) to
151 meet with teachers concerning their child's education;

152 (3) Encourage advice and suggestions from the business
153 community;

154 (4) Encourage school volunteer programs and
155 mentorship programs;

156 (5) Foster utilization of the school facilities and grounds
157 for public community activities;

158 (6) Encourage students to adopt safe and healthy
159 lifestyles; and

160 (7) Communicate to students the common skills and
161 attributes sought by employers in prospective employees.

162 (m) Councils may adopt their own guidelines
163 established under this section. In addition, the councils may
164 adopt all or any part of the guidelines proposed by other
165 local school improvement councils, as developed under this
166 section, which are not inconsistent with the laws of this
167 state, the policies of the West Virginia Board of Education
168 or the policies of the county board.

169 (n) The State Board of Education shall provide
170 assistance to a local school improvement council upon
171 receipt of a reasonable request for that assistance. The state
172 board also may solicit proposals from other parties or
173 entities to provide orientation training for local school
174 improvement council members and may enter into contracts
175 or agreements for that purpose. Any training for members
176 shall meet the guidelines established by the state board.

§18-5A-3. County board authority to designate innovation schools; local school improvement council proposals of alternatives to operation of school; process for requesting waivers of rules, policies, interpretations and statutes to implement alternatives.

1 (a) The intent of this section is to encourage and
2 facilitate the design and implementation of innovative
3 initiatives by local schools, working through their local
4 school improvement councils, that meet the school's needs
5 and circumstances. A school level initiative may propose
6 alternatives to the operation of the public school that will
7 enable the school to better meet or exceed the high quality
8 standards established by the state board, increase
9 administrative efficiency, enhance the delivery of
10 instructional programs, promote student engagement in the
11 learning process, promote business partnerships, promote
12 parent and community involvement at the school, or
13 improve the educational performance of the school
14 generally. In accordance with this intent, a local school

15 improvement council established under the provisions of
16 §18-5A-2 of this code may submit to its county board
17 proposed alternatives to the operation of the public school
18 in accordance with this section. If the county board
19 approves the proposal in accordance with this section, it
20 may designate the school as an innovation school and may
21 provide funding to support implementation of the proposal,
22 if necessary.

23 (b) An alternative proposed by a local school
24 improvement council shall set forth:

25 (1) The objective or objectives to be accomplished
26 under the proposal;

27 (2) How the accomplishment of such objective or
28 objectives will meet or exceed the standards established by
29 the state board;

30 (3) The indicators upon which the meeting of such
31 standards should be judged;

32 (4) A projection of any funds to be saved by the proposal
33 and how such funds will be reallocated within the school, or
34 any costs associated with the proposal and proposed funding
35 sources; and

36 (5) Any policies or rules promulgated by the state or
37 county board, any state superintendent interpretations and
38 any state statutes for which a waiver will be required for the
39 proposed alternative to be implemented; and

40 (c) For an alternative to be proposed, at least two thirds
41 of the members of the local school improvement council
42 must vote in favor of the proposal. If the alternative to be
43 proposed includes the request for a waiver of policies or
44 rules promulgated by the state or county board, state
45 superintendent interpretations or state statutes affecting
46 employees, then prior to the proposal of the alternative, a
47 majority of the local affected employee group must agree.

48 (d) A local school improvement council shall submit its
49 proposed alternative to the county board. The county board
50 shall acknowledge receipt of the proposal and promptly
51 review the proposed alternative. The county board may
52 request additional information and clarifications from the
53 local school improvement council regarding the proposed
54 alternative. The county board shall approve or disapprove
55 the proposal and return it to the council with a statement of
56 the reasons for the action taken, subject to the following:

57 (1) If an alternative proposed by the local school
58 improvement council requires the waiver of any policies or
59 rules promulgated by the county board, approval of the
60 proposal by the county board constitutes a grant of the
61 waiver;

62 (2) If an alternative proposed by the local school
63 improvement council requires the waiver of any policies or
64 rules promulgated by the state board and the county board
65 approves the proposal except that a waiver by the state board
66 is required, the county board shall forward the approved
67 proposal to the state board for final determination. The state
68 board shall acknowledge receipt of the proposal and
69 promptly review the proposed alternative in consultation
70 with the county board or their agents and, in its discretion,
71 approve implementation of the alternative or reply to the
72 county board and council within a reasonable time as to its
73 reasons for not approving the proposed alternative.
74 Approval of the proposal by the state board constitutes a
75 grant of the waiver;

76 (3) If an alternative proposed by the local school
77 improvement council requires the waiver of a state
78 superintendent's interpretation and the county board
79 approves the proposal except that a waiver by the state
80 superintendent is required, the county board shall forward
81 the approved proposal to the state superintendent for final
82 determination. The state superintendent shall acknowledge
83 receipt of the proposal and promptly review the proposed
84 alternative in consultation with the county board or their

85 agents and, in his or her discretion, approve implementation
86 of the alternative or reply to the county board and council
87 within a reasonable time as to its reasons for not approving
88 the proposed alternative. Approval of the proposal by the
89 state superintendent constitutes a grant of the waiver;

90 (4) If an alternative proposed by the local school
91 improvement council requires the waiver of a state statute
92 and the county board approves the proposal except that a
93 waiver of the statute is required, the county board shall
94 forward the approved proposal to the Legislative Oversight
95 Commission on Education Accountability. The commission
96 shall acknowledge receipt of the proposal and promptly
97 review the proposed alternative in consultation with the
98 county board or their agents and determine whether a
99 recommendation should be made for an Act of the
100 Legislature to waive the statute to permit implementation of
101 the proposed alternative;

102 (5) If an alternative that requires a waiver is proposed
103 by more than one local school improvement council in the
104 county and the county board approves, the county board
105 may forward a consolidated proposal requesting the waiver
106 to the appropriate bodies as provided in this subsection; and

107 (6) When an alternative to the operation of a school is
108 approved, the county board shall establish a process for
109 evaluation of the operation of the alternative. Approval for
110 the operation of the alternative may be continued or revoked
111 at any time based on the results and findings of the
112 evaluation.

113 (e) Notwithstanding any other provisions of the law to
114 the contrary, a local school improvement council is not
115 prohibited from permitting off-site classrooms to be
116 developed in conjunction with local businesses if those sites
117 meet the requirements established by the county board for
118 sites that are located off campus.

119 (f) The state board shall submit a report to the
120 Legislative Oversight commission on education
121 accountability and the Governor on September 1, of each
122 year summarizing the proposed alternatives received,
123 approved or rejected, continued or revoked during the
124 preceding school year and the results and findings of the
125 evaluations. The report shall specifically identify all policy,
126 rule, and interpretation waiver requests including those
127 requests made to county boards by local school
128 improvement councils received during the preceding year
129 and the disposition of each.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

1 (a) There is established at every public school in this
2 state a faculty senate which is comprised of all permanent,
3 full-time professional educators employed at the school who
4 shall all be voting members. “Professional educators”, as
5 used in this section, means “professional educators” as
6 defined in chapter eighteen-a of this code. A quorum of
7 more than one half of the voting members of the faculty
8 shall be present at any meeting of the faculty senate at which
9 official business is conducted. Prior to the beginning of the
10 instructional term each year, but within the employment
11 term, the principal shall convene a meeting of the faculty
12 senate to elect a chair, vice chair and secretary and discuss
13 matters relevant to the beginning of the school year. The
14 vice chair shall preside at meetings when the chair is absent.
15 Meetings of the faculty senate shall be held during the times
16 provided in accordance with subdivision (12), subsection
17 (b) of this section as determined by the faculty senate.
18 Emergency meetings may be held during noninstructional
19 time at the call of the chair or a majority of the voting
20 members by petition submitted to the chair and vice chair.
21 An agenda of matters to be considered at a scheduled
22 meeting of the faculty senate shall be available to the
23 members at least two employment days prior to the meeting.
24 For emergency meetings the agenda shall be available as

25 soon as possible prior to the meeting. The chair of the
26 faculty senate may appoint such committees as may be
27 desirable to study and submit recommendations to the full
28 faculty senate, but the acts of the faculty senate shall be
29 voted upon by the full body.

30 (b) In addition to any other powers and duties conferred
31 by law, or authorized by policies adopted by the state or
32 county board or bylaws which may be adopted by the
33 faculty senate not inconsistent with law, the powers and
34 duties listed in this subsection are specifically reserved for
35 the faculty senate. The intent of these provisions is neither
36 to restrict nor to require the activities of every faculty senate
37 to the enumerated items except as otherwise stated. Each
38 faculty senate shall organize its activities as it considers
39 most effective and efficient based on school size,
40 departmental structure and other relevant factors.

41 (1) Each faculty senate shall control funds allocated to
42 the school from legislative appropriations pursuant to
43 section nine, article nine-a of this chapter. From those funds,
44 each classroom teacher and librarian shall be allotted \$300
45 for expenditure during the instructional year for academic
46 materials, supplies or equipment which, in the judgment of
47 the teacher or librarian, will assist him or her in providing
48 instruction in his or her assigned academic subjects or shall
49 be returned to the faculty senate: *Provided*, That nothing
50 contained herein prohibits the funds from being used for
51 programs and materials that, in the opinion of the teacher,
52 enhance student behavior, increase academic achievement,
53 improve self-esteem and address the problems of students at
54 risk. The remainder of funds shall be expended for academic
55 materials, supplies or equipment in accordance with a
56 budget approved by the faculty senate. Notwithstanding any
57 other provisions of the law to the contrary, funds not
58 expended in one school year are available for expenditure in
59 the next school year: *Provided, however*, That the amount
60 of county funds budgeted in a fiscal year may not be reduced
61 throughout the year as a result of the faculty appropriations
62 in the same fiscal year for such materials, supplies and

63 equipment. Accounts shall be maintained of the allocations
64 and expenditures of such funds for the purpose of financial
65 audit. Academic materials, supplies or equipment shall be
66 interpreted broadly, but does not include materials, supplies
67 or equipment which will be used in or connected with
68 interscholastic athletic events.

69 (2) A faculty senate may establish a process for
70 members to interview or otherwise obtain information
71 regarding applicants for classroom teaching vacancies that
72 will enable the faculty senate to submit recommendations
73 regarding employment to the principal. To facilitate the
74 establishment of a process that is timely, effective,
75 consistent among schools and counties, and designed to
76 avoid litigation or grievance, the state board shall
77 promulgate a rule pursuant to article three-b, chapter
78 twenty-nine-a of this code to implement the provisions of
79 this subdivision. The rule may include the following:

80 (A) A process or alternative processes that a faculty
81 senate may adopt;

82 (B) If determined necessary, a requirement and
83 procedure for training for principals and faculty senate
84 members or their designees who may participate in
85 interviews and provisions that may provide for the
86 compensation based on the appropriate daily rate of a
87 classroom teacher who directly participates in the training
88 for periods beyond his or her individual contract;

89 (C) Timelines that will assure the timely completion of
90 the recommendation or the forfeiture of the right to make a
91 recommendation upon the failure to complete a
92 recommendation within a reasonable time;

93 (D) The authorization of the faculty senate to delegate
94 the process for making a recommendation to a committee of
95 no less than three members of the faculty senate; and

96 (E) Such other provisions as the state board determines
97 are necessary or beneficial for the process to be established
98 by the faculty senate.

99 (3) A faculty senate may nominate teachers for
100 recognition as outstanding teachers under state and local
101 teacher recognition programs and other personnel at the
102 school, including parents, for recognition under other
103 appropriate recognition programs and may establish such
104 programs for operation at the school.

105 (4) A faculty senate may submit recommendations to
106 the principal regarding the assignment scheduling of
107 secretaries, clerks, aides and paraprofessionals at the school.

108 (5) A faculty senate may submit recommendations to
109 the principal regarding establishment of the master
110 curriculum schedule for the next ensuing school year.

111 (6) A faculty senate may establish a process for the
112 review and comment on sabbatical leave requests submitted
113 by employees at the school pursuant to section eleven,
114 article two of this chapter.

115 (7) Each faculty senate shall elect three faculty
116 representatives to the local school improvement council
117 established pursuant to section two of this article.

118 (8) Each faculty senate may nominate a member for
119 election to the county staff development council pursuant to
120 section eight, article three, chapter eighteen-a of this code.

121 (9) Each faculty senate shall have an opportunity to
122 make recommendations on the selection of faculty to serve
123 as mentors for beginning teachers under beginning teacher
124 internship programs at the school.

125 (10) A faculty senate may solicit, accept and expend any
126 grants, gifts, bequests, donations and any other funds made
127 available to the faculty senate: *Provided*, That the faculty
128 senate shall select a member who has the duty of

129 maintaining a record of all funds received and expended by
130 the faculty senate, which record shall be kept in the school
131 office and is subject to normal auditing procedures.

132 (11) Any faculty senate may review the evaluation
133 procedure as conducted in their school to ascertain whether
134 the evaluations were conducted in accordance with the
135 written system required pursuant to section twelve, article
136 two, chapter eighteen-a of this code or pursuant to section
137 two, article three-c, chapter eighteen-a of this code, as
138 applicable, and the general intent of this Legislature
139 regarding meaningful performance evaluations of school
140 personnel. If a majority of members of the faculty senate
141 determine that such evaluations were not so conducted, they
142 shall submit a report in writing to the State Board of
143 Education: *Provided*, That nothing herein creates any new
144 right of access to or review of any individual's evaluations.

145 (12) A local board shall provide to each faculty senate
146 at least six two-hour blocks of time for faculty senate
147 meetings with at least one two-hour block of time scheduled
148 in the first month of the employment term, one two-hour
149 block of time scheduled in the last month of the employment
150 term and at least one two-hour block of time scheduled in
151 each of the months of October, December, February and
152 April. A faculty senate may meet for an unlimited block of
153 time during noninstructional days to discuss and plan
154 strategies to improve student instruction and to conduct
155 other faculty senate business. A faculty senate meeting
156 scheduled on a noninstructional day shall be considered as
157 part of the purpose for which the noninstructional day is
158 scheduled. This time may be used and determined at the
159 local school level and includes, but is not limited to, faculty
160 senate meetings.

161 (13) Each faculty senate shall develop a strategic plan
162 to manage the integration of special needs students into the
163 regular classroom at their respective schools and submit the
164 strategic plan to the superintendent of the county board
165 periodically pursuant to guidelines developed by the State

166 Department of Education. Each faculty senate shall
167 encourage the participation of local school improvement
168 councils, parents and the community at large in developing
169 the strategic plan for each school.

170 Each strategic plan developed by the faculty senate shall
171 include at least: (A) A mission statement; (B) goals; (C)
172 needs; (D) objectives and activities to implement plans
173 relating to each goal; (E) work in progress to implement the
174 strategic plan; (F) guidelines for placing additional staff into
175 integrated classrooms to meet the needs of exceptional
176 needs students without diminishing the services rendered to
177 the other students in integrated classrooms; (G) guidelines
178 for implementation of collaborative planning and
179 instruction; and (H) training for all regular classroom
180 teachers who serve students with exceptional needs in
181 integrated classrooms.

ARTICLE 5G. PUBLIC CHARTER SCHOOLS.

§18-5G-1. Legislative purpose and intent.

1 (a) The purpose of this article is to establish a process
2 for the creation, governance and oversight accountability of
3 public charter schools with a renewed the commitment to
4 the mission, goals, and diversity of public education that
5 benefits students, parents, teachers, and community
6 members.

7 (b) Public charter schools are intended to empower new,
8 innovative, and more flexible ways of educating all children
9 within the public school system to:

10 (1) Improve student learning by creating more diverse
11 public schools with high standards for student performance;

12 (2) Allow innovative educational methods, practices
13 and programs that engage students in the learning process,
14 thus resulting in higher student achievement;

15 (3) Enable schools to establish a distinctive school
16 curriculum, a specialized academic or technical theme, or
17 method of instruction;

18 (4) Provide expanded opportunities within the public
19 schools for parents to choose among the school curricula,
20 specialized academic or technical themes, and methods of
21 instruction that best serve the interests or needs of their
22 child;

23 (5) Provide students, parents, community members, and
24 local entities with expanded opportunities for involvement
25 in the public school system;

26 (6) Allow authorized public schools and programs
27 within public schools exceptional levels of self-direction
28 and flexibility in exchange for exceptional levels of results-
29 driven accountability for student learning; and

30 (7) Encourage the replication of successful strategies for
31 improving student learning.

32 (c) All public charter schools established under this
33 article are public schools and are part of the state's public
34 education system.

35 (d) The provisions of this article shall be interpreted
36 liberally to support the purpose and intent of this section and
37 to advance a renewed commitment by the state to the
38 mission, goals and diversity of public education.

39 (e) No provision of this article may be interpreted to
40 allow the conversion of private schools into public charter
41 schools.

42 (f) An elected official may not profit or receive any
43 monetary consideration from a charter school: *Provided*,
44 That this prohibition does not apply with respect to the
45 continued employment of an elected official who was
46 employed by a public school prior to its conversion to a
47 public charter school.

48 (g) The total number of public charter schools
49 authorized and in operation under an approved contract in
50 this state shall be limited to 3 pilot public charter schools
51 until July 1, 2023. The State Board shall report to the
52 Legislative Oversight Commission on Education
53 Accountability by November 1, 2022, and every 3 years
54 thereafter, on the status of the state’s public charter schools.
55 LOCEA shall report its findings and recommendations, if
56 any, to the Legislature during its next Regular Session.
57 Beginning July 1, 2023, and every 3 years thereafter, an
58 additional 3 public charter schools may be authorized and
59 in operation under an approved contract in this state. The
60 Mountaineer Challenge Academy, if converted to a public
61 charter school, shall not count towards the limitation
62 established by this subsection.

§18-5G-2. Definitions.

1 The following words used in this article and any
2 proceedings pursuant thereto have the following meanings
3 unless the context clearly indicates a different meaning:

4 (1) “Applicant” means any one or more in combination
5 of parents, community members, teachers, school
6 administrators, or institutions of higher education in this
7 state who are interested in organizing a public charter school
8 and:

9 (A) Have obtained 501(c)(3) tax-exempt status or have
10 submitted an application for 501(c)(3) tax-exempt status;
11 and

12 (B) Have developed and submitted an application to an
13 authorizer to establish a public charter school;

14 (2) “Authorizer” means the entity empowered under this
15 article to review applications, decide whether to approve or
16 reject applications, enter into charter contracts with
17 applicants, oversee public charter schools, and decide
18 whether to renew, not renew, or revoke charter contracts.
19 Authorizers include:

20 (A) A county school board when the charter school or
21 application to form a charter school includes a primary
22 recruitment area that is wholly within the county over which
23 the board has jurisdiction;

24 (B) Two or more county school boards when the charter
25 school or application to form a charter school includes a
26 primary recruitment area that encompasses territory in the
27 two or more counties over which the respective boards have
28 jurisdiction; or

29 (C) The West Virginia Board of Education in the
30 following instances:

31 (i) The charter school or application to form a charter
32 school or to renew a charter contract is in a county where
33 the state board has intervened in the operation of the school
34 system and limited the authority of the county board to act
35 pursuant to §18-2E-5 of this code; and

36 (ii) The application to form a public charter school or to
37 renew a charter contract is approved by the affected county
38 board or boards and is forwarded it to the West Virginia
39 Board of Education with a request that it perform to the
40 authorizer function.

41 (3) “Charter application” means a proposal from an
42 applicant to an authorizer to enter into a charter contract
43 whereby the proposed school obtains public charter school
44 status;

45 (4) “Charter contract” or “contract” means a fixed-term,
46 renewable contract between a public charter school’s
47 governing board and an authorizer that identifies the roles,
48 powers, responsibilities, operational duties, accountability,
49 and performance expectations for each party to the contract,
50 consistent with the requirements of this article;

51 (5) “Conversion public charter school” means a public
52 charter school that existed as a noncharter public school
53 before becoming a public charter school;

54 (6) “County board” means a board exercising
55 management and control of a school district. A county
56 board’s management and control of a public charter school
57 is limited to only that granted under this article. In the case
58 of a school district in which the state board has intervened
59 and limited the authority of the county board to act pursuant
60 to §18-2E-5 of this code, “county board” means the state
61 board. In the case of a multicounty vocational or technical
62 center, “county board” means the administrative council of
63 the multicounty center;

64 (7) “Education service provider” means an education
65 management organization, school design provider, or any
66 other partner entity with which a public charter school
67 contracts for educational design, implementation, or
68 comprehensive management;

69 (8) “Governing board” means a public charter school
70 governing board that meets the requirements §18-5G-3 and
71 §18-5G-7 of this code and is party to the charter contract
72 with the authorizer;

73 (9) “Noncharter public school” means a public school
74 or multicounty vocational center other than a public charter
75 school established pursuant to this article;

76 (10) “Parent” means a parent, guardian, or other person
77 or entity having legal custody over a child;

78 (11) “Public charter school” means a public school or
79 program within a public school that is authorized in
80 accordance with the provisions of this article and meets the
81 general criteria, governance structure and statutory
82 compliance requirements described in §18-5G-3 of this
83 code, and other provisions of this article;

84 (12) “Program conversion public charter school” means
85 a program within an existing noncharter public school that
86 is either preexisting and converted or newly created to
87 become a separate and discreet program governed and

88 operated in accordance with this article within the
89 noncharter public school;

90 (13) “Start-up public charter school” means a public
91 charter school that did not exist as a noncharter public
92 school prior to becoming a public charter school.

93 (14) “State board” means the West Virginia Board of
94 Education; and

95 (15) “Student” means any person that is eligible for
96 attendance in a public school in West Virginia.

§18-5G-3. Public charter school criteria, governance structure and statutory compliance requirements; applicable federal and state laws.

1 (a) Public charter schools authorized pursuant to this
2 article shall meet the following general criteria:

3 (1) Are part of the state’s system of public schools and
4 are subject to general supervision by the West Virginia
5 Board of Education for meeting the student performance
6 standards required of other public school students under
7 §18-2E-5(d) and (e) of this code;

8 (2) Are subject to the oversight of the school’s
9 authorizer for operating in accordance with its approved
10 charter contract and for meeting the terms and performance
11 standards established in the charter contract;

12 (3) Are not home school-based;

13 (4) Are not affiliated with or espouse any specific
14 religious denomination, organization, sect, or belief and do
15 not promote or engage in any religious practices in their
16 educational program, admissions, employment policies, or
17 operations;

18 (5) Are not affiliated with any organized group whose
19 espoused beliefs attack or malign an entire class of people,

20 typically for immutable characteristics, as identified
21 through listings of such groups as may be made by the U. S.
22 Department of Justice, the Federal Bureau of Investigation,
23 or officials having similar jurisdiction in this state;

24 (6) Are public schools to which parents or legal
25 guardians choose to send their child or children;

26 (7) Do not charge tuition and may only charge such fees
27 as may be imposed by noncharter public schools in this
28 state; and

29 (8) Have no requirements that would exclude any child
30 from enrollment who would not be excluded at a noncharter
31 public school.

32 (b) A public charter school authorized pursuant to this
33 article shall be governed by a board that meets the
34 requirements established in §18-5G-7 of this code and:

35 (1) Has autonomy over key decisions, including, but not
36 limited to, decisions concerning finance, personnel,
37 scheduling, curriculum, and instruction except as provided
38 in this article;

39 (2) Has no power to levy taxes;

40 (3) Operates in pursuit of a specific set of educational
41 objectives as defined in its charter contract;

42 (4) Provides a program of public education that:

43 (A) Includes one or more of the following:
44 Prekindergarten and any grade or grades from kindergarten
45 to grade 12 including any associated post-secondary
46 embedded credit, dual credit, advanced placement,
47 internship, and industry or workforce credential programs
48 that the public charter school chooses to incorporate into its
49 programs;

50 (B) May include in its mission a specific focus on
51 students with special needs, including, but not limited to, at-
52 risk students, English language learners, students with
53 severe disciplinary problems at a noncharter public school,
54 or students involved with the juvenile justice system; and

55 (C) May include a specific academic approach or theme
56 including, but not limited to, approaches or themes such as
57 STEM education, mastery-based education, early college,
58 or fine and performing arts;

59 (5) Provides programs and services to a student with a
60 disability in accordance with the student's individualized
61 education program and all federal and state laws,
62 regulations, rules and policies. A charter school shall deliver
63 the services directly or contract with a county board or
64 another provider to deliver the services as set forth in its
65 charter contract;

66 (6) Is eligible to participate in state-sponsored or
67 district-sponsored athletic and academic interscholastic
68 leagues, competitions, awards, scholarships, and
69 recognition programs for students, educators,
70 administrators, and schools to the same extent as noncharter
71 public schools;

72 (7) Employs its own personnel as employees of the
73 public charter school and is ultimately responsible for
74 processing employee paychecks, managing its employees'
75 participation in the applicable retirement system, and
76 managing its employees' participation in insurance plans:
77 *Provided*, That nothing in this subdivision prohibits the
78 public charter school from contracting with another person
79 or entity to perform services relating to managing its
80 employees' participation in the retirement system or
81 insurance plan. A county board may not require any
82 employee of its school system to be employed in a public
83 charter school. A county board may not harass, threaten,
84 discipline, discharge, retaliate, or in any manner
85 discriminate against any school system employee involved

86 directly or indirectly with an application to establish a
87 public charter school as authorized under this section. All
88 personnel in a public charter school who were previously
89 employed by the county board shall continue to accrue
90 seniority with the county board in the same manner that they
91 would accrue seniority if employed in a noncharter public
92 school in the county for purposes of employment in
93 noncharter public schools; and

94 (8) Is responsible for establishing a staffing plan that
95 includes the requisite qualifications and any associated
96 certification and/or licensure necessary for teachers and
97 other instructional staff to be employed at the public charter
98 school and for verifying that these requirements are met.

99 (c) A public charter school authorized pursuant to this
100 article is exempt from all statutes and rules applicable to a
101 noncharter public school or board of education except the
102 following:

103 (1) All federal laws and authorities applicable to
104 noncharter public schools in this state including, but not
105 limited to, the same federal nutrition standards, the same
106 civil rights, disability rights and health, life and safety
107 requirements applicable to noncharter public schools in this
108 state;

109 (2) The provisions of §29B-1-1 *et seq.* of this code
110 relating to freedom of information and the provisions of §6-
111 9A-1 *et seq.* of this code relating to open governmental
112 proceedings;

113 (3) The same immunization requirements applicable to
114 noncharter public schools;

115 (4) The same compulsory school attendance
116 requirements applicable to noncharter public schools;

117 (5) The same minimum number of days or an equivalent
118 amount of instructional time per year as required of

119 noncharter public school students under §18-5-45 of this
120 code;

121 (6) The same student assessment requirements
122 applicable to noncharter public schools in this state, but only
123 to the extent that will allow the state board to measure the
124 performance of public charter school students pursuant to
125 §18-2E-5(d) and (e) of this code. Nothing precludes a
126 public charter school from establishing additional student
127 assessment measures that go beyond state requirements;

128 (7) The Student Data Accessibility, Transparency and
129 Accountability Act pursuant to §18-2-5h of this code;

130 (8) Use of the electronic education information system
131 established by the West Virginia Department of Education
132 for the purpose of reporting required information;

133 (9) Reporting information on student and school
134 performance to parents, policy-makers, and the general
135 public in the same manner as noncharter public schools
136 utilizing the electronic format established by the West
137 Virginia Department of Education. Nothing precludes a
138 public charter school from utilizing additional measures for
139 reporting information on student and school performance
140 that go beyond state requirements;

141 (10) All applicable accounting and financial reporting
142 requirements as prescribed for public schools, including
143 adherence to generally accepted accounting principles. A
144 public charter school shall annually engage an external
145 auditor to perform an independent audit of the school's
146 finances. The public charter school shall submit the audit to
147 its authorizer and to the state superintendent of schools
148 within nine months of the end of the fiscal year for which
149 the audit is performed;

150 (11) A criminal history check pursuant to §18A-3-10 of
151 this code for any staff person that would be required if the
152 person was employed in a noncharter public school, unless

153 a criminal history check has already been completed for that
154 staff person pursuant to that section. Governing board
155 members and other public charter school personnel are
156 subject to criminal history record checks and fingerprinting
157 requirements applicable to noncharter public schools in this
158 state. Contractors and service providers or their employees
159 are prohibited from making direct, unaccompanied contact
160 with students and from access to school grounds
161 unaccompanied when students are present if it cannot be
162 verified that the contractors, service providers or employees
163 have not previously been convicted of a qualifying offense
164 pursuant to §18-5-15c of this code;

165 (12) The same zoning rules for its facilities that apply to
166 noncharter public schools in this state;

167 (13) The same building codes, regulations and fees for
168 its facilities that apply to noncharter public schools in this
169 state, including any inspections required for noncharter
170 public schools under this chapter and the West Virginia
171 State Fire Marshal for inspection and issuance of a
172 certificate of occupancy for any facility used by the public
173 charter school; and

174 (14) The same student transportation safety laws
175 applicable to public schools when transportation is
176 provided.

**§18-5G-4. West Virginia Board of Education; powers and
duties for implementation, general supervision and
support of public charter schools; authorizer
responsibilities; limit on charter schools authorized.**

1 (a) The state board shall consult with nationally
2 recognized charter school organizations and establish and
3 maintain a catalogue of best practices for public charter
4 schools applicable for all applicants, authorizers, governing
5 board members, and administrators that are consistent with
6 this article and nationally recognized principles and
7 professional standards for quality public charter school

8 authorizing and governance in all major areas of authorizing
9 and governance responsibility in the following areas:

10 (1) Organizational capacity and infrastructure;

11 (2) Solicitation and evaluation of charter applications;

12 (3) A framework to guide the development of charter
13 contracts;

14 (4) Performance contracting including a performance
15 framework;

16 (5) Providing transparency and avoiding all conflicts of
17 interest;

18 (6) Ongoing charter school oversight and evaluation;
19 and

20 (7) Charter approval, renewal, and revocation decision-
21 making;

22 (b) The state board is responsible for exercising, in
23 accordance with this article, the following powers and
24 duties with respect to the oversight and authorization of
25 public charter schools:

26 (1) Provide forms to promote the quality and ease of use
27 for authorizers to solicit applications for public charter
28 schools, for applicants to complete applications, and for
29 establishing quality charter contracts that include a
30 framework for performance standards. The forms shall be
31 available for use and solicitations made not later than the
32 beginning of February, 2020. The forms shall include an
33 application deadline of August 2020 for any charter school
34 proposing to begin operation for the 2021-22 school year.
35 No charter school may begin operation prior to the 2021-22
36 school year;

37 (2) Provide training programs for public charter school
38 applicants, administrators and governing board members, as
39 applicable, that include, but are not limited to:

40 (i) Pre-application training programs and forms to assist
41 in the development of high quality public charter school
42 applications;

43 (ii) The required components and the necessary
44 information of the public charter school application and the
45 charter contract as set forth in this article;

46 (iii) The charter school board's statutory role and
47 responsibilities;

48 (iv) Charter school employment policies and practices;
49 and

50 (v) Authorizer responsibilities for charter school
51 contract oversight and performance evaluation;

52 (3) Receive and expend appropriate gifts, grants and
53 donations of any kind from any public or private entity to
54 carry out the purposes of this act, subject to all lawful terms
55 and conditions under which the gifts, grants or donations are
56 given;

57 (4) Apply for any federal funds that may be available
58 for the implementation of public charter school programs;

59 (5) Establish reporting requirements that enable the state
60 board to monitor the performance and legal compliance of
61 authorizers and public charter schools; and

62 (6) Submit to the Governor and the Legislature an
63 annual report within 60 days of the end of each school year
64 summarizing:

65 (A) The student performance of all operating public
66 charter schools; and

67 (B) The authorization status of all public charter schools
68 within the last school year, identifying all public charter
69 schools as:

70 (i) Application pending;

71 (ii) Application denied;

72 (iii) Application approved, but not yet operating;

73 (iv) Operating and years of operation;

74 (v) Renewed and years of operation;

75 (vi) Terminated;

76 (vii) Closed;

77 (viii) Never opened; and

78 (ix) Any successful innovations applied in authorized
79 schools which may be replicated in other schools. The
80 report shall provide information about how noncharter
81 public schools may implement these innovations.

82 (c) The state board shall be the authorizer of a public
83 charter school when a county board or boards approve the
84 application for a public charter school and requests the state
85 board to perform the authorizer duties and responsibilities
86 or when an application to form a public charter school or to
87 renew a charter contract is submitted from an applicant
88 within a county in which the state board has intervened and
89 limited the power of the county board to act pursuant to §18-
90 2E-5 of this code.

**§18-5G-5. State board rule relating to funding for charter
school enrollment and other necessary provisions; local
education agency status; authorizer oversight fee.**

1 (a) The state board shall promulgate a rule pursuant to
2 the provisions of §29A-3B-1 *et seq.* of this code setting forth
3 requirements for public charter school funding. The rule

4 shall include a requirement that 90 percent of the per pupil
5 total basic foundation allowance follow the student to the
6 public charter school, subject to the following:

7 (1) Notwithstanding §18-9A-1 *et seq.* of this code, the
8 rule may provide for modifications to the calculations set
9 forth in §18-9A-7 of this code regarding the allowance for
10 student transportation and in §18-9A-9(1) of this code
11 regarding the allowance for current expense for the purpose
12 of making appropriate adjustments to those allowances to
13 account for student transportation and current expense
14 related funding a school district loses in situations where it
15 pays money to a charter school pursuant to this subsection
16 without a corresponding decrease in the county's
17 transportation and current expense related expenditures;

18 (2) The rule shall designate which county school district
19 is required to pay for a student attending a public charter
20 school, and notwithstanding the terms in the definition of
21 "net enrollment" in §18-9A-2 of this code, shall provide that
22 the county school district paying for the student attending a
23 public charter school have that student included in its net
24 enrollment for the purposes of §18-9A-1 *et seq.* of this code;
25 and

26 (3) The rule shall require the Department of Education
27 to follow federal requirements in ensuring that federal
28 funding follows the student to a public charter school.

29 (b) The state board may promulgate a rule in accordance
30 with §29A-3B-1 *et seq.* of this code, if necessary, for
31 ensuring the accountability of public charter schools for
32 meeting the standards for student performance required of
33 other public school students under §18-2E-5 of this code
34 and the accountability of authorizers for ensuring that those
35 standards are met in the schools authorized by it. If an
36 authorizer fails to close a charter school that does not meet
37 the standards, the authorizer shall appear before the state
38 board to justify its decision. The state board may uphold or

39 overturn the authorizer's decision and may revoke the
40 authority of the authorizer to authorize charter schools.

41 (c) The school district in which the public charter school
42 is located remains the local educational agency for all public
43 charter schools authorized by the county board and the
44 public charter school is a school within that local
45 educational agency except that the public charter school is
46 treated as a local educational agency for purposes of
47 applying for competitive federal grants. The state board is
48 the local education agency for public charter schools
49 authorized by the state board except that the public charter
50 school is treated as a local educational agency for purposes
51 of applying for competitive federal grants.

52 (d) To cover authorizer costs for overseeing public
53 charter schools, the state board shall establish a statewide
54 formula for authorizer oversight funding, which shall apply
55 uniformly to every authorizer in the state. Each public
56 charter school shall remit to its respective authorizer an
57 oversight fee. The oversight fee shall be drawn from and
58 calculated as a uniform percentage of the per pupil basic
59 foundation as provided pursuant to state board rule
60 promulgated in accordance with this section, not to exceed
61 one percent of each public charter school's per-student
62 funding in a single school year. The state board may
63 establish a sliding scale for authorizing funding, with the
64 funding percentage decreasing after the authorizer has
65 achieved a certain threshold, such as after a certain number
66 of schools have been authorized or after a certain number of
67 students are enrolled in the authorizer's public charter
68 schools. The state board shall establish a cap on the total
69 amount of funding that an authorizer may withhold from a
70 full-time public charter school. The state board shall
71 annually review the effectiveness of the state formula for
72 authorizer funding and shall adjust the formula if necessary
73 to maximize public benefit and strengthen the
74 implementation of this act.

75 (e) The state board shall promulgate a rule in accordance
76 with §29A-3B-1 *et seq.* of this code to clarify, if necessary,
77 the requirements of this article and address any unforeseen
78 issues that might arise relating to the implementation of the
79 requirements of this article. The rule also shall include a
80 provision prohibiting a county board from discrimination
81 against any district employee involved directly or indirectly
82 with an application to establish a public charter school under
83 this article.

84 (f) All state board rules required to be promulgated by
85 this article shall be promulgated on or before January 1,
86 2020.

§18-5G-6. Authorizer powers and duties.

1 (a) Each authorizing authority is responsible for
2 exercising in accordance with this article the following
3 powers and duties with respect to the oversight and
4 authorization of public charter schools:

5 (1) Demonstrate public accountability and transparency
6 in all matters concerning its charter-authorizing practices,
7 decisions, and expenditures;

8 (2) Establish and maintain policies and practices
9 consistent with the principles and professional standards for
10 authorizers of public charter schools, including standards
11 relating to:

12 (A) Organizational capacity and infrastructure;

13 (B) Evaluating applications;

14 (C) Ongoing public charter school oversight and
15 evaluation; and

16 (D) Charter approval, renewal, and revocation decision-
17 making.

18 (3) Solicit applications and guide the development of
19 high-quality public charter school applications;

20 (4) Approve new charter applications that meet the
21 requirements of this article and on the basis of their
22 application satisfying all requirements of §18-5G-8 of this
23 code, that demonstrate the ability to operate the school in an
24 educationally and fiscally sound manner, and that are likely
25 to improve student achievement through the program
26 detailed in the charter application;

27 (5) Decline to approve charter applications that fail to
28 meet the requirements of §18-5G-8 of this code;

29 (6) Negotiate and execute in good faith a charter
30 contract with each public charter school it authorizes;

31 (7) Monitor the performance and compliance of public
32 charter schools according to the terms of the charter
33 contract; and

34 (8) Determine whether each charter contract it
35 authorizes merits renewal or revocation.

36 (b) After an applicant submits a written application to
37 establish a public charter school, the authorizer shall:

38 (1) Complete a thorough review process;

39 (2) Conduct an in-person interview with the applicant;

40 (3) Provide an opportunity in a public forum for local
41 residents to provide input and learn about the charter
42 application;

43 (4) Provide a detailed analysis of the application to the
44 applicant or applicants;

45 (5) Allow an applicant a reasonable time to provide
46 additional materials and amendments to its application to
47 address any identified deficiencies; and

48 (6) Approve or deny a charter application based on
49 established objective criteria or request additional
50 information.

51 (c) In deciding to approve a charter application, the
52 authorizer shall:

53 (1) Approve charter applications only to applicants that
54 possess competence in all elements of the application
55 requirements identified in this section and §18-5G-8 of this
56 code;

57 (2) Base decisions on documented evidence collected
58 through the application review process; and

59 (3) Follow charter-granting policies and practices that
60 are transparent, based on merit, and avoid conflicts of
61 interest.

62 (d) No later than 90 days following the filing of the
63 charter application, the authorizer shall approve or deny the
64 charter application. The authorizer shall provide its decision
65 in writing, including an explanation stating the reasons for
66 approval or denial of its decision during an open meeting.
67 Any failure to act on a charter application within the time
68 specified shall be deemed an approval by the authorizer.

69 (e) An authorizer's charter application approval shall be
70 submitted to the West Virginia Department of Education.

71 (f) An authorizer shall conduct or require oversight
72 activities that enable it to fulfill its responsibilities under this
73 article, including conducting appropriate inquiries and
74 investigations, so long as those activities are consistent with
75 the intent of this article, adhere to the terms of the charter
76 contract and do not unduly inhibit the autonomy granted to
77 charter schools. In the event that a public charter school's
78 performance or legal compliance appears unsatisfactory, the
79 authorizer shall promptly notify in writing the public charter
80 school governing board of perceived problems and provide
81 reasonable opportunity for the school to remedy the

82 problems: *Provided*, That if the problem warrants
83 revocation, the revocation time frames will apply;

84 (g) An authorizer shall take appropriate corrective
85 actions or exercise sanctions in response to apparent
86 deficiencies in a charter school's performance or legal
87 compliance. If warranted, the actions or sanctions may
88 include requiring a charter school to develop and execute a
89 corrective action plan within a specified time frame;

90 (h) An authorizer may require each charter school it
91 oversees to submit an annual report to assist the authorizer
92 in gathering complete information about each school,
93 consistent with the performance framework.

94 (i) To cover authorizer costs for overseeing public
95 charter schools, each public charter school shall remit to its
96 respective authorizer an oversight fee drawn from and
97 calculated as a uniform percentage of the per student
98 operational funding allocated to each public charter school
99 as established by the state board by rule pursuant to §18-5G-
100 5 of this code.

101 (j) An authorizer may receive and expend appropriate
102 gifts, grants and donations of any kind from any public or
103 private entity to carry out the purposes of this act, subject to
104 all lawful terms and conditions under which the gifts, grants
105 or donations are given, and may apply for any federal funds
106 that may be available for the implementation of public
107 charter school programs;

108 (k) Notwithstanding any provision of this code to the
109 contrary, no civil liability shall attach to an authorizer or to
110 any of its members or employees for any acts or omissions
111 of the public charter school. Neither the county board of
112 education nor the State of West Virginia shall be liable for
113 the debts or financial obligations of a public charter school
114 or any person or entity that operates a public charter school.

115 (l) Regulation of public charter schools by the state
116 board and a county board shall be limited to those powers
117 and duties of authorizers prescribed in this article and
118 general supervision consistent with the spirit and intent of
119 this article.

§18-5G-7. Public Charter school governing board.

1 (a) To ensure compliance with this article, a public
2 charter school shall be administered by a governing board
3 accountable to the authorizer as set forth in the charter
4 contract. A public charter school governing board shall
5 consist of no fewer than five members elected or selected in
6 a manner specified in the charter application, including at
7 least the following:

8 (1) Two parents of students attending the public charter
9 school operating under the governing board; and

10 (2) Two members who reside in the community served
11 by the public charter school.

12 (b) Members of the governing board shall:

13 (A) Not be an employee of the public charter school
14 administered by the governing board;

15 (B) Not be an employee of an education service provider
16 that provides services to the public charter school;

17 (C) File a full disclosure report to the authorizer
18 identifying potential conflicts of interest, relationships with
19 management organizations, and relationships with family
20 members who are employed by the public charter school or
21 have other business dealings with the school, the
22 management organization of the school, or any other public
23 charter school;

24 (D) Collectively possess expertise in leadership,
25 curriculum and instruction, law, and finance; and

26 (E) Be considered an officer of a school district under
27 the provisions of §6-6-7 of this code and removal from
28 office shall be in accordance with the provisions of that
29 section.

30 (c) The public charter school governing board shall:

31 (1) Operate under the oversight of its authorizer in
32 accordance with its charter contract;

33 (2) As a public corporate body, have the powers
34 necessary for carrying out the terms of its charter contract,
35 including, but not limited to the power to:

36 (A) Receive and disburse funds for school purposes;

37 (B) Secure appropriate insurance and enter into
38 contracts and leases;

39 (C) Contract with an education service provider, so long
40 as the governing board retains final oversight and authority
41 over the school;

42 (D) Pledge, assign, or encumber its assets to be used as
43 collateral for loans or extensions of credit;

44 (E) Solicit and accept any gifts or grants for school
45 purposes, subject to applicable laws and the terms of its
46 charter; and

47 (F) Acquire real property for use as its facilities or
48 facilities from public or private sources;

49 (3) Enroll students in the public charter school pursuant
50 to §18-5G-11 of this code;

51 (4) Require any education service provider contracted
52 with the governing board to provide a monthly detailed
53 budget to the board; and

54 (5) Provide programs and services to a student with a
55 disability in accordance with the student's individualized

56 education program and all federal and state laws, rules, and
57 regulations. A public charter school shall deliver the
58 services directly or contract with another provider to deliver
59 the services.

60 (d) A public charter school authorized under this article
61 may:

62 (1) Negotiate and contract with its authorizer or any
63 third party for the use, operation, and maintenance of a
64 building and grounds, liability insurance, and the provision
65 of any service, activity, or undertaking that the public
66 charter school is required to perform in order to carry out
67 the educational program described in its charter contract.
68 Any services for which a public charter school contracts
69 with a school district shall be provided by the district at cost
70 and shall be negotiated as a separate agreement after final
71 charter contract negotiations;

72 (2) Sue and be sued in its own name;

73 (3) Own, rent, or lease its space;

74 (4) Participate in cocurricular activities to the same
75 extent as noncharter public schools; and

76 (5) Participate in extracurricular activities to the same
77 extent as noncharter public schools.

78 (e) The public charter school governing board is
79 responsible for the operation of its public charter school,
80 including, but not limited to, ensuring compliance with the
81 public charter school criteria, governance and statutory
82 compliance set forth §18-5G-3 of this code, the preparation
83 of an annual budget, contracting for services, school
84 curriculum, personnel matters, and achieving the objectives
85 and goals of the public charter school's program.

86 (f) The public charter school governing board shall
87 comply with the provisions of §29B-1-1 *et seq.* of this code
88 relating to freedom of information and the provisions of §6-

89 9A-1 *et seq.* of this code relating to open governmental
90 proceedings.

§18-5G-8. Application to establish public charter school.

1 (a) To establish a new public charter school, to convert
2 an existing noncharter public school to a public charter
3 school or establish a program conversion public charter
4 school, an applicant shall submit a charter application to an
5 authorizer. Charter authorizers shall accept and document
6 the date and time of receipt of all charter applications.

7 (b) The application shall contain, at a minimum, the
8 following information:

9 (1) A mission statement and a vision statement for the
10 public charter school, including specialized academic focus,
11 if any, to be promoted and advanced through the
12 establishment of the public charter school;

13 (2) A detailed description of the public charter school's
14 proposed program;

15 (3) The student achievement goals for the public charter
16 school's program and the chosen methods of evaluating
17 whether students have attained the skills and knowledge
18 specified for those goals;

19 (4) The school's plan for using data derived from
20 student evaluations and assessments, including the
21 statewide summative assessment, to drive instruction and
22 promote continued school improvement;

23 (5) An explanation of how the school's proposed
24 program is likely to improve the achievement of
25 traditionally underperforming students in the local school
26 district;

27 (6) The proposed governance structure of the school,
28 including a list of members of the initial governing board, a
29 draft of bylaws that include the description of the

30 qualifications, terms, and methods of appointment or
31 election of governing board members, and the
32 organizational structure of the school that clearly presents
33 lines of authority and reporting between the governing
34 board, school administrators, staff, any related bodies such
35 as advisory bodies or parent and teacher councils, and any
36 external organizations that will play a role in managing the
37 school;

38 (7) Plans and timelines for student enrollment, including
39 the school primary recruitment area and policies and
40 procedures for conducting transparent and random
41 admission lotteries when applications for enrollment exceed
42 capacity that are open to the public and consistent with this
43 article;

44 (8) A proposed five-year budget, including the start-up
45 year and projections for four additional years with clearly
46 stated assumptions;

47 (9) Proposed fiscal and internal control policies for the
48 public charter school;

49 (10) Acknowledgement that the public charter school
50 will participate in the state's accountability system;

51 (11) A proposed handbook that outlines the personnel
52 policies of the public charter school, including the criteria
53 to be used in the hiring of qualified teachers, school
54 administrators, and other school employees, a description of
55 staff responsibilities, and the school's plan to evaluate
56 personnel on an annual basis;

57 (12) An explanation of proposed student discipline
58 procedures, including disciplinary procedures for students
59 with disabilities, which shall be consistent with the
60 requirements of due process and with state and federal laws
61 and regulations governing the placement of students with
62 disabilities;

63 (13) A description of the facilities to be used by the
64 public charter school, including the location of the school
65 and how the facility supports the implementation of the
66 school's program. The school shall obtain all required
67 occupation and operation certificates and licenses prior to
68 the first instructional day for students;

69 (14) The proposed ages and grade levels to be served by
70 the public charter school, including the planned minimum
71 and maximum enrollment per grade per year;

72 (15) The school calendar and school day schedule;

73 (16) Types and amounts of insurance coverage to be
74 obtained by the public charter school, which:

75 (A) Shall include adequate insurance for liability,
76 property loss, and the personal injury of students
77 comparable to noncharter public schools within the local
78 school district operated by the county board; and

79 (B) May include coverage from the Board of Risk and
80 Insurance Management pursuant to §29-12-5a of this code;

81 (17) A description of the food services to be provided to
82 students attending the school;

83 (18) Process and procedures to be followed in the case
84 of the closure or dissolution of the public charter school,
85 including provisions for the transfer of students and student
86 records to the appropriate local school district and an
87 assurance and agreement to payment of net assets or equity
88 after payment of debts;

89 (19) A code of ethics for the school setting forth the
90 standards of conduct expected of its governing board,
91 officers, and employees;

92 (20) The public charter school's plan for successfully
93 serving students with disabilities, students who are English
94 language learners, bilingual students, and students who are

95 academically behind and gifted, including, but not limited
96 to, the school's plan for compliance with all applicable
97 federal and state laws and regulations;

98 (21) A description of cocurricular and extracurricular
99 programs to be offered by the public charter school and how
100 they will be funded and delivered;

101 (22) The process by which the school will resolve any
102 disputes with the authorizer;

103 (23) A detailed start-up plan, including financing, tasks,
104 timelines, and individuals responsible for carrying out the
105 plan;

106 (24) The public charter school's plan for notice to
107 parents and others of enrollment in the school as an option
108 available for students and the school's primary recruitment
109 area; and

110 (25) The public charter school's plan for parental
111 involvement.

112 (c) If the applicant intends to contract with an education
113 service provider for educational program implementation or
114 comprehensive management, the application shall
115 additionally require the applicant to provide the following
116 information with respect to the educational service provider:

117 (1) Evidence of success in serving student populations
118 similar to the targeted population, including demonstrated
119 academic achievement as well as successful management of
120 nonacademic school functions, if applicable;

121 (2) Student performance data and financial audit reports
122 for all current and past public charter schools;

123 (3) Documentation of and explanation for any actions
124 taken, legal or otherwise, against any of its public charter
125 schools for academic, financial, or ethical concerns;

- 126 (4) The proposed duration of the service contract;
- 127 (5) The annual proposed fees and other amounts to be
128 paid to the education service provider;
- 129 (6) The roles and responsibilities of the governing
130 board, the school staff, and the education service provider;
- 131 (7) The scope of services and resources to be provided
132 by the education service provider;
- 133 (8) Performance evaluation measures and timelines;
- 134 (9) Methods of contract oversight and enforcement;
- 135 (10) Investment disclosure;
- 136 (11) Conditions for renewal and termination of the
137 contract; and
- 138 (12) Disclosure and explanation any existing or
139 potential conflicts of interest between the governing board
140 and the proposed education service provider or any
141 affiliated business entities.

§18-5G-9. Charter contract requirements; term of contract.

- 1 (a) Within 90 days of the approval of a charter
2 application, the governing board and the authorizer shall
3 negotiate and enter into a charter contract.
- 4 (b) The charter contract shall address, in detail, the
5 following items:
- 6 (1) The term of the contract: *Provided*, That the contract
7 term shall be no longer than five years;
- 8 (2) The agreements relating to each item required in the
9 charter application and, if applicable, the agreement with an
10 education service provider that the governing boards intends
11 to contract with for educational program implementation or
12 comprehensive management;

13 (3) The rights and duties of the authorizer and the public
14 charter school;

15 (4) The administrative relationship between the
16 authorizer and the public charter school;

17 (5) The process the authorizer will use to provide
18 ongoing oversight;

19 (6) The specific commitments of the authorizer relating
20 to its obligations to oversee, monitor the progress of, and
21 supervise the public charter school;

22 (7) The process and criteria the authorizer will use to
23 annually monitor and evaluate the overall academic,
24 operating, and fiscal conditions of the public charter school,
25 including the process the authorizer will use to oversee the
26 correction of any deficiencies found;

27 (8) The process for revision or amendment to the terms
28 of the charter contract agreed to by the authorizer and the
29 governing board;

30 (9) The process agreed to by the authorizer and the
31 governing board that identifies how disputes between the
32 authorizer and the board will be handled;

33 (10) Any other terms and conditions agreed to by the
34 authorizer and the governing board, including preopening
35 conditions.

36 (c) The charter contract shall include provisions relating
37 to the performance of the public charter school that set forth
38 the academic and operational performance indicators,
39 measures, and metrics to be used by the authorizer to
40 evaluate the public charter school. At a minimum, the
41 performance provisions shall include indicators, measures,
42 and metrics for:

43 (1) Student academic proficiency;

- 44 (2) Student academic growth;
- 45 (3) Achievement gaps in both student proficiency and
46 student growth between student subgroups, including race,
47 sex, socioeconomic status, and areas of exceptionality;
- 48 (4) Student attendance;
- 49 (5) Student suspensions;
- 50 (6) Student withdrawals;
- 51 (7) Recurrent enrollment from year to year;
- 52 (8) Governing board's performance and stewardship,
53 including compliance with all applicable statutes and terms
54 of charter contract; and
- 55 (9) Additional valid and reliable indicators requested by
56 the public charter school.
- 57 (d) A charter contract shall include provisions for
58 revoking the charter contract. At a minimum, these
59 provisions shall include:
- 60 (1) The information that must be included in the
61 authorizer's initial decision to revoke the charter contract;
- 62 (2) Notification requirements to the governing board
63 about the authorizer's initial decision to revoke a charter
64 contract and the reasons for the revocation;
- 65 (3) An opportunity and timeframe for the governing
66 board to provide a response to the authorizer's initial
67 decision to revoke the charter contract;
- 68 (4) An opportunity for the governing board to submit
69 documentation and provide testimony as to why the charter
70 contract should not be revoked;
- 71 (5) An opportunity for a recorded public hearing, at the
72 request of the governing board;

73 (6) That the authorizer shall consider the governing
74 board's response, testimony, and documentation, as well as
75 the recorded public hearing, prior to rendering a final
76 decision on the revocation of the charter contract;

77 (7) The information that must be included in the
78 authorizer's final decision if it determines to revoke the
79 charter contract;

80 (8) A timeline for an authorizer to render a final decision
81 on whether or not to revoke a charter contract;

82 (9) Rendering of the authorizer's decision shall be
83 adopted during an open meeting; and

84 (10) A provision that the failure of the authorizer to act
85 on a renewal application within the designated timeframes
86 shall be deemed approval of the application.

87 (e) The authorizer shall be responsible for collecting and
88 reporting to the state board all state-required assessment and
89 achievement data for the public charter school.

90 (f) The charter contract shall be signed by the chair of
91 the governing board and the president of the county board,
92 presidents of the county boards, or the president of the
93 public or private institution of higher education, as
94 applicable. A copy of the charter contract shall be provided
95 to the State Superintendent of Schools.

96 (g) No public charter school may commence operations
97 without a charter contract that meets the requirements of this
98 section, has been properly executed, and has been approved
99 by, as applicable, a county board, county boards, or the state
100 board.

**§18-5G-10. Charter contract renewal; performance report by
authorizer and renewal guidance; renewal application;
renewal term; nonrenewal and revocation; closure and
dissolution.**

1 (a) No later than June 30 of a public charter school's
2 fourth year of operation under each five-year term of a
3 charter contract, the authorizer shall issue a performance
4 report on the public charter school. The performance report
5 shall summarize the public charter school's performance
6 record to date, based on the data collected under the
7 performance framework in section eleven of this article and
8 the charter contract, and shall provide notice of any
9 weaknesses or concerns perceived by the authorizer
10 concerning the school that may jeopardize its position in
11 seeking renewal if not timely rectified. The school and the
12 authorizer shall mutually agree to a reasonable time period
13 for the charter school to respond to the performance report
14 and submit any corrections for the report.

15 (b) If the public charter school's contract is expiring, the
16 authorizer shall offer contract renewal application guidance
17 to the school. The renewal application guidance required by
18 this subsection shall include or refer explicitly to the criteria
19 and standards that will guide the authorizer's renewal
20 decisions. These criteria and standards shall be based on the
21 performance framework set forth in section eleven of this
22 article, as set forth in the charter contract and consistent with
23 this article. The renewal application guidance shall, at a
24 minimum, require and provide an opportunity for the public
25 charter school to:

26 (1) Present additional evidence, beyond the data
27 contained in the performance report, supporting its case for
28 charter renewal;

29 (2) Describe improvements undertaken or planned for
30 the school; and

31 (3) Detail the school's plans for the next charter term.

32 (c) No later than September 30 of a public charter
33 school's final authorized year of operation under a term of
34 a charter contract, the governing board of the public charter
35 school seeking renewal shall submit a renewal application

36 to the authorizer pursuant to the renewal application
37 guidance offered by the authorizer under subsection (b) of
38 this section. The authorizer shall rule in a public meeting
39 and by resolution on the renewal application no later than
40 45 days after the filing of the renewal application. In making
41 charter renewal decisions, the authorizer shall:

42 (1) Ground its decisions on a thorough analysis of
43 evidence of the school's performance over the term of the
44 charter contract in accordance with the terms and measures
45 established in the performance framework set forth in the
46 charter contract;

47 (2) Ensure that data used in making renewal decisions
48 are available to the public charter school and the public;

49 (3) Provide a public report summarizing the evidence
50 basis for each decision; and

51 (4) Include one of the following rulings:

52 (A) Renew the charter contract for another term of five
53 years based on the school's performance data and
54 demonstrated capacities of the public charter school; or

55 (B) Decline to renew the charter contract. The
56 authorizer shall clearly state in a resolution the reasons for
57 the nonrenewal. The governing board of the school shall be
58 granted 30 days to respond in writing to the decision and
59 public report before that decision becomes final. The
60 governing board shall be allowed to provide the authorizer
61 with such arguments and supporting information as it sees
62 fit and also shall be granted an opportunity for a recorded
63 public hearing, at the request of the governing board. The
64 authorizer shall consider the governing board's response,
65 testimony, and documentation, as well as the recorded
66 public hearing, prior to rendering a final decision on the
67 revocation of the charter contract. The authorizer shall
68 render its final determination within 10 days of the close of
69 the 30-day period.

70 (d) The failure of the authorizer to act on a renewal
71 application within the designated timeframes shall be
72 deemed an approval of the renewal application.

73 (e) Within 10 days of taking final action to renew, not
74 renew or revoke a charter under this section, the authorizer
75 shall report the action taken and reasons for the decision to
76 the school's governing board and the state board or affected
77 county board, as applicable. A copy of the report shall be
78 submitted at the same time to the state superintendent.

79 (f) A charter contract may be revoked at any time or not
80 renewed if the authorizer determines that the health and
81 safety of students attending the public charter school is
82 threatened or the public charter school has:

83 (A) Failed to comply with the provisions of this article:

84 (B) Committed a material violation of any of the terms,
85 conditions, standards or procedures required under this
86 chapter or the charter contract;

87 (C) Failed to meet the performance expectations set
88 forth in the charter contract;

89 (D) Failed to meet generally accepted standards of fiscal
90 management; or

91 (E) Violated any provision of law from which the school
92 was not exempted.

93 (g) If an authorizer does not renew or revokes a charter
94 contract, the authorizer shall clearly state in a resolution in
95 a public meeting, the reasons for the nonrenewal or
96 revocation.

97 (h) If an authorizer revokes a charter contract, the
98 authorizer shall close the school: *Provided*, That when the
99 charter is revoked or not renewed for a school that began as
100 a conversion public charter school or program conversion
101 public charter school, the county board of the district in

102 which the school is located may return it to noncharter
103 public school status.

104 (i) If a public charter school is closed, the authorizer
105 shall clearly state in a resolution in a public meeting, the
106 reasons for the closure.

107 (j) In the event of a public charter school closure for any
108 reason, the authorizer shall oversee and work with the
109 closing school to ensure a smooth and orderly closure and
110 transition for students and parents, as guided by the closure
111 protocol established by the state board including, but not
112 limited to, the following:

113 (1) Overseeing and working with the closing public
114 charter school to ensure timely notification to parents,
115 orderly transition of students and student records to new
116 schools and proper disposition of school funds, property and
117 assets in accordance with the requirements of this chapter;
118 and

119 (2) Distributing the assets of the public charter school
120 first to satisfy outstanding payroll obligations for employees
121 of the public charter school and then to creditors of the
122 public charter school. Any remaining funds shall be paid to
123 the county board. If the assets of the public charter school
124 are insufficient to pay all parties to whom the public charter
125 school owes compensation, the prioritization of distribution
126 of assets may be determined by decree of a court of law.

127 (k) If a public charter school is subject to closure or
128 transition, following exhaustion of any appeal allowed
129 under §18-5G-13 of this code, an authorizer may remove at
130 will at any time any or all of the members of the board of
131 directors of the public charter school in connection with
132 ensuring a smooth and orderly closure or transition. If the
133 authorizer removes members of the board of directors such
134 that the board of directors can no longer function, the
135 authorizer shall be empowered to take any further necessary
136 and proper acts connected with closure or transition of the

137 public charter school in the name and interest of the public
138 charter school.

§18-5G-11. Public charter school students; enrollment and eligibility; enrollment preferences; random selection lottery; enrollment discrimination prohibited; credit transfers; participation in interscholastic sports.

1 (a) Public charter schools are open for enrollment to all
2 students of appropriate grade level age and all students shall
3 be enrolled in accordance with the following:

4 (1) A public charter school shall provide or publicize to
5 parents and the general public information about the public
6 charter school as an enrollment option for students and the
7 process for application and enrollment, including dates and
8 timelines. If the public charter school includes in its mission
9 a specific focus on students with special needs, including,
10 but not limited to, at-risk students, English language
11 learners, students with severe disciplinary problems at a
12 noncharter public school or students involved with the
13 juvenile justice system, it shall include the information in
14 such publication. A public charter school's recruitment
15 effort shall include all segments of the student populations
16 served by noncharter public schools of comparable grade
17 levels;

18 (2) A county board shall provide or publicize to parents
19 and the general public information about public charter
20 schools within the county as an enrollment option to the
21 same extent and through the same means that the county
22 provides and publicizes information about noncharter
23 public schools in the county;

24 (3) A county board may not require any student residing
25 in the county to enroll in a public charter school, nor may it
26 prohibit any charter school student from returning to a
27 noncharter public school;

28 (4) A public charter school shall designate its primary
29 recruitment area in its charter application and charter

30 contract. The establishment of a primary recruitment area
31 by a public charter school does not negate any overlapping
32 attendance area or areas established by a county board or
33 boards for noncharter public schools. A primary recruitment
34 area may include territory in more than one county;

35 (5) The primary recruitment area shall be based on the
36 public charter school's estimated facility and program
37 capacity. The capacity of the public charter school shall be
38 determined annually by the governing board of the public
39 charter school in conjunction with its authorizer and in
40 consideration of the public charter school's ability to
41 facilitate the academic success of its students, to achieve the
42 other objectives specified in the charter contract, and to
43 ensure that the student enrollment does not exceed the
44 capacity of its facility, site and programs. An authorizer may
45 not restrict the number of students a public charter school
46 may enroll;

47 (6) Public charter schools may not discriminate against
48 any person on any basis which would be unlawful for
49 noncharter public schools in the school district. A public
50 charter school may not establish admission policies or limit
51 student admissions in any manner in which a public school
52 is not permitted to establish admission policies or limit
53 student admissions: *Provided*, That this subdivision may not
54 be construed to limit the formation of a public charter school
55 that is dedicated to focusing its education program and
56 services on students with special needs, including, but not
57 limited to, at-risk students, English language learners,
58 students with severe disciplinary problems at a noncharter
59 public school, or students involved with the juvenile justice
60 system;

61 (7) A public charter school may establish any one or
62 more of the following enrollment preferences for:

63 (A) Children who reside within the school's primary
64 recruitment area;

65 (B) Students enrolled in the public charter school the
66 previous school year and siblings of students already
67 enrolled in the public charter school;

68 (C) Children with special needs, including, but not
69 limited to, at-risk students, English language learners,
70 students with severe disciplinary problems at a noncharter
71 public school, or students involved with the juvenile justice
72 system, it shall include the information in such publication;
73 and

74 (D) Children of governing board members and full-time
75 employees of the school as long as the number of students
76 enrolled under this preference constitute no more than five
77 percent of the school's total student enrollment;

78 (8) A start-up public charter school shall enroll all
79 students who apply and to whom an enrollment preference
80 has been established. If the school has excess capacity after
81 enrolling these students, the school shall enroll all other
82 students who apply: *Provided*, That if the remaining
83 applicants exceed the enrollment capacity of the program,
84 class, grade level or building of the public charter school,
85 the public charter school shall select students for enrollment
86 from among all remaining applicants by a random selection
87 lottery. The school's lottery procedures and timelines
88 support equal and open access for all students and take place
89 in an open meeting;

90 (9) A conversion public charter school shall guarantee
91 enrollment to all students who were previously enrolled in
92 the noncharter public school and shall adopt and maintain a
93 policy that gives enrollment preference to students who
94 reside within the attendance area as established prior to the
95 conversion of the school. If the school has excess capacity
96 after enrolling these students and all others to whom an
97 enrollment preference has been given, the school shall
98 enroll all other students who apply: *Provided*, That if the
99 remaining applicants exceed the enrollment capacity of the
100 program, class, grade level or building of a public charter

101 school, the public charter school shall select students for
102 enrollment from among all remaining applicants by a
103 random selection lottery. The school's lottery procedures
104 and timelines support equal and open access for all students
105 and take place in an open meeting; and

106 (10) A program conversion public charter school shall
107 enroll all students who apply for enrollment in the program
108 who, at the time of authorization, are enrolled in the
109 noncharter public school at which the program is operated.
110 A program conversion public charter school shall adopt and
111 maintain a policy that gives enrollment preference to
112 students who are enrolled in the noncharter public school at
113 which the program is operated. If the school has excess
114 capacity after enrolling these students, the school shall
115 enroll all other students who apply: *Provided*, That if the
116 remaining applicants exceed the enrollment capacity of the
117 program, class, grade level or building of a public charter
118 school, the public charter school shall select students for
119 enrollment from among all remaining applicants by a
120 random selection lottery. The school's lottery procedures
121 and timelines support equal and open access for all students
122 and take place in an open meeting.

123 (b) If a student who was previously enrolled in a public
124 charter school transfers enrollment to a noncharter public
125 school in this state, the school to which the student transfers
126 shall accept credits earned by the student in courses or
127 instructional programs at the public charter school in a
128 uniform and consistent manner and according to the same
129 criteria that are used to accept academic credits from other
130 noncharter public schools or that consider content
131 competency when appropriate due to differences in
132 curriculum delivery, instructional methods and strategies, or
133 course designations and sequence.

134 (c) Each public charter school shall be given access to
135 and shall utilize the electronic education information system
136 established by the West Virginia Department of Education,
137 is subject to the Student Data Accessibility, Transparency

138 and Accountability Act pursuant to section §18-2-5h of this
139 code, and shall report information on student and school
140 performance to parents, policy-makers and the general
141 public in the same manner as noncharter public schools
142 utilizing the electronic format established by the West
143 Virginia Department of Education.

144 (d) Each public charter school shall certify annually to
145 the State Department of Education and to the county board
146 of the school district in which the charter school is located
147 its student enrollment, average daily attendance and student
148 participation in the national school lunch program, special
149 education, vocational education, gifted education, advanced
150 placement and dual credit courses, and federal programs in
151 the same manner as school districts.

§18-5G-12. Access to public facilities.

1 (a) A public charter school may request usage of public
2 facilities from the county board or other public entity in the
3 county where the charter school is located or proposes to
4 locate. A county board or other public entity shall make
5 facilities available to the charter school that are either not
6 used, in whole or in part, for classroom instruction at the
7 time the charter school seeks to use or lease the public
8 facility.

9 (b) If a charter school seeks to lease the whole or part of
10 a public facility, the cost of the lease must be at or under
11 current market value.

12 (c) During the term of the lease, the charter school is
13 solely responsible for the direct expenses related to the
14 public facility lease, including utilities, insurance,
15 maintenance, repairs, and remodeling. The county school
16 board is responsible for any debt incurred or liens that are
17 attached to the school building before the charter school
18 leases the public facility.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**§18-7A-3. Definitions.**

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

3 “Accumulated contributions” means all deposits and all
4 deductions from the gross salary of a contributor plus
5 regular interest.

6 “Accumulated net benefit” means the aggregate amount
7 of all benefits paid to or on behalf of a retired member.

8 “Actuarially equivalent” or “of equal actuarial value”
9 means a benefit of equal value computed upon the basis of
10 the mortality table and interest rates as set and adopted by
11 the retirement board in accordance with the provisions of
12 this article: *Provided*, That when used in the context of
13 compliance with the federal maximum benefit requirements
14 of Section 415 of the Internal Revenue Code, “actuarially
15 equivalent” shall be computed using the mortality tables and
16 interest rates required to comply with those requirements.

17 “Annuities” means the annual retirement payments for
18 life granted beneficiaries in accordance with this article.

19 “Average final salary” means the average of the five
20 highest fiscal year salaries earned as a member within the
21 last 15 fiscal years of total service credit, including military
22 service as provided in this article, or if total service is less
23 than 15 years, the average annual salary for the period on
24 which contributions were made: *Provided*, That salaries for
25 determining benefits during any determination period may
26 not exceed the maximum compensation allowed as adjusted
27 for cost of living in accordance with §5-10D-7 of this code
28 and Section 401(a)(17) of the Internal Revenue Code.

29 “Beneficiary” means the recipient of annuity payments
30 made under the retirement system.

31 “Contributor” means a member of the retirement system
32 who has an account in the Teachers Accumulation Fund.

33 “Deposit” means a voluntary payment to his or her
34 account by a member.

35 “Employer” means the agency of and within the state
36 which has employed or employs a member.

37 “Employer error” means an omission,
38 misrepresentation, or violation of relevant provisions of the
39 West Virginia Code, or of the West Virginia Code of State
40 Regulations, or the relevant provisions of both the West
41 Virginia Code and of the West Virginia Code of State
42 Regulations by the participating public employer that has
43 resulted in an underpayment or overpayment of
44 contributions required. A deliberate act contrary to the
45 provisions of this section by a participating public employer
46 does not constitute employer error.

47 “Employment term” means employment for at least 10
48 months, a month being defined as 20 employment days.

49 “Gross salary” means the fixed annual or periodic cash
50 wages paid by a participating public employer to a member
51 for performing duties for the participating public employer
52 for which the member was hired. Gross salary shall be
53 allocated and reported in the fiscal year in which the work
54 was done. Gross salary also includes retroactive payments
55 made to a member to correct a clerical error, or made
56 pursuant to a court order or final order of an administrative
57 agency charged with enforcing federal or state law
58 pertaining to the member’s rights to employment or wages,
59 with all retroactive salary payments to be allocated to and
60 considered paid in the periods in which the work was or
61 would have been done. Gross salary does not include lump
62 sum payments for bonuses, early retirement incentives,
63 severance pay, or any other fringe benefit of any kind
64 including, but not limited to, transportation allowances,

65 automobiles or automobile allowances, or lump sum
66 payments for unused, accrued leave of any type or character.

67 “Internal Revenue Code” means the Internal Revenue
68 Code of 1986, as it has been amended.

69 “Member” means any person who has accumulated
70 contributions standing to his or her credit in the State
71 Teachers Retirement System. A member shall remain a
72 member until the benefits to which he or she is entitled
73 under this article are paid or forfeited, or until cessation of
74 membership pursuant to §18-7A-13 of this code.

75 “Members of the administrative staff of the public
76 schools” means deans of instruction, deans of men, deans of
77 women, and financial and administrative secretaries.

78 “Members of the extension staff of the public schools”
79 means every agricultural agent, boys and girls club agent,
80 and every member of the agricultural extension staff whose
81 work is not primarily stenographic, clerical, or secretarial.

82 “New entrant” means a teacher who is not a present
83 teacher.

84 “Nonteaching member” means any person, except a
85 teacher member, who is regularly employed for full-time
86 service by: (A) Any county board of education or
87 educational services cooperative; (B) the State Board of
88 Education; (C) the Higher Education Policy Commission;
89 (D) the West Virginia Council for Community and
90 Technical College Education; (E) a governing board, as
91 defined in §18B-1-2 of this code; or (F) a public charter
92 school established pursuant to §18-5G-1 *et seq.* of this code
93 if the charter school includes in its charter contract entered
94 into pursuant to §18-5G-7 of this code a determination to
95 participate in the retirement systems under this article and
96 §18-7B-1 *et seq.* of this code, subject to §18-7B-7a:
97 *Provided*, That any person whose employment with the
98 Higher Education Policy Commission, the West Virginia

99 Council for Community and Technical College Education,
100 or a governing board commences on or after July 1, 1991, is
101 not considered a nonteaching member.

102 “Plan year” means the 12-month period commencing on
103 July 1 and ending the following June 30 of any designated
104 year.

105 “Present member” means a present teacher or
106 nonteacher who is a member of the retirement system.

107 “Present teacher” means any person who was a teacher
108 within the 35 years beginning July 1, 1934, and whose
109 membership in the retirement system is currently active.

110 “Prior service” means all service as a teacher completed
111 prior to July 1, 1941, and all service of a present member
112 who was employed as a teacher and did not contribute to a
113 retirement account because he or she was legally ineligible
114 for membership during the service.

115 “Public schools” means all publicly supported schools,
116 including colleges and universities in this state.

117 “Refund beneficiary” means the estate of a deceased
118 contributor or a person he or she has nominated as
119 beneficiary of his or her contributions by written
120 designation duly executed and filed with the retirement
121 board.

122 “Regular interest” means interest at four percent
123 compounded annually, or a higher earnable rate if set forth
124 in the formula established in legislative rules, series seven
125 of the Consolidated Public Retirement Board, 162 CSR 7.

126 “Regularly employed for full-time service” means
127 employment in a regular position or job throughout the
128 employment term regardless of the number of hours worked
129 or the method of pay.

130 “Required beginning date” means April 1 of the
131 calendar year following the later of: (A) The calendar year
132 in which the member attains age 70 and one-half years; or
133 (B) the calendar year in which the member retires or ceases
134 covered employment under the system after having attained
135 the age of 70 and one-half years.

136 “Retirant” means any member who commences an
137 annuity payable by the retirement system.

138 “Retirement board” means the Consolidated Public
139 Retirement Board created pursuant to §5-10D-1 *et seq.* of
140 this code.

141 “Retirement system” means the State Teachers
142 Retirement System established by this article.

143 “Teacher member” means the following persons, if
144 regularly employed for full-time service: (A) Any person
145 employed for instructional service in the public schools of
146 West Virginia; (B) principals; (C) public school librarians;
147 (D) superintendents of schools and assistant county
148 superintendents of schools; (E) any county school
149 attendance director holding a West Virginia teacher’s
150 certificate; (F) members of the research, extension,
151 administrative, or library staffs of the public schools; (G)
152 the State Superintendent of Schools, heads and assistant
153 heads of the divisions under his or her supervision, or any
154 other employee under the state superintendent performing
155 services of an educational nature; (H) employees of the
156 State Board of Education who are performing services of an
157 educational nature; (I) any person employed in a
158 nonteaching capacity by the State Board of Education, any
159 county board of education, the State Department of
160 Education, or the State Teachers Retirement Board, if that
161 person was formerly employed as a teacher in the public
162 schools; (J) all classroom teachers, principals, and
163 educational administrators in schools under the supervision
164 of the Division of Corrections and Rehabilitation, the
165 Division of Health, or the Division of Human Services; (K)

166 an employee of the State Board of School Finance, if that
167 person was formerly employed as a teacher in the public
168 schools; (L) employees of an educational services
169 cooperative who are performing services of an educational
170 nature; (M) any person designated as a 21st Century Learner
171 Fellow pursuant to §18A-3-11 of this code who elects to
172 remain a member of the State Teachers Retirement System
173 provided in this article; and (N) any person employed by a
174 public charter school established pursuant to §18-5G-1 *et*
175 *seq.* of this code if the charter school includes in its charter
176 contract entered into pursuant to §18-5G-7 of this code a
177 determination to participate in the retirement systems under
178 this article and §18-7B-1 *et seq.* of this code.

179 “Total service” means all service as a teacher or
180 nonteacher while a member of the retirement system since
181 last becoming a member and, in addition thereto, credit for
182 prior service, if any.

183 Age in excess of 70 years shall be considered to be 70
184 years.

ARTICLE 7B. TEACHERS’ DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

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

3 “Annual addition” means, for purposes of the
4 limitations under Section 415(c) of the Internal Revenue
5 Code, the sum credited to a member’s account for any
6 limitation year of: (A) Employer contributions; (B)
7 employee contributions; and (C) forfeitures. Repayment of
8 cash-outs or contributions as described in Section 415(k)(3)
9 of the Internal Revenue Code, rollover contributions and
10 picked-up employee contributions to a defined benefit plan
11 may not be treated as annual additions, consistent with the
12 requirements of Treasury Regulation §1.415(c)-1.

13 “Annuity account” or “annuity” means an account
14 established for each member to record the deposit of
15 member contributions and employer contributions and
16 interest, dividends, or other accumulations credited on
17 behalf of the member.

18 “Compensation” means the full compensation actually
19 received by members for service whether or not a part of the
20 compensation is received from other funds, federal or
21 otherwise, than those provided by the state or its
22 subdivisions: *Provided*, That annual compensation for
23 determining contributions during any determination period
24 may not exceed the maximum compensation allowed as
25 adjusted for cost of living in accordance with §5-10D-7 of
26 this code and Section 401(a)(17) of the Internal Revenue
27 Code: *Provided, however*, That solely for purposes of
28 applying the limitations of Section 415 of the Internal
29 Revenue Code to any annual addition, “compensation” has
30 the meaning given it in §18-7B-13(d) of this code.

31 “Consolidated board” or “board” means the
32 Consolidated Public Retirement Board created and
33 established pursuant to §5-10D-1 *et seq.* of this code.

34 “Defined contribution system” or “system” means the
35 Teachers’ Defined Contribution Retirement System created
36 and established by this article.

37 “Employer” means the agency of and within the State of
38 West Virginia which has employed or employs a member.

39 “Employer contribution” means an amount deposited
40 into the member’s individual annuity account on a periodic
41 basis coinciding with the employee’s regular pay period by
42 an employer from its own funds.

43 “Employment term” means employment for at least 10
44 months in any plan year with a month being defined as 20
45 employment days.

46 “Existing employer” means any employer who
47 employed or employs a member of the system.

48 “Existing retirement system” means the State Teachers
49 Retirement System established in §18-7A-1 *et seq.* of this
50 code.

51 “Internal Revenue Code” means the Internal Revenue
52 Code of 1986, as it has been amended.

53 “Member” or “employee” means the following persons,
54 if regularly employed for full-time service: (A) Any person
55 employed for instructional service in the public schools of
56 West Virginia; (B) principals; (C) public school librarians;
57 (D) superintendents of schools and assistant county
58 superintendents of schools; (E) any county school
59 attendance director holding a West Virginia teacher’s
60 certificate; (F) members of the research, extension,
61 administrative, or library staffs of the public schools; (G)
62 the State Superintendent of Schools, heads and assistant
63 heads of the divisions under his or her supervision, or any
64 other employee under the state superintendent performing
65 services of an educational nature; (H) employees of the
66 State Board of Education who are performing services of an
67 educational nature; (I) any person employed in a
68 nonteaching capacity by the State Board of Education, any
69 county board of education, or the State Department of
70 Education, if that person was formerly employed as a
71 teacher in the public schools; (J) all classroom teachers,
72 principals, and educational administrators in schools under
73 the supervision of the Division of Corrections and the
74 Department of Health and Human Resources; (K) any
75 person who is regularly employed for full-time service by
76 any county board of education, educational services
77 cooperative, or the State Board of Education; (L) the
78 administrative staff of the public schools including deans of
79 instruction, deans of men and deans of women, and financial
80 and administrative secretaries; (M) any person designated
81 as a 21st Century Learner Fellow pursuant to §18A-3-11 of
82 this code who elects to remain a member of the Teachers’

83 Defined Contribution Retirement System established by this
84 article; and (N) any person employed by a public charter
85 school established pursuant to §18-5G-1 *et seq.* of this code
86 if the charter school includes in its charter contract entered
87 into pursuant to §18-5G-7 of this code a determination to
88 participate in the retirement systems under this article,
89 subject to §18-7B-7a, and §18-7A-1 *et seq.* of this code.

90 “Member contribution” means an amount reduced from
91 the employee’s regular pay periods, and deposited into the
92 member’s individual annuity account within the Teachers’
93 Defined Contribution Retirement System.

94 “Permanent, total disability” means a mental or physical
95 incapacity requiring absence from employment service for
96 at least six months: *Provided*, That the incapacity is shown
97 by an examination by a physician or physicians selected by
98 the board: *Provided, however*, That for employees hired on
99 or after July 1, 2005, “permanent, total disability” means an
100 inability to engage in substantial gainful activity by reason
101 of any medically determinable physical or mental
102 impairment that can be expected to result in death, or has
103 lasted or can be expected to last for a continuous period of
104 not less than 12 months and the incapacity is so severe that
105 the member is likely to be permanently unable to perform
106 the duties of the position the member occupied immediately
107 prior to his or her disabling injury or illness.

108 “Plan year” means the 12-month period commencing on
109 July 1 of any designated year and ending on the following
110 June 30.

111 “Public schools” means all publicly supported schools,
112 including normal schools, colleges, and universities in this
113 state.

114 “Regularly employed for full-time service” means
115 employment in a regular position or job throughout the
116 employment term regardless of the number of hours worked
117 or the method of pay.

118 “Required beginning date” means April 1 of the
119 calendar year following the later of: (A) The calendar year
120 in which the member attains age 70 and one-half years; or
121 (B) the calendar year in which the member retires or
122 otherwise ceases employment with a participating employer
123 after having attained the age of 70 and one-half years.

124 “Retirement” means a member’s withdrawal from the
125 active employment of a participating employer and
126 completion of all conditions precedent to retirement.

127 “Year of employment service” means employment for
128 at least 10 months, with a month being defined as 20
129 employment days: *Provided*, That no more than one year of
130 service may be accumulated in any 12-month period.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

1 (a) The county attendance director and the assistants
2 shall diligently promote regular school attendance. The
3 director and assistants shall:

4 (1) Ascertain reasons for unexcused absences from
5 school of students of compulsory school age and students
6 who remain enrolled beyond the compulsory school age as
7 defined under section one-a of this article;

8 (2) Take such steps as are, in their discretion, best
9 calculated to encourage the attendance of students and to
10 impart upon the parents and guardians the importance of
11 attendance and the seriousness of failing to do so;

12 (3) For the purposes of this article, the following
13 definitions apply:

14 (A) “Excused absence” includes:

15 (i) Personal illness or injury of the student;

16 (ii) Personal illness or injury of the student's parent,
17 guardian, custodian, or family member: *Provided*, That the
18 excuse must provide a reasonable explanation for why the
19 student's absence was necessary and caused by the illness
20 or injury in the family;

21 (iii) Medical or dental appointment with written excuse
22 from physician or dentist;

23 (iv) Chronic medical condition or disability that impacts
24 attendance;

25 (v) Participation in home or hospital instruction due to
26 an illness or injury or other extraordinary circumstance that
27 warrants home or hospital confinement;

28 (vi) Calamity, such as a fire or flood;

29 (vii) Death in the family;

30 (viii) School-approved or county-approved curricular or
31 extra-curricular activities;

32 (ix) Judicial obligation or court appearance involving
33 the student;

34 (x) Military requirement for students enlisted or
35 enlisting in the military;

36 (xi) Personal or academic circumstances approved by
37 the principal; and

38 (xii) Such other situations as may be further determined
39 by the county board: *Provided*, That absences of students
40 with disabilities shall be in accordance with the Individuals
41 with Disabilities Education Improvement Act of 2004 and
42 the federal and state regulations adopted in compliance
43 therewith; and

44 (B) "Unexcused absence" means any absence not
45 specifically included in the definition of "excused absence";
46 and

47 (4) All documentation relating to absences shall be
48 provided to the school no later than three instructional days
49 after the first day the student returns to school.

50 (b) In the case of three total unexcused absences of a
51 student during a school year, the attendance director,
52 assistant, or principal shall make meaningful contact with
53 the parent, guardian, or custodian of the student to ascertain
54 the reasons for the unexcused absences and what measures
55 the school may employ to assist the student in attending and
56 not incurring any additional unexcused absences.

57 (c) In the case of five total unexcused absences, the
58 attendance director or assistant or principal shall again make
59 meaningful contact with the parent, guardian, or custodian
60 of the student to ascertain the reasons for the unexcused
61 absences and what measures the school may employ to
62 assist the student in attending school and not incurring any
63 additional unexcused absences.

64 (d) In the case of 10 total unexcused absences of a
65 student during a school year, the attendance director or
66 assistant may make a complaint against the parent, guardian
67 or custodian before a magistrate of the county. If it appears
68 from the complaint that there is probable cause to believe
69 that an offense has been committed and that the accused has
70 committed it, a summons or a warrant for the arrest of the
71 accused shall issue to any officer authorized by law to serve
72 the summons or to arrest persons charged with offenses
73 against the state. More than one parent, guardian or
74 custodian may be charged in a complaint. Initial service of
75 a summons or warrant issued pursuant to the provisions of
76 this section shall be attempted within ten calendar days of
77 receipt of the summons or warrant and subsequent attempts
78 at service shall continue until the summons or warrant is
79 executed or until the end of the school term during which
80 the complaint is made, whichever is later.

81 (e) The magistrate court clerk, or the clerk of the circuit
82 court performing the duties of the magistrate court as

83 authorized in §50-1-8 of this code, shall assign the case to a
84 magistrate within 10 days of execution of the summons or
85 warrant. The hearing shall be held within 20 days of the
86 assignment to the magistrate, subject to lawful continuance.
87 The magistrate shall provide to the accused at least 10 days'
88 advance notice of the date, time and place of the hearing.

89 (f) When any doubt exists as to the age of a student
90 absent from school, the attendance director and assistants
91 have authority to require a properly attested birth certificate
92 or an affidavit from the parent, guardian or custodian of the
93 student, stating age of the student. In the performance of his
94 or her duties, the county attendance director and assistants
95 have authority to take without warrant any student absent
96 from school in violation of the provisions of this article and
97 to place the student in the school in which he or she is or
98 should be enrolled.

99 (g) The county attendance director and assistants shall
100 devote such time as is required by section three of this
101 article to the duties of attendance director in accordance
102 with this section during the instructional term and at such
103 other times as the duties of an attendance director are
104 required. All attendance directors and assistants hired for
105 more than 200 days may be assigned other duties
106 determined by the superintendent during the period in
107 excess of 200 days. The county attendance director is
108 responsible under direction of the county superintendent for
109 efficiently administering school attendance in the county.

110 (h) In addition to those duties directly relating to the
111 administration of attendance, the county attendance director
112 and assistant directors also shall perform the following
113 duties:

114 (1) Assist in directing the taking of the school census to
115 see that it is taken at the time and in the manner provided by
116 law;

117 (2) Confer with principals and teachers on the
118 comparison of school census and enrollment for the
119 detection of possible nonenrollees;

120 (3) Cooperate with existing state and federal agencies
121 charged with enforcing child labor laws;

122 (4) Prepare a report for submission by the county
123 superintendent to the State Superintendent of Schools on
124 school attendance, at such times and in such detail as may
125 be required. The state board shall promulgate a legislative
126 rule pursuant to §29A-3B-1 *et seq.* of this code that set forth
127 student absences that are excluded for accountability
128 purposes. The absences that are excluded by rule shall
129 include, but are not limited to, excused student absences,
130 students not in attendance due to disciplinary measures and
131 absent students for whom the attendance director has
132 pursued judicial remedies to compel attendance to the extent
133 of his or her authority. The attendance director shall file
134 with the county superintendent and county board at the close
135 of each month a report showing activities of the school
136 attendance office and the status of attendance in the county
137 at the time;

138 (5) Promote attendance in the county by compiling data
139 for schools and by furnishing suggestions and
140 recommendations for publication through school bulletins
141 and the press, or in such manner as the county
142 superintendent may direct;

143 (6) Participate in school teachers' conferences with
144 parents and students;

145 (7) Assist in such other ways as the county
146 superintendent may direct for improving school attendance;

147 (8) Make home visits of students who have excessive
148 unexcused absences, as provided in subsection-a of this
149 section, or if requested by the chief administrator, principal
150 or assistant principal; and

151 (9) Serve as the liaison for homeless children and youth.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

1 For the purpose of this article:

2 (a) “State board” means the West Virginia Board of
3 Education.

4 (b) “County board” or “board” means a county board of
5 education.

6 (c) “Professional salaries” means the state legally
7 mandated salaries of the professional educators as provided
8 in §18A-4-1 *et seq.* of this code.

9 (d) “Professional educator” shall be synonymous with
10 and shall have the same meaning as “teacher” as defined
11 in §18-1-1 of this code, and includes technology integration
12 specialists.

13 (e) “Professional instructional personnel” means a
14 professional educator whose regular duty is as that of a
15 classroom teacher, librarian, attendance director, or school
16 psychologist. A professional educator having both
17 instructional and administrative or other duties shall be
18 included as professional instructional personnel for that
19 ratio of the school day for which he or she is assigned and
20 serves on a regular full-time basis in appropriate instruction,
21 library, attendance, or psychologist duties.

22 (f) “Professional student support personnel” means a
23 “teacher” as defined in §18-1-1 of this code who is assigned
24 and serves on a regular full-time basis as a counselor or as a
25 school nurse with a bachelor’s degree and who is licensed
26 by the West Virginia Board of Examiners for Registered
27 Professional Nurses. Professional student support personnel
28 shall also include professional personnel providing direct
29 social and emotional support services to students, as well as

30 professional personnel addressing chronic absenteeism. For
31 all purposes except for the determination of the allowance
32 for professional educators pursuant to §18-9A-4 of this
33 code, professional student support personnel are
34 professional educators.

35 (g) “Service personnel salaries” means the state legally
36 mandated salaries for service personnel as provided
37 in §18A-4-8a of this code.

38 (h) “Service personnel” means all personnel as provided
39 in §18A-4-8 of this code. For the purpose of computations
40 under this article of ratios of service personnel to net
41 enrollment, a service employee shall be counted as that
42 number found by dividing his or her number of employment
43 days in a fiscal year by 200: *Provided*, That the computation
44 for any service person employed for three and one-half
45 hours or fewer per day as provided in §18A-4-8a of this
46 code shall be calculated as one-half an employment day.

47 (i) “Net enrollment” means the number of pupils
48 enrolled in special education programs, kindergarten
49 programs, and grades one to 12, inclusive, of the public
50 schools of the county. Net enrollment further shall include:

51 (1) Adults enrolled in vocational programs: *Provided*,
52 That net enrollment includes no more than 2,500 of those
53 adults counted on the basis of full-time equivalency and
54 apportioned annually to each county to support Advanced
55 Career Education programs, as provided in §18-2E-11 of
56 this code, in proportion to the adults participating in
57 vocational programs counted on the basis of full-time
58 equivalency: *Provided further*, That beginning with the
59 2021 fiscal year and every year thereafter, a career technical
60 education center may only receive the funding for
61 enrollment as authorized by this paragraph if the center has
62 satisfied the requirements of §18-2E-11 of this code;

63 (2) Students enrolled in early childhood education
64 programs as provided in §18-5-44 of this code, counted on
65 the basis of full-time equivalency;

66 (3) A pupil may not be counted more than once by
67 reason of transfer within the county or from another county
68 within the state, and a pupil may not be counted who attends
69 school in this state from another state;

70 (4) The enrollment shall be modified to the equivalent
71 of the instructional term and in accordance with the
72 eligibility requirements and rules established by the state
73 board; and

74 (5) For the purposes of determining the county's basic
75 foundation program only, for any county whose net
76 enrollment as determined under all other provisions of this
77 definition is less than 1,400, the net enrollment of the county
78 shall be increased by an amount to be determined in
79 accordance with the following:

80 (A) Divide the state's lowest county student population
81 density by the county's actual student population density;

82 (B) Multiply the amount derived from the calculation
83 in §18-9A-2(i)(5)(A) of this code by the difference between
84 1,400 and the county's actual net enrollment;

85 (C) Add the amount derived from the calculation in
86 paragraph (B) of this subdivision to the county's actual net
87 enrollment and increase that total amount by 10 percent; and

88 (D) If the net enrollment as determined under this
89 subdivision is greater than 1,400, the calculated net
90 enrollment shall be reduced to 1,400; and

91 (E) During the 2008-2009 interim period and every
92 three interim periods thereafter, the Legislative Oversight
93 Commission on Education Accountability shall review this
94 subdivision to determine whether these provisions properly

95 address the needs of counties with low enrollment and a
96 sparse population density.

97 (j) “Sparse-density county” means a county whose ratio
98 of net enrollment, excluding any increase in the net
99 enrollment of counties, pursuant to §18-9A-2(i)(5) of this
100 code, of the definition of “net enrollment”, to the square
101 miles of the county is less than five.

102 (k) “Low-density county” means a county whose ratio
103 of net enrollment, excluding any increase in the net
104 enrollment of counties, pursuant to §18-9A-2(i)(5) of this
105 code, of the definition of “net enrollment”, to the square
106 miles of the county is equal to or greater than five but less
107 than 10.

108 (l) “Medium-density county” means a county whose
109 ratio of net enrollment, excluding any increase in the net
110 enrollment of counties, pursuant to §18-9A-2(i)(5) of this
111 code, of the definition of “net enrollment”, to the square
112 miles of the county is equal to or greater than 10 but less
113 than 20.

114 (m) “High-density county” means a county whose ratio
115 of net enrollment, excluding any increase in the net
116 enrollment of counties, pursuant to §18-9A-2(i)(5) of this
117 code, of the definition of “net enrollment”, to the square
118 miles of the county is equal to or greater than 20.

119 (n) “Levies for general current expense purposes”
120 means 85 percent of the levy rate for county boards of
121 education calculated or set by the Legislature pursuant to
122 §11-8-6f of this code.

123 (o) “Technology integration specialist” means a
124 professional educator who has expertise in the technology
125 field and is assigned as a resource teacher to provide
126 information and guidance to classroom teachers on the
127 integration of technology into the curriculum.

128 (p) “State aid eligible personnel” means all professional
129 educators and service personnel employed by a county
130 board in positions that are eligible to be funded under this
131 article and whose salaries are not funded by a specific
132 funding source such as a federal or state grant, donation,
133 contribution, or other specific funding source not listed.

134 (q) The amendments to this section during the 2019 First
135 Extraordinary Session of the Legislature shall be effective
136 for the 2019-2020 funding year, and the provisions of this
137 section existing immediately prior to the 2019 First
138 Extraordinary Session of the Legislature remain in effect for
139 funding years prior to the 2019-2020 funding year.

§18-9A-8. Foundation allowance for professional student support services.

1 (a) Until the 2019-2020 fiscal year, the basic foundation
2 allowance to the county for professional student support
3 personnel shall be the same amount of money as in the 2013
4 fiscal year, plus any additional amount of funding necessary
5 to cover any increases in the State Minimum Salary
6 Schedule set forth in §18A-4-2 of this code.

7 (b) Effective for the 2019-2020 fiscal year and
8 thereafter, the basic foundation allowance to the county for
9 professional student support personnel is the amount of
10 money required to pay the state minimum salaries, in
11 accordance with provisions of §18A-4-1 *et seq.* of this code,
12 subject to the following:

13 (1) In making this computation, each county shall
14 receive an allowance for five state aid eligible professional
15 student support personnel positions to each 1,000 students
16 in net enrollment: *Provided*, That nothing in this section
17 precludes the county from entering into public-private
18 partnerships or other contracts to provide these services;

19 (2) For any professional student support personnel
20 positions, or fraction thereof, determined for a county
21 pursuant to subdivision (1) of this subsection that exceed the

22 number employed, the county's allowance for these
23 positions shall be determined using the average state funded
24 salary of professional student support personnel for the
25 county;

26 (3) The number of and the allowance for personnel paid
27 in part by state and county funds shall be prorated; and

28 (4) Where two or more counties join together in support
29 of a vocational or comprehensive high school or any other
30 program or service, the professional student support
31 personnel for the school or program may be prorated among
32 the participating counties on the basis of each one's
33 enrollment therein and the personnel shall be considered
34 within the above-stated limit.

35 (5) For the 2019-2020 fiscal year only, the number of
36 positions funded for each county by subdivision (1) cannot
37 be less than the number of positions that would have been
38 funded in accordance with the previous methodology for
39 determining the number of professional student support
40 personnel positions funded for each county.

**§18-9A-9. Foundation allowance for other current expense
and substitute employees and faculty senates.**

1 The total allowance for other current expense and
2 substitute employees is the sum of the following:

3 (1) For current expense:

4 (A) The non-salary related expenditures for operations
5 and maintenance, exclusive of expenditures reported in
6 special revenue funds, for the latest available school year, in
7 each county, divided by the total square footage of school
8 buildings in each county is used to calculate a state average
9 expenditure per square foot for operations and maintenance;

10 (B) The total square footage of school buildings in each
11 county divided by each county's net enrollment for school

12 aid purposes is used to calculate a state average square
13 footage per student;

14 (C) Each county's net enrollment for school aid
15 purposes multiplied by the state average expenditure per
16 square foot for operations and maintenance as calculated in
17 paragraph (A) of this subdivision and multiplied by the state
18 average square footage per student as calculated in
19 paragraph (B) of this subdivision is that county's state
20 average costs per square footage per student for operations
21 and maintenance;

22 (D) Where two or more counties join together in support
23 of a vocational or comprehensive high school or any other
24 program or service, the allowance for current expense may
25 be prorated among the participating counties by adjusting
26 the net enrollment for school aid purposes utilized in the
27 calculation by the number of students enrolled therein for
28 each county; and

29 (E) Each county's allowance for current expense is
30 70.25% of the county's state average costs per square
31 footage per student for operations and maintenance amount
32 as calculated in paragraph (C) of this subdivision: *Provided*,
33 That effective for the 2019-2020 fiscal year and each year
34 thereafter, each county's allowance for current expense is
35 71.25 percent of the county's state average costs per square
36 footage per student for operations and maintenance amount
37 as calculated in paragraph (C) of this subdivision; plus

38 (2) For professional educator substitutes or current
39 expense, two and five-tenths percent of the computed state
40 allocation for professional educators and professional
41 student support personnel as determined in §18-9A-4 and
42 §18-9A-8 of this code. Distribution to the counties is made
43 proportional to the number of professional educators and
44 professional student support personnel authorized for the
45 county in compliance with §18-9A-4 and §18-9A-8 of this
46 code; plus

47 (3) For service personnel substitutes or current expense,
48 two and five-tenths percent of the computed state allocation
49 for service personnel as determined in §18-9A-5 of this
50 code. Distribution to the counties is made proportional to
51 the number of service personnel authorized for the county
52 in compliance with §18-9A-5 of this code; plus

53 (4) For academic materials, supplies and equipment for
54 use in instructional programs, \$400 multiplied by the
55 number of professional instructional personnel and
56 professional student support personnel employed in the
57 schools of the county. Distribution is made to each county
58 for allocation to the faculty senate of each school in the
59 county on the basis of \$400 per professional instructional
60 personnel and professional student support personnel
61 employed at the school. "Faculty Senate" means a faculty
62 senate created pursuant to §18-5A-5 of this code. Decisions
63 for the expenditure of such funds are made at the school
64 level by the faculty senate in accordance with the provisions
65 of said section five, article five-a and may not be used to
66 supplant the current expense expenditures of the county.
67 Beginning on September 1, 1994, and every September
68 thereafter, county boards shall forward to each school for
69 the use by faculty senates the appropriation specified in this
70 section. Each school shall be responsible for keeping
71 accurate records of expenditures.

§18-9A-19. State Aid Block Grant Funding.

1 Beginning for the school year 2019-2020 and thereafter,
2 each county board shall receive its allocated state aid share
3 of the county's basic foundation program as calculated
4 pursuant to this article in the form of block grants.
5 Notwithstanding other provisions within this article, all
6 funds distributed to a county board in a block grant shall be
7 exempt from expenditure requirements and limitations
8 contained within this article and a recipient county board
9 may expend such funds in any authorized and allowable
10 manner the county board deems appropriate: *Provided*, That

- 11 all expenditures shall be consistent with the provisions of all
12 other articles of this code.

ARTICLE 9B. SCHOOL FINANCE.

§18-9B-22. Searchable budget database and website.

1 (a) Effective July 1, 2020, the state superintendent shall
2 provide the State Auditor with the required data for use by
3 the searchable budget data website: *Provided*, That the state
4 superintendent shall not be required to violate the Family
5 Educational Rights and Privacy Act in providing such data.
6 The data shall also contain the required information for the
7 previous three fiscal years provided such data is available.

8 (b) The required data shall include for use by the
9 searchable budget database website the following content:

10 (1) The name and principal location or residence of the
11 entity or recipients of funds: *Provided*, That employee
12 addresses shall not be made public or otherwise displayed
13 on the budget data website;

14 (2) The name of the person or entity requesting the
15 funds;

16 (3) The amount of funds expended;

17 (4) The funding or expending agency;

18 (5) The funding source of the revenue expended;

19 (6) The budget program or activity of the expenditure;

20 (7) A descriptive purpose for the funding action or
21 expenditure;

22 (8) Any state audit or report relating to the entity or
23 recipient of funds or the budget program or agency; and

24 (9) Any other relevant information specified by the
25 Legislature.

26 (c) The information shall be updated for each fiscal year
27 no later than 30 days following the end of the fiscal year. In
28 addition, the State Auditor shall update the searchable
29 budget database website as new data becomes available.
30 The State Auditor shall provide guidance to the state
31 superintendent to ensure compliance with this section.

32 (d) Nothing in this subsection is intended to cause a
33 substantial modification to the West Virginia Education
34 Information System.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-5. Powers and duties of state superintendent.

1 (a) The State Superintendent of Schools shall organize,
2 promote, administer and be responsible for:

3 (1) Stimulating and assisting county boards of education
4 in establishing, organizing and maintaining special schools,
5 classes, regular class programs, home-teaching and visiting-
6 teacher services for exceptional children.

7 (2) Cooperating with all other public and private
8 agencies engaged in relieving, caring for, curing, educating
9 and rehabilitating exceptional children, and in helping
10 coordinate the services of such agencies.

11 (3) (A) Preparing the necessary rules, policies, and
12 formulas for distribution of available appropriated funds,
13 reporting forms and procedures necessary to define
14 minimum standards in providing suitable facilities for
15 education of exceptional children and ensuring the
16 employment, certification and approval of qualified
17 teachers and therapists subject to approval by the State
18 Board of Education: *Provided*, That no state rule, policy or
19 standard under this article or any county board rule, policy
20 or standard governing special education may exceed the
21 requirements of federal law or regulation.

22 (B) A separate appropriation shall be made to the
23 Department of Education to be disbursed to county
24 boards and public charter schools authorized pursuant to
25 §18-5G-1 *et seq.* of this code to assist them with serving
26 exceptional children with high cost/high acuity special
27 needs that exceed the capacity of county to provide with
28 funds available. Each county board and public charter
29 school shall apply to the state superintendent to receive this
30 funding in a manner set forth by the state superintendent that
31 assesses and takes into account varying acuity levels of the
32 exceptional students. Any remaining funds at the end of a
33 fiscal year from the appropriation shall be carried over to
34 the next fiscal year. When possible, federal funds shall
35 be disbursed to county boards and public charter schools for
36 this purpose before any of the state appropriation is
37 disbursed. The state board shall promulgate a rule in
38 accordance with the provisions of §29A-3B-1 *et seq.* of this
39 code that implements the provisions of this subdivision
40 relating to disbursing the funds to the county boards and
41 public charter schools. The rule at least shall include a
42 definition for “children with high acuity needs”.

43 (4) Receiving from county boards and public charter
44 schools, their applications, annual reports and claims for
45 reimbursement from such moneys as are appropriated by the
46 Legislature, auditing such claims, and preparing vouchers to
47 reimburse said counties the amounts reimbursable to them.

48 (5) Assuring that all exceptional children in the state,
49 including children in mental health facilities, residential
50 institutions, private schools and correctional facilities as
51 provided in §18-2-13f of this code receive an education in
52 accordance with state and federal laws: *Provided*, That the
53 state superintendent shall also assure that adults in
54 correctional facilities and regional jails receive an education
55 to the extent funds are provided therefor.

56 (6) Performing other duties and assuming other
57 responsibilities in connection with this program as needed.

58 (b) Nothing contained in this section shall be construed
 59 to prevent any county board of education from establishing
 60 and maintaining special schools, classes, regular class
 61 programs, home-teaching or visiting-teacher services for
 62 exceptional children out of funds available from local
 63 revenue.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

1 (a) It is the goal of the Legislature to increase the state
 2 minimum salary for teachers with zero years of experience
 3 and an A. B. degree, including the supplement, to at least
 4 \$43,000 by fiscal year 2019.

5 (b) For school year 2018–2019, and continuing
 6 thereafter, each teacher shall receive the amount prescribed
 7 in the State Minimum Salary Schedule I as set forth in this
 8 section; specific additional amounts prescribed in this
 9 section or article; and any county supplement in effect in a
 10 county pursuant to §18A-4-5a of this code during the
 11 contract year: *Provided*, That for the school year 2019-
 12 2020, and continuing thereafter, each teacher shall receive
 13 the amount prescribed in the State Minimum Salary
 14 Schedule II as set forth in this section, specific additional
 15 amounts prescribed in this section or article, and any county
 16 supplement in effect in a county pursuant to §18A-4-5a of
 17 this code during the contract year.

STATE MINIMUM SALARY SCHEDULE I

Years	4th	3rd	2nd	A.B.		M.A.		M.A.	M.A.	Doc-
Exp	Class	Class	Class	A.B.	+ 15	M.A.	+ 15	+ 30	+ 45	torate
0	29,937	30,626	30,892	32,335	33,096	34,863	35,624	36,385	37,146	38,181
1	30,265	30,954	31,220	32,853	33,614	35,382	36,143	36,903	37,664	38,699
2	30,594	31,282	31,548	33,372	34,133	35,900	36,661	37,422	38,183	39,218
3	30,922	31,610	31,876	33,891	34,651	36,419	37,180	37,940	38,701	39,736
4	31,494	32,182	32,448	34,653	35,414	37,182	37,943	38,703	39,464	40,499

5	31,822	32,510	32,776	35,172	35,933	37,700	38,461	39,222	39,983	41,018
6	32,150	32,838	33,104	35,690	36,451	38,219	38,980	39,740	40,501	41,536
7	32,478	33,167	33,432	36,209	36,970	38,737	39,498	40,259	41,020	42,055
8	32,806	33,495	33,761	36,727	37,488	39,256	40,017	40,777	41,538	42,573
9	33,134	33,823	34,089	37,246	38,007	39,774	40,535	41,296	42,057	43,092
10	33,463	34,151	34,417	37,766	38,526	40,294	41,055	41,816	42,576	43,611
11	33,791	34,479	34,745	38,284	39,045	40,813	41,573	42,334	43,095	44,130
12	34,119	34,807	35,073	38,803	39,563	41,331	42,092	42,853	43,613	44,648
13	34,447	35,135	35,401	39,321	40,082	41,850	42,610	43,371	44,132	45,167
14	34,775	35,463	35,729	39,840	40,600	42,368	43,129	43,890	44,650	45,685
15	35,103	35,791	36,057	40,358	41,119	42,887	43,647	44,408	45,169	46,204
16	35,431	36,119	36,385	40,877	41,637	43,405	44,166	44,927	45,687	46,722
17	35,759	36,448	36,713	41,395	42,156	43,924	44,685	45,445	46,206	47,241
18	36,087	36,776	37,042	41,914	42,675	44,442	45,203	45,964	46,725	47,760
19	36,415	37,104	37,370	42,432	43,193	44,961	45,722	46,482	47,243	48,278
20	36,743	37,432	37,698	42,951	43,712	45,479	46,240	47,001	47,762	48,797
21	37,072	37,760	38,026	43,469	44,230	45,998	46,759	47,519	48,280	49,315
22	37,400	38,088	38,354	43,988	44,749	46,516	47,277	48,038	48,799	49,834
23	37,728	38,416	38,682	44,507	45,267	47,035	47,796	48,556	49,317	50,352
24	38,056	38,744	39,010	45,025	45,786	47,554	48,314	49,075	49,836	50,871
25	38,384	39,072	39,338	45,544	46,304	48,072	48,833	49,594	50,354	51,389
26	38,712	39,400	39,666	46,062	46,823	48,591	49,351	50,112	50,873	51,908
27	39,040	39,728	39,994	46,581	47,341	49,109	49,870	50,631	51,391	52,426
28	39,368	40,057	40,322	47,099	47,860	49,628	50,388	51,149	51,910	52,945
29	39,696	40,385	40,651	47,618	48,378	50,146	50,907	51,668	52,428	53,463
30	40,024	40,713	40,979	48,136	48,897	50,665	51,425	52,186	52,947	53,982
31	40,353	41,041	41,307	48,655	49,416	51,183	51,944	52,705	53,465	54,500
32	40,681	41,369	41,635	49,173	49,934	51,702	52,463	53,223	53,984	55,019
33	41,009	41,697	41,963	49,692	50,453	52,220	52,981	53,742	54,503	55,538
34	41,337	42,025	42,291	50,210	50,971	52,739	53,500	54,260	55,021	56,056
35	41,665	42,353	42,619	50,729	51,490	53,257	54,018	54,779	55,540	56,575

STATE MINIMUM SALARY SCHEDULE II

Years	4th	3rd	2nd	A.B.		M.A.	M.A.	M.A.	Doc-	
Exp	Class	Class	Class	A.B.	+ 15	M.A.	+ 15	+ 30	+ 45	torate
0	32,057	32,746	33,012	34,455	35,216	36,983	37,744	38,505	39,266	40,301
1	32,385	33,074	33,340	34,973	35,734	37,502	38,263	39,023	39,784	40,819

2	32,714	33,402	33,668	35,492	36,253	38,020	38,781	39,542	40,303	41,338
3	33,042	33,730	33,996	36,011	36,771	38,539	39,300	40,060	40,821	41,856
4	33,614	34,302	34,568	36,773	37,534	39,302	40,063	40,823	41,584	42,619
5	33,942	34,630	34,896	37,292	38,053	39,820	40,581	41,342	42,103	43,138
6	34,270	34,958	35,224	37,810	38,571	40,339	41,100	41,860	42,621	43,656
7	34,598	35,287	35,552	38,329	39,090	40,857	41,618	42,379	43,140	44,175
8	34,926	35,615	35,881	38,847	39,608	41,376	42,137	42,897	43,658	44,693
9	35,254	35,943	36,209	39,366	40,127	41,894	42,655	43,416	44,177	45,212
10	35,583	36,271	36,537	39,886	40,646	42,414	43,175	43,936	44,696	45,731
11	35,911	36,599	36,865	40,404	41,165	42,933	43,693	44,454	45,215	46,250
12	36,239	36,927	37,193	40,923	41,683	43,451	44,212	44,973	45,733	46,768
13	36,567	37,255	37,521	41,441	42,202	43,970	44,730	45,491	46,252	47,287
14	36,895	37,583	37,849	41,960	42,720	44,488	45,249	46,010	46,770	47,805
15	37,223	37,911	38,177	42,478	43,239	45,007	45,767	46,528	47,289	48,324
16	37,551	38,239	38,505	42,997	43,757	45,525	46,286	47,047	47,807	48,842
17	37,879	38,568	38,833	43,515	44,276	46,044	46,805	47,565	48,326	49,361
18	38,207	38,896	39,162	44,034	44,795	46,562	47,323	48,084	48,845	49,880
19	38,535	39,224	39,490	44,552	45,313	47,081	47,842	48,602	49,363	50,398
20	38,863	39,552	39,818	45,071	45,832	47,599	48,360	49,121	49,882	50,917
21	39,192	39,880	40,146	45,589	46,350	48,118	48,879	49,639	50,400	51,435
22	39,520	40,208	40,474	46,108	46,869	48,636	49,397	50,158	50,919	51,954
23	39,848	40,536	40,802	46,627	47,387	49,155	49,916	50,676	51,437	52,472
24	40,176	40,864	41,130	47,145	47,906	49,674	50,434	51,195	51,956	52,991
25	40,504	41,192	41,458	47,664	48,424	50,192	50,953	51,714	52,474	53,509
26	40,832	41,520	41,786	48,182	48,943	50,711	51,471	52,232	52,993	54,028
27	41,160	41,848	42,114	48,701	49,461	51,229	51,990	52,751	53,511	54,546
28	41,488	42,177	42,442	49,219	49,980	51,748	52,508	53,269	54,030	55,065
29	41,816	42,505	42,771	49,738	50,498	52,266	53,027	53,788	54,548	55,583
30	42,144	42,833	43,099	50,256	51,017	52,785	53,545	54,306	55,067	56,102
31	42,473	43,161	43,427	50,775	51,536	53,303	54,064	54,825	55,585	56,620
32	42,801	43,489	43,755	51,293	52,054	53,822	54,583	55,343	56,104	57,139
33	43,129	43,817	44,083	51,812	52,573	54,340	55,101	55,862	56,623	57,658
34	43,457	44,145	44,411	52,330	53,091	54,859	55,620	56,380	57,141	58,176
35	43,785	44,473	44,739	52,849	53,610	55,377	56,138	56,899	57,660	58,695

18 (c) Six hundred dollars shall be paid annually to each
19 classroom teacher who has at least 20 years of teaching

20 experience. The payments: (i) Shall be in addition to any
21 amounts prescribed in the applicable State Minimum Salary
22 Schedule; (ii) shall be paid in equal monthly installments;
23 and (iii) shall be considered a part of the state minimum
24 salaries for teachers.

25 (d) Effective July 1, 2019, each classroom teacher
26 providing math instruction in the teacher's certified area of
27 study for at least 60 percent of the time the teacher is
28 providing instruction to students shall be considered to have
29 three additional years of experience only for the purposes of
30 the salary schedule set forth in subsection (b) of this section:
31 *Provided*, That for any classroom teacher who satisfies
32 these requirements and whose years of experience plus the
33 three additional years due to them exceeds the years of
34 experience provided for on the salary schedule shall be paid
35 the additional amount equivalent to three additional years of
36 experience notwithstanding the maximum experience
37 provided on the salary schedule.

38 (e) Effective July 1, 2019, each classroom teacher
39 certified in special education and employed as a full-time
40 special education teacher shall be considered to have three
41 additional years of experience only for the purposes of the
42 salary schedule set forth in subsection (b) of this section:
43 *Provided*, That for any classroom teacher who satisfies
44 these requirements and whose years of experience plus the
45 three additional years due to them exceeds the years of
46 experience provided for on the salary schedule shall be paid
47 the additional amount equivalent to three additional years of
48 experience notwithstanding the maximum experience
49 provided on the salary schedule.

50 (f) In accordance with §18A-4-5 of this code, each
51 teacher shall be paid the supplement amount as applicable
52 for his or her classification of certification or classification
53 of training and years of experience as follows, subject to the
54 provisions of that section:

55 (1) For “4th Class” at zero years of experience, \$1,781.
56 An additional \$38 shall be paid for each year of experience
57 up to and including 35 years of experience;

58 (2) For “3rd Class” at zero years of experience, \$1,796.
59 An additional \$67 shall be paid for each year of experience
60 up to and including 35 years of experience;

61 (3) For “2nd Class” at zero years of experience, \$1,877.
62 An additional \$69 shall be paid for each year of experience
63 up to and including 35 years of experience;

64 (4) For “A. B.” at zero years of experience, \$2,360. An
65 additional \$69 shall be paid for each year of experience up
66 to and including 35 years of experience;

67 (5) For “A. B. + 15” at zero years of experience, \$2,452.
68 An additional \$69 shall be paid for each year of experience
69 up to and including 35 years of experience;

70 (6) For “M. A.” at zero years of experience, \$2,644. An
71 additional \$69 shall be paid for each year of experience up
72 to and including 35 years of experience;

73 (7) For “M. A. + 15” at zero years of experience, \$2,740.
74 An additional \$69 shall be paid for each year of experience
75 up to and including 35 years of experience;

76 (8) For “M. A. + 30” at zero years of experience, \$2,836.
77 An additional \$69 shall be paid for each year of experience
78 up to and including 35 years of experience;

79 (9) For “M. A. + 45” at zero years of experience, \$2,836.
80 An additional \$69 shall be paid for each year of experience
81 up to and including 35 years of experience; and

82 (10) For “Doctorate” at zero years of experience,
83 \$2,927. An additional \$69 shall be paid for each year of
84 experience up to and including 35 years of experience.

85 These payments: (i) Shall be in addition to any amounts
86 prescribed in the applicable State Minimum Salary
87 Schedule, any specific additional amounts prescribed in this
88 section and article and any county supplement in effect in a
89 county pursuant to §18A-4-5a of this code; (ii) shall be paid
90 in equal monthly installments; and (iii) shall be considered
91 a part of the state minimum salaries for teachers.

§18A-4-5. State salary supplement.

1 (a) The Legislature recognizes its constitutional
2 responsibility to provide for a thorough and efficient system
3 of education. To carry out this responsibility the Legislature
4 enacted, and continues to update, as necessary, the public
5 school support program as set forth in §18-9A-1, *et seq.* of
6 this code. The public school support program is a non-
7 discriminatory funding mechanism for financing the
8 educational system in this state as it takes into account each
9 county's specific characteristics, and ensures that all
10 counties are provided equitable funding.

11 (b) The Legislature further finds that the purpose of the
12 public school support program is not to deter counties from
13 growing economically or from using county resources in a
14 manner that best meets their specific educational needs and
15 the desires of their citizens. To that end, counties must have
16 the discretion and flexibility to use local county funds, not
17 otherwise factored into the public school support program,
18 to provide the best education possible to their students,
19 including, but not limited to, providing salary supplements
20 to teachers.

21 (c) Subject to available state appropriations and the
22 conditions set forth herein, each teacher and school service
23 personnel shall receive a supplement amount as specified in
24 §18A-4-2 and §18A-4-8a of this code, respectively, of this
25 article in addition to the amount from the state minimum
26 salary schedules provided in those sections. State funds for
27 this purpose shall be paid within the West Virginia public
28 school support plan in accordance with §18-9A-1 *et seq.* of

29 this code. The amount allocated for this supplement shall be
30 apportioned between teachers and school service personnel
31 in direct proportion to that amount necessary to support the
32 professional salaries and service personnel salaries
33 statewide under §18-9A-4, §18-9A-5, and §18-9A-8 of this
34 code.

35 (d) Pursuant to this section, each teacher and service
36 person shall receive from state funds the supplement
37 amount indicated in §18A-4-2(f) and §18A-4-8a(f) of this
38 code, as applicable, reduced by any amount provided by the
39 county as a salary supplement for teachers and school
40 service personnel on January 1, 1984.

41 (e) The amount received pursuant to this section shall
42 not be decreased as a result of any county supplement
43 increase instituted after January 1, 1984: *Provided*, That any
44 amount received pursuant to this section may be reduced
45 proportionately based upon the amount of funds
46 appropriated for this purpose. No county may reduce any
47 salary supplement that was in effect on January 1, 1984,
48 except as permitted by §18-4-5a and §18-4-5b of this code.

49 (f) The amendments to this section during the 2019 First
50 Extraordinary Session of the Legislature shall be effective
51 for school years beginning on or after July 1, 2019, and the
52 provisions of this section existing immediately prior to the
53 2019 First Extraordinary Session of the Legislature remain
54 in effect for school years beginning prior to July 1, 2019.

§18A-4-5a. County salary supplements for teachers.

1 (a) County boards of education in fixing the salaries of
2 teachers shall use at least the state minimum salaries
3 established under the provisions of this article. The board
4 may establish salary schedules which shall be in excess of
5 the state minimums fixed by this article, such county
6 schedules to be uniform throughout the county as to the
7 classification of training, experience, responsibility and
8 other requirements subject to the following:

9 (1) Counties may fix higher salaries for teachers placed
10 in special instructional assignments, for those assigned to or
11 employed for duties other than regular instructional duties,
12 and for teachers of one-teacher schools;

13 (2) Counties may provide additional compensation for
14 any teacher assigned duties in addition to the teacher's
15 regular instructional duties wherein such noninstructional
16 duties are not a part of the scheduled hours of the regular
17 school day;

18 (3) Counties may provide additional compensation for
19 teachers who are assigned and fully certified to teach in a
20 subject area in which the county board finds it has a critical
21 need and shortage of fully certified teachers;

22 (4) Counties may provide additional compensation or
23 other financial assistance to teachers who teach in schools
24 that are in remote geographical locations or have
25 experienced high rates of turnover in experienced teachers;
26 and

27 (5) Counties may provide additional compensation to
28 teachers who, in addition to regularly assigned teaching
29 duties, are assigned as a master teacher, mentor, academic
30 coach, or other title whose duties include providing strong
31 school-based support and supervision to assist licensure
32 candidates in a clinical internship, beginning teachers, and
33 other teachers at the school to improve their professional
34 practice as set forth in the county's comprehensive system
35 of support for teacher and leader induction and professional
36 growth provided for in section §18A-3C-3 of this code.

37 (b) In establishing such local salary schedules
38 authorized in subsection (a) of this section, a county may
39 not reduce local funds allocated for salaries in effect on
40 January 1, 1990, and used in supplementing the state
41 minimum salaries as provided for in this article, unless
42 forced to do so by defeat of a special levy, or a loss in
43 assessed values or events over which it has no control and

44 for which the county board has received approval from the
45 state board prior to making such reduction.

46 (c) Counties may provide, in a uniform manner, benefits
47 for teachers which require an appropriation from local funds
48 including, but not limited to, dental, optical, health and
49 income protection insurance, vacation time and retirement
50 plans excluding the State Teachers Retirement System.
51 Nothing herein shall prohibit the maintenance nor result in
52 the reduction of any benefits in effect on January 1, 1984,
53 by any county board of education.

**§18A-4-7a. Employment, promotion, and transfer of
professional personnel; qualifications.**

1 (a) A county board of education shall make decisions
2 affecting the filling of vacancies in professional positions of
3 employment on the basis of the applicant with the highest
4 qualifications: *Provided*, That the county superintendent
5 shall be hired under separate criteria pursuant to §18-4-2 of
6 this code.

7 (b) In judging qualifications for the filling of vacancies
8 of professional positions of employment, consideration
9 shall be given to each of the following:

10 (1) Appropriate certification, licensure or both;

11 (2) Amount of experience relevant to the position or, in
12 the case of a classroom teaching position, the amount of
13 teaching experience in the required certification area;

14 (3) The amount of course work, degree level or both in
15 the relevant field and degree level generally;

16 (4) Academic achievement;

17 (5) In the case of a principal or classroom teaching
18 position, certification by the National Board for
19 Professional Teaching Standards;

20 (6) Specialized training relevant to performing the
21 duties of the job;

22 (7) Past performance evaluations conducted pursuant to
23 §18A-2-12 and §18A-3C-2 of this code or, in the case of a
24 classroom teacher, past evaluations of the applicant's
25 performance in the teaching profession;

26 (8) Seniority;

27 (9) Other measures or indicators upon which the relative
28 qualifications of the applicant may fairly be judged;

29 (10) In the case of a classroom teaching position, the
30 recommendation of the principal of the school at which the
31 applicant will be performing a majority of his or her duties;
32 and

33 (11) In the case of a classroom teaching position, the
34 recommendation, if any, resulting from the process
35 established pursuant to the provisions of §18-5A-5 of this
36 code by the faculty senate of the school at which the
37 employee will be performing a majority of his or her duties.

38 (c) When filling of a vacancy pursuant to this section, a
39 county board is entitled to determine the appropriate weight
40 to apply to each of the criterion when assessing an
41 applicant's qualifications: *Provided*, That if one or more
42 permanently employed instructional personnel apply for a
43 classroom teaching position and meet the standards set forth
44 in the job posting, each criterion under subsection (b) of this
45 section shall be given equal weight except that the criterion
46 in subdivisions (10) and (11) shall each be double weighted.

47 (d) For a classroom teaching position, if the principal
48 and faculty senate recommend the same applicant pursuant
49 to subdivisions (10) and (11), subsection (b) of this section,
50 and the superintendent concurs with those
51 recommendations, then the other provisions of subsections
52 (b) and (c) of this section do not apply and the county board

53 shall appoint that applicant notwithstanding any other
54 provision of this code to the contrary.

55 (e) The state board shall promulgate a rule, including an
56 emergency rule if necessary, in accordance with the
57 provisions of §29A-3B-1 *et seq.* of this code to implement
58 and interpret the provisions of this section. The rule may
59 provide for a classroom teacher who directly participates in
60 making recommendations pursuant to this section to be
61 compensated at the appropriate daily rate during periods of
62 participation beyond his or her individual contract.

63 (f) The recommendations of the principal and faculty
64 senate made pursuant to subdivisions (10) and (11),
65 subsection (b) of this section shall be based on a
66 determination as to which applicant is the most highly
67 qualified for the position: *Provided*, That nothing in this
68 subsection may require principals or faculty senates to
69 assign any amount of weight to any factor in making a
70 recommendation.

71 (g) With the exception of guidance counselors, the
72 seniority of classroom teachers, as defined in section one,
73 article one of this chapter, shall be determined on the basis
74 of the length of time the employee has been employed as a
75 regular full-time certified and/or licensed professional
76 educator by the county board of education and shall be
77 granted in all areas that the employee is certified, licensed
78 or both.

79 (h) If two or more employees with the same certification
80 establish an identical seniority date as a result of initial
81 employment as a regular teacher on or after July 1, 2019,
82 the priority between these employees shall be determined by
83 a random selection system established by the employees and
84 approved by the county board. A board shall conduct the
85 random selection within 30 days of the time the employees
86 with the same certification establish an identical seniority
87 date. All employees with an identical seniority date and the
88 same certification shall participate in the random selection.

89 As long as the affected employees hold the identical
90 seniority date within a certification, the initial random
91 selection conducted by the board shall be permanent for the
92 duration of the employment of the employees by the board.

93 (i) Upon completion of 133 days of employment in any
94 one school year, substitute teachers, except retired teachers
95 and other retired professional educators employed as
96 substitutes, shall accrue seniority exclusively for the
97 purpose of applying for employment as a permanent, full-
98 time professional employee. One hundred thirty-three days
99 or more of said employment shall be prorated and shall vest
100 as a fraction of the school year worked by the permanent,
101 full-time teacher.

102 (j) Guidance counselors and all other professional
103 employees, as defined in §18A-1-1 of this code, except
104 classroom teachers, shall gain seniority in their nonteaching
105 area of professional employment on the basis of the length
106 of time the employee has been employed by the county
107 board of education in that area: *Provided*, That if an
108 employee is certified as a classroom teacher, the employee
109 accrues classroom teaching seniority for the time that
110 employee is employed in another professional area. For the
111 purposes of accruing seniority under this subsection,
112 employment as principal, supervisor or central office
113 administrator, as defined in §18A-1-1 of this code, shall be
114 considered one area of employment.

115 (k) Employment for a full employment term equals one
116 year of seniority, but an employee may not accrue more than
117 one year of seniority during any given fiscal year.
118 Employment for less than the full employment term shall be
119 prorated.

120 (l) All decisions on reductions in force shall be based on
121 qualifications as set forth in a county board policy.
122 Furthermore, for the purposes of this subsection and
123 subsections (m) through (t), inclusive, of this section, the
124 word “qualifications” means the qualifications set forth in

125 county board policy and only means qualifications set forth
126 in subsection (b) of this section to the extent those
127 qualifications are set forth in county board policy: *Provided*,
128 That in defining the word “qualifications” in its policy, the
129 county board:

130 (1) Shall consider including the following criteria:

131 (A) Seniority;

132 (B) Appropriate certification, licensure, or both;

133 (C) Amount of experience relevant to the position or, in
134 the case of a classroom teaching position, the amount of
135 teaching experience in the required certification area;

136 (D) The amount of course work, degree level, or both in
137 the relevant field and degree level generally;

138 (E) Academic achievement;

139 (F) In the case of a principal or classroom teaching
140 position, certification by the National Board for
141 Professional Teaching Standards;

142 (G) Specialized training relevant to performing the
143 duties of the job;

144 (H) Past performance evaluations conducted pursuant to
145 §18A-2-12 and §18A-3C-2 of this code or, in the case of a
146 classroom teacher, past evaluations of the applicant’s
147 performance in the teaching profession;

148 (I) Other measures or indicators upon which the relative
149 qualifications of the applicant may fairly be judged;

150 (J) In the case of transfer or recall to a classroom
151 teaching position, the recommendation of the principal of
152 the school at which the applicant will be performing a
153 majority of his or her duties; and

154 (K) In the case of transfer or recall to a classroom
155 teaching position, the recommendation, if any, resulting
156 from the process established pursuant to the provisions of
157 §18-5A-5 of this code by the faculty senate of the school at
158 which the employee will be performing a majority of his or
159 her duties;

160 (2) Shall consider other criteria set forth in subdivision
161 (1) of this subsection to the extent they are included in the
162 county board policy only after considering personnel whose
163 last performance evaluation conducted pursuant to §18A-2-
164 12 or §18A-3C-2 of this code, as applicable, is less than
165 satisfactory; and

166 (3) May not include salary as one of the criteria in the
167 definition.

168 (m) Whenever a county board is required to reduce the
169 number of professional personnel in its employment, the
170 selection of the employee to be properly notified and
171 released from employment pursuant to the provisions of
172 section two, article two of this chapter shall be based upon
173 seniority, certification, licensure and performance
174 evaluations. The provisions of this subsection are subject to
175 the following:

176 (1) In the event of a reduction in force, a county board
177 of education may properly notify and release from
178 employment pursuant to the provisions of section two,
179 article two of this chapter any classroom teacher with
180 unsatisfactory evaluations for the previous two consecutive
181 years regardless of years of service instead of release from
182 employment of less senior classroom teachers with
183 satisfactory performance evaluations;

184 (2) All persons employed in a certification area to be
185 reduced who are employed under a temporary permit shall
186 be properly notified and released before a fully certified
187 employee in such a position is subject to release;

188 (3) Notwithstanding any provision of this code to the
189 contrary, for any vacancy in an established, existing or
190 newly created position that, on or before March 1, is known
191 to exist for the ensuing school year, upon recommendation
192 of the superintendent, the board shall appoint the successful
193 applicant from among all qualified applicants. All
194 employees subject to release shall be considered applicants
195 for the positions for which they are qualified and shall be
196 considered before posting such vacancies for application by
197 nonemployees;

198 (4) An employee subject to release shall be employed in
199 any other professional position where the employee is
200 certified and was previously employed or to any lateral area
201 for which the employee is certified, licensed or both, if the
202 employees seniority is greater than the seniority of any other
203 employee in that area of certification, licensure or both;

204 (5) If an employee subject to release holds certification,
205 licensure or both in more than one lateral area and if the
206 employees seniority is greater than the seniority of any other
207 employee in one or more of those areas of certification,
208 licensure or both, the employee subject to release shall be
209 employed in the professional position held by the employee
210 with the least seniority in any of those areas of certification,
211 licensure or both; and

212 (6) If, prior to August 1 of the year, a reduction in force
213 is approved, the reason for any particular reduction in force
214 no longer exists as determined by the county board in its
215 sole and exclusive judgment, the board shall rescind the
216 reduction in force or transfer and shall notify the released
217 employee in writing of his or her right to be restored to his
218 or her position of employment. Within five days of being so
219 notified, the released employee shall notify the board, in
220 writing, of his or her intent to resume his or her position of
221 employment or the right to be restored shall terminate.
222 Notwithstanding any other provision of this subdivision, if
223 there is another employee on the preferred recall list with
224 proper certification and higher seniority, that person shall be

225 placed in the position restored as a result of the reduction in
226 force being rescinded.

227 (n) For the purpose of this article, all positions which
228 meet the definition of “classroom teacher” as defined in
229 §18A-1-1 of this code shall be lateral positions. For all other
230 professional positions, the county board of education shall
231 adopt a policy by October 31, 1993, and may modify the
232 policy thereafter as necessary, which defines which
233 positions shall be lateral positions. In adopting the policy,
234 the board may give consideration to the rank of each
235 position in terms of title; nature of responsibilities; salary
236 level; and certification, licensure or both; along with the
237 days in the period of employment.

238 (o) All professional personnel whose lesser
239 qualifications, as determined by county board policy, with
240 the county board is insufficient to allow their retention by
241 the county board during a reduction in workforce shall be
242 placed upon a preferred recall list. As to any professional
243 position opening within the area where they had previously
244 been employed or to any lateral area for which they have
245 certification, licensure or both, the employee shall be
246 recalled on the basis of qualifications if no regular, full-time
247 professional personnel, or those returning from leaves of
248 absence with greater qualifications apply for and accept the
249 position.

250 (p) The board shall annually notify professional
251 personnel on the preferred list of the job application
252 procedures and any websites used to advertise vacancies.
253 The notice shall be sent by certified mail via the U.S. Postal
254 Service to the last known address of the employee, and it
255 shall be the duty of each professional person to notify the
256 board of continued availability annually of any change in
257 address, or of any change in certification, licensure or both.

258 (q) Openings in established, existing or newly created
259 positions shall be processed as follows:

260 (1) Boards shall be required to post and date notices of
261 each opening at least once. At their discretion, boards may
262 post an opening for a position other than classroom teacher
263 more than once in order to attract more qualified applicants.
264 At their discretion, boards may repost an opening for a
265 classroom teacher after the first posting in order to attract
266 more qualified applicants subject to the following:

267 (A) Each notice shall be posted in conspicuous working
268 places for all professional personnel to observe for at least
269 five working days which may include any website
270 maintained by the county board;

271 (B) At least one notice shall be posted within 20
272 working days of the position openings and shall include the
273 job description;

274 (C) Any special criteria or skills that are required by the
275 position shall be specifically stated in the job description
276 and directly related to the performance of the job;

277 (D) Postings for vacancies made pursuant to this section
278 shall be written so as to ensure that the largest possible pool
279 of qualified applicants may apply; and

280 (E) Job postings may not require criteria which are not
281 necessary for the successful performance of the job and may
282 not be written with the intent to favor a specific applicant;

283 (2) No vacancy may be filled until after the five-day
284 minimum posting period of the most recent posted notice of
285 the vacancy;

286 (3) If one or more applicants under all the postings for a
287 vacancy meets the qualifications listed in the job posting,
288 the successful applicant to fill the vacancy shall be selected
289 by the board within 30 working days of the end of the first
290 posting period;

291 (4) A position held by a teacher who is certified,
292 licensed or both, who has been issued a permit for full-time

293 employment and is working toward certification in the
294 permit area shall not be subject to posting if the certificate
295 is awarded within five years; and

296 (5) Nothing provided herein may prevent the county
297 board of education from eliminating a position due to lack
298 of need.

299 (r) Notwithstanding any other provision of the code to
300 the contrary, where the total number of classroom teaching
301 positions in an elementary school does not increase from
302 one school year to the next, but there exists in that school a
303 need to realign the number of teachers in one or more grade
304 levels, kindergarten through six, teachers at the school may
305 be reassigned to grade levels for which they are certified
306 without that position being posted: *Provided*, That the
307 employee and the county board mutually agree to the
308 reassignment.

309 (s) Reductions in classroom teaching positions in
310 elementary schools shall be determined pursuant to the
311 considerations set forth in county board policy and
312 processed as follows:

313 (1) When the total number of classroom teaching
314 positions in an elementary school needs to be reduced, the
315 reduction shall be made on the basis of qualifications with
316 the least qualified classroom teacher being recommended
317 for transfer; and

318 (2) When a specified grade level needs to be reduced
319 and the least qualified employee in the school is not in that
320 grade level, the least qualified classroom teacher in the
321 grade level that needs to be reduced shall be reassigned to
322 the position made vacant by the transfer of the least
323 qualified classroom teacher in the school without that
324 position being posted: *Provided*, That the employee is
325 certified, licensed or both and agrees to the reassignment.

326 (t) Any board failing to comply with the provisions of
327 this article may be compelled to do so by mandamus and
328 shall be liable to any party prevailing against the board for
329 court costs and reasonable attorney fees as determined and
330 established by the court. Further, employees denied
331 promotion or employment in violation of this section shall
332 be awarded the job, pay and any applicable benefits
333 retroactive to the date of the violation and payable entirely
334 from local funds. Further, the board shall be liable to any
335 party prevailing against the board for any court reporter
336 costs including copies of transcripts.

337 (u) Notwithstanding any other provision of this code to
338 the contrary, upon recommendation of the principal and
339 approval by the classroom teacher and county board, a
340 classroom teacher assigned to the school may at any time be
341 assigned to a new or existing classroom teacher position at
342 the school without the position being posted.

343 (v) All personnel in a public charter school shall
344 continue to accrue seniority in the same manner that they
345 would accrue seniority if employed in a noncharter public
346 school in the county for the purpose of employment in
347 noncharter public schools.

§18A-4-8a. Service personnel minimum monthly salaries.

1 (a) The minimum monthly pay for each service
2 employee shall be as follows:

3 (1) For school year 2018–2019, the minimum monthly
4 pay for each service employee whose employment is for a
5 period of more than three and one-half hours a day shall be
6 at least the amounts indicated in the State Minimum Pay
7 Scale Pay Grade Schedule I and the minimum monthly pay
8 for each service employee whose employment is for a
9 period of three and one-half hours or less a day shall be at
10 least one-half the amount indicated in the State Minimum
11 Pay Scale Pay Grade Schedule I set forth in this subdivision:
12 *Provided*, That for school year 2019-2020, and continuing

13 thereafter, the minimum monthly pay for each service
 14 employee whose employment is for a period of more than
 15 three and one-half hours a day shall be at least the amounts
 16 indicated in the State Minimum Pay Scale Pay Grade
 17 Schedule II and the minimum monthly pay for each service
 18 employee whose employment is for a period of three and
 19 one-half hours or less a day shall be at least one-half the
 20 amount indicated in the State Minimum Pay Scale Pay
 21 Grade Schedule II set forth in this subdivision.

STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE I

Years Exp.	PAY GRADE							
	A	B	C	D	E	F	G	H
0	1,770	1,791	1,833	1,886	1,939	2,002	2,034	2,107
1	1,802	1,824	1,865	1,918	1,972	2,035	2,066	2,140
2	1,835	1,856	1,898	1,951	2,004	2,067	2,099	2,172
3	1,867	1,889	1,931	1,984	2,037	2,100	2,132	2,205
4	1,900	1,922	1,963	2,016	2,069	2,133	2,164	2,239
5	1,933	1,954	1,996	2,049	2,102	2,165	2,197	2,271
6	1,965	1,987	2,030	2,082	2,135	2,198	2,230	2,304
7	1,999	2,019	2,062	2,114	2,167	2,231	2,262	2,337
8	2,032	2,052	2,095	2,147	2,200	2,263	2,295	2,369
9	2,064	2,085	2,128	2,181	2,233	2,296	2,327	2,402
10	2,097	2,118	2,160	2,213	2,265	2,330	2,361	2,435
11	2,130	2,151	2,193	2,246	2,298	2,362	2,394	2,467
12	2,162	2,184	2,225	2,279	2,332	2,395	2,426	2,500
13	2,195	2,216	2,258	2,311	2,364	2,427	2,459	2,533
14	2,228	2,249	2,291	2,344	2,397	2,460	2,492	2,565
15	2,260	2,282	2,323	2,376	2,429	2,493	2,524	2,598
16	2,293	2,314	2,356	2,409	2,462	2,525	2,557	2,631
17	2,325	2,347	2,390	2,442	2,495	2,558	2,590	2,664
18	2,358	2,380	2,422	2,474	2,527	2,591	2,622	2,697
19	2,392	2,412	2,455	2,507	2,560	2,623	2,655	2,729
20	2,424	2,445	2,488	2,541	2,593	2,656	2,688	2,763
21	2,457	2,477	2,520	2,573	2,625	2,689	2,720	2,797
22	2,490	2,511	2,553	2,606	2,658	2,722	2,754	2,829
23	2,522	2,544	2,586	2,639	2,692	2,756	2,788	2,863
24	2,555	2,576	2,618	2,671	2,724	2,790	2,821	2,897

25	2,588	2,609	2,651	2,704	2,758	2,822	2,855	2,929
26	2,620	2,642	2,683	2,738	2,792	2,856	2,887	2,963
27	2,653	2,674	2,716	2,770	2,824	2,888	2,921	2,996
28	2,686	2,707	2,750	2,804	2,858	2,922	2,955	3,030
29	2,718	2,741	2,783	2,836	2,891	2,956	2,987	3,064
30	2,752	2,773	2,817	2,870	2,924	2,988	3,021	3,097
31	2,785	2,807	2,851	2,904	2,958	3,022	3,055	3,130
32	2,819	2,840	2,883	2,937	2,990	3,056	3,087	3,164
33	2,853	2,873	2,917	2,971	3,024	3,088	3,121	3,197
34	2,885	2,907	2,951	3,005	3,058	3,122	3,155	3,230
35	2,919	2,941	2,983	3,037	3,090	3,156	3,188	3,264
36	2,953	2,974	3,017	3,071	3,125	3,189	3,222	3,296
37	2,985	3,008	3,051	3,105	3,159	3,223	3,255	3,330
38	3,019	3,040	3,083	3,137	3,191	3,256	3,288	3,364
39	3,053	3,074	3,117	3,171	3,225	3,289	3,322	3,396
40	3,085	3,108	3,150	3,204	3,259	3,323	3,355	3,430

STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE II

Years Exp.	PAY GRADE							
	A	B	C	D	E	F	G	H
0	1,885	1,906	1,948	2,001	2,054	2,117	2,149	2,222
1	1,917	1,939	1,980	2,033	2,087	2,150	2,181	2,255
2	1,950	1,971	2,013	2,066	2,119	2,182	2,214	2,287
3	1,982	2,004	2,046	2,099	2,152	2,215	2,247	2,320
4	2,015	2,037	2,078	2,131	2,184	2,248	2,279	2,354
5	2,048	2,069	2,111	2,164	2,217	2,280	2,312	2,386
6	2,080	2,102	2,145	2,197	2,250	2,313	2,345	2,419
7	2,114	2,134	2,177	2,229	2,282	2,346	2,377	2,452
8	2,147	2,167	2,210	2,262	2,315	2,378	2,410	2,484
9	2,179	2,200	2,243	2,296	2,348	2,411	2,442	2,517
10	2,212	2,233	2,275	2,328	2,380	2,445	2,476	2,550
11	2,245	2,266	2,308	2,361	2,413	2,477	2,509	2,582
12	2,277	2,299	2,340	2,394	2,447	2,510	2,541	2,615
13	2,310	2,331	2,373	2,426	2,479	2,542	2,574	2,648
14	2,343	2,364	2,406	2,459	2,512	2,575	2,607	2,680
15	2,375	2,397	2,438	2,491	2,544	2,608	2,639	2,713
16	2,408	2,429	2,471	2,524	2,577	2,640	2,672	2,746

17	2,440	2,462	2,505	2,557	2,610	2,673	2,705	2,779
18	2,473	2,495	2,537	2,589	2,642	2,706	2,737	2,812
19	2,507	2,527	2,570	2,622	2,675	2,738	2,770	2,844
20	2,539	2,560	2,603	2,656	2,708	2,771	2,803	2,878
21	2,572	2,592	2,635	2,688	2,740	2,804	2,835	2,912
22	2,605	2,626	2,668	2,721	2,773	2,837	2,869	2,944
23	2,637	2,659	2,701	2,754	2,807	2,871	2,903	2,978
24	2,670	2,691	2,733	2,786	2,839	2,905	2,936	3,012
25	2,703	2,724	2,766	2,819	2,873	2,937	2,970	3,044
26	2,735	2,757	2,798	2,853	2,907	2,971	3,002	3,078
27	2,768	2,789	2,831	2,885	2,939	3,003	3,036	3,111
28	2,801	2,822	2,865	2,919	2,973	3,037	3,070	3,145
29	2,833	2,856	2,898	2,951	3,006	3,071	3,102	3,179
30	2,867	2,888	2,932	2,985	3,039	3,103	3,136	3,212
31	2,900	2,922	2,966	3,019	3,073	3,137	3,170	3,245
32	2,934	2,955	2,998	3,052	3,105	3,171	3,202	3,279
33	2,968	2,988	3,032	3,086	3,139	3,203	3,236	3,312
34	3,000	3,022	3,066	3,120	3,173	3,237	3,270	3,345
35	3,034	3,056	3,098	3,152	3,205	3,271	3,303	3,379
36	3,068	3,089	3,132	3,186	3,240	3,304	3,337	3,411
37	3,100	3,123	3,166	3,220	3,274	3,338	3,370	3,445
38	3,134	3,155	3,198	3,252	3,306	3,371	3,403	3,479
39	3,168	3,189	3,232	3,286	3,340	3,404	3,437	3,511
40	3,200	3,223	3,265	3,319	3,374	3,438	3,470	3,545

22 (2) Each service employee shall receive the amount
 23 prescribed in the State Minimum Pay Scale Pay Grade in
 24 accordance with the provisions of this subsection according
 25 to their class title and pay grade as set forth in this
 26 subdivision:

27	CLASS TITLE	PAY GRADE
28	Accountant I	D
29	Accountant II	E
30	Accountant III	F
31	Accounts Payable Supervisor	G

32	Aide I	A
33	Aide II	B
34	Aide III	C
35	Aide IV	D
36	Audiovisual Technician	C
37	Auditor	G
38	Autism Mentor	F
39	Braille Specialist	E
40	Bus Operator	D
41	Buyer	F
42	Cabinetmaker	G
43	Cafeteria Manager	D
44	Carpenter I	E
45	Carpenter II	F
46	Chief Mechanic	G
47	Clerk I	B
48	Clerk II	C
49	Computer Operator	E
50	Cook I	A
51	Cook II	B
52	Cook III	C
53	Crew Leader	F

54	Custodian I	A
55	Custodian II	B
56	Custodian III	C
57	Custodian IV	D
58	Director or Coordinator of Services	H
59	Draftsman	D
60	Early Childhood Classroom Assistant Teacher I	E
61	Early Childhood Classroom Assistant Teacher II	E
62	Early Childhood Classroom Assistant Teacher III	F
63	Educational Sign Language Interpreter I	F
64	Educational Sign Language Interpreter II	G
65	Electrician I	F
66	Electrician II	G
67	Electronic Technician I	F
68	Electronic Technician II	G
69	Executive Secretary	G
70	Food Services Supervisor	G
71	Foreman	G
72	General Maintenance	C
73	Glazier	D
74	Graphic Artist	D
75	Groundsman	B

76	Handyman	B
77	Heating and Air Conditioning Mechanic I	E
78	Heating and Air Conditioning Mechanic II	G
79	Heavy Equipment Operator	E
80	Inventory Supervisor	D
81	Key Punch Operator	B
82	Licensed Practical Nurse	F
83	Locksmith	G
84	Lubrication Man	C
85	Machinist	F
86	Mail Clerk	D
87	Maintenance Clerk	C
88	Mason	G
89	Mechanic	F
90	Mechanic Assistant	E
91	Office Equipment Repairman I	F
92	Office Equipment Repairman II	G
93	Painter	E
94	Paraprofessional	F
95	Payroll Supervisor	G
96	Plumber I	E
97	Plumber II	G

98 Printing Operator B

99 Printing Supervisor D

100 Programmer H

101 Roofing/Sheet Metal Mechanic F

102 Sanitation Plant Operator G

103 School Bus Supervisor E

104 Secretary I D

105 Secretary II E

106 Secretary III F

107 Sign Support Specialist E

108 Supervisor of Maintenance H

109 Supervisor of Transportation H

110 Switchboard Operator-Receptionist D

111 Truck Driver D

112 Warehouse Clerk C

113 Watchman B

114 Welder F

115 WVEIS Data Entry and Administrative Clerk B

116 (b) An additional \$12 per month is added to the
 117 minimum monthly pay of each service person who holds a
 118 high school diploma or its equivalent.

119 (c) An additional \$11 per month also is added to the
 120 minimum monthly pay of each service person for each of
 121 the following:

122 (1) A service person who holds 12 college hours or
123 comparable credit obtained in a trade or vocational school
124 as approved by the state board;

125 (2) A service person who holds 24 college hours or
126 comparable credit obtained in a trade or vocational school
127 as approved by the state board;

128 (3) A service person who holds 36 college hours or
129 comparable credit obtained in a trade or vocational school
130 as approved by the state board;

131 (4) A service person who holds 48 college hours or
132 comparable credit obtained in a trade or vocational school
133 as approved by the state board;

134 (5) A service employee who holds 60 college hours or
135 comparable credit obtained in a trade or vocational school
136 as approved by the state board;

137 (6) A service person who holds 72 college hours or
138 comparable credit obtained in a trade or vocational school
139 as approved by the state board;

140 (7) A service person who holds 84 college hours or
141 comparable credit obtained in a trade or vocational school
142 as approved by the state board;

143 (8) A service person who holds 96 college hours or
144 comparable credit obtained in a trade or vocational school
145 as approved by the state board;

146 (9) A service person who holds 108 college hours or
147 comparable credit obtained in a trade or vocational school
148 as approved by the state board;

149 (10) A service person who holds 120 college hours or
150 comparable credit obtained in a trade or vocational school
151 as approved by the state board.

152 (d) An additional \$40 per month also is added to the
153 minimum monthly pay of each service person for each of
154 the following:

155 (1) A service person who holds an associate's degree;

156 (2) A service person who holds a bachelor's degree;

157 (3) A service person who holds a master's degree;

158 (4) A service person who holds a doctorate degree.

159 (e) An additional \$11 per month is added to the
160 minimum monthly pay of each service person for each of
161 the following:

162 (1) A service person who holds a bachelor's degree plus
163 15 college hours;

164 (2) A service person who holds a master's degree plus
165 15 college hours;

166 (3) A service person who holds a master's degree plus
167 30 college hours;

168 (4) A service person who holds a master's degree plus
169 45 college hours; and

170 (5) A service person who holds a master's degree plus
171 60 college hours.

172 (f) Each service person is paid a supplement, as set forth
173 in §18A-4-5 of this code, of \$164 per month, subject to the
174 provisions of that section. These payments: (i) Are in
175 addition to any amounts prescribed in the applicable State
176 Minimum Pay Scale Pay Grade, any specific additional
177 amounts prescribed in this section and article and any
178 county supplement in effect in a county pursuant to §18A-
179 4-5b of this code; (ii) are paid in equal monthly installments;
180 and (iii) are considered a part of the state minimum salaries
181 for service personnel.

182 (g) When any part of a school service person's daily
183 shift of work is performed between the hours of 6:00 p. m.
184 and 5:00 a. m. the following day, the employee is paid no
185 less than an additional \$10 per month and one half of the
186 pay is paid with local funds.

187 (h) Any service person required to work on any legal
188 school holiday is paid at a rate one and one-half times the
189 person's usual hourly rate.

190 (i) Any full-time service personnel required to work in
191 excess of their normal working day during any week which
192 contains a school holiday for which they are paid is paid for
193 the additional hours or fraction of the additional hours at a
194 rate of one and one-half times their usual hourly rate and
195 paid entirely from county board funds.

196 (j) A service person may not have his or her daily work
197 schedule changed during the school year without the
198 employee's written consent and the person's required daily
199 work hours may not be changed to prevent the payment of
200 time and one-half wages or the employment of another
201 employee.

202 (k) The minimum hourly rate of pay for extra duty
203 assignments as defined in §18A-4-8b of this code is no less
204 than one seventh of the person's daily total salary for each
205 hour the person is involved in performing the assignment
206 and paid entirely from local funds: *Provided*, That an
207 alternative minimum hourly rate of pay for performing extra
208 duty assignments within a particular category of
209 employment may be used if the alternate hourly rate of pay
210 is approved both by the county board and by the affirmative
211 vote of a two-thirds majority of the regular full-time persons
212 within that classification category of employment within
213 that county: *Provided, however*, That the vote is by secret
214 ballot if requested by a service person within that
215 classification category within that county. The salary for
216 any fraction of an hour the employee is involved in
217 performing the assignment is prorated accordingly. When

218 performing extra duty assignments, persons who are
219 regularly employed on a one-half day salary basis shall
220 receive the same hourly extra duty assignment pay
221 computed as though the person were employed on a full-day
222 salary basis.

223 (l) The minimum pay for any service personnel engaged
224 in the removal of asbestos material or related duties required
225 for asbestos removal is their regular total daily rate of pay
226 and no less than an additional \$3 per hour or no less than \$5
227 per hour for service personnel supervising asbestos removal
228 responsibilities for each hour these employees are involved
229 in asbestos-related duties. Related duties required for
230 asbestos removal include, but are not limited to, travel,
231 preparation of the work site, removal of asbestos,
232 decontamination of the work site, placing and removal of
233 equipment and removal of structures from the site. If any
234 member of an asbestos crew is engaged in asbestos-related
235 duties outside of the employee's regular employment
236 county, the daily rate of pay is no less than the minimum
237 amount as established in the employee's regular
238 employment county for asbestos removal and an additional
239 \$30 per each day the employee is engaged in asbestos
240 removal and related duties. The additional pay for asbestos
241 removal and related duties shall be payable entirely from
242 county funds. Before service personnel may be used in the
243 removal of asbestos material or related duties, they shall
244 have completed a federal Environmental Protection Act-
245 approved training program and be licensed. The employer
246 shall provide all necessary protective equipment and
247 maintain all records required by the Environmental
248 Protection Act.

249 (m) For the purpose of qualifying for additional pay as
250 provided in §18A-5-8 of this code, an aide is considered to
251 be exercising the authority of a supervisory aide and control
252 over pupils if the aide is required to supervise, control,
253 direct, monitor, escort, or render service to a child or
254 children when not under the direct supervision of a certified

255 professional person within the classroom, library, hallway,
256 lunchroom, gymnasium, school building, school grounds, or
257 wherever supervision is required. For purposes of this
258 section, “under the direct supervision of a certified
259 professional person” means that certified professional
260 person is present, with and accompanying the aide.

§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.

1 (a) Personal Leave.

2 (1) At the beginning of the employment term, any full-
3 time employee of a county board is entitled annually to at
4 least one and one-half days personal leave for each
5 employment month or major fraction thereof in the
6 employee’s employment term. Unused leave shall be
7 accumulative without limitation and is transferable within
8 the state. A change in job assignment during the school year
9 does not affect the employee’s rights or benefits.

10 (2) A regular full-time employee who is absent from
11 assigned duties due to accident, sickness, death in the
12 immediate family, or life threatening illness of the
13 employee’s spouse, parents or child, or other cause
14 authorized or approved by the board, shall be paid the full
15 salary from his or her regular budgeted salary appropriation
16 during the period which the employee is absent, but not to
17 exceed the total amount of leave to which the employee is
18 entitled.

19 (3) Each employee is permitted to use three days of
20 leave annually without regard to the cause for the absence:
21 *Provided*, That effective July 1, 2019, each employee is
22 permitted to use four days of leave annually without regard
23 to the cause for the absence. Personal leave without cause
24 may not be used on consecutive work days unless
25 authorized or approved by the employee’s principal or
26 immediate supervisor, as appropriate. The employee shall
27 give notice of leave without cause to the principal or

28 immediate supervisor at least 24 hours in advance, except
29 that in the case of sudden and unexpected circumstances,
30 notice shall be given as soon as reasonably practicable. The
31 principal or immediate supervisor may deny use of the day
32 if, at the time notice is given, either 15 percent of the
33 employees or three employees, whichever is greater, under
34 the supervision of the principal or immediate supervisor,
35 have previously given notice of their intention to use that
36 day for leave. Personal leave may not be used in connection
37 with a concerted work stoppage or strike. Where the cause
38 for leave originated prior to the beginning of the
39 employment term, the employee shall be paid for time lost
40 after the start of the employment term. If an employee uses
41 personal leave which the employee has not yet accumulated
42 on a monthly basis and subsequently leaves the
43 employment, the employee is required to reimburse the
44 board for the salary or wages paid for the unaccumulated
45 leave.

46 (4) The State Board shall maintain a rule to restrict the
47 payment of personal leave benefits and the charging of
48 personal leave time used to an employee receiving a
49 workers' compensation benefit from a claim filed against
50 and billed to the county board by which the person is
51 employed. If an employee is awarded this benefit, the
52 employee shall receive personal leave compensation only to
53 the extent the compensation is required, when added to the
54 workers' compensation benefit, to equal the amount of
55 compensation regularly paid the employee. If personal leave
56 compensation equal to the employee's regular pay is paid
57 prior to the award of the workers' compensation benefit, the
58 amount which, when added to the benefit, is in excess of the
59 employee's regular pay shall be deducted from the
60 employee's subsequent pay. The employee's accrued
61 personal leave days shall be charged only for such days as
62 equal the amount of personal leave compensation required
63 to compensate the employee at the employee's regular rate
64 of pay.

65 (5) The county board may establish reasonable rules for
66 reporting and verification of absences for cause. If any error
67 in reporting absences occurs, the county board may make
68 necessary salary adjustments:

69 (A) In the next pay after the employee has returned to
70 duty; or

71 (B) In the final pay if the absence occurs during the last
72 month of the employment term.

73 (b) Leave Banks.

74 (1) Each county board shall establish a personal leave
75 bank that is available to all school personnel. The board may
76 establish joint or separate banks for professional personnel
77 and school service personnel. Each employee may
78 contribute up to two days of personal leave per school year.
79 An employee may not be coerced or compelled to contribute
80 to a personal leave bank.

81 (2) The personal leave bank shall be established and
82 operated pursuant to a rule adopted by the county board. The
83 rule:

84 (A) May limit the maximum number of days used by an
85 employee;

86 (B) Shall limit the use of leave bank days to an active
87 employee with fewer than five days accumulated personal
88 leave who is absent from work due to accident or illness of
89 the employee; and

90 (C) Shall prohibit the use of days to:

91 (i) Qualify for or add to service for any retirement
92 system administered by the state; or

93 (ii) Extend insurance coverage pursuant to §5-16-13 of
94 this code.

95 (D) Shall require that each personal leave day
96 contributed:

97 (i) Is deducted from the number of personal leave days
98 to which the donor employee is entitled by this section;

99 (ii) Is not deducted from the personal leave days without
100 cause to which a donor employee is entitled if sufficient
101 general personal leave days are otherwise available to the
102 donor employee;

103 (iii) Is credited to the receiving employee as one full
104 personal leave day;

105 (iv) May not be credited for more or less than a full day
106 by calculating the value of the leave according to the hourly
107 wage of each employee; and

108 (v) May be used only for an absence due to the purpose
109 for which the leave was transferred. Any transferred days
110 remaining when the catastrophic medical emergency ends
111 revert back to the leave bank.

112 (3) The administration, subject to county board
113 approval, may use its discretion as to the need for a
114 substitute where limited absence may prevail, when an
115 allowable absence does not:

116 (i) Directly affect the instruction of the students; or

117 (ii) Require a substitute employee because of the nature
118 of the work and the duration of the cause for the absence.

119 (4) If funds in any fiscal year, including transfers, are
120 insufficient to pay the full cost of substitutes for meeting the
121 provisions of this section, the remainder shall be paid on or
122 before the August 31 from the budget of the next fiscal year.

123 (5) A county board may supplement the leave
124 provisions in any manner it considers advisable in

125 accordance with applicable rules of the state Board and the
126 provisions of this chapter and chapter 18 of this code.

127 (c) Effective July 1, 2019, a classroom teacher who has
128 not utilized more than four days of personal leave during the
129 200-day employment term shall receive a bonus of \$500 at
130 the end of the school year. If the appropriations to the
131 Department of Education for this purpose are insufficient to
132 compensate all applicable classroom teachers, the
133 Department of Education shall request a supplemental
134 appropriation in an amount sufficient to compensate all
135 eligible classroom teachers. This bonus may not be counted
136 as part of the final average salary for the purpose of
137 calculating retirement.

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

ARTICLE 4. UNDERWOOD-SMITH TEACHING SCHOLARS PROGRAM.

§18C-4-1. Underwood-Smith Teaching Scholars Program Fund created; purposes; funding; effective date.

1 (a) It is the purpose of this article and §18C-4A-1 *et seq.*
2 of this code to improve the quality of education in the public
3 schools of West Virginia by encouraging and enabling
4 individuals who have demonstrated outstanding academic
5 abilities to pursue teaching careers in critical shortage fields
6 at the elementary, middle or secondary levels in the public
7 schools of this state. Particular efforts shall be made in the
8 scholarship selection criteria and procedures to reflect the
9 state's present and projected critical teacher shortage fields.

10 (b) In consultation with the State Board of Education
11 and the State Superintendent of Schools, the commission
12 shall propose legislative rules in accordance with the
13 provisions of §29A-3A-1 *et seq.* of this code. The rules shall
14 provide for the administration of the Underwood-Smith
15 Teaching Scholars Program and the Teacher Education
16 Loan Repayment Program by the Vice Chancellor for

17 Administration in furtherance of the purposes of this article,
18 and §18C-4A-1 *et seq.* of this code including, but not limited
19 to, the following:

20 (1) Establishing scholarship selection criteria and
21 procedures;

22 (2) Establishing criteria and procedures for identifying
23 critical teacher shortage fields;

24 (3) Establishing and updating as necessary a list of
25 critical teacher shortage fields in the public schools for
26 which scholarships are available;

27 (4) Requiring scholarship recipients to teach in a public
28 school in this state at the elementary, middle or secondary
29 level in a critical teacher shortage field pursuant to the
30 provisions of §18C-4-3 of this code;

31 (5) Awarding loan repayment assistance, including
32 establishing conditions under which partial awards may be
33 granted for less than a full year of teaching in a critical
34 teacher shortage field;

35 (6) Determining eligibility for loan repayment
36 assistance renewal;

37 (7) Establishing procedures ensuring that loan
38 repayment assistance funds are paid directly to the proper
39 lending entity;

40 (8) Establishing criteria for determining participant
41 compliance or noncompliance with terms of the agreement
42 and establishing procedures to address noncompliance
43 including, but not limited to, repayment, deferral and
44 excusal; and

45 (9) Developing model agreements.

46 (c) The commission and State Board of Education
47 jointly shall ensure that Underwood-Smith Teaching

48 Scholars award recipients receive additional academic
49 support and training from mentors in their academic field
50 beginning with the freshman year and continuing through
51 degree completion and the teaching obligation.

52 (d) The Underwood-Smith Teacher Scholarship and
53 Loan Assistance Fund is continued in the State Treasury as
54 a special revolving fund and is hereafter to be known as the
55 Underwood-Smith Teaching Scholars Program Fund. The
56 fund shall be administered by the Vice Chancellor for
57 Administration solely for granting scholarships and loan
58 repayment assistance to teachers and prospective teachers in
59 accordance with this article and §18C-4A-1 *et seq.* of this
60 code. Any moneys which may be appropriated by the
61 Legislature, or received by the Vice Chancellor for
62 Administration from other sources, for the purposes of this
63 article and §18C-4A-1 *et seq.* of this code shall be deposited
64 in the fund. Any moneys remaining in the fund at the close
65 of a fiscal year shall be carried forward for use in the next
66 fiscal year. Any moneys repaid to the Vice Chancellor for
67 Administration by reason of default of a scholarship or loan
68 repayment assistance agreement under this article or §18C-
69 4A-1 *et seq.* of this code also shall be deposited in the fund.
70 Fund balances shall be invested with the state's
71 consolidated investment fund, and any and all interest
72 earnings on these investments shall be used solely for the
73 purposes for which moneys invested were appropriated or
74 otherwise received.

75 (e) The Vice Chancellor for Administration may accept
76 and expend any gift, grant, contribution, bequest,
77 endowment, or other money for the purposes of this article
78 and §18C-4A-1 *et seq.* of this code and shall make a
79 reasonable effort to encourage external support for the
80 scholarship and loan repayment assistance programs.

81 (f) For the purpose of encouraging support for the
82 scholarship and loan repayment assistance programs from
83 private sources, the Vice Chancellor for Administration
84 may set aside no more than half of the funds appropriated

85 by the Legislature for Underwood-Smith Teaching Scholars
86 Program and loan repayment assistance awards to be used
87 to match two state dollars to each private dollar from a
88 nonstate source contributed on behalf of a specific
89 institution of higher education in this state.

90 (g) In recognition of the high academic achievement
91 necessary to receive an award under this article, each
92 recipient shall be distinguished as an “Underwood-Smith
93 Teaching Scholar” in a manner befitting the distinction as
94 determined by the commission.

95 (h) Notwithstanding the provisions of subsection (d) of
96 this section, and §18C-4A-3 of this code:

97 (1) Moneys in the Underwood-Smith Teaching
98 Scholars Program Fund may be used to satisfy loan
99 repayment assistance agreements pursuant to §18C-4A-1 *et*
100 *seq.* of this code and any renewals for which a recipient
101 would be eligible pursuant to the prior enactment of §18C-
102 4A-1 *et seq.* of this code for any student who is receiving
103 such loan repayment assistance or fulfilling the
104 requirements of an agreement on the effective date of this
105 section;

106 (2) Moneys in the Underwood-Smith Teaching Scholars
107 Program Fund may be used to fund Underwood-Smith
108 teacher scholarships, and any renewals for which a recipient
109 would be eligible pursuant to the prior enactment of this
110 article, for those students receiving such scholarship on the
111 effective date of this section; and

112 (3) The terms, conditions, requirements, and
113 agreements applicable to an Underwood-Smith teacher
114 scholarship or loan repayment recipient prior to the
115 effective date of this section shall continue in effect and are
116 not altered by the reenactment of this section during the
117 2019 First Extraordinary Session of the Legislature.

118 (i) The amendments to this article during the 2019 First
119 Extraordinary Session of the Legislature shall be effective
120 for school years beginning on or after July 1, 2020, and the
121 provisions of this article existing immediately prior to the
122 2019 First Extraordinary Session of the Legislature remain
123 in effect for school years beginning prior to July 1, 2020.

**§18C-4-2. Selection criteria and procedures for awarding
scholarships.**

1 (a) Vice Chancellor for Administration shall appoint a
2 selection panel comprised of individuals representing
3 higher education, public education, and the community at
4 large to select Underwood-Smith Teaching Scholars who
5 meet the eligibility criteria set forth in subsection (b) of this
6 section.

7 (b) Eligibility for an Underwood-Smith Teaching
8 Scholars award shall be limited to students who meet the
9 following criteria:

10 (1) Have graduated or are graduating from high school
11 with a cumulative grade point average of at least 3.25 on a
12 4.0 scale;

13 (2) Have met the college algebra ready assessment
14 standards and college readiness English, reading, and
15 writing standards as established by the commission; and

16 (3) Agree to teach in a critical teacher shortage field at
17 the elementary, middle or secondary level in a public school
18 in the state pursuant to the provisions of §18C-4-3 of this
19 code.

20 (c) To be eligible for an award, a non-citizen of the
21 United States shall hold a valid Employment Authorization
22 Document (EAD), or work permit, issued by the United
23 States Citizenship and Immigration Services (USCIS).

24 (d) In accordance with the rules of the commission, the
25 Vice Chancellor for Administration shall develop criteria

26 and procedures for the selection of scholarship recipients.
27 The selection criteria shall reflect the purposes of this article
28 and shall specify the areas in which particular efforts will be
29 made in the selection of scholars as set forth in §18C-4-1 of
30 this code. Selection procedures and criteria also may
31 include, but are not limited to, the grade point average of the
32 applicant, involvement in extracurricular activities,
33 financial need, current academic standing and an expression
34 of interest in teaching as demonstrated by an essay written
35 by the applicant. These criteria and procedures further may
36 require the applicant to furnish letters of recommendation
37 from teachers and others. It is the intent of the Legislature
38 that academic abilities be the primary criteria for selecting
39 scholarship recipients.

40 (e) In developing the selection criteria and procedures
41 to be used by the selection panel, the Vice Chancellor for
42 Administration shall solicit the views of public and private
43 education agencies and institutions and other interested
44 parties. Input from interested parties shall be solicited by
45 means of written and published selection criteria and
46 procedures in final form for implementation and may be
47 solicited by means of public hearings on the present and
48 projected teacher needs of the state or any other methods the
49 Vice Chancellor for Administration may determine to be
50 appropriate to gather the information.

51 (f) The Vice Chancellor for Administration shall make
52 application forms for Underwood-Smith Teaching Scholars
53 available to public and private high schools in the state and
54 in other locations convenient to applicants, parents and
55 others, and shall make an effort to attract students from low-
56 income backgrounds, ethnic or racial minority students,
57 students with disabilities, and women or minority students
58 who show interest in pursuing teaching careers in
59 mathematics and science and who are under-represented in
60 those fields.

§18C-4-3. Scholarship agreement.

1 (a) Each recipient of an Underwood-Smith Teaching
2 Scholars award shall enter into an agreement with the Vice
3 Chancellor for Administration under which the recipient
4 shall meet the following conditions:

5 (1) Provide the commission with evidence of
6 compliance with §18C-4-4(a) of this code;

7 (2) Beginning within one year after completing the
8 teacher education program for which the scholarship was
9 awarded, teach full-time in a critical teacher shortage field
10 at the elementary, middle or secondary level, under contract
11 with a county board of education in a public education
12 program in the state, for a period of not fewer than five
13 consecutive years for the four academic years. Any teaching
14 time accrued during the required five-year period as a
15 substitute teacher for a county board of education in a
16 critical teacher shortage field at the elementary, middle or
17 secondary level shall be credited pro rata in accordance with
18 rules promulgated by the commission; or

19 (3) Repay all or part of an Underwood-Smith Teaching
20 Scholars award received under this article plus interest and,
21 if applicable, reasonable collection fees in accordance with
22 §18C-4-4 of this code.

23 (b) Scholarship agreements shall disclose fully the
24 terms and conditions under which assistance under this
25 article is provided and under which repayment may be
26 required. The agreements shall include the following:

27 (1) A description of the conditions and procedures to be
28 established under §18C-4-4 of this code; and

29 (2) A description of the appeals procedure required to
30 be established under §18C-4-4 of this code.

31 (c) The scholarship terms, conditions, requirements, and
32 agreements applicable to an Underwood-Smith teacher

33 scholarship recipient prior to the effective date of this
34 section shall continue in effect and are not altered by the
35 reenactment of this section during the 2019 First
36 Extraordinary Session of the Legislature.

§18C-4.4. Renewal conditions; noncompliance; deferral; excusal.

1 (a) The recipient of an Underwood-Smith Teaching
2 Scholars award is eligible for scholarship renewal only
3 during those periods when the recipient meets the following
4 conditions:

5 (1) Is enrolled as a full-time student in an accredited
6 institution of higher education in this state;

7 (2) Is pursuing a program of study leading to teacher
8 certification in a critical teacher shortage field at the
9 elementary, middle or secondary level;

10 (3) Is maintaining satisfactory progress as determined
11 by the institution of higher education the recipient is
12 attending;

13 (4) Is maintaining a cumulative grade point average of
14 at least 3.0 on a 4.0 scale; and

15 (5) Is complying with such other standards as the
16 commission may establish by rule.

17 (b) Recipients found to be in noncompliance with the
18 agreement entered into under §18C-4-3 of this code shall be
19 required to repay the amount of the scholarship awards
20 received, plus interest, and, where applicable, reasonable
21 collection fees, on a schedule and at a rate of interest
22 prescribed in the program guidelines. Guidelines also shall
23 provide for proration of the amount to be repaid by a
24 recipient who teaches for part of the period required under
25 §18C-4-3(a) of this code and for appeal procedures under
26 which a recipient may appeal any determination of
27 noncompliance.

28 (c) A recipient is not in violation of the agreement
29 entered into under §18C-4-3 of this code during any period
30 in which the recipient is meeting any of the following
31 conditions:

32 (1) Pursuing a full-time course of study at an accredited
33 institution of higher education;

34 (2) Serving, not in excess of four years, as a member of
35 the armed services of the United States;

36 (3) Satisfying the provisions of any repayment
37 exemptions that may be prescribed by the commission by
38 rule; or

39 (4) Failing to comply with the terms of the agreement
40 due to death or permanent or temporary disability as
41 established by sworn affidavit of a qualified physician.

42 (d) The rules adopted by the commission may provide
43 guidelines under which the Vice Chancellor for
44 Administration may extend the time period for beginning or
45 fulfilling the teaching obligation if extenuating
46 circumstances exist.

§18C-4-5. Amount and duration of scholarship; relation to other assistance.

1 (a) An Underwood-Smith Teaching Scholars award
2 shall be used in preparation for becoming an elementary,
3 middle or secondary teacher in a critical teacher shortage
4 field in the public schools of this state. Each award shall
5 be in the amount of \$10,000 annually, and is available for a
6 maximum of four academic years for the completion of a
7 bachelor's degree.

8 (b) An individual may not receive a scholarship award
9 under this article which exceeds the cost of attendance at the
10 institution the individual is attending. The cost of attendance
11 shall be based upon the actual cost of tuition and fees, and
12 reasonable allowances for books, educational supplies,

13 room and board and other expenses necessitated by
14 individual circumstances, in accordance with the program
15 guidelines. For the purposes of establishing an award
16 amount, the Vice Chancellor for Administration shall take
17 into account the amount of financial aid assistance the
18 recipient has or will receive from all other sources. If the
19 amount of the Underwood-Smith Teaching Scholars award
20 and the amount of scholarship and grant awards which the
21 recipient has received from all other sources exceed the cost
22 of attendance, the institution's financial aid officer, in
23 consultation with the scholar, will determine what aid is to
24 be reduced and shall do so in a manner to the best advantage
25 of the scholar.

26 (c) The amendments to this article during the 2019 First
27 Extraordinary Session of the Legislature shall be effective
28 for academic years beginning on or after July 1, 2019, and
29 the provisions of this article existing immediately prior to
30 the 2019 first extraordinary session of the Legislature
31 remain in effect for academic years beginning prior to July
32 1, 2019.

ARTICLE 4A. TEACHER EDUCATION LOAN REPAYMENT PROGRAM.

§18C-4A-1. Selection criteria and procedures for loan assistance; effective date.

1 (a) The Higher Education Student Financial Aid
2 Advisory Board created by §18C-1-5 of this code shall
3 select recipients to receive Teacher Education Loan
4 Repayment Program awards. The advisory board shall
5 make decisions regarding loan repayment awards pursuant
6 to §18C-4-1 of this code and rules of the commission.

7 (b) To be eligible for a loan repayment award, an
8 applicant shall currently be employed in a public school in
9 this state as a teacher in a critical teacher shortage field or
10 as a school counselor at the elementary, middle or

11 secondary level in a school or geographic area of the state
12 identified as an area of critical need for such field.

13 (c) In accordance with the rule promulgated pursuant to
14 §18C-4-1 of this code, the Vice Chancellor for
15 Administration shall develop additional eligibility criteria
16 and procedures for the administration of the loan repayment
17 program.

18 (d) The Vice Chancellor for Administration shall make
19 available program application forms to public and private
20 schools in the state via the website of the commission and
21 the State Department of Education and in other locations
22 convenient to potential applicants.

23 (e) The amendments to this article during the 2019 First
24 Extraordinary Session of the Legislature shall be effective
25 for school years beginning on or after July 1, 2020, and the
26 provisions of this article existing immediately prior to the
27 2019 First Extraordinary Session of the Legislature remain
28 in effect for school years beginning prior to July 1, 2020.

§18C-4A-2. Teacher Education Loan Repayment agreement.

1 (a) Before receiving a loan repayment award, each
2 eligible applicant shall enter into an agreement with the
3 Vice Chancellor for Administration and shall meet the
4 following criteria:

5 (1) Provide the commission with evidence of
6 compliance with §18C-4-4 of this code;

7 (2) Agree to be employed full time under contract with
8 a county board of education for a period of two school years
9 as a teacher in a critical teacher shortage field or as a school
10 counselor at the elementary, middle or secondary level in a
11 school or geographic area of critical need for such field for
12 each year for which a loan repayment assistance award is
13 received pursuant to this article. The Vice Chancellor for
14 Administration may grant a partial award to an eligible

15 recipient whose contract term is for less than a full school
16 year pursuant to criteria established by commission rule;

17 (3) Acknowledge that an award is to be paid to the
18 recipient's student loan institution, not directly to the
19 recipient, and only after the commission determines that the
20 recipient has complied with all terms of the agreement; and

21 (4) Agree to repay all or part of an award received
22 pursuant to this article if the award is not paid to the student
23 loan institution or if the recipient does not comply with the
24 other terms of the agreement.

25 (b) Each loan repayment agreement shall disclose fully
26 the terms and conditions under which an award may be
27 granted pursuant to this article and under which repayment
28 may be required. The agreement also is subject to and shall
29 include the terms and conditions established by §18C-4-5 of
30 this code.

**§18C-4A-3. Amount and duration of loan repayment awards;
limits.**

1 (a) Each award recipient is eligible to receive loan
2 assistance in an amount determined annually by the
3 commission based upon available funds, but not less than
4 \$3,000 annually in an amount determined annually by the
5 commission based upon available funds, and subject to
6 limits set forth in subsection (b) of this section, if the
7 recipient:

8 (1) Has been employed for a full school year under
9 contract with a county board of education as a teacher in a
10 critical teacher shortage field or as a school counselor at the
11 elementary, middle or secondary level in a school or
12 geographic area of critical need; and

13 (2) Otherwise has complied with the terms of the
14 agreement and with applicable provisions of this article and
15 §18C-4-1 *et seq.* of this code, and any rules promulgated
16 pursuant thereto.

17 (b) The recipient is eligible for renewal of a loan
18 repayment assistance award only during periods when the
19 recipient complies with other criteria and conditions
20 established by rule, and is under contract with a county
21 board of education as a teacher in a critical teacher shortage
22 field or as a school counselor at the elementary, middle or
23 secondary level, in a school or geographic area of critical
24 need in such field.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12. STATE INSURANCE.

§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, public charter schools electing to obtain coverage, and for employees and officers of the state Division of Corrections and Rehabilitation; 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 provide
3 appropriate professional or other liability insurance for all
4 county boards of education, teachers, supervisory and
5 administrative staff members, service personnel, county
6 superintendents of schools, and school board members and
7 for all employees and officers of the State Division of
8 Corrections and Rehabilitation: *Provided*, That the Board of
9 Risk and Insurance Management is not required to provide
10 insurance for every property, activity, or responsibility of
11 county boards of education, teachers, supervisory and
12 administrative staff members, service personnel, county
13 superintendents of schools, and school board members, and
14 for all employees and officers of the state Division of
15 Corrections and Rehabilitation.

16 (b) Insurance provided by the Board of Risk and
17 Insurance Management pursuant to the provisions of
18 subsection (a) of this section shall cover claims, demands,

19 actions, suits, or judgments by reason of alleged negligence
20 or other acts resulting in bodily injury or property damage
21 to any person within or without any school building or
22 correctional institution if, at the time of the alleged injury,
23 the teacher, supervisor, administrator, service personnel
24 employee, county superintendent, school board member, or
25 employee or officer of the Division of Corrections and
26 Rehabilitation was acting in the discharge of his or her
27 duties, within the scope of his or her office, position or
28 employment, under the direction of the county board of
29 education, or Commissioner of Corrections, or in an official
30 capacity as a county superintendent or as a school board
31 member or as Commissioner of Corrections.

32 (c) Insurance coverage provided by the Board of Risk
33 and Insurance Management pursuant to subsection (a) of
34 this section shall be in an amount to be determined by the
35 state Board of Risk and Insurance Management, but in no
36 event less than \$1,250,000 for each occurrence. In addition,
37 each county board of education shall purchase, through
38 the Board of Risk and Insurance Management, excess
39 coverage of at least \$5 million for each occurrence. The cost
40 of this excess coverage will be paid by the respective county
41 boards of education. Any insurance purchased under this
42 section shall be obtained from a company licensed to do
43 business in this state.

44 (d) The insurance policy provided by the Board of Risk
45 and Insurance Management pursuant to subsection (a) of
46 this section shall include comprehensive coverage, personal
47 injury coverage, malpractice coverage, corporal punishment
48 coverage, legal liability coverage, as well as a provision for
49 the payment of the cost of attorney's fees in connection with
50 any claim, demand, action, suit, or judgment arising from
51 such alleged negligence or other act resulting in bodily
52 injury under the conditions specified in this section.

53 (e) The county superintendent and other school
54 personnel shall be defended by the county board or an
55 insurer in the case of suit, unless the act or omission shall

56 not have been within the course or scope of employment or
57 official responsibility or was motivated by malicious or
58 criminal intent.

59 (f) At least annually, beginning with the 2019-2020
60 school year, county boards shall provide written notice of
61 insurance coverage to each of its insureds, including
62 teachers, supervisors, administrators, service personnel
63 employees, county superintendent, and school board
64 members. The notice shall identify the coverages, monetary
65 limits of insurance, and duty to defend for each occurrence
66 as provided to insureds by the Board of Risk and Insurance
67 Management under this section. The written notice may be
68 sent via email, or via first-class mail to the insured's last
69 mailing address known to the county board. The written
70 notice shall also include contact information for the Board
71 of Risk and Insurance Management.

72 (g) The provisions of this section apply to public charter
73 schools that have been authorized pursuant to §18-5G-1 *et*
74 *seq.* of this code and have included in their charter contract
75 entered into pursuant to §18-5G-7 of this code a
76 determination to obtain insurance coverage from the Board
77 of Risk and Insurance Management pursuant to this section.
78 If a public charter school elects to obtain coverage pursuant
79 to this section:

80 (1) Any provision in this section applicable to a county
81 board also applies to a charter school governing board;

82 (2) Any provision in this section applicable to a school
83 board member also applies to a member of a charter school
84 governing board; and

85 (3) Any provision of this section applicable to teachers,
86 supervisory and administrative staff members, and service
87 personnel employed by a county board also applies to
88 teachers, supervisory or administrative staff members, and
89 service personnel employed by a public charter school.

90 (h) The amendments to this section during the 2019 First
91 Extraordinary Session of the Legislature shall be effective
92 for fiscal years beginning on or after July 1,
93 2019: *Provided*, That the amendment to subsection (c) of
94 this section during the 2019 First Extraordinary Session of
95 the Legislature shall be effective for fiscal years beginning
96 on or after July 1, 2020.



CHAPTER 32

**(S. B. 1004 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed May 20, 2019; in effect ninety days from passage.]
[Approved by the Governor on May 29, 2019.]

AN ACT to amend and reenact §18-16-1, §18-16-2, §18-16-3, and §18-16-4 of the Code of West Virginia, 1931, as amended, all relating generally to prohibiting hazing; adopting a short title; defining terms; criminalizing participation in hazing; establishing criminal penalties; expanding and clarifying organizations subject to anti-hazing provisions; requiring institutions of higher education to promulgate policies related to hazing; requiring enforcement of institution anti-hazing policies; and authorizing institutions to impose noncriminal penalties for hazing.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. ANTIHAZING LAW.

§18-16-1. Short title.

1 This article shall be known and may be cited as the West
2 Virginia Anti-hazing Law.

§18-16-2. Definitions.

1 As used in this article:

2 (1) “Hazing” means to cause any action or situation
3 which recklessly or intentionally endangers the mental or
4 physical health or safety of another person or persons or
5 causes another person or persons to destroy or remove
6 public or private property for the purpose of initiation or
7 admission into or affiliation with, or as a condition for
8 continued membership in, any organization the members of
9 which are primarily students or alumni of an institution of
10 higher education. The term includes, but is not limited to,
11 acts of a physical nature, such as whipping, beating,
12 branding, required consumption of any food, liquor, drug,
13 or other substance, or any other required physical activity
14 which could reasonably be deemed to adversely affect the
15 physical health and safety of the person or persons so
16 treated, and includes any activity which would subject the
17 person or persons so treated to extreme mental stress, such
18 as sleep deprivation, forced exclusion from social contact,
19 required conduct which could result in extreme
20 embarrassment, or any other required activity which could
21 reasonably be deemed to adversely affect the mental health
22 or dignity of the person or persons so treated, or any willful
23 destruction or removal of public or private property:
24 *Provided*, That the implied or expressed consent or
25 willingness of a person or persons to hazing may not be a
26 defense under this section.

27 (2) “Institution of higher education” or “institution”
28 means any public or private institution as defined in §18B-
29 1-2 of this code.

30 (3) “Organization” means any fraternity, sorority,
31 association, corporation, order, society, corps, club, or
32 similar group, or a national or international affiliate thereof,
33 the membership of which is primarily made up students or
34 alumni of an institution of higher education.

§18-16-3. Hazing prohibited.

1 Any person who causes hazing is guilty of a
2 misdemeanor and, upon conviction thereof, shall be fined
3 not less than \$100 nor more than \$1,000, or confined in jail
4 for not more than nine months, or both fined and confined.

§18-16-4. Enforcement by institutions.

1 (a) *Anti-hazing policy.* —The governing body of each
2 institution of higher education in this state shall promulgate
3 and enforce anti-hazing rules consistent with this article.

4 (b) *Enforcement and penalties.* —

5 (1) Each institution shall provide a program for the
6 enforcement of rules promulgated pursuant to subsection (a)
7 of this section and shall adopt appropriate penalties for
8 violations thereof.

9 (2) Penalties may include rescission of permission for an
10 organization to operate on campus property or to otherwise
11 operate under the sanction or recognition of the institution.

12 (3) All penalties imposed under the authority of this
13 section shall be in addition to any penalty imposed for
14 violation of §18-16-3 of this code or of any of the criminal
15 laws of this state.

16 (4) Rules adopted pursuant hereto apply to acts
17 conducted on or off campus whenever such acts constitute
18 hazing as defined in §18-16-2 of this code.

●

CHAPTER 33

**(H. B. 133 - By Delegates Hanshaw (Mr. Speaker)
and Miley)
[By Request of the Executive]**

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

AN ACT to amend and reenact §55-7B-7a of the Code of West Virginia, 1931, as amended, relating to the admissibility of health care staffing requirements in medical professional liability litigation; providing that compliance with minimum staffing requirements under state law creates rebuttable presumptions that appropriate staffing and adequate supervision of patients to prevent accidents were provided; requiring that if staffing is less than requirements dictated by state law then there is a rebuttable presumption that there was inadequate supervision of patients and that inadequate staffing or inadequate supervision was a contributing cause of the patient's fall and resulting injuries or death; and requiring the jury be instructed accordingly.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-7a. Admissibility and use of certain information.

1 (a) In an action brought, there is a rebuttable
2 presumption that the following information may not be
3 introduced unless it applies specifically to the injured
4 person or it involves substantially similar conduct that
5 occurred within one year of the particular incident involved:

6 (1) A state or federal survey, audit, review or other
7 report of a health care provider or health care facility;

8 (2) Disciplinary actions against a health care provider's
9 license, registration or certification;

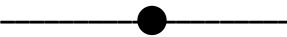
10 (3) An accreditation report of a health care provider or
11 health care facility; and

12 (4) An assessment of a civil or criminal penalty.

13 (b) In any action brought alleging inappropriate staffing
14 or inadequate supervision, if the health care facility or
15 health care provider demonstrates compliance with the
16 minimum staffing requirements under state law, the health
17 care facility or health care provider is entitled to a rebuttable
18 presumption that appropriate staffing and adequate
19 supervision of patients to prevent accidents were provided,
20 and the jury shall be instructed accordingly.

21 (c) In any action brought alleging inappropriate staffing
22 or inadequate supervision, if staffing is less than the
23 minimum staffing requirements under state law, then there
24 is a rebuttable presumption that there was inadequate
25 supervision of patients and that inadequate staffing or
26 inadequate supervision was a contributing cause of the
27 patient's fall and injuries or death arising therefrom, and the
28 jury shall be instructed accordingly.

29 (d) Information under this section may only be
30 introduced in a proceeding if it is otherwise admissible
31 under the West Virginia Rules of Evidence.



CHAPTER 34

**(H. B. 118 - By Delegates Hanshaw (Mr. Speaker)
and Miley)
[By Request of the Executive]**

[Passed June 17, 2019; in effect from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-24, relating generally to criteria for initial licensure to engage in certain professions and occupations; regulating and making consistent the consideration of prior criminal convictions in initial licensure determinations by certain boards and licensing authorities; requiring a rational nexus between prior criminal convictions considered by certain boards and licensing authorities and the profession or occupation for which the initial licensure is sought; providing criteria for certain boards and licensing authorities to consider when determining whether a criminal conviction has a rational nexus to a profession or occupation; defining terms; eliminating offenses generally described as ones of moral turpitude from grounds for denial of an initial license to engage in certain professions and occupations absent there being a rational nexus between the underlying offense and the profession or occupation for which licensure is sought; requiring certain boards and licensing authorities to allow a previously disqualified applicant to apply for licensure after a certain period of time, with exceptions; requiring certain boards and licensing authorities to allow a potential applicant to petition the board or authority for a determination as to whether his or her criminal record precludes licensure and requiring the board or agency to provide the applicant with such determination within a certain period of time; and

requiring certain boards and licensing authorities to promulgate rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-24. Use of criminal records as disqualification from authorization to practice.

1 (a) *Definitions.* — For the purposes of this section:

2 (1) “Board” means the board, authority, or other agency
3 authorized by the provisions of this chapter to issue licenses,
4 certifications, registrations, or other authorizations to
5 engage in a particular profession or occupation.

6 (2) “License” or “licensure” means the official
7 authorization to engage in a profession or occupation issued
8 by a board, pursuant to the requirements of this chapter.

9 (3) “Unreversed”, as that term refers to a criminal
10 conviction, means that a conviction has not been set aside,
11 vacated, pardoned, or expunged.

12 (b) Notwithstanding any provision of this chapter to the
13 contrary, except for the professions and occupations
14 regulated by §30-2-1 *et seq.*, §30-3-1 *et seq.*, §30-3E-1 *et*
15 *seq.*, §30-14-1 *et seq.*, §30-18-1 *et seq.*, and §30-29-1 *et seq.*
16 of this code, and where not in conflict with an existing
17 compact or model act:

18 (1) Boards subject to the requirements of this section
19 may not disqualify an applicant from initial licensure to
20 engage in a profession or occupation because of a prior
21 criminal conviction that remains unreversed unless that
22 conviction is for a crime that bears a rational nexus to the
23 profession or occupation requiring licensure. In determining
24 whether a criminal conviction bears a rational nexus to a

25 profession or occupation, the board shall consider at a
26 minimum:

27 (A) The nature and seriousness of the crime for which
28 the individual was convicted;

29 (B) The passage of time since the commission of the
30 crime;

31 (C) The relationship of the crime to the ability, capacity,
32 and fitness required to perform the duties and discharge the
33 responsibilities of the profession or occupation; and

34 (D) Any evidence of rehabilitation or treatment
35 undertaken by the individual.

36 (2) Because the term “moral turpitude” is vague and
37 subject to inconsistent applications, boards subject to the
38 requirements of this section may not rely upon the
39 description of a crime for which an applicant has been
40 convicted as one of “moral turpitude” as a basis for denying
41 licensure: *Provided*, That if the prior conviction for the
42 underlying crime bears a rational nexus to the profession or
43 occupation requiring licensure, the board may consider the
44 conviction according to the requirements of subdivision (1)
45 of this subsection.

46 (3) Notwithstanding any other provision of this chapter
47 to the contrary, if an applicant is disqualified from licensure
48 because of a prior criminal conviction, a board shall permit
49 the applicant to apply for initial licensure if:

50 (A) A period of five years has elapsed from the date of
51 conviction or the date of release from incarceration,
52 whichever is later;

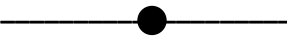
53 (B) The individual has not been convicted of any other
54 crime during the period of time following the disqualifying
55 offense; and

56 (C) The conviction was not for an offense of a violent
57 or sexual nature: *Provided*, That a conviction for an offense
58 of a violent or sexual nature may subject an individual to a
59 longer period of disqualification from licensure, to be
60 determined by the individual board.

61 (4) An individual with a criminal record who has not
62 previously applied for licensure may petition the
63 appropriate board at any time for a determination of whether
64 the individual's criminal record will disqualify the
65 individual from obtaining a license. This petition shall
66 include sufficient details about the individual's criminal
67 record to enable the board to identify the jurisdiction where
68 the conviction occurred, the date of the conviction, and the
69 specific nature of the conviction. The board shall provide
70 the determination within 60 days of receiving the petition
71 from the applicant. The board may charge a fee to recoup its
72 costs for each petition.

73 (5) The requirements of this section do not apply to the
74 criteria that boards may consider when making
75 determinations regarding relicensure or discipline of
76 licensees.

77 (c) Every board subject to the provisions of this section
78 shall propose rules or amendments to existing rules for
79 legislative approval to comply with the provisions of this
80 section. These rules or amendments to rules shall be
81 proposed pursuant to the provisions of §29A-3-1 *et seq.* of
82 this code within the applicable time limit to be considered
83 by the Legislature during its regular session in the year
84 2020.



CHAPTER 35

**(S. B. 1006 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed May 20, 2019; in effect from passage.]

[Approved by the Governor on May 29, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-20-8a, relating to authorizing the West Virginia Board of Physical Therapy to conduct criminal background checks on applicants seeking their initial license; requiring applicants seeking initial license to submit to national and state criminal record background check as condition of eligibility for license; mandating such applicants to submit fingerprints and authorize board, West Virginia State Police, and Federal Bureau of Investigation to use records submitted to screen applicants; prohibiting release of background check results, with certain exceptions; establishing that background check records are not public records for purposes of chapter 29B of this code; obligating such applicants to complete background check as soon as possible after application for license; requiring applicants to pay costs of fingerprinting and background check; prohibiting board from disqualifying applicants from licensure because of prior conviction unless conviction was for crime bearing rational nexus to the occupation for which licensure is sought; barring board from using crimes of moral turpitude to make licensure decisions; allowing applicants disqualified for licensure because of criminal conviction to reapply after five years after later date of conviction or date of release from penalty imposed for conviction and providing exception for violent or sexual offenses; establishing procedure for individuals with criminal

records to petition board for determination whether such criminal record will disqualify individual from obtaining licensure; and requiring rulemaking by a certain deadline.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. PHYSICAL THERAPISTS.

§30-20-8a. West Virginia Board of Physical Therapy criminal history record checks.

1 (a) The West Virginia Board of Physical Therapy is
2 authorized to require state and national criminal history
3 record checks for the purpose of issuing licenses. The West
4 Virginia Board of Physical Therapy shall require an
5 applicant, including physical therapists and physical therapy
6 assistants, as a condition of eligibility for initial license to
7 submit to a state and national criminal history record check
8 as set forth in this section.

9 (b) The applicant shall meet all requirements necessary
10 to accomplish the state and national criminal history record
11 check, including:

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

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

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

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

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

25 (3) Pursuant to a court order.

26 (d) The criminal history record check and related
27 records are not public records for the purposes of §29B-1-1
28 *et seq.* of this code.

29 (e) The applicant shall ensure that the criminal history
30 record check is completed as soon as possible after the date
31 of the original application for registration.

32 (f) The applicant shall pay the actual costs of the
33 fingerprinting and criminal history record check.

34 (g) The board may not disqualify an applicant for initial
35 licensure because of a prior criminal conviction that has not
36 been reversed unless that conviction is for a crime that bears
37 a rational nexus to the occupation requiring licensure.

38 (h) The board may not use crimes involving moral
39 turpitude in making licensure determinations.

40 (i) If an applicant is disqualified for licensure because
41 of a criminal conviction that has not been reversed, the
42 board shall afford the applicant the opportunity to reapply
43 for licensure after the expiration of five years from the date
44 of conviction or date of release from the penalty that was
45 imposed, whichever is later, if the individual has not been
46 convicted of any other crime during that period of time:
47 *Provided*, That convictions for violent or sexual offenses or
48 offenses shall subject an individual to a longer period of
49 disqualification, to be determined by the board.

50 (j) An individual with a criminal record who has not
51 previously applied for licensure, certification, or
52 registration may petition the board at any time for a
53 determination of whether the individual's criminal record
54 will disqualify the individual from obtaining a license or
55 other authorization to practice. This petition shall include
56 sufficient details about the individual's criminal record to
57 enable the board to identify the jurisdiction where the
58 conviction occurred, the date of the conviction, and the

59 specific nature of the conviction. The board shall inform the
60 individual of his or her standing within 60 days of receiving
61 the petition from the applicant. The board may charge a fee
62 established by rule to recoup its costs for each petition.

63 (k) The board shall propose rules or amendments to
64 existing rules for legislative approval to comply with the
65 provisions of this section. These rules or amendments to
66 rules shall be proposed pursuant to the provisions of §29A-
67 3-1 *et seq.* of this code within the applicable time limit to be
68 considered by the Legislature during its regular session in
69 the year 2020.

CHAPTER 36

**(H. B. 146 - By Delegates Hanshaw (Mr. Speaker) and
Miley)
[By Request of the Executive]**

[Passed June 24, 2019; in effect ninety days from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT to amend and reenact §16-53-1 of the Code of West Virginia, 1931, as amended, relating to substance use disorder; clarifying who is eligible to receive funds; providing the secretary with discretion to decide who is eligible to funds; and removing certain limitations on funding limitations.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 53. ESTABLISHING ADDITIONAL SUBSTANCE
ABUSE TREATMENT FACILITIES.**

**§16-53-1. Establishment of substance use disorder treatment
and recovery services.**

1 (a) The Secretary of the Department of Health and
2 Human Resources shall ensure that substance use disorder
3 treatment or recovery services, or both, are made available
4 in locations throughout the state which the department
5 determines to be the highest priority for serving the needs
6 of the state.

7 (b) The secretary shall identify and allocate funds to
8 appropriate facilities to provide substance use disorder
9 treatment services, which shall be provided via an inpatient
10 or outpatient service model. These facilities shall:

11 (1) Give preference to West Virginia residents;

12 (2) Accept payment from private pay patients, third
13 person payors, or patients covered by Medicaid;

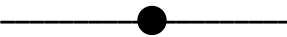
14 (3) Offer treatment, based upon need;

15 (4) Work closely with the Adult Drug Court Program,
16 provided for in §62-15-1 *et seq.* of this code; and

17 (5) Be licensed by this state to provide substance use
18 disorder treatment services.

19 (c) The secretary shall identify and allocate funds to
20 appropriate facilities to provide recovery services. Peer-led
21 facilities shall follow standards set forth by the National
22 Alliance for Recovery Residences and offer access to peer
23 support services.

24 (d) Other programs or projects designed to address
25 substance use disorder, and a study or studies designed to
26 evaluate substance use prevention education programs in
27 schools, may be eligible for funding at the secretary's
28 discretion and as funds are available.



CHAPTER 37

**(S. B. 1012 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed May 20, 2019; in effect from passage.]
[Approved by the Governor on May 29, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-59-1, §16-59-2, and §16-59-3, all relating to regulation of recovery residences; providing voluntary certification procedures; providing voluntary inspection standards; providing requirements for the referral of persons; providing criminal penalties and fines; permitting rulemaking; requiring compliance with the Fair Housing Act and Americans with Disabilities Act; and providing for the payment of state funds to recovery residences in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 59. CERTIFICATION OF RECOVERY RESIDENCES.

§16-59-1. Definitions.

- 1 As used in this article, the term:
- 2 (1) “Certificate of compliance” means a certificate that
- 3 is issued to a recovery residence by the department’s
- 4 appointed certifying agency.
- 5 (2) “Certified recovery residence” means a recovery
- 6 residence that holds a valid certificate of compliance.
- 7 (3) “Department” means the Department of Health and
- 8 Human Resources.

9 (4) “Recovery residence” means a single-family, drug-
10 free, and alcohol-free residential dwelling unit, or other
11 form of group housing, that is offered or advertised by any
12 person or entity as a residence that provides a drug-free and
13 alcohol-free living environment for the purposes of
14 promoting sustained, long-term recovery from substance
15 use disorder.

§16-59-2. Voluntary certification of recovery residences.

1 (a) The department shall contract with an entity to serve
2 as the certifying agency for a voluntary certification
3 program for drug-free and alcohol-free recovery residences
4 based upon standards determined by the National Alliance
5 for Recovery Residences (NARR) or a similar entity. The
6 certifying agency shall establish and implement an
7 accreditation program for drug-free and alcohol-free
8 recovery residences that shall maintain nationally
9 recognized standards that:

10 (1) Uphold industry best practices and support a safe,
11 healthy, and effective recovery environment;

12 (2) Evaluate the residence’s ability to assist persons in
13 achieving long-term recovery goals;

14 (3) Protect residents of drug- and alcohol-free housing
15 against unreasonable and unfair practices in setting and
16 collecting fee payments.

17 (b) The department shall require the recovery residence
18 to submit the following:

19 (1) Documentation verifying certification as specified
20 and administered by the certifying agency;

21 (2) If a municipality or county offers or requires
22 verification of compliance with local building, maximum
23 occupancy, fire safety, and sanitation codes applicable to
24 single-family housing, documentation of verification by the

25 municipality or county where the recovery residence is
26 located stating that the recovery residence is in compliance.

27 (c) If a municipality or county offers or requires
28 verification of compliance with local building, maximum
29 occupancy, fire safety, and sanitation codes applicable to
30 single-family housing, the municipality or county must
31 perform requested or required inspections within 30 days of
32 receiving a request for verification. If a residence is located
33 within a municipality or county that offers or requires
34 verification of compliance with local building, maximum
35 occupancy, fire safety, and sanitation codes applicable to
36 single-family housing, and the municipality or county fails
37 to perform requested or required inspections within 30 days
38 of receiving a request for verification, the residence may
39 apply for and be granted certification directly through the
40 certifying agency without the aforementioned verification.

41 (d) Upon receiving a complete application, the
42 certifying agency shall evaluate the residence to determine
43 if the residence is in compliance with national best-practice
44 standards and safety requirements. Additionally, any
45 application of the items specified in this section must
46 comply with the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*
47 and the Americans with Disabilities Act of 2008, 42 U.S.C.
48 § 12101 *et seq.*

49 (1) If it is determined that the residence is in
50 compliance, the certification agency shall issue a certificate
51 of compliance to the recovery residence operator for the
52 specific recovery residence location set forth in the
53 application.

54 (2) Each residence location, even if operated by the
55 same person or entity, must maintain a certificate of
56 compliance for the purposes of this article.

57 (e) The certifying agency may suspend or revoke a
58 certificate of compliance if the recovery residence is not in
59 compliance with any provision of this section or has failed

60 to remedy any deficiency identified in writing and served by
61 certified mail. Suspension or revocation may take place
62 after a notice of deficiency is served and has existed for at
63 least 30 days.

64 (f) The certifying agency shall implement and maintain
65 a process by which a residence whose certification has been
66 suspended or revoked may apply for and be granted
67 reinstatement. If a municipality or county offers or requires
68 verification of compliance with local building, maximum
69 occupancy, fire safety, and sanitation codes applicable to
70 single-family housing, and if the residence's certification
71 suspended or revoked for noncompliance with local
72 building, maximum occupancy, fire safety, and sanitation
73 codes applicable to single-family housing, the municipality
74 or county may charge a fee of up to \$100 for any requested
75 reinspection of a recovery residence by the residence
76 seeking reinstatement.

77 (g) The department shall periodically evaluate the
78 quality, integrity, and efficacy of the accreditation program
79 developed. The department shall promulgate rules subject
80 to legislative approval in accordance with §29A-3-1 *et seq.*
81 of this code to implement this section that shall include a
82 process for receiving complaints against drug-free and
83 alcohol-free recovery residences and criteria by which such
84 residences' certifications can be revoked.

85 (h) A person may not advertise to the public any
86 recovery residence as a "certified recovery residence"
87 unless the recovery residence has first secured a certificate
88 of compliance under this section. A person who violates this
89 subsection commits a misdemeanor, punishable by a fine of
90 not less than \$1,000 nor more than \$5,000 for each
91 infraction.

92 (i) Nothing herein shall be read to require any recovery
93 residence to obtain certifications set forth herein in order to
94 conduct operations.

§16-59-3. Referrals to recovery residences; prohibitions; receipt of state funds.

1 (a) The certifying agency shall maintain, publish, and
2 disseminate a list of drug- and alcohol-free housing certified
3 pursuant to this section. This list shall be disseminated to
4 the department for use by each state agency or vendor with
5 a statewide contract that provides substance use disorder
6 treatment services. The list shall also be posted on the
7 website maintained by the certifying agency.

8 (b) The Division of Corrections and Rehabilitation, the
9 Parole Board, county probation offices, day report centers,
10 municipal courts, and a medical or clinical treatment facility
11 that receives any funds for its operations from the State
12 Treasury may not make a referral of any prisoner, parolee,
13 probationer, or prospective, current, or discharged patient or
14 client to a recovery residence unless the recovery residence
15 holds a valid certificate of compliance as provided in §16-
16 59-2 of this code.

17 (c) No recovery residence is eligible to receive funds
18 from any source within the State Treasury unless it holds a
19 valid certificate of compliance as provided in §16-59-2 of
20 this code.

21 (d) A state agency and a medical or clinical treatment
22 facility that receive funds for its operation from the State
23 Treasury, that make referrals to recovery residences shall
24 maintain records of referrals to or from recovery residences.

25 (e) Nothing in this section requires a state agency or a
26 clinical or medical provider to make a referral of a person
27 to a recovery residence.

28 (f) A person who violates this section commits a
29 misdemeanor, punishable by a fine of not less than \$500 nor
30 more than \$1,000.

CHAPTER 38

**(S. B. 1013 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed May 20, 2019; in effect from passage.]
[Approved by the Governor on May 29, 2019.]

AN ACT to amend and reenact §16-5Y-5 of the Code of West Virginia, 1931, as amended, relating to permitting certain trained professionals to provide counseling in a medication-assisted treatment program.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT
PROGRAM LICENSING ACT.**

§16-5Y-5. Operational requirements.

1 (a) The medication-assisted treatment program shall be
2 licensed and registered in this state with the secretary, the
3 Secretary of State, the State Tax Department, and all other
4 applicable business or licensing entities.

5 (b) The program sponsor need not be a licensed
6 physician but shall employ a licensed physician for the
7 position of medical director, when required by the rules
8 promulgated pursuant to this article.

9 (c) Each medication-assisted treatment program shall
10 designate a medical director. If the medication-assisted
11 treatment program is accredited by a Substance Abuse and
12 Mental Health Services Administration approved
13 accrediting body that meets nationally accepted standards
14 for providing medication-assisted treatment, including the

15 Commission on Accreditation of Rehabilitation Facilities or
16 the Joint Commission on Accreditation of Healthcare
17 Organizations, then the program may designate a medical
18 director to oversee all facilities associated with the
19 accredited medication-assisted treatment program. The
20 medical director shall be responsible for the operation of the
21 medication-assisted treatment program, as further specified
22 in the rules promulgated pursuant to this article. He or she
23 may delegate the day-to-day operation of a medication-
24 assisted treatment program as provided in rules promulgated
25 pursuant to this article. Within 10 days after termination of
26 a medical director, the medication-assisted treatment
27 program shall notify the director of the identity of another
28 medical director for that program. Failure to have a medical
29 director practicing at the program may be the basis for a
30 suspension or revocation of the program license. The
31 medical director shall:

32 (1) Have a full, active, and unencumbered license to
33 practice allopathic medicine or surgery from the West
34 Virginia Board of Medicine or to practice osteopathic
35 medicine or surgery from the West Virginia Board of
36 Osteopathic Medicine in this state and be in good standing
37 and not under any probationary restrictions;

38 (2) Meet both of the following training requirements:

39 (A) If the physician prescribes a partial opioid agonist,
40 he or she shall complete the requirements for the Drug
41 Addiction Treatment Act of 2000; and

42 (B) Complete other programs and continuing education
43 requirements as further described in the rules promulgated
44 pursuant to this article;

45 (3) Practice at the licensed or registered medication-
46 assisted treatment program a sufficient number of hours,
47 based upon the type of medication-assisted treatment
48 license or registration issued pursuant to this article, to
49 ensure regulatory compliance, and carry out those duties

50 specifically assigned to the medical director as further
51 described in the rules promulgated pursuant to this article;

52 (4) Be responsible for monitoring and ensuring
53 compliance with all requirements related to the licensing
54 and operation of the medication-assisted treatment program;

55 (5) Supervise, control, and direct the activities of each
56 individual working or operating at the medication-assisted
57 treatment program, including any employee, volunteer, or
58 individual under contract, who provides medication-
59 assisted treatment at the program or is associated with the
60 provision of that treatment. The supervision, control, and
61 direction shall be provided in accordance with rules
62 promulgated by the secretary; and

63 (6) Complete other requirements prescribed by the
64 secretary by rule.

65 (d) Each medication-assisted treatment program shall
66 designate counseling staff, either employees, or those used
67 on a referral-basis by the program, which meet the
68 requirements of this article and the rules promulgated
69 pursuant to this article. The individual members of the
70 counseling staff shall have one or more of the following
71 qualifications:

72 (1) Be a licensed psychiatrist;

73 (2) Certification as an alcohol and drug counselor;

74 (3) Certification as an advanced alcohol and drug
75 counselor;

76 (4) Be a counselor, psychologist, marriage and family
77 therapist, or social worker with a master's level education
78 with a specialty or specific training in treatment for
79 substance use disorders, as further described in the rules
80 promulgated pursuant to this article;

81 (5) Under the direct supervision of an advanced alcohol
82 and drug counselor, be a counselor with a bachelor's degree
83 in social work or another relevant human services field:
84 *Provided*, That the individual practicing with a bachelor's
85 degree under supervision applies for certification as an
86 alcohol and drug counselor within three years of the date of
87 employment as a counselor;

88 (6) Be a counselor with a graduate degree actively
89 working toward licensure or certification in the individual's
90 chosen field under supervision of a licensed or certified
91 professional in that field and/or advanced alcohol and drug
92 counselor;

93 (7) Be a psych-mental health nurse practitioner or a
94 psych-mental health clinical nurse specialist; or

95 (8) Be a psychiatry CAQ-certified physician assistant.

96 (e) The medication-assisted treatment program shall be
97 eligible for, and not prohibited from, enrollment with West
98 Virginia Medicaid and other private insurance. Prior to
99 directly billing a patient for any medication-assisted
100 treatment, a medication-assisted treatment program must
101 receive either a rejection of prior authorization, rejection of
102 a submitted claim, or a written denial from a patient's
103 insurer or West Virginia Medicaid denying coverage for
104 such treatment: *Provided*, That the secretary may grant a
105 variance from this requirement pursuant to §15-5Y-6 of this
106 code. The program shall also document whether a patient
107 has no insurance. At the option of the medication-assisted
108 treatment program, treatment may commence prior to
109 billing.

110 (f) The medication-assisted treatment program shall
111 apply for and receive approval as required from the United
112 States Drug Enforcement Administration, Center for
113 Substance Abuse Treatment, or an organization designated
114 by Substance Abuse and Mental Health and Mental Health
115 Administration.

116 (g) All persons employed by the medication-assisted
117 treatment program shall comply with the requirements for
118 the operation of a medication-assisted treatment program
119 established within this article or by any rule adopted
120 pursuant to this article.

121 (h) All employees of an opioid treatment program shall
122 furnish fingerprints for a state and federal criminal records
123 check by the Criminal Identification Bureau of the West
124 Virginia State Police and the Federal Bureau of
125 Investigation. The fingerprints shall be accompanied by a
126 signed authorization for the release of information and
127 retention of the fingerprints by the Criminal Identification
128 Bureau and the Federal Bureau of Investigation. The opioid
129 treatment program shall be subject to the provisions of §16-
130 49-1 *et seq.* of this code and subsequent rules promulgated
131 thereunder.

132 (i) The medication-assisted treatment program shall not
133 be owned by, nor shall it employ or associate with, any
134 physician or prescriber:

135 (1) Whose Drug Enforcement Administration number is
136 not currently full, active, and unencumbered;

137 (2) Whose application for a license to prescribe,
138 dispense, or administer a controlled substance has been
139 denied by and is not full, active, and unencumbered in any
140 jurisdiction; or

141 (3) Whose license is anything other than a full, active,
142 and unencumbered license to practice allopathic medicine
143 or surgery by the West Virginia Board of Medicine or
144 osteopathic medicine or surgery by the West Virginia Board
145 of Osteopathic Medicine in this state, and who is in good
146 standing and not under any probationary restrictions.

147 (j) A person may not dispense any medication-assisted
148 treatment medication, including a controlled substance as
149 defined by §60A-1-101 of this code, on the premises of a

150 licensed medication-assisted treatment program, unless he
151 or she is a physician or pharmacist licensed in this state and
152 employed by the medication-assisted treatment program
153 unless the medication-assisted treatment program is a
154 federally certified narcotic treatment program. Prior to
155 dispensing or prescribing medication-assisted treatment
156 medications, the treating physician must access the
157 Controlled Substances Monitoring Program Database to
158 ensure the patient is not seeking medication-assisted
159 treatment medications that are controlled substances from
160 multiple sources and to assess potential adverse drug
161 interactions, or both. Prior to dispensing or prescribing
162 medication-assisted treatment medications, the treating
163 physician shall also ensure that the medication-assisted
164 treatment medication utilized is related to an appropriate
165 diagnosis of a substance use disorder and approved for such
166 usage. The physician shall also review the Controlled
167 Substances Monitoring Program Database no less than
168 quarterly and at each patient's physical examination. The
169 results obtained from the Controlled Substances Monitoring
170 Program Database shall be maintained with the patient's
171 medical records.

172 (k) A medication-assisted treatment program
173 responsible for medication administration shall comply
174 with:

175 (1) The West Virginia Board of Pharmacy regulations;

176 (2) The West Virginia Board of Examiners for
177 Registered Professional Nurses regulations;

178 (3) All applicable federal laws and regulations relating
179 to controlled substances; and

180 (4) Any requirements as specified in the rules
181 promulgated pursuant to this article.

182 (l) Each medication-assisted treatment program location
183 shall be licensed separately, regardless of whether the

184 program is operated under the same business name or
185 management as another program.

186 (m) The medication-assisted treatment program shall
187 develop and implement patient protocols, treatment plans,
188 or treatment strategies and profiles, which shall include, but
189 not be limited by, the following guidelines:

190 (1) When a physician diagnoses an individual as having
191 a substance use disorder, the physician may treat the
192 substance use disorder by managing it with medication in
193 doses not exceeding those approved by the United States
194 Food and Drug Administration as indicated for the
195 treatment of substance use disorders and not greater than
196 those amounts described in the rules promulgated pursuant
197 to this article. The treating physician and treating
198 counselor's diagnoses and treatment decisions shall be
199 made according to accepted and prevailing standards for
200 medical care;

201 (2) The medication-assisted treatment program shall
202 maintain a record of all of the following:

203 (A) Medical history and physical examination of the
204 individual;

205 (B) The diagnosis of substance use disorder of the
206 individual;

207 (C) The plan of treatment proposed, the patient's
208 response to the treatment, and any modification to the plan
209 of treatment;

210 (D) The dates on which any medications were
211 prescribed, dispensed, or administered, the name and
212 address of the individual for whom the medications were
213 prescribed, dispensed, or administered, and the amounts and
214 dosage forms for any medications prescribed, dispensed, or
215 administered;

216 (E) A copy of the report made by the physician or
217 counselor to whom referral for evaluation was made, if
218 applicable; and

219 (F) A copy of the coordination of care agreement, which
220 is to be signed by the patient, treating physician, and treating
221 counselor. If a change of treating physician or treating
222 counselor takes place, a new agreement must be signed. The
223 coordination of care agreement must be updated or
224 reviewed at least annually. If the coordination of care
225 agreement is reviewed, but not updated, this review must be
226 documented in the patient's record. The coordination of care
227 agreement will be provided in a form prescribed and made
228 available by the secretary;

229 (3) Medication-assisted treatment programs shall report
230 information, data, statistics, and other information as
231 directed in this code, and the rules promulgated pursuant to
232 this article to required agencies and other authorities;

233 (4) A prescriber authorized to prescribe a medication-
234 assisted treatment medication who practices at a
235 medication-assisted treatment program is responsible for
236 maintaining the control and security of his or her
237 prescription blanks and any other method used for
238 prescribing a medication-assisted treatment medication.
239 The prescriber shall comply with all state and federal
240 requirements for tamper-resistant prescription paper. In
241 addition to any other requirements imposed by statute or
242 rule, the prescriber shall notify the secretary and appropriate
243 law-enforcement agencies in writing within 24 hours
244 following any theft or loss of a prescription blank or breach
245 of any other method of prescribing a medication-assisted
246 treatment medication; and

247 (5) The medication-assisted treatment program shall
248 have a drug testing program to ensure a patient is in
249 compliance with the treatment strategy.

250 (n) Medication-assisted treatment programs shall only
251 prescribe, dispense, or administer liquid methadone to
252 patients pursuant to the restrictions and requirements of the
253 rules promulgated pursuant to this article.

254 (o) The medication-assisted treatment program shall
255 immediately notify the secretary, or his or her designee, in
256 writing of any changes to its operations that affect the
257 medication-assisted treatment program's continued
258 compliance with the certification and licensure
259 requirements.

260 (p) If a physician treats a patient with more than 16
261 milligrams per day of buprenorphine then clear medical
262 notes shall be placed in the patient's medical file indicating
263 the clinical reason or reasons for the higher level of dosage.

264 (q) If a physician is not the patient's obstetrical or
265 gynecological provider, the physician shall consult with the
266 patient's obstetrical or gynecological provider to the extent
267 possible to determine whether the prescription is
268 appropriate for the patient.

269 (r) A practitioner providing medication-assisted
270 treatment may perform certain aspects of telehealth if
271 permitted under his or her scope of practice.

272 (s) The physician shall follow the recommended
273 manufacturer's tapering schedule for the medication-
274 assisted treatment medication. If the schedule is not
275 followed, the physician shall document in the patient's
276 medical record and the clinical reason why the schedule was
277 not followed. The secretary may investigate a medication-
278 assisted treatment program if a high percentage of its
279 patients are not following the recommended tapering
280 schedule.

●

CHAPTER 39

**(S. B. 1037 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed May 20, 2019; in effect from passage.]

[Approved by the Governor on May 29, 2019.]

AN ACT to amend and reenact §16A-2-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §16A-4-3 of said code; to amend and reenact §16A-6-3 and §16A-6-13 of said code; to amend and reenact §16A-7-4 of said code; to amend and reenact §16A-8-1 of said code; to amend and reenact §16A-9-1 of said code; to amend said code by adding thereto two new sections, designated §16A-9-3 and §16A-9-4; to amend and reenact §16A-10-6 of said code; to amend and reenact §16A-11-1 of said code; to amend said code by adding thereto a new section, designated §16A-15-10; and to amend and reenact §16A-16-1 of said code, all relating generally to medical cannabis; defining terms; modifying certain definitions; modifying conditions for issuance of patient certifications; expanding practitioner reporting requirements; defining “resident” for purposes of the act; requiring that state residents own a majority of business entities applying for medical cannabis organization permits; removing regional distribution requirements for growers, processors, and dispensaries; establishing criteria for choosing the locations of dispensary permittees; requiring the Bureau for Public Health to adopt fair and objective evaluation procedures in choosing permittees; requiring numeric scoring of applications; increasing the maximum number of dispensary permits; increasing the number of dispensary permits a person or entity may hold; authorizing persons or entities to hold grower, processor, and dispensary

permits; authorizing the bureau to oversee testing of medical cannabis; removing the requirement that dispensaries have a physician or pharmacist onsite; modifying tax rates and tax procedures related to medical cannabis organizations; establishing a 10 percent tax on gross proceeds at the dispensary level; authorizing electronic filing with the Tax Commissioner; directing tax proceeds to be deposited in the Medical Cannabis Program Fund; clarifying applicability of the West Virginia Tax Procedure and Administration Act and the West Virginia Tax Crimes and Penalties Act apply to medical cannabis operations; extending the authority of the bureau to adopt emergency rules until July 1, 2021; adding two osteopathic physicians appointed by the West Virginia Osteopathic Association to the Medical Cannabis Advisory Board; immunizing state officials and employees from causes of action in their personal capacities for actions taken to implement the act; limiting any type of recovery to proceeds of available insurance; obligating the state to defend and indemnify state officials and employees against one type of action brought against them for implementing the act; authorizing precertification of patients; maintaining restriction that patient certificates may not be issued until July 1, 2019; and incorporating certain tax offenses and penalties by reference.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DEFINITIONS.

§16A-2-1. Definitions.

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

4 (1) “Act” means the West Virginia Medical Cannabis
5 Act and the provisions contained in §60A-1-101 *et seq.* of
6 this code.

7 (2) “Advisory board” means the advisory board
8 established under §16A-11-1 *et seq.* of this code.

9 (3) “Bureau” means the Bureau for Public Health within
10 the West Virginia Department of Health and Human
11 Resources.

12 (4) “Caregiver” means the individual designated by a
13 patient or, if the patient is under 18 years of age, an
14 individual authorized under §16A-5-1 *et seq.* of this code,
15 to deliver medical cannabis.

16 (5) “Certified medical use” means the acquisition,
17 possession, use, or transportation of medical cannabis by a
18 patient, or the acquisition, possession, delivery,
19 transportation, or administration of medical cannabis by a
20 caregiver, for use as part of the treatment of the patient’s
21 serious medical condition, as authorized in a certification
22 under this act, including enabling the patient to tolerate
23 treatment for the serious medical condition.

24 (6) “Change in control” means the acquisition by a
25 person or group of persons acting in concert of a controlling
26 interest in an applicant or permittee either all at one time or
27 over the span of a 12-consecutive-month period.

28 (7) “Commissioner” means the Commissioner of the
29 Bureau for Public Health.

30 (8) “Continuing care” means treating a patient, in the
31 course of which the practitioner has completed a full
32 assessment of the patient’s medical history and current
33 medical condition, including an in-person consultation with
34 the patient, and is able to document and make a medical
35 diagnosis based upon the substantive treatment of the
36 patient.

37 (9) “Controlling interest” means:

38 (A) For a publicly traded entity, voting rights that entitle
39 a person to elect or appoint one or more of the members of
40 the board of directors or other governing board or the
41 ownership or beneficial holding of five percent or more of
42 the securities of the publicly traded entity.

43 (B) For a privately held entity, the ownership of any
44 security in the entity.

45 (10) “Dispensary” means a person, including a natural
46 person, corporation, partnership, association, trust, or other
47 entity, or any combination thereof, which holds a permit
48 issued by the bureau to dispense medical cannabis. The term
49 does not include a health care medical cannabis
50 organization as defined in §16A-13-1 *et seq.* of this code.

51 (11) “Family or household member” means the same as
52 defined in §48-27-204 of this code.

53 (12) “Financial backer” means an investor, mortgagee,
54 bondholder, note holder, or other source of equity, capital,
55 or other assets, other than a financial institution.

56 (13) “Financial institution” means a bank, a national
57 banking association, a bank and trust company, a trust
58 company, a savings and loan association, a building and
59 loan association, a mutual savings bank, a credit union, or a
60 savings bank.

61 (14) “Form of medical cannabis” means the
62 characteristics of the medical cannabis recommended or
63 limited for a particular patient, including the method of
64 consumption and any particular dosage, strain, variety and
65 quantity, or percentage of medical cannabis or particular
66 active ingredient.

67 (15) “Fund” means the Medical Cannabis Program
68 Fund established in §16A-9-2 of this code.

69 (16) “Grower” means a person, including a natural
70 person, corporation, partnership, association, trust, or other
71 entity, or any combination thereof, which holds a permit
72 from the bureau under this act to grow medical cannabis.
73 The term does not include a health care medical cannabis
74 organization as defined in §16-13-1 *et seq.* of this code.

75 (17) “Grower/processor” means either a grower or a
76 processor.

77 (18) “Identification card” means a document issued
78 under §16A-5-1 *et seq.* of this code that authorizes access to
79 medical cannabis under this act.

80 (19) “Individual dose” means a single measure of
81 medical cannabis.

82 (20) “Medical cannabis” means cannabis for certified
83 medical use as set forth in this act.

84 (21) “Medical cannabis organization” means a
85 dispensary, grower, or processor. The term does not include
86 a health care medical cannabis organization as defined in
87 §16A-13-1 *et seq.* of this code.

88 (22) “Patient” means an individual who:

89 (A) Has a serious medical condition;

90 (B) Has met the requirements for certification under this
91 act; and

92 (C) Is a resident of this state.

93 (23) “Permit” means an authorization issued by the
94 bureau to a medical cannabis organization to conduct
95 activities under this act.

96 (24) “Physician” or “practitioner” means a doctor of
97 allopathic or osteopathic medicine who is fully licensed
98 pursuant to the provisions of either §30-3-1 *et seq.* or §30-
99 14-1 *et seq.* of this code to practice medicine and surgery in
100 this state.

101 (25) “Post-traumatic stress disorder” means a diagnosis
102 made as part of continuing care of a patient by a medical
103 doctor, licensed counselor, or psychologist.

104 (26) “Prescription drug monitoring program” means the
105 West Virginia Controlled Substances Monitoring Program
106 under §60A-9-101 *et seq.* of this code.

107 (27) “Principal” means an officer, director, or person
108 who directly owns a beneficial interest in or ownership of
109 the securities of an applicant or permittee, a person who has
110 a controlling interest in an applicant or permittee, or who
111 has the ability to elect the majority of the board of directors
112 of an applicant or permittee, or otherwise control an
113 applicant or permittee, other than a financial institution.

114 (28) “Processor” means a person, including a natural
115 person, corporation, partnership, association, trust, or other
116 entity, or any combination thereof, which holds a permit
117 from the bureau under this act to process medical cannabis.
118 The term does not include a health care medical cannabis
119 organization as defined in §16A-13-1 *et seq.* of this code.

120 (29) “Registry” means the registry established by the
121 bureau for practitioners.

122 (30) “Serious medical condition” means any of the
123 following, as has been diagnosed as part of a patient’s
124 continuing care:

125 (A) Cancer.

126 (B) Positive status for human immunodeficiency virus
127 or acquired immune deficiency syndrome.

128 (C) Amyotrophic lateral sclerosis.

129 (D) Parkinson’s disease.

130 (E) Multiple sclerosis.

131 (F) Damage to the nervous tissue of the spinal cord with
132 objective neurological indication of intractable spasticity.

133 (G) Epilepsy.

- 134 (H) Neuropathies.
- 135 (I) Huntington's disease.
- 136 (J) Crohn's disease.
- 137 (K) Post-traumatic stress disorder.
- 138 (L) Intractable seizures.
- 139 (M) Sickle cell anemia.
- 140 (N) Severe chronic or intractable pain of neuropathic
141 origin or severe chronic or intractable pain.
- 142 (O) Terminally ill.
- 143 (31) "Terminally ill" means a medical prognosis of life
144 expectancy of approximately one year or less if the illness
145 runs its normal course.

ARTICLE 4. PRACTITIONERS.

§16A-4-3. Issuance of certification.

- 1 (a) *Conditions for issuance.* — A certification to use
2 medical cannabis may be issued by a practitioner to a patient
3 if all of the following requirements are met:
- 4 (1) The practitioner has been approved by the bureau for
5 inclusion in the registry and has a valid, unexpired,
6 unrevoked, unsuspended license to practice medicine in this
7 state at the time of the issuance of the certification.
- 8 (2) The practitioner has determined that the patient has
9 a serious medical condition and has included the condition
10 in the patient's health care record.
- 11 (3) The patient is under the practitioner's continuing
12 care for the serious medical condition.
- 13 (4) In the practitioner's professional opinion and review
14 of past treatments, the practitioner determines the patient is

15 likely to receive therapeutic or palliative benefit from the
16 use of medical cannabis.

17 (5) The practitioner has determined that the patient has
18 no past or current medical condition(s) or medication use
19 that would constitute a contraindication for the use of
20 cannabis.

21 (6) The practitioner has determined that the patient is
22 experiencing serious pathophysiological discomfort,
23 disability, or dysfunction that may be attributable to a
24 serious medical condition and may possibly benefit from
25 cannabis treatment when current medical research exhibits
26 a moderate or higher probability of efficacy; and

27 (7) The practitioner has educated the patient about
28 cannabis and its safe use.

29 (b) *Contents.* — The certification shall include:

30 (1) The patient's name, date of birth, and address.

31 (2) The specific serious medical condition of the patient.

32 (3) A statement by the practitioner that the patient has a
33 serious medical condition and the patient is under the
34 practitioner's continuing care for the serious medical
35 condition.

36 (4) The date of issuance.

37 (5) The name, address, telephone number, and signature
38 of the practitioner.

39 (6) Any requirement or limitation concerning the
40 appropriate form of medical cannabis and limitation on the
41 duration of use, if applicable, including whether the patient
42 is terminally ill.

43 (7) A statement by the practitioner attesting that he or
44 she has performed the requirements contained in subsection
45 (a) of this section on a form to be issued by the West

46 Virginia Department of Health and Human Resources,
47 Bureau for Public Health.

48 (c) *Consultation.* —

49 (1) A practitioner shall review the prescription drug
50 monitoring program prior to:

51 (A) Issuing a certification to determine the controlled
52 substance history of a patient.

53 (B) Recommending a change of amount or form of
54 medical cannabis.

55 (2) The practitioner shall consider and give due
56 consideration to other controlled substances the patient may
57 be taking prior to certifying medical cannabis.

58 (d) *Other access by practitioner.* — A practitioner may
59 access the prescription drug monitoring program to do any
60 of the following:

61 (1) Determine whether a patient may be under treatment
62 with a controlled substance by another physician or other
63 person.

64 (2) Allow the practitioner to review the patient's
65 controlled substance history as deemed necessary by the
66 practitioner.

67 (3) Provide to the patient, or caregiver, on behalf of the
68 patient if authorized by the patient, a copy of the patient's
69 controlled substance history.

70 (e) *Duties of practitioner.* — The practitioner shall:

71 (1) Provide the certification to the patient.

72 (2) Provide a copy of the certification to the bureau,
73 which shall place the information in the patient directory
74 within the bureau's electronic database. The bureau shall
75 permit electronic submission of the certification.

76 (3) File a copy of the certification in the patient's health
77 care record.

78 (f) *Prohibition.* — A practitioner may not issue a
79 certification for the practitioner's own use or for the use of
80 a family or household member.

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 a resident of this state as defined in
9 §29-22B-327 of this code or is organized under the law of
10 this state. If the applicant is a business entity, majority
11 ownership in the business entity must be held by a state
12 resident or residents.

13 (4) The applicant is ready, willing, and able to properly
14 carry on the activity for which a permit is sought.

15 (5) The applicant possesses the ability to obtain in an
16 expeditious manner sufficient land, buildings, and
17 equipment to properly grow, process, or dispense medical
18 cannabis.

19 (6) It is in the public interest to grant the permit.

20 (7) The applicant, including the financial backer or
21 principal, is of good moral character and has the financial
22 fitness necessary to operate.

23 (8) The applicant is able to implement and maintain
24 security, tracking, recordkeeping, and surveillance systems
25 relating to the acquisition, possession, growth, manufacture,
26 sale, delivery, transportation, distribution, or the dispensing
27 of medical cannabis as required by the bureau.

28 (9) The applicant satisfies any other conditions as
29 determined by the bureau.

30 (b) *Nontransferability*. — A permit issued under this
31 chapter shall be nontransferable.

32 (c) *Privilege*. — The issuance or renewal of a permit
33 shall be a revocable privilege.

34 (d) *Dispensary location*. — The bureau shall consider
35 the following when issuing a dispensary permit:

36 (1) Geographic location;

37 (2) Regional population;

38 (3) The number of patients suffering from serious
39 medical conditions;

40 (4) The types of serious medical conditions;

41 (5) Access to public transportation;

42 (6) Approval by local health departments;

43 (7) Whether the county has disallowed the location of a
44 grower, processor, or dispensary; and

45 (8) Any other factor the bureau deems relevant.

46 (e) *Application procedure*. — The bureau shall establish
47 a procedure for the fair and objective evaluation of all
48 applications for all medical cannabis organization permits.
49 Such evaluations shall score each applicant numerically
50 according to standards set forth in this chapter.

§16A-6-13. Limitations on permits.

1 (a) The following limitations apply to approval of
2 permits for growers, processors, and dispensaries, subject to
3 the limitations in subsection (b) of this section:

4 (1) The bureau may not issue permits to more than 10
5 growers: *Provided*, That each grower may have up to two
6 locations per permit.

7 (2) The bureau may not issue permits to more than 10
8 processors.

9 (3) The bureau may not issue permits to more than 100
10 dispensaries.

11 (4) The bureau may not issue more than 10 individual
12 dispensary permits to one person.

13 (5) The bureau may not issue more than one individual
14 grower permit to one person.

15 (6) The bureau may not issue more than one individual
16 processor permit to one person.

17 (7) A dispensary may only obtain medical cannabis
18 from a grower or processor holding a valid permit under this
19 act.

20 (8) A grower or processor may only provide medical
21 cannabis to a dispensary holding a valid permit under this
22 act.

23 (9) A person may hold a grower permit, a processor
24 permit, and a dispensary permit, or any combination thereof,
25 concurrently.

26 (b) Before a permit may be issued, the bureau shall
27 obtain the following:

28 (1) A written approval from the board of health for the
29 county in which the permit is to be located and operate
30 business.

31 (2) A written statement from the county commission for
32 the county in which the permit is to be located and conduct
33 business that the county has not voted, pursuant to §16A-7-
34 6 of this code, to disapprove a medical cannabis
35 organization to be located or operate within the county.

ARTICLE 7. MEDICAL CANNABIS CONTROLS.

§16A-7-4. Laboratory.

1 (a) A grower and processor shall contract with an
2 independent laboratory to test the medical cannabis
3 produced by the grower or processor. The bureau shall
4 approve the laboratory and require that the laboratory report
5 testing results in a manner as the bureau shall determine,
6 including requiring a test at harvest and a test at final
7 processing. The possession by a laboratory of medical
8 cannabis shall be a lawful use.

9 (b) All medical cannabis produced pursuant to this
10 chapter shall be subject to testing as directed by the bureau.

11 (c) The bureau shall ensure that there is sufficient testing
12 capacity to meet patient demand.

13 (d) All laboratories providing testing pursuant to this
14 section shall be certified to do so by the Office of
15 Laboratory Services.

ARTICLE 8. DISPENSARIES.

§16A-8-1. Dispensing to patients and caregivers.

1 (a) *General rule.* — A dispensary that has been issued a
2 permit under §16A-6-1 *et seq.* of this code may lawfully
3 dispense medical cannabis to a patient or caregiver upon
4 presentation to the dispensary of a valid identification card
5 for that patient or caregiver. The dispensary shall provide to

6 the patient or caregiver a receipt, as appropriate. The receipt
7 shall include all of the following:

8 (1) The name, address, and any identification number
9 assigned to the dispensary by the bureau.

10 (2) The name and address of the patient and caregiver.

11 (3) The date the medical cannabis was dispensed.

12 (4) Any requirement or limitation by the practitioner as
13 to the form of medical cannabis for the patient.

14 (5) The form and the quantity of medical cannabis
15 dispensed.

16 (b) *Filing with bureau.* — Prior to dispensing medical
17 cannabis to a patient or caregiver, the dispensary shall file
18 the receipt information with the bureau utilizing the
19 electronic tracking system. When filing receipts under this
20 subsection, the dispensary shall dispose of any
21 electronically recorded certification information as
22 provided by rule.

23 (c) *Limitations.* — No dispensary may dispense to a
24 patient or caregiver:

25 (1) A quantity of medical cannabis greater than that
26 which the patient or caregiver is permitted to possess under
27 the certification; or

28 (2) A form of medical cannabis prohibited by this act.

29 (d) *Supply.* — When dispensing medical cannabis to a
30 patient or caregiver, the dispensary may not dispense an
31 amount greater than a 30-day supply until the patient has
32 exhausted all but a seven-day supply provided pursuant to
33 §16A-4-5 of this code.

34 (e) *Verification.* — Prior to dispensing medical cannabis
35 to a patient or caregiver, the dispensary shall verify the
36 information in subsections (d) and (f) of this section by

37 consulting the electronic tracking system included in the
38 bureau's electronic database established under §16A-3-1 of
39 this code and the dispensary tracking system under §16A-7-
40 1 of this code.

41 (f) *Form of medical cannabis.* — Medical cannabis
42 dispensed to a patient or caregiver by a dispensary shall
43 conform to any requirement or limitation set by the
44 practitioner as to the form of medical cannabis for the
45 patient.

46 (g) *Safety insert.* — When a dispensary dispenses
47 medical cannabis to a patient or caregiver, the dispensary
48 shall provide to that patient or caregiver, as appropriate, a
49 safety insert. The insert shall be developed and approved by
50 the bureau. The insert shall provide the following
51 information:

52 (1) Lawful methods for administering medical cannabis
53 in individual doses.

54 (2) Any potential dangers stemming from the use of
55 medical cannabis.

56 (3) How to recognize what may be problematic usage of
57 medical cannabis and how to obtain appropriate services or
58 treatment for problematic usage.

59 (4) How to prevent or deter the misuse of medical
60 cannabis by minors or others.

61 (5) Any other information as determined by the bureau.

62 (h) *Sealed and labeled package.* — Medical cannabis
63 shall be dispensed by a dispensary to a patient or caregiver
64 in a sealed, properly labeled, and child-resistant package.
65 The labeling shall contain the following:

66 (1) The information required to be included in the
67 receipt provided to the patient or caregiver, as appropriate,
68 by the dispensary.

69 (2) The packaging date.

70 (3) Any applicable date by which the medical cannabis
71 should be used.

72 (4) A warning stating:

73 “This product is for medicinal use only. Women should
74 not consume during pregnancy or while breastfeeding
75 except on the advice of the practitioner who issued the
76 certification and, in the case of breastfeeding, the infant’s
77 pediatrician. This product might impair the ability to drive
78 or operate heavy machinery. Keep out of reach of children.”

79 (5) The amount of individual doses contained within the
80 package and the species and percentage of
81 tetrahydrocannabinol and cannabidiol.

82 (6) A warning that the medical cannabis must be kept in
83 the original container in which it was dispensed.

84 (7) A warning that unauthorized use is unlawful and will
85 subject the person to criminal penalties.

86 (8) Any other information required by the bureau.

ARTICLE 9. TAX ON MEDICAL CANNABIS.

§16A-9-1. Tax on medical cannabis.

1 (a) *Tax imposed.* — For the privilege of engaging or
2 continuing within this state in the business of a dispensary
3 of medical cannabis, as defined in §16A-2-1 of this code,
4 there is hereby levied upon and collected from every person
5 exercising the privilege a privilege tax.

6 (b) *Rate and measure of tax.* — The rate of tax imposed
7 by this section shall be 10 percent of the gross receipts the
8 dispensary receives or accrues during the reporting period,
9 depending upon its method of accounting for federal income
10 tax purposes, from the sale of medical cannabis to a patient
11 or to a caregiver. The tax imposed by this section shall not

12 be added by the dispensary as a separate charge or line item
13 on any sales slip, invoice, receipt, other statement, or
14 memorandum of the price paid by a patient, or caregiver.

15 (c) *Definitions.* — For purposes of this article:

16 (1) “Gross receipts” means and includes the gross
17 receipts, however denominated, derived from the sale,
18 distribution, or transfer of medical cannabis, without any
19 deduction on account of the cost of property sold; the cost
20 of materials used to grow, process, or sell the medical
21 cannabis; labor costs, taxes, royalties paid in cash or in kind,
22 or otherwise; interest or discount paid; or any other expense,
23 however denominated.

24 (2) “Person” includes any natural person, corporation,
25 partnership, limited liability company, or other business
26 entity as those terms are defined in §11-1-1 *et seq.* of this
27 code.

28 (d) *Payment of tax and reports.* — Every person subject
29 to the tax imposed by this section shall make quarterly
30 payments under this section for each calendar quarter at the
31 rate prescribed in subsection (b) of this section on the gross
32 receipts received or accrued for the calendar quarter,
33 depending upon the person’s method of accounting for
34 federal income tax purposes. The tax shall be due and
35 payable on the 20th day of January, April, July, and October
36 for the preceding calendar quarter. When the payment of tax
37 is due, the person shall file a tax return in a form prescribed
38 by the Tax Commissioner. The Tax Commissioner may
39 require such forms, schedules, and returns and impose such
40 filing and remittance requirements as may be necessary or
41 convenient for the efficient administration of taxes imposed
42 by this section.

43 (e) *Electronic filing and payment.* — The taxes imposed
44 by this section shall be paid to the Tax Commissioner by
45 electronic funds transfer, unless electronic payment is
46 prohibited by state or federal law. Tax returns required by

47 this section shall be filed electronically with the Tax
48 Commissioner.

49 (f) *Liability for reporting and payment of tax.* — If any
50 dispensary does not renew its permit, gives up its permit,
51 loses its permit to operate a dispensary, or otherwise ceases
52 business then any tax, additions to tax, penalties, and
53 interest imposed by this article and by §11-10-1 *et seq.* of
54 this code shall become due and payable immediately and the
55 dispensary shall make a final return or returns and pay any
56 tax which is due within 30 days after not renewing its
57 permit, giving up its permit, losing its permit to operate a
58 dispensary, or otherwise ceasing business. The unpaid
59 amount of any tax is a lien upon the property of the
60 dispensary and of its owners.

61 (g) *Deposits of proceeds.* — All money received from
62 the tax imposed under this section, including any interest
63 and additions to tax paid under §11-10-1 *et seq.*, less the
64 amount of any refunds, shall be deposited into the Medical
65 Cannabis Program Fund.

66 (h) *Exemption.* — Sales of medical cannabis shall not be
67 subject to the taxes imposed by §11-15-1 *et seq.* and §11-
68 15A-1 *et seq.* of this code if gross receipts from the sale
69 thereof are included in the measure of tax under this section
70 and the tax has been paid as provided in this section.
71 Additionally, sales of medical cannabis shall not be subject
72 to a special district excise tax imposed by a county or
73 municipality pursuant to this code, or to a county or
74 municipal sales tax.

75 (i) *Information.* —

76 (1) Persons subject to the tax imposed by this section
77 shall provide to the Tax Commissioner any information the
78 Tax Commissioner may require to administer, collect, and
79 enforce the tax imposed by this section.

80 (2) Notwithstanding any provision of §11-10-1 *et seq.*
81 of this code or of this article to the contrary, the Tax
82 Commissioner, the bureau, and the Secretary of Health and
83 Human Resources may enter into written agreements
84 pursuant to which the Tax Commissioner will disclose to
85 designated employees of the bureau and the Secretary of
86 Health and Human Resources, whether a particular grower,
87 processor, or dispensary is in good standing with the Tax
88 Commissioner, and the bureau and the secretary will
89 disclose to designated employees of the Tax Commissioner
90 information a grower, processor, or dispensary provides to
91 the bureau and the secretary pursuant to this code. Tax
92 information disclosed pursuant to a written agreement shall
93 remain confidential in the hands of the receiver and shall not
94 be disclosable under §29B-1-1 *et seq.* of this code. To the
95 extent feasible, this information should be shared or
96 exchanged electronically.

97 (j) *Rules.* — The Tax Commissioner may promulgate, in
98 accordance with the provisions of §29A-3-1 *et seq.* of this
99 code, such procedural, interpretive, or legislative rules,
100 including emergency rules, as the Tax Commissioner may
101 deem necessary or convenient for the efficient
102 administration of taxes imposed by this §16A-9-1 of this
103 code.

§16A-9-3. Tax on medical cannabis crimes and penalties.

1 Notwithstanding any provision in §11-9-1 *et seq.* of this
2 code to the contrary, each and every provision of the West
3 Virginia Tax Crimes and Penalties Act set forth in §11-9-1
4 *et seq.* of this code shall apply to the tax imposed by §16A-
5 9-1 *et seq.* of this code with like effect as if said act were
6 applicable only to the tax imposed by §16A-9-1 *et seq.* of
7 this code and were set forth in extenso in §16A-9-1 *et seq.*
8 of this code.

§16A-9-4. Procedure and administration of the tax on medical cannabis.

1 Notwithstanding any provision of §11-10-1 *et seq.* of
2 this code or any other provision of this code to the contrary,
3 each and every provision of the West Virginia Tax
4 Procedure and Administration Act set forth in §11-10-1 *et*
5 *seq.* of this code shall apply to the tax imposed by §16A-9-
6 1 *et seq.* with like effect as if the said West Virginia Tax
7 Procedure and Administration Act were applicable only to
8 the tax imposed by §16A-9-1 *et seq.* of this code and were
9 set forth in extenso in §16A-9-1 *et seq.* of this code.

ARTICLE 10. ADMINISTRATION.**§16A-10-6. Emergency rules.**

1 (a) *Promulgation.* — In order to facilitate the prompt
2 implementation of this act, the bureau may promulgate
3 emergency rules that shall expire not later than two years
4 following the publication of the emergency rule.

5 (b) *Expiration.* — The bureau's authority to adopt
6 emergency rules under subsection (a) of this section shall
7 expire July 1, 2021. Rules adopted after this period shall be
8 promulgated as provided by law.

9 (c) *Publication.* — The bureau shall begin publishing
10 emergency rules in the State Register no later than six
11 months after the effective date of this section.

ARTICLE 11. MEDICAL CANNABIS ADVISORY BOARD.**§16A-11-1. Advisory board.**

1 (a) The Medical Cannabis Advisory Board is
2 established within the bureau. The advisory board shall
3 consist of the following members:

4 (1) The commissioner or a designee.

5 (2) The Superintendent of the West Virginia State
6 Police or a designee.

7 (3) Four physicians licensed to practice in the state to be
8 appointed by the State Medical Association with one from
9 each of the following specialized medicine:

10 (A) Family Practice/Neurologist/General Practitioner.

11 (B) Pain Management.

12 (C) Oncologist/Palliative Care.

13 (D) Psychiatrist.

14 (4) Two physicians who are licensed pursuant to §30-
15 14-1 *et seq.* of this code appointed by the West Virginia
16 Osteopathic Association.

17 (5) One pharmacist licensed to practice in the state, to
18 be designated by the Board of Pharmacy.

19 (6) One pharmacologist who has experience in the
20 science of cannabis and a knowledge of the uses, effects,
21 and modes of actions of drugs, to be appointed by the
22 Governor.

23 (7) One member who is a horticulturalist, to be
24 designated by the West Virginia Commissioner of
25 Agriculture.

26 (8) One member designated by the West Virginia
27 Association of Alcoholism and Drug Counselors.

28 (9) An attorney licensed in the state who is
29 knowledgeable about medical cannabis laws.

30 (10) One member appointed by the West Virginia
31 Prosecuting Attorneys Institute.

32 (11) One member appointed by the Governor, who shall
33 be a patient, a family or household member of a patient, or
34 a patient advocate.

35 (b) *Terms.* — Except as provided under subsection (g)
36 of this section, the members shall serve a term of four years
37 or until a successor has been appointed and qualified, but no
38 longer than six months beyond the four-year period.

39 (c) *Chair.* — The commissioner, or a designee, shall
40 serve as chair of the advisory board.

41 (d) *Voting; quorum.* — A majority of the members shall
42 constitute a quorum for the purpose of organizing the
43 advisory board, conducting its business, and fulfilling its
44 duties. A vote of the majority of the members present shall
45 be sufficient for all actions of the advisory board unless the
46 bylaws require a greater number.

47 (e) *Attendance.* — A member of the advisory board who
48 fails to attend three consecutive meetings shall be deemed
49 vacant, unless the commissioner, upon written request from
50 the member, finds that the member should be excused from
51 a meeting for good cause. A member who cannot be
52 physically present may attend meetings via electronic
53 means, including video conference.

54 (f) *Governance.* — The advisory board shall have the
55 power to prescribe, amend, and repeal bylaws governing the
56 manner in which the business of the advisory board is
57 conducted and the manner in which the duties granted to it
58 are fulfilled. The advisory board may delegate supervision
59 of the administration of advisory board activities to an
60 administrative commissioner and other employees of the
61 bureau as the commissioner shall appoint.

62 (g) *Initial terms.* — The initial terms of members
63 appointed under subsection (a) of this section shall be for
64 terms of one, two, three, or four years, the particular term of
65 each member to be designated by the commissioner at the

66 time of appointment. All other members shall serve for a
67 term of four years.

68 (h) *Vacancy*. — In the event that any member appointed
69 under subsection (a) of this section shall die or resign, or
70 otherwise become disqualified during the member's term of
71 office, a successor shall be appointed in the same way and
72 with the same qualifications as set forth in this section and
73 shall hold office for the unexpired term. An appointed
74 member of the advisory board shall be eligible for
75 reappointment.

76 (i) *Expenses*. — A member shall receive the amount of
77 reasonable travel, hotel, and other necessary expenses
78 incurred in the performance of the duties of the member in
79 accordance with state rules but shall receive no other
80 compensation for the member's service on the board.

81 (j) *Duties*. — The advisory board shall have the
82 following duties:

83 (1) To examine and analyze the statutory and regulatory
84 law relating to medical cannabis within this state.

85 (2) To examine and analyze the law and events in other
86 states and the nation with respect to medical cannabis.

87 (3) To accept and review written comments from
88 individuals and organizations about medical cannabis.

89 (4) To issue, two years after the effective date of this
90 section, a written report to the Governor, the Senate, and the
91 House of Delegates.

92 (5) The written report under subdivision (4) of this
93 subsection shall include recommendations and findings as
94 to the following:

95 (A) Whether to change the types of medical
96 professionals who can issue certifications to patients.

97 (B) Whether to change, add, or reduce the types of
98 medical conditions which qualify as serious medical
99 conditions under this act.

100 (C) Whether to change the form of medical cannabis
101 permitted under this act.

102 (D) Whether to change, add, or reduce the number of
103 growers, processors, or dispensaries.

104 (E) How to ensure affordable patient access to medical
105 cannabis.

106 (F) Whether to permit medical cannabis to be dispensed
107 in dry leaf or plant form, for administration by vaporization.

108 (6) The final written report under this section shall be
109 adopted at a public meeting.

ARTICLE 15. MISCELLANEOUS PROVISIONS.

§16A-15-10. State employee actions and federal law.

1 (a) No cause of action exists against the state officers
2 and employees in their personal capacities, while acting
3 within the scope of duties contemplated by §16A-1-1 *et seq.*
4 of this code. Any recovery for claims or actions arising from
5 this section is limited solely to the proceeds of available
6 insurance coverage.

7 (b) To the extent permitted by law, the State of West
8 Virginia shall defend state officers and employees involved
9 in implementing the provisions of §16A-1-1 *et seq.* of this
10 code against any claims, charges, liabilities, or expenses and
11 shall indemnify and hold harmless state officers and
12 employees involved in implementing the provisions of
13 §16A-1-1 *et seq.* of this code provided they acted within the
14 scope of their duties or employment in accordance with the
15 act, including without limitation, defense in any state,
16 federal, or local court and payment of the amount of any

17 judgment obtained, damages, legal fees, expenses, and any
18 other expenses incurred.

ARTICLE 16. EFFECTIVE DATE.

§16A-16-1. Effective date.

1 (a) Unless excepted in subsection (b) or (c) of this
2 section, the provisions of this act shall be effective upon
3 passage.

4 (b) The provisions of §16A-12-1 *et seq.* of this code, and
5 any other criminal provisions or penalties contained in this
6 act, shall not be effective until 90 days from passage of
7 Senate Bill 386 during the 2017 regular session.

8 (c) Notwithstanding any provision of this chapter to the
9 contrary, no identification cards may be issued to patients
10 until July 1, 2019. The bureau may take sufficient steps
11 through rule to implement the preliminary provisions in
12 preparation for implementation of the provisions of this act.

13 (d) Notwithstanding the prohibition contained in
14 subsection (c) of this section on the issuance of
15 identification cards until July 1, 2019, the bureau may
16 implement a process for the preregistration of patients with
17 a serious medical condition who have been issued a
18 certification approved by the bureau and to a caregiver
19 designated by the patient: *Provided*, That a patient who is
20 preregistered must nevertheless comply with the provisions
21 of §16A-5-1 of this code and may not be issued an
22 identification card necessary to obtain and use medical
23 cannabis as authorized by this act until July 1, 2019.

●

CHAPTER 40

**(H. B. 144 - By Delegates Hanshaw (Mr. Speaker),
Miley and Howell)
[By Request of the Executive]**

[Passed June 24, 2019; in effect ninety days from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-1n, relating to creating a pilot program to encourage utility infrastructure development to certain lands; declaring certain legislative findings; defining certain terms; requiring the Secretary of Commerce to consider certain applications; allowing the secretary to certify sites that do not currently have adequate public utility services from one or more public utilities regulated by the Public Service Commission as having potential for industrial development; requiring the Public Service Commission to consider certain multi-year comprehensive plans for infrastructure development to construct public utility infrastructure and provide services to industrial development sites as certified by the secretary, in lieu of a proceeding pursuant to §24-2-11 of the code; requiring the applicant to publish the anticipated rates and, if any, rate increase under the proposal, by average percentage and dollar amount for customers within a class of service, as a Class I legal advertisement; providing the Public Service Commission with the authority to allow certain public utility infrastructure projects to recover certain costs via ratemaking; providing for the expiration of certain statutory provisions; and providing for an effective date of the provisions of this section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**§24-2-1n. West Virginia Business Ready Sites Program.**

1 (a) The Legislature finds and declares that:

2 (1) Presently, West Virginia's available industrial sites
3 lack competitiveness with industrial sites in surrounding
4 states due in part to the lack of presently constructed,
5 adequate utility infrastructure serving sites having industrial
6 potential;

7 (2) Having construction-ready industrial sites with
8 adequately developed utility infrastructure will increase the
9 state's potential to attract new industrial projects to the state
10 and advance the state's economic development efforts;

11 (3) Incentivizing utilities to construct adequate public
12 utility infrastructure and provide services to sites identified
13 as having industrial potential will increase the likelihood
14 that such sites are developed; and

15 (4) Responsibly increasing the number of industrial
16 sites with adequate and fully developed utility services is in
17 the public interest of the state.

18 (b) Definitions. – For the purpose of this section:

19 (1) "Industrial Development Agency" means any
20 incorporated organization, foundation, association, or
21 agency to whose members or shareholders no profit inures,
22 which has as its primary function the promotion,
23 encouragement, and development of industrial, commercial,
24 manufacturing, and tourist enterprises or projects in this
25 state;

26 (2) "Industrial Development Site" means a land
27 development containing a minimum of 50 contiguous acres
28 that is identified by the secretary as having potential for
29 industrial development and that does not currently have

30 adequate public utility services from one or more public
31 utilities regulated by the Public Service Commission;

32 (3) “Secretary” means the Secretary of the Department
33 of Commerce; and

34 (4) “Utility” means electricity, natural gas, water, or
35 sewage service provided by a public utility regulated by the
36 Public Service Commission.

37 (c) The secretary shall identify a pilot program known
38 hereafter as “The West Virginia Business Ready Sites
39 Program” for the purpose of promoting economic
40 development in certain areas of the state by facilitating the
41 construction of utility infrastructure necessary to increase
42 the attractiveness of such sites for industrial development
43 within the state.

44 (d) An industrial development agency may identify a
45 potential industrial development site and apply to the
46 secretary for approval of the site as an industrial
47 development site.

48 (e) Upon receipt of the application, the secretary shall
49 determine whether the potential industrial development site
50 has the attributes to accomplish the public purposes of this
51 section; and, upon determining that the site has such
52 attributes, the secretary may certify the site as an industrial
53 development site and communicate such certification to the
54 Public Service Commission.

55 (f) After the Public Service Commission receives the
56 certification described in subsection (e) of this section,
57 public utilities may file with the Public Service Commission
58 an application for a multi-year comprehensive plan for
59 infrastructure development to construct public utility
60 infrastructure and provide services to industrial
61 development sites. Subject to commission review and
62 approval, a plan may be amended and updated by the public
63 utility as circumstances warrant. The recovery of costs in

64 support of the plans shall be allowed in the manner set forth
65 in this section if the proposed plans have been found to be
66 prudent and useful.

67 (g) The application submitted to the Public Service
68 Commission under subsection (f) of this section is in lieu of
69 a proceeding pursuant to §24-2-11 of this code and shall
70 contain the following:

71 (1) A description of the infrastructure program, in such
72 detail as the Public Service Commission prescribes, and the
73 projected annual amount in approximate line sizes and feet,
74 general location, type, and projected installation timing of
75 the facilities that the applicant proposes to replace,
76 construct, or improve;

77 (2) The projected net cost, on an annual basis, of the
78 replacement, construction, or improvements;

79 (3) The projected start date for the infrastructure
80 program;

81 (4) The projected numbers of potential new customers
82 that may be served by the infrastructure program and the
83 projected annual demand for public utility services of the
84 customers;

85 (5) The projected debt for the infrastructure program
86 funding and the projected capital structure for infrastructure
87 program funding;

88 (6) A proposed full and timely cost recovery mechanism
89 consistent with this section; and

90 (7) Other information the applicant considers relevant
91 or the Public Service Commission requires.

92 (h) Upon filing of the application, the applicant shall
93 publish, in the form the Public Service Commission directs,
94 which form shall include, but not be limited to, the
95 anticipated rates and, if any, rate increase under the

96 proposal, by average percentage and dollar amount for
97 customers within a class of service, as a Class I legal
98 advertisement in compliance with the provisions of §59-3-1
99 *et seq.* of this code, the publication area to be each county
100 in which service is provided by the public utility, a notice of
101 the filing of the application, and that the commission shall
102 hold a hearing on the application within 90 days of the
103 notice; unless no opposition to the rate change is received
104 by the commission within one week of the proposed hearing
105 date, in which case the hearing can be waived, and issue a
106 final order within 150 days of the application filing date.

107 (i) Upon notice and hearing, if required by the Public
108 Service Commission, the commission shall approve the
109 infrastructure program and allow expedited recovery of
110 costs related to the expenditures as provided in subsection
111 (j) of this section if the commission finds that the
112 expenditures and the associated rate requirements are just,
113 reasonable, and are not contrary to the public interest:
114 *Provided*, That the commission may approve infrastructure
115 programs undertaken in connection with a maximum of 10
116 industrial development sites under this program: *Provided*,
117 *however*, That no more than four industrial development
118 sites shall be located in any one congressional district, as
119 such congressional districts are defined in §1-2-3 of this
120 code on the effective date of this section: *Provided further*,
121 That if the number of congressional districts is reduced to
122 two, that no more than five industrial development sites
123 shall be located in any one congressional district.

124 (j) Upon Public Service Commission approval, utilities
125 will be authorized to implement the infrastructure programs
126 and to recover related incremental costs, net of contributions
127 to recovery of return, operation and maintenance,
128 depreciation and tax expenses directly attributable to the
129 infrastructure program served by the infrastructure program
130 investments, if any, as provided in the following:

131 (1) An allowance for return shall be calculated by
132 applying a rate of return to the average planned net

133 incremental increase to rate base attributable to the
134 infrastructure program for the coming year, considering the
135 projected amount and timing of expenditures under the
136 infrastructure program plus any expenditures in previous
137 years of the infrastructure program. The rate of return shall
138 be determined by utilizing the rate of return on equity
139 authorized by the Public Service Commission in the public
140 utility's most recent rate case proceeding or in the case of a
141 settled rate case, a rate of return on equity as determined by
142 the commission, and the projected cost of the public utility's
143 debt during the period of the infrastructure program to
144 determine the weighted cost of capital based upon the public
145 utility's capital structure.

146 (2) Income taxes applicable to the return allowed on the
147 infrastructure program shall be calculated at the statutory
148 tax rate for inclusion in rates.

149 (3) Incremental operation and maintenance,
150 depreciation, and property tax expenses directly attributable
151 to the infrastructure program shall be estimated for the
152 upcoming year.

153 (4) Following Public Service Commission approval of
154 its infrastructure program, a public utility shall place into
155 effect rates that include an increment that recovers the
156 allowance for return, related income taxes at the statutory
157 rate, operation and maintenance, depreciation, and property
158 tax expenses associated with the public utility's estimated
159 infrastructure program investments for the upcoming year,
160 net of contributions to recovery of those incremental costs
161 provided by new customers served by the infrastructure
162 program investments, if any. In each year subsequent to the
163 order approving the infrastructure program and the
164 incremental cost recovery increment, the public utility shall
165 file a petition with the Public Service Commission setting
166 forth a new proposed incremental cost recovery increment
167 based on investments to be made in the subsequent year,
168 plus any under-recovery or minus any over-recovery of

169 actual incremental costs attributable to the infrastructure
170 program investments, for the preceding year.

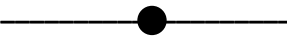
171 (5) The facilities installed in an application approved by
172 the Public Service Commission shall be considered used
173 and useful as of the date of construction expenditure for rate
174 recovery.

175 (k) The public utility may make any accounting accruals
176 necessary to establish a regulatory asset or liability through
177 which actual incremental costs incurred and costs recovered
178 through the rate mechanism are tracked.

179 (l) Utilities may defer incremental operation and
180 maintenance expenditures attributable to regulatory and
181 compliance-related requirements introduced after the public
182 utility's last rate case proceeding and not included in the
183 public utility's current rates. In a future rate case, the Public
184 Service Commission may allow recovery of the deferred
185 costs amortized over a reasonable period of time to be
186 determined by the commission provided the commission
187 finds that the costs were reasonable and prudently incurred
188 and were not reflected in rates in prior rate cases.

189 (m) The provisions of this section shall expire on
190 December 31, 2024. The expiration of this section shall not
191 affect the full and timely cost recovery of constructing a
192 project that is commenced pursuant to this section prior to
193 such date.

194 (n) The provisions of this section are effective upon
195 passage.



CHAPTER 41

**(Com. Sub. for H. B. 193 - By Delegates Ellington,
Linville, Waxman, Foster, Howell, Dean,
Harshbarger, Summers, Hamrick, Bibby and
Cooper)**

[Passed July 22, 2019; in effect ninety days from passage.]

AN ACT to amend and reenact §18A-2-7a of the Code of West Virginia, 1931, as amended, relating to the statewide school personnel job bank; expanding the purpose of the statewide job bank to include the recruitment and reemployment of professional experienced personnel; requiring that a total compensation statement be contained within a job posting on the statewide job bank; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-7a. Statewide job bank.

1 (a) The state board shall establish and maintain a
2 statewide job bank to assist the recruitment and
3 reemployment of experienced professional personnel. The
4 job bank shall consist of the following for each county:

5 (1) A list of the names, qualifications, and contact
6 information of all professional personnel who have been
7 terminated because of a reduction in force, except personnel
8 who have requested in writing that they not be listed in the
9 job bank;

10 (2) A list of professional positions for which the county
11 is seeking applicants; and

12 (3) A total compensation statement for each listed
13 position.

14 (b) The job bank shall be accessible electronically to
15 each county and to individuals on a read only basis, except
16 that each county shall have the capability of editing
17 information for the county and shall be responsible for
18 maintaining current information on the county lists.

19 (c) The following terms are defined as follows:

20 (1) "Direct compensation" means base salary and
21 incentives that are provided regularly and consistently.

22 (2) "Indirect compensation" means any noncash benefit
23 provided to an employee, including, but not limited to:

24 (A) Health insurance;

25 (B) Dental insurance;

26 (C) Vision insurance;

27 (D) Life insurance;

28 (E) Disability income protection;

29 (F) Retirement benefits;

30 (G) Employer student loan contributions or other
31 employee assistance programs;

32 (H) Educational benefits;

33 (I) Childcare;

34 (J) Relocation benefits; and

35 (K) Vacation leave, sick leave, and any other form of
36 paid time-off.

37 (3) "Total compensation statement" means a list of
38 direct and indirect compensation provided or offered for a

39 position, including an itemized list of the types of
40 compensation provided or offered and a cumulative total of
41 the value of all compensation provided or offered.



CHAPTER 42

**(S. B. 1009 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed May 20, 2019; in effect from passage.]
[Approved by the Governor on May 29, 2019.]

AN ACT to amend and reenact §18C-3-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18C-3-5, all relating to establishing health professionals student loan programs; providing legislative findings and purpose; establishing a loan repayment program for mental health providers; providing for in-state tuition rates to out-of-state medical students who agree to practice for a specific time within West Virginia; establishing the program eligibility requirements; setting forth repayment schedules; creating application procedures; establishing violations; providing for civil penalties for the failure to complete the required service; creating special revenue accounts; and providing for specific policy provisions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

**§18C-3-3. Health Sciences Service Program; establishment;
administration; eligibility.**

1 (a) There is continued a special revolving fund account
2 under the Higher Education Policy Commission in the State
3 Treasury formerly known as the Health Sciences
4 Scholarship Fund. The fund shall be used to accomplish the
5 purposes of this section. The fund consists of any of the
6 following:

7 (1) All unexpended health sciences scholarship funds on
8 deposit in the State Treasury on the effective date of this
9 section;

10 (2) Appropriations as may be provided by the
11 Legislature;

12 (3) Repayments, including interest as set by the Vice
13 Chancellor for Health Sciences, collected from program
14 award recipients who fail to practice or teach in West
15 Virginia under the terms of an award agreement or the
16 Health Sciences Scholarship Program previously
17 established by this section; and

18 (4) Amounts that may become available from other
19 sources.

20 Balances remaining in the fund at the end of the fiscal
21 year do not expire or revert to the general revenue. All costs
22 associated with the administration of this section shall be
23 paid from the Health Sciences Service Program Fund under
24 the direction of the Vice Chancellor for Health Sciences.

25 (b) Award preference is given to West Virginia
26 residents. An individual is eligible for consideration for a
27 Health Sciences Service Program award if the individual:

28 (1) Either:

29 (A) Is a fourth-year medical student at the Marshall
30 University School of Medicine, West Virginia School of
31 Osteopathic Medicine, or West Virginia University School
32 of Medicine who has been accepted in a primary care or

33 emergency medicine internship/residency program in West
34 Virginia; or

35 (B) Is enrolled in an approved education program at a
36 West Virginia institution leading to a degree or certification
37 in the field of nurse practitioner, nurse educator, nurse
38 midwife, physician assistant, dentist, pharmacist, physical
39 therapist, doctoral clinical psychologist, licensed
40 independent clinical social worker, or other disciplines
41 identified as shortage fields by the Vice Chancellor for
42 Health Sciences; and

43 (2) Signs an agreement to practice for at least two years
44 in an underserved area of West Virginia or, if pursuing a
45 master's degree in nursing, signs an agreement to teach at
46 least two years for a school of nursing located in West
47 Virginia, as may be determined by the Vice Chancellor for
48 Health Sciences, after receiving the master's degree.

49 (c) Program awards shall be in an amount set by the
50 Higher Education Policy Commission of at least \$20,000 for
51 medical and dental students and at least \$10,000 for all
52 others and may be awarded by the Vice Chancellor for
53 Health Sciences, with the advice of an advisory panel, from
54 the pool of all applicants with a commitment to practice in
55 an underserved area of West Virginia. This section does not
56 grant or guarantee any applicant any right to a program
57 award.

58 (d) A program award recipient who fails to practice in
59 an underserved area of West Virginia within six months of
60 the completion of his or her training, or who fails to
61 complete his or her training or required teaching, is in
62 breach of contract and is liable for repayment of the program
63 award and any accrued interest. The granting or renewal of
64 a license to practice in West Virginia or to reciprocal
65 licensure in another state based upon licensure in West
66 Virginia is contingent upon beginning payment and
67 continuing payment until complete repayment of the award
68 and any accrued interest. A license, renewal, or reciprocity

69 may not be granted to any person whose repayment is in
70 arrears. The appropriate regulatory board shall inform all
71 other states where a recipient has reciprocated based upon
72 West Virginia licensure of any refusal to renew licensure in
73 West Virginia as a result of failure to repay the award. This
74 provision shall be explained in bold type in the award
75 contract. Repayment terms, not inconsistent with this
76 section, shall be established by the Vice Chancellor for
77 Health Sciences pursuant to the rule required by this section.

78 (e) (1) There is created a student loan repayment
79 program to be administered by the Higher Education Policy
80 Commission. The loan repayment program shall help repay
81 the student loans for mental health providers who provide
82 therapy and counseling services and who reside in West
83 Virginia and work in an underserved area of West Virginia
84 for up to three years beginning January 1, 2020. Individuals
85 participating in the loan repayment program may be eligible
86 to receive up to \$30,000 to be dispersed as follows:

87 (A) A participant may receive a loan repayment
88 program award of up to \$10,000 each year in exchange for
89 the participant completing one year of practice in an
90 underserved area.

91 (B) A participant may not receive a program award for
92 more than three years of practice.

93 (C) A participant must direct each award received
94 toward the repayment of his or her educational loans.

95 (2) There is created a special revenue fund account
96 under the Higher Education Policy Commission in the State
97 Treasury known as the Mental Health Provider Student
98 Loan Repayment Fund. The fund shall be used to
99 accomplish the purposes of this subsection. The fund shall
100 consist of appropriations as may be provided by the
101 Legislature. Any moneys remaining in the fund at the close
102 of a fiscal year shall be carried forward for use in the next
103 fiscal year.

104 (f) *Rule.* — The Higher Education Policy Commission
105 shall promulgate a rule pursuant to §29A-3A-1 *et seq.* of this
106 code to implement and administer this section.

107 (g) As used in this section:

108 (1) “Training” means:

109 (A) The entire degree program or certification program
110 for nurse midwives, nurse practitioners, nurse educators,
111 physician assistants, dentists, pharmacists, physical
112 therapists, doctoral clinical psychologists, licensed
113 independent clinical social workers, and other disciplines
114 identified as shortage fields by the Vice Chancellor for
115 Health Sciences; or

116 (B) Completion of a degree program and an approved
117 residency/internship program for students pursuing a degree
118 in medicine or osteopathy, or as otherwise may be
119 designated for such students in the rule required by this
120 section.

121 (2) “Underserved area” means any primary care health
122 professional shortage area located in the state as determined
123 by the Bureau for Public Health or any additional health
124 professional shortage area, including an emergency
125 medicine professional determined by the Vice Chancellor
126 for Health Sciences.

§18C-3-5. Nonresident Medical Student Tuition Regularization Program.

1 (a) The Legislature finds as follows:

2 (1) There is a critical need for additional primary care
3 physicians practicing in West Virginia;

4 (2) West Virginia has an aging population and an
5 increasing need for recruiting primary care physicians, and
6 placing primary care physicians in rural areas of the state;

7 (3) West Virginia has a historically low retention rate of
8 state resident medical students following graduation;

9 (4) Efforts by the medical schools in West Virginia to
10 increase class sizes as a means of increasing the number of
11 physicians practicing in the state have been largely
12 ineffective;

13 (5) The primary care field of practice yields a lower
14 wage than other medical specialties and maintains an
15 extreme shortage of practicing physicians, particularly in
16 rural areas of the state;

17 (6) The high cost of nonresident medical education
18 tuition, and resulting high level of debt incurred by students,
19 often prohibit nonresident graduates who remain in the state
20 from entering a primary care practice;

21 (7) Many nonresident medical students in West Virginia
22 have indicated that they would be willing to remain in the
23 state as a practicing physician if it was affordable;

24 (8) A waiver of the state resident to nonresident tuition
25 rate differential would offset the significant student debt
26 load incurred by nonresident medical school graduates;

27 (9) Beginning a medical practice with up to four years
28 committed to practicing medicine in a specific area has a
29 strong likelihood of influencing a nonresident medical
30 school graduate to remain in that area following the service
31 commitment;

32 (10) Investing resources, developing professional
33 networks, and creating community ties all serve to create
34 permanent connections to an area for an individual who is
35 not originally from that area; and

36 (11) Attracting practicing physicians to rural and
37 medically underserved areas of the state will further attract
38 related health care professionals that support a medical

39 practice or facility and will expand the economic and job-
40 growth potential of such areas.

41 (b) It is the purpose of this section to offer nonresident
42 medical students a partial tuition waiver as a means of
43 recruiting practicing physicians to underserved areas, and to
44 primary care and practitioner shortage fields in West
45 Virginia.

46 (c) There is created the Nonresident Medical Student
47 Tuition Regularization Program to be administered by the
48 Vice Chancellor for Health Sciences in cooperation with the
49 deans of the three medical schools in the state.

50 (1) Two nonresident medical students from each
51 medical school in the state are selected annually to
52 participate in the program subject to the exception provided
53 in subsection (f) of this section.

54 (2) Each student selected is charged the state resident
55 tuition rate for each academic year he or she is enrolled in
56 the program and has the cost differential between the
57 resident and nonresident rates waived by the institution at
58 which he or she is enrolled.

59 (3) For each academic year that a medical student
60 participates in the program, he or she shall commit to render
61 services for one calendar year as a medical doctor or a
62 doctor of osteopathy in this state in a medically underserved
63 area or in a primary care or specialty practice or field in
64 which there is a shortage of physicians, as determined by
65 the Division of Health at the time the application for the
66 program is submitted. The service commitment begins
67 within six months after graduation from an accredited
68 residency program.

69 (4) Once selected to participate in the program, a student
70 may continue in the program for as long as he or she
71 continues to meet the eligibility criteria in subsection (d) of
72 this section, for a maximum of four academic years.

73 (d) An individual is eligible for enrollment or
74 continuation in the program if he or she meets the following
75 criteria:

76 (1) Is enrolled or accepted for enrollment at the West
77 Virginia University School of Medicine, the Marshall
78 University School of Medicine, or the West Virginia School
79 of Osteopathic Medicine in a program leading to the degree
80 of Medical Doctor (M.D.) or Doctor of Osteopathy (D.O.);

81 (2) Has not yet received one of the degrees provided in
82 subdivision (1) of this subsection;

83 (3) Satisfies the academic standards established by the
84 program rule;

85 (4) Is not in default of any previous student loan;

86 (5) Is a nonresident student who is charged nonresident
87 tuition rates;

88 (6) Commits to render services for one calendar year as
89 a Medical Doctor or a Doctor of Osteopathy in this state in
90 a medically underserved area or in a primary care or
91 specialty practice or field in which there is a shortage of
92 physicians for each academic year for which he or she
93 participates in the program;

94 (7) Submits to the commission:

95 (A) An application for enrollment in the program as
96 provided by the commission; and

97 (B) A sworn statement of commitment to service on a
98 form provided by the commission for that purpose; and

99 (8) Other criteria as established by the program rule.

100 (e) (1) A program participant violates the service
101 commitment if he or she:

102 (A) Fails to render services as a Medical Doctor or
103 Doctor of Osteopathy in accordance with the sworn
104 statement he or she submitted to the commission. This
105 includes failure to begin serving within six months of
106 completing an accredited residency program, or failure to
107 complete each one-year term to which he or she committed
108 to serve; or

109 (B) Fails to complete or remain enrolled in the medical
110 education program for which he or she obtained the tuition
111 waiver.

112 (2) A program participant who violates the service
113 commitment is subject to the following:

114 (A) He or she shall repay the amount of nonresident
115 tuition charges waived plus interest at a rate of five percent
116 per annum;

117 (B) The granting or renewal of a license to practice
118 medicine in West Virginia or to reciprocal licensure in
119 another state based upon licensure in West Virginia is
120 contingent upon commencing payment and continuing
121 payment until full repayment of the obligation if the
122 recipient fails to complete the required practice
123 commitment. A license, renewal, or reciprocity may not be
124 granted to an individual whose repayments are in arrears.
125 The West Virginia Board of Medicine shall inform all other
126 states where a recipient has reciprocated based upon West
127 Virginia licensure of any refusal to renew licensure in West
128 Virginia as a result of failure to repay the tuition amount.

129 (f) The commission shall develop policy to provide for:

130 (1) A method for selecting annually the six new students
131 to be enrolled in the program, with priority consideration to
132 applicants in the earliest academic years of the medical
133 education program;

134 (2) A method for selecting greater or fewer than two
135 participants from a single medical school in any year where
136 two suitable applicants are not available at each school;

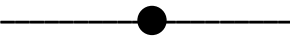
137 (3) A method for the applicant to select the service area
138 or specialty to which he or she commits to practice
139 medicine;

140 (4) A method for developing a mutually agreeable
141 modification to the terms of a participant's service
142 commitment regarding the medically underserved area or
143 primary care or specialty practice or field in which he or she
144 committed to serve under circumstances where the Division
145 of Health determines at the time the participant's service
146 commitment is scheduled to commence that the area is no
147 longer medically underserved or that primary care or service
148 specialty is no longer experiencing a physician shortage;

149 (5) Provisions for enforcing sanctions against a
150 participant who fails to satisfy the service commitment; and

151 (6) Such other provisions as the commission considers
152 necessary to administer the program.

153 (g) There is created in the State Treasury a special
154 revenue account to be designated the Nonresident Medical
155 Student Tuition Regularization Fund which is an interest-
156 bearing account that may be invested and retain all earnings.
157 Expenditures from the fund shall be for the purposes set
158 forth in this section and are to be made only in accordance
159 with appropriation by the Legislature and in accordance
160 with §11B-2-1 *et seq.* of this code.



CHAPTER 43

**(H. B. 111 - By Delegates Hanshaw (Mr. Speaker)
and Miley)**

[By Request of the Executive]

[Passed May 20, 2019; in effect from passage.]

[Approved by the Governor on May 29, 2019.]

AN ACT to amend and reenact §11-14C-30 of the Code of West Virginia, 1931, as amended, relating to refunds of excise taxes collected from dealers of petroleum products under certain circumstances; and increasing a cap on the amount of tax that may be refunded for fuels lost through evaporation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-30. Refund of taxes erroneously collected, etc.; refund for gallonage exported or lost through casualty or evaporation; change of rate; petition for refund.

1 (a) The commissioner is hereby authorized to refund
2 from the funds collected under the provisions of this article
3 any tax, interest, additions to tax or penalties which have
4 been erroneously collected from any person.

5 (b) Any supplier, distributor, producer, retail dealer,
6 exporter or importer, while the owner of motor fuel in this
7 state, that loses any invoiced gallons of motor fuel through
8 fire, lightning, breakage, flood or other casualty, which
9 gallons having been previously included in the tax by or for
10 that person, may claim a refund of a sum equal to the
11 amount of the flat rate of the tax levied by section five of
12 this article paid upon the invoiced gallons lost.

13 (c) Any dealer as defined in §47-11C-2 of this code, and
14 any bulk plant in this state that purchases or receives motor
15 fuel in this state upon which the tax levied by section five of
16 this article has been paid, is entitled to an annual refund of the
17 flat rate of the tax levied by section five of this article for
18 invoiced gallons lost through evaporation: *Provided*, That only
19 the owner of the bulk plant that is also the owner of the fuel in
20 the bulk plant may claim this refund for invoiced gallons lost
21 through evaporation. The refund is computed at the flat rate of
22 tax levied per gallon under this article on all invoiced gallons
23 of motor fuel actually lost due to evaporation, not exceeding
24 one percent of the adjusted total accountable gallons,
25 computed as determined by the commissioner.

26 (d) Every supplier, distributor or producer, retail dealer,
27 exporter or importer is entitled to a refund of the flat rate of the
28 tax levied by section five of this article from this state of the
29 amount resulting from a change of rate decreasing the tax
30 under the provisions of this article on motor fuel on hand and
31 in inventory on the effective date of the rate change, which
32 motor fuel has been included in any previous computation by
33 which the tax levied by this article has been paid.

CHAPTER 44

**(H. B. 112 - By Delegates Hanshaw (Mr. Speaker) and
Miley)**

[By Request of the Executive]

[Passed May 20, 2019; in effect from passage.]

[Approved by the Governor on May 29, 2019.]

AN ACT to amend and reenact §11-21-17 and §11-21-17a of the Code of West Virginia, 1931, as amended; to amend and reenact §11-21-37c of said code as contained in Chapter 244, Acts of the Legislature, Regular Session, 2019; and to amend

said code by adding thereto a new section, designated §11-21-12k, all relating generally to the personal income tax; creating additional modification to West Virginia adjusted gross income of shareholder of S corporation, or member of a limited liability company, when engaged in business as a financial organization in this state; setting forth apportionment rules for certain financial organizations; specifying special gross receipts factor; defining terms; making technical corrections; and providing retroactive effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12k. Additional modification reducing federal adjusted gross income for shareholders of S corporations and members of limited liability companies engaged in banking business.

1 (a) For taxable years beginning on and after January 1,
2 2018, the West Virginia adjusted gross income of a taxpayer
3 who is a shareholder of an S corporation, or member of a
4 limited liability company, engaged in business as a financial
5 organization as defined in §11-24-3a(a)(14) of this code, as
6 adjusted pursuant to §11-21-12 of this code, shall be further
7 adjusted by multiplying that portion of the taxpayer's West
8 Virginia adjusted gross income attributable to the taxpayer's
9 proportional share of all items of income, loss, deduction or
10 credit of the S corporation, or limited liability company, as
11 shown on the K-1 received by the taxpayer for the tax year,
12 by a fraction equal to one minus a fraction:

13 (1) The numerator of which is the sum of the average of
14 the monthly beginning and ending account balances of the
15 S corporation, or limited liability company, during the
16 taxable year (account balances to be determined at cost in
17 the same manner that obligations, investments and loans are
18 reported on Schedule L of Federal Form 1120S, or Schedule
19 L of Form 1065) of the following:

20 (A) Obligations or securities of the United States, or of
21 any agency, authority, commission or instrumentality of the
22 United States and any other corporation or entity created
23 under the authority of the United States Congress for the
24 purpose of implementing or furthering an objective of
25 national policy;

26 (B) Obligations or securities of this state and any
27 political subdivision or authority of the state;

28 (C) Investments or loans primarily secured by
29 mortgages, or deeds of trust, on residential property located
30 in this state and occupied by nontransients; and

31 (D) Loans primarily secured by a lien or security
32 agreement on residential property in the form of a mobile
33 home, modular home or double-wide located in this state
34 and occupied by nontransients.

35 (2) The denominator of which is the average of the
36 monthly beginning and ending account balances of the total
37 assets of the S corporation, or limited liability company,
38 which are shown on Schedule L of Federal Form 1120S,
39 which is filed by the S corporation, or on Schedule L of
40 Federal Form 1065, which is filed by the limited liability
41 company, with the Internal Revenue Service: *Provided*,
42 That the adjustment allowed herein shall not be made to the
43 extent that the adjustments provided for in this section are
44 otherwise allowed by §11-21-12 of this code and shall not
45 be made to adjusted gross income of a taxpayer who is a
46 shareholder of an S corporation, or a member of a limited
47 liability company, engaged in banking business if the
48 income of the S corporation, or limited liability company,
49 of which the taxpayer is a shareholder, or member, has been
50 adjusted at the S corporation, or limited liability company,
51 level for the tax year.

52 (b) *Apportionment rules for organizations engaged in*
53 *business both within and without this state.* — For taxable
54 years beginning on and after January 1, 2018, an S

55 corporation, or a limited liability company, engaged in
56 business as a financial organization as defined in §11-24-
57 3a(a)(14) of this code, which regularly engages in business
58 both within and without this state shall apportion the
59 business income component of its federal taxable income,
60 after adjustment as provided in subsection (a) of this
61 section, by multiplying the amount thereof by the special
62 gross receipts factor determined as provided in subsection
63 (c) of this section.

64 (c) *Special gross receipts factor.* — The gross receipts
65 factor is a fraction, the numerator of which is the total gross
66 receipts of the S corporation, or limited liability company,
67 engaged in business as a financial organization as defined in
68 §11-24-3a(a)(14) of this code from sources within this state
69 during the taxable year and the denominator of which is the
70 total gross receipts of the S corporation, or limited liability
71 company, engaged in business as a financial organization as
72 defined in §11-24-3a(a)(14) of this code wherever earned
73 during the taxable year: *Provided*, That neither the
74 numerator nor the denominator of the gross receipts factor
75 shall include receipts from obligations described in
76 subsection(a) of this section.

77 (d) *Effective date.* — The provisions of this section are
78 retroactive with respect to tax years beginning on or after
79 January 1, 2018, the law in effect for each of those years is
80 fully preserved as to those years, except as provided in this
81 section.

§11-21-17. Resident partners.

1 (a) *Partner's modifications.* — In determining West
2 Virginia adjusted gross income and West Virginia taxable
3 income of a resident partner, any modification described in
4 §11-21-12(b), §11-21-12(c), §11-21-12(d), or §11-21-12j of
5 this code, which relates to an item of partnership income,
6 gain, loss or deduction shall be made in accordance with the
7 partner's distributive share, for federal income tax purposes,
8 of the items to which the modifications relate. Where a

9 partner's distributive share of any such item is not required
10 to be taken into account separately for federal income tax
11 purposes, the partner's distributive share of such item shall
12 be his or her distributive share for federal income tax
13 purposes of partnership taxable income or loss generally.

14 (b) *Character of items.* — Each item of partnership
15 income, gain, loss, or deduction shall have the same
16 character for a partner under this article as for federal
17 income tax purposes. Where an item is not characterized for
18 federal income tax purposes, it shall have the same character
19 for a partner as if realized directly from the source from
20 which realized by the partnership, or incurred in the same
21 manner as incurred by the partnership.

22 (c) *West Virginia tax avoidance or evasion.* — Where a
23 partner's distributive share of an item of partnership
24 income, gain, loss or deduction is determined for federal
25 income tax purposes by special provision in the partnership
26 agreement with respect to such item, and where the
27 principal purpose of such provision is the avoidance or
28 evasion of tax under this article, the partner's distributive
29 share of such item, and any modification required with
30 respect thereto shall be determined as if the partnership
31 agreement made no special provision with respect to such
32 item.

33 (d) *Partnership defined.* — For purposes of this article,
34 "partnership" means a partnership as defined in §11-21A-1
35 of this code.

§11-21-17a. Resident shareholders of S corporations.

1 (a) *S corporation shareholder's modifications.* — In
2 determining West Virginia adjusted gross income and West
3 Virginia taxable income of a resident S corporation
4 shareholder, any modification described in §11-21-12(b),
5 §11-21-12(c), §11-21-12(d), or §11-21-12j of this code,
6 which relates to an item of income, gain, loss or deduction
7 shall be made in accordance with the S corporation

8 shareholder's pro rata share, for federal income tax
9 purposes, of the items to which the modifications relate.
10 Where a shareholder's pro rata share of any such item is not
11 required to be taken into account separately for federal
12 income tax purposes, the shareholder's pro rata share of
13 such item shall be his or her pro rata share for federal
14 income tax purposes of S corporation taxable income or loss
15 generally.

16 (b) *Character of items.* — Each item of S corporation
17 income, gain, loss or deduction shall have the same
18 character for a shareholder under this article as for federal
19 income tax purposes. Where an item is not characterized for
20 federal income tax purposes, it shall have the same character
21 for a shareholder as if realized directly from the source from
22 which realized by the S corporation, or incurred in the same
23 manner as incurred by the S corporation.

§11-21-37c. Special apportionment rules - financial organizations.

1 (a) *General.* — The Legislature hereby finds that the
2 general formula set forth in §11-21-37a of this code for
3 apportioning the business income of persons taxable in this
4 state as well as in another state is inappropriate for use by
5 financial organizations due to the particular characteristics
6 of those organizations and the manner in which their
7 business is conducted. Accordingly, the general formula set
8 forth in §11-21-37a of this code may not be used to
9 apportion the business income of financial organizations,
10 which shall use only the apportionment formula and
11 methods set forth in this section.

12 (b) *West Virginia financial organizations taxable in*
13 *another state.* — The West Virginia taxable income of a
14 financial organization that has its commercial domicile in
15 this state and which is taxable in another state shall be the
16 sum of: (1) The nonbusiness income component of its
17 adjusted federal taxable income for the taxable year which
18 is allocated to this state as provided §11-21-37a(d) of this
19 code; plus (2) the business income component of its

20 adjusted federal taxable income for the taxable year which
21 is apportioned to this state as provided in this section.

22 (c) *Out-of-state financial organizations with business*
23 *activities in this state.* — The West Virginia taxable income
24 of a financial organization that does not have its commercial
25 domicile in this state but which regularly engages in
26 business in this state shall be the sum of: (1) The
27 nonbusiness income component of its adjusted federal
28 taxable income for the taxable year which is allocated to this
29 state as provided in §11-21-37a(d) of this code; plus (2) the
30 business income component of its adjusted federal taxable
31 income for the taxable year which is apportioned to this state
32 as provided in this section.

33 (d) *Engaging in business - nexus presumptions and*
34 *exclusions.* — A financial organization that has its
35 commercial domicile in another state is presumed to be
36 regularly engaging in business in this state if during any year
37 it obtains or solicits business with 20 or more persons within
38 this state, or if the sum of the value of its gross receipts
39 attributable to sources in this state equals or exceeds
40 \$100,000. However, gross receipts from the following types
41 of property, as well as those contacts with this state
42 reasonably and exclusively required to evaluate and
43 complete the acquisition or disposition of the property, the
44 servicing of the property or the income from it, the
45 collection of income from the property or the acquisition or
46 liquidation of collateral relating to the property shall not be
47 a factor in determining whether the owner is engaging in
48 business in this state:

49 (1) An interest in a real estate mortgage investment
50 conduit, a real estate investment trust, or a regulated
51 investment company;

52 (2) An interest in a loan backed security representing
53 ownership or participation in a pool of promissory notes or
54 certificates of interest that provide for payments in relation

55 to payments or reasonable projections of payments on the
56 notes or certificates;

57 (3) An interest in a loan or other asset from which the
58 interest is attributed to a consumer loan, a commercial loan,
59 or a secured commercial loan and in which the payment
60 obligations were solicited and entered into by a person that
61 is independent, and not acting on behalf, of the owner;

62 (4) An interest in the right to service or collect income
63 from a loan or other asset from which interest on the loan is
64 attributed as a loan described in the previous paragraph and
65 in which the payment obligations were solicited and entered
66 into by a person that is independent, and not acting on
67 behalf, of the owner; or

68 (5) Any amounts held in an escrow or trust account with
69 respect to property described above.

70 (e) *Definitions.* — For purposes of this section:

71 (1) “Commercial domicile” has same meaning as that
72 term is defined in §11-24-3a of this code.

73 (2) “Deposit” means:

74 (A) The unpaid balance of money or its equivalent
75 received or held by a financial organization in the usual
76 course of business and for which it has given or it is
77 obligated to give credit, either conditionally or
78 unconditionally, to a commercial, checking, savings, time,
79 or thrift account whether or not advance notice is required
80 to withdraw the credit funds, or which is evidenced by a
81 certificate of deposit, thrift certificate, investment
82 certificate, or certificate of indebtedness, or other similar
83 name, or a check or draft drawn against a deposit account
84 and certified by the financial organization, or a letter of
85 credit or a traveler’s check on which the financial
86 organization is primarily liable: *Provided*, That without
87 limiting the generality of the term “money or its
88 equivalent”, any account or instrument must be regarded as

89 evidencing the receipt of the equivalent of money when
90 credited or issued in exchange for checks or drafts or for a
91 promissory note upon which the person obtaining any credit
92 or instrument is primarily or secondarily liable or for a
93 charge against a deposit account or in settlement of checks,
94 drafts or other instruments forwarded to the bank for
95 collection;

96 (B) Trust funds received or held by the financial
97 organization, whether held in the trust department or held or
98 deposited in any other department of the financial
99 organization;

100 (C) Money received or held by a financial organization
101 or the credit given for money or its equivalent received or
102 held by a financial organization in the usual course of
103 business for a special or specific purpose, regardless of the
104 legal relationship thereby established, including, without
105 being limited to, escrow funds, funds held as security for an
106 obligation due the financial organization or other, including
107 funds held as dealers' reserves or for securities loaned by
108 the financial organization, funds deposited by a debtor to
109 meet maturing obligations, funds deposited as advance
110 payment on subscriptions to United States government
111 securities, funds held for distribution or purchase of
112 securities, funds held to meet its acceptances or letters of
113 credit, and withheld taxes: *Provided*, That there may not be
114 included funds which are received by the financial
115 organization for immediate application to the reduction of
116 an indebtedness to the receiving financial organization, or
117 under condition that the receipt thereof immediately reduces
118 or extinguishes an indebtedness;

119 (D) Outstanding drafts, including advice or
120 authorization to charge a financial organization's balance in
121 another organization, cashier's checks, money orders or
122 other officer's checks issued in the usual course of business
123 for any purpose, but not including those issued in payment
124 for services, dividends, or purchases or other costs or
125 expenses of the financial organization itself; and

126 (E) Money or its equivalent held as a credit balance by
127 a financial organization on behalf of its customer if the
128 entity is engaged in soliciting and holding balances in the
129 regular course of its business.

130 (3) “Financial organization” has the same meaning as
131 that term is defined in §11-21-3a of this code.

132 (4) “Sales” means, for purposes of apportionment under
133 this section, the gross receipts of a financial organization
134 included in the gross receipts factor described in subsection
135 (g) of this section, regardless of their source.

136 (f) *Apportionment rules.* — A financial organization
137 which regularly engages in business both within and
138 without this state shall apportion the business income
139 component of its federal taxable income, after adjustment as
140 provided in §11-21-12j of this code, by multiplying the
141 amount thereof by the special gross receipts factor
142 determined as provided in subsection (g) of this section.

143 (g) *Special gross receipts factor.* — The gross receipts
144 factor is a fraction, the numerator of which is the total gross
145 receipts of the taxpayer from sources within this state during
146 the taxable year and the denominator of which is the total
147 gross receipts of the taxpayer wherever earned during the
148 taxable year: *Provided*, That neither the numerator nor the
149 denominator of the gross receipts factor shall include
150 receipts from obligations described in §11-21-12j(a)(1)(A),
151 (B), (C), and (D) of this code.

152 (1) *Numerator.* — The numerator of the gross receipts
153 factor shall include, in addition to items otherwise
154 includable in the sales factor under §11-21-37a of this code,
155 the following:

156 (A) Receipts from the lease or rental of real or tangible
157 personal property whether as the economic equivalent of an
158 extension of credit or otherwise if the property is located in
159 this state;

160 (B) Interest income and other receipts from assets in the
161 nature of loans which are secured primarily by real estate or
162 tangible personal property if the security property is located
163 in the state. If the security property is also located in one or
164 more other states, receipts are presumed to be from sources
165 within this state, subject to rebuttal based upon factors
166 described in rules to be proposed by the Tax Commissioner,
167 including the factor that the proceeds of any loans were
168 applied and used by the borrower entirely outside of this
169 state;

170 (C) Interest income and other receipts from consumer
171 loans which are unsecured or are secured by intangible
172 property that are made to residents of this state, whether at
173 a place of business, by traveling loan officer, by mail, by
174 telephone or other electronic means or otherwise;

175 (D) Interest income and other receipts from commercial
176 loans and installment obligations which are unsecured or are
177 secured by intangible property if and to the extent that the
178 borrower or debtor is a resident of or is domiciled in this
179 state: *Provided*, That receipts are presumed to be from
180 sources in this state and the presumption may be overcome
181 by reference to factors described in rules to be proposed by
182 the Tax Commissioner, including the factor that the
183 proceeds of any loans were applied and used by the
184 borrower entirely outside of this state;

185 (E) Interest income and other receipts from a financial
186 organization's syndication and participation in loans, under
187 the rules set forth in paragraphs (A) through (D), inclusive,
188 of this subdivision;

189 (F) Interest income and other receipts, including service
190 charges, from financial institution credit card and travel and
191 entertainment credit card receivables and credit card
192 holders' fees if the borrower or debtor is a resident of this
193 state or if the billings for any receipts are regularly sent to
194 an address in this state;

195 (G) Merchant discount income derived from financial
196 institution credit card holder transactions with a merchant
197 located in this state. When merchants are located within and
198 without this state, only receipts from merchant discounts
199 attributable to sales made from locations within this state
200 shall be attributed to this state. It shall be presumed, subject
201 to rebuttal, that the location of a merchant is the address
202 shown on the invoice submitted by the merchant to the
203 taxpayer;

204 (H) Gross receipts from the performance of services are
205 attributed to this state if:

206 (i) The service receipts are loan-related fees, including
207 loan servicing fees, and the borrower resides in this state,
208 except that, at the taxpayer's election, receipts from loan-
209 related fees which are either: (I) "Pooled" or aggregated for
210 collective financial accounting treatment; or (II) manually
211 written as nonrecurring extraordinary charges to be
212 processed directly to the general ledger may either be
213 attributed to a state based upon the borrowers' residences or
214 upon the ratio that total interest sourced to that state bears
215 to total interest from all sources;

216 (ii) The service receipts are deposit-related fees and the
217 depositor resides in this state, except that, at the taxpayer's
218 election, receipts from deposit-related fees which are either:
219 (I) "Pooled" or aggregated for collective financial
220 accounting treatment; or (II) manually written as
221 nonrecurring extraordinary charges to be processed directly
222 to the general ledger may either be attributed to a state based
223 upon the depositors' residences or upon the ratio that total
224 deposits sourced to that state bears to total deposits from all
225 sources;

226 (iii) The service receipt is a brokerage fee and the
227 account holder is a resident of this state;

228 (iv) The service receipts are fees related to estate or trust
229 services and the estate's decedent was a resident of this state

230 immediately before death or the grantor who either funded
231 or established the trust is a resident of this state; or

232 (v) The service receipt is associated with the
233 performance of any other service not identified above and
234 the service is performed for an individual resident of, or for
235 a corporation or other business domiciled in, this state and
236 the economic benefit of service is received in this state;

237 (I) Gross receipts from the issuance of travelers' checks
238 and money orders if the checks and money orders are
239 purchased in this state; and

240 (J) All other receipts not attributed by this rule to a state
241 in which the taxpayer is taxable shall be attributed pursuant
242 to the laws of the state of the taxpayer's commercial
243 domicile.

244 (2) *Denominator.* — The denominator of the gross
245 receipts factor shall include all of the taxpayer's gross
246 receipts from transactions of the kind included in the
247 numerator, but without regard to their source or situs.

248 (h) *Effective date.* — The provisions of this section
249 enacted in 2019 shall apply to all taxable years beginning
250 on or after January 1, 2018.

●

CHAPTER 45

**(H. B. 113 – By Delegates Hanshaw (Mr. Speaker)
and Miley)
[By Request of the Executive]**

[Passed June 24, 2019; in effect ninety days from passage.]
[Approved by the Governor on June 28, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-12l; and to amend said code by adding thereto a new section, designated §11-24-6b, all relating generally to establishing tax incentive for new business activity in qualified opportunity zones; establishing eligibility requirements; defining terms; specifying duration of tax benefit; providing rulemaking authority; providing for termination of program; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12l. Decreasing modification reducing federal adjusted gross income for the net income of Qualified Opportunity Zone Businesses; effective date.

1 (a) *General.* — In addition to the amounts authorized to
2 be subtracted from federal adjusted gross income pursuant
3 to §11-21-12(c) of this code, a modification reducing
4 federal adjusted gross income is hereby authorized for
5 taxable years beginning on and after January 1, 2019:

6 (1) For individuals: in an amount equal to and limited to
7 that portion of net income included in federal adjusted gross
8 income by a taxpayer in the taxable year that is directly
9 derived from a qualified opportunity zone business located

10 in a qualified opportunity zone which is located in West
11 Virginia;

12 (2) For partners or members of limited liability
13 companies that are treated as partnerships for federal
14 income tax purposes, and other pass-through entities: in an
15 amount equal to and limited to that portion of the
16 distributive share of the partner or member that is
17 attributable to the flow through income directly derived
18 from the qualified opportunity zone business located in
19 West Virginia. A similar rule applies to shareholders in
20 corporations taxed under subchapter S of the Internal
21 Revenue Code.

22 (b) *Eligibility.* — To be entitled to modification
23 provided for in subsection (a) of this section, the qualified
24 opportunity zone business must be a newly registered
25 business in West Virginia registered on or after January 1,
26 2019 and before January 1, 2024. Limited liability
27 companies that are treated as corporations for purposes of
28 the federal income tax and West Virginia corporation net
29 income tax and which otherwise qualify in accordance with
30 the requirements and limitations of this section may qualify
31 for the modification authorized under this section.

32 (c) *Duration.* — The modification provided for in
33 subsection (a) of this section shall apply with respect to a
34 taxpayer for a 10-year period beginning with the first full
35 taxable year during which the qualified opportunity zone
36 business first qualifies as a qualified opportunity zone
37 business, or the first year in which the qualified opportunity
38 zone business reports net income: *Provided*, That the
39 qualified opportunity zone business first qualifies as such
40 on or after January 1, 2019.

41 (d) The following definitions apply to this section:

42 (1) “Internal Revenue Code” means the Internal
43 Revenue Code of the United States as defined in §11-21-9
44 or §11-24-3 of this code.

45 (2) “Newly registered business” means a business that
46 is formed on or after January 1, 2019 and before January 1,
47 2024, that is first required to obtain a business registration
48 certificate under §11-12-1 *et seq.* of this code from the Tax
49 Commissioner on or after January 1, 2019 and before
50 January 1, 2024, and which is not the reorganization of a
51 business that existed prior to January 1, 2019.

52 (3) “Reorganization of an existing business” includes,
53 but is not limited to, a change in the name of a business, a
54 change in the form of doing business such as, but not limited
55 to, a proprietorship that reorganizes as a partnership or other
56 business entity, a subsidiary that becomes a stand-alone
57 business entity, a division of an existing business that
58 becomes a separate business and any other similar type of
59 business reorganization. For purposes of this definition any
60 entity or organization that is determined by the Tax
61 Commissioner to be an alter ego, nominee or
62 instrumentality of an existing or previously existing
63 business, as determined in accordance with the criteria
64 specified in §11-12-5 of this code is a business resulting
65 from reorganization of an existing business.

66 (4) “Qualified Opportunity Zone Business” means
67 Qualified Opportunity Zone Business as that term is defined
68 in Section §1400Z-2 of the Internal Revenue Code.

69 (5) “Qualified Opportunity Zone” means Qualified
70 Opportunity Zone as that term is defined in Section 1400Z-
71 1 of the Internal Revenue Code.

72 (e) *Rules.* — The Tax Commissioner may propose
73 legislative rules, or promulgate interpretive or procedural
74 rules, as the commissioner deems necessary to carry out the
75 provisions of this section and to provide guidelines and
76 requirements to ensure uniform administrative practices
77 statewide to effect the intent of this section. All rules shall
78 be promulgated in accordance with the provisions of §29A-
79 3-1 *et seq.* of this code.

80 (f) *Effective date; expiration of modification,*
81 *preservation of entitlement.* — The modification authorized
82 by this section becomes effective and is authorized for
83 taxable years beginning on and after January 1, 2019:
84 *Provided,* That unless sooner terminated by law, the
85 modification authorized by this section will terminate for
86 taxable years beginning on and after January 1, 2024, and
87 no new entitlement to the modification is authorized
88 thereafter; *Provided however,* That those taxpayers shall
89 retain that entitlement for the remainder of the 10-year
90 application period over which the original entitlement
91 applies, if the Taxpayer otherwise remains in compliance
92 with the requirements of this section.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6b. Decreasing modification reducing federal taxable income for the income of Qualified Opportunity Zone Businesses; effective date.

1 (a) *General.* — In addition to the amounts authorized to
2 be subtracted from federal taxable income pursuant to §11-
3 24-6(c) of this code, there shall be subtracted from federal
4 taxable income, an amount equal to net income included in
5 federal taxable income by a corporate taxpayer in a taxable
6 year that is ordinary income derived from a qualified
7 opportunity zone business located in a qualified opportunity
8 zone located in West Virginia.

9 (b) *Eligibility.* — To be entitled to modification
10 provided for in subsection (a), the qualified opportunity
11 zone business must be a newly registered business in West
12 Virginia registered on or after January 1, 2019 and before
13 January 1, 2024. Limited liability companies that are treated
14 as corporations for purposes of the federal income tax and
15 West Virginia corporation net income tax and which
16 otherwise qualify in accordance with the requirements and
17 limitations of this section may qualify for the modification
18 authorized under this section.

19 (c) *Duration.* — The modification provided for in
20 subsection (a) of this section shall apply with respect to a
21 taxpayer during the 10-year period beginning with the first
22 full taxable year during which the qualified opportunity
23 zone business first qualifies as a qualified opportunity zone
24 business, or the first year in which the qualified opportunity
25 zone business reports net income: *Provided*, That the
26 qualified opportunity zone business first qualifies as such
27 on or after January 1, 2019.

28 (d) The following definitions apply to this section:

29 (1) “Newly registered business” means a business that
30 is formed on or after January 1, 2019 and before January 1,
31 2024, that is first required to obtain a business registration
32 certificate under §11-12-1 *et seq.* of this code from the Tax
33 Commissioner on or after January 1, 2019 and before
34 January 1, 2024, and which is not the reorganization of a
35 business that existed prior to January 1, 2019.

36 (2) “Reorganization of an existing business” includes,
37 but is not limited to, a change in the name of a business, a
38 change in the form of doing business such as, but not limited
39 to, a proprietorship that reorganizes as a partnership or other
40 business entity, a subsidiary that becomes a stand-alone
41 business entity, a division of an existing business that
42 becomes a separate business and any other similar type of
43 business reorganization. For purposes of this definition any
44 entity or organization that is determined by the Tax
45 Commissioner to be an alter ego, nominee or
46 instrumentality of an existing or previously existing
47 business, as determined in accordance with the criteria
48 specified in §11-12-5 of this code is a business resulting
49 from reorganization of an existing business.

50 (3) “Qualified Opportunity Zone Business” means
51 Qualified Opportunity Zone Business as that term is defined
52 in Section 1400Z-2 of the Internal Revenue Code.

53 (4) “Qualified Opportunity Zone” means Qualified
54 Opportunity Zone as that term is defined in Section 1400Z-
55 1 of the Internal Revenue Code.

56 (e) *Rules.* — The Tax Commissioner may propose
57 legislative rules, or promulgate interpretive or procedural
58 rules, as the commissioner deems necessary to carry out the
59 provisions of this section and to provide guidelines and
60 requirements to ensure uniform administrative practices
61 statewide to effect the intent of this section. All rules shall
62 be promulgated in accordance with the provisions of §29A-
63 3-1 *et seq.* of this code.

64 (f) *Effective date; expiration of modification,*
65 *preservation of entitlement.* — The modification authorized
66 by this section becomes effective and is authorized for
67 taxable years beginning on and after January 1, 2019:
68 *Provided,* That unless sooner terminated by law, the
69 modification authorized by this section will terminate for
70 taxable years beginning on and after January 1, 2024, and
71 no new entitlement to the modification is authorized
72 thereafter; *Provided however,* That those taxpayers shall
73 retain that entitlement for the remainder of the 10-year
74 application period over which the original entitlement
75 applies, if the Taxpayer otherwise remains in compliance
76 with the requirements of this section.

●

CHAPTER 46

**(H. B. 207 - By Delegates Hanshaw (Mr. Speaker)
and Miley)
[By Request of the Executive]**

[Passed July 23, 2019; in effect ninety days from passage.]
[Approved by the Governor on July 30, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13-2q, relating to exempting from business and occupation tax certain merchant power plants; defining merchant power plant; specifying conditions for exemption from tax; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2q. Exemption from tax for certain merchant power plants.

1 (a) *Exemption.* — Notwithstanding the provisions of
2 §11-13-2o of this code, for taxable years, or portions
3 thereof, beginning on or after January 1, 2020, a merchant
4 power plant is exempt from the business and occupation tax
5 imposed by §11-13-2o of this code on the generating
6 capacity of its generating units located in this state that are
7 owned or leased by the taxpayer and used to generate
8 electricity. When the January 1, 2020, date falls during a
9 taxpayer's taxable year, the tax liability for that year shall
10 be prorated based upon the number of months before and
11 the number of months beginning on and after January 1,
12 2020, in that taxable year.

13 (b) *Definition.* — As used in this section, the term
14 “merchant power plant” means an electricity generating
15 plant in this state that (1) Is not subject to regulation of its
16 rates by the West Virginia Public Service Commission, (2)
17 sells electricity it generates only on the wholesale market,
18 (3) does not sell electricity pursuant to one or more long-
19 term sales contracts, and (4) does not sell electricity to retail
20 consumers.



CHAPTER 47

**(H. B. 117 - By Delegates Hanshaw (Mr. Speaker) and
Miley)**

[By Request of the Executive]

[Passed May 20, 2019; in effect ninety days from passage.]

[Approved by the Governor on May 29, 2019.]

AN ACT to amend and reenact §11-13-3f of the Code of West Virginia, 1931, as amended; to amend and reenact §11-13F-1, §11-13F-2 and §11-13F-3 of said code; to amend and reenact §11-24-11 of said code; to amend and reenact §24-2A-5 of said code; and to amend and reenact §24-3-2 of said code, all relating to reduced rates for low-income residential customers of privately owned sewer and combined water and sewer utilities; providing for application for reduced rates; updating definitions; authorizing certain tax credits for cost of using reduced rates; and providing for retroactive effective date.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3f. Tax credit for reducing electric, natural gas or water utility rates for low-income residential customers; regulations.

1 (a) There shall be allowed as a credit against the tax
2 imposed by this article, the cost of providing electric or
3 natural gas or water utility service, or any combination of
4 electric, natural gas or water utility services, at reduced rates
5 to qualified low-income residential customers which has not
6 been reimbursed by any other means.

7 (b) For tax years beginning on or after January 1, 2019,
8 there shall be allowed as a credit against the tax imposed by
9 this article, the cost of providing sewer service or sewer and
10 water service at reduced rates to qualified low-income
11 residential customers which has not been reimbursed by any
12 other means.

13 (c) The tax commissioner may prescribe such
14 regulations as may be necessary to carry out the purposes of
15 this section, of §11-13F-1 *et seq.* of this code and of §11-
16 24-11 of this code.

**ARTICLE 13F. BUSINESS AND OCCUPATION TAX
CREDIT FOR REDUCING ELECTRIC, NATURAL
GAS, WATER, AND SEWER UTILITY RATES FOR
LOW-INCOME RESIDENTIAL CUSTOMERS.**

§11-13F-1. Legislative Purpose.

1 In order to reimburse public utilities for the revenue
2 deficiencies that they incur in providing special reduced
3 electric or natural gas, water, or sewer utility rates to low-
4 income residential customers in accordance with the
5 provisions of §24-2A-1 *et seq.* of this code, there is hereby
6 provided a business and occupation tax credit for reducing
7 electric, natural gas, water, or sewer utility rates for low-
8 income residential customers.

§11-13F-2. Definitions.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in §11-13-1
3 *et seq.* of this code, unless a different meaning is clearly
4 required by the context of its use or by definition in this
5 article.

6 (b) For purposes of this article, the term:

7 (1) “Eligible taxpayer” means a utility which has
8 provided electric or natural gas service, or both electric and
9 natural gas service; or water or sewer service, or both water
10 and sewer service, to qualified low-income residential
11 customers at special reduced rates.

12 (2) “Cost of providing utility service at special reduced
13 rates” means the amount certified by the Public Service
14 Commission under the provisions of §24-2A-2 of this code
15 as the revenue deficiency incurred by a public utility in
16 providing special reduced rates for electric, natural gas,
17 sewer, or water utility service as required by §24-2A-1 or
18 approved pursuant to §24-2A-5 of this code.

19 (3) “Special reduced rates” means the rates ordered by
20 the Public Service Commission under the authority of §24-
21 2A-1 or §24-2A-5 of this code.

22 (4) “Qualified low-income residential customers”
23 means those utility customers eligible to receive electric,
24 natural gas, water, or sewer utility service under special
25 reduced rates.

§11-13F-3. Amount of credit.

1 (a) There shall be allowed to any eligible taxpayer a
2 credit against the business and occupation taxes imposed by
3 §11-13-1 *et seq.* of this code, for reducing electric and
4 natural gas utility rates. The amount of the credit available
5 to any eligible taxpayer shall be equal to its cost of
6 providing electric or natural gas service, or both, at special

7 reduced rates as certified by the Public Service Commission
8 under the provisions of §24-2A-2 of this code to qualified
9 residential customers, less any reimbursement of said cost
10 which the taxpayer has received through any other means.

11 (b) For tax years beginning on or after January 1, 2019,
12 there shall be allowed to any eligible taxpayer a credit
13 against the business and occupation taxes imposed by §11-
14 13-1 *et seq.* of this code, for reducing rates for providing
15 electric, natural gas, sewer or water service, or any
16 combination of electric, natural gas, water or sewer services.
17 The amount of the credit available to any eligible taxpayer
18 shall be equal to its cost of providing utility service at
19 special reduced rates to qualified residential customers, less
20 any reimbursement of said cost which the taxpayer has
21 received through any other means.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-11. Credit for reducing electric or natural gas or water utility rates for low-income residential customers.

1 (a) *General.* — A credit shall be allowed against the
2 primary tax liability of an eligible taxpayer under this article
3 for the cost of providing electric or natural gas or water
4 utility service, or any combination of electric, natural gas or
5 water utility services, at special reduced rates to qualified
6 low-income residential customers which has not been
7 reimbursed by any other means.

8 (b) *Definitions.* — For purposes of this section, the term:

9 (1) “Eligible taxpayer” means a utility which has
10 provided electric, natural gas, water, or sewer utility service,
11 or any combination of electric, natural gas, water, or sewer
12 utility services, to qualified low-income residential
13 customers at special reduced rates.

14 (2) “Cost of providing electric or natural gas or water or
15 sewer utility service, or any combination of electric, or
16 natural gas, or water, or sewer utility services, at special

17 reduced rates” means the amount certified by the Public
18 Service Commission under the provisions of §24-2A-2 of
19 this code, as the revenue deficiency incurred by a public
20 utility in providing special reduced rates for electric or
21 natural gas or water or sewer utility service, or any
22 combination of electric, natural gas or water or sewer utility
23 services, as required by §24-2A-1 of this code or authorized
24 by §24-2A-5 of this code.

25 (3) “Special reduced rates” means the rates ordered or
26 approved by the Public Service Commission under the
27 authority of §24-2A-1 or §24-2A-5 of this code.

28 (4) “Qualified low-income residential customers”
29 means those utility customers eligible to receive electric, or
30 natural gas, or water or sewer utility service, or any
31 combination of electric, natural gas, or water or sewer utility
32 services, under special reduced rates.

33 (c) *Amount of credit.* —

34 (1) For tax years beginning prior to January 1, 2019, the
35 amount of the credit available to any eligible taxpayer shall
36 be equal to its cost of providing electric, or natural gas, or
37 water utility service, or any combination of electric, natural
38 gas, or water utility services, at special reduced rates to
39 qualified residential customers, less any reimbursement of
40 said cost which the taxpayer has received through any other
41 means.

42 (2) For tax years beginning on or after January 1, 2019,
43 the amount of the credit available to any eligible taxpayer
44 shall be equal to its cost of providing electric, or natural gas,
45 or water or sewer utility service, or any combination of
46 electric, natural gas, water or sewer utility services, at
47 special reduced rates to qualified residential customers, less
48 any reimbursement of said cost which the taxpayer has
49 received through any other means.

50 (d) When credit may be taken. — An eligible taxpayer
51 may claim a credit allowed under this section on its annual
52 return for the taxable year in which it receives certification
53 of the amount of its revenue deficiency from the Public
54 Service Commission.

55 Notwithstanding the provisions of §11-24-16 of this
56 code to the contrary, no credit may be claimed on any
57 declaration of estimated tax filed for such taxable year prior
58 to July 1 of such taxable year. Such credit may be claimed
59 on a declaration or amended declaration filed on or after that
60 date but only if the amount certified will not be recovered
61 by application of the business and occupation tax credit
62 allowed by §11-13-3f of this code. In such event, only that
63 amount not recovered by that credit may be considered or
64 taken as a credit when estimating the tax due under this
65 article. In no event may the eligible taxpayer recover more
66 than 100 percent of its revenue deficiency as certified by the
67 Public Service Commission.

68 (e) *Application of credit.* — The credit allowable by this
69 section for a taxable year is not subject to the 50 percent
70 limitation specified in §11-24-9 of this code.
71 Notwithstanding the provisions of §11-13F-4 of this code,
72 any unused credit may be carried over and applied against
73 business and occupation taxes in the manner specified in
74 §11-13F-5 of this code.

75 (f) *Copy of certification order.* — A copy of a
76 certification order from the Public Service Commission
77 shall be attached to any annual return under this article on
78 which a credit allowed by this section is taken.

ARTICLE 2A. REDUCED RATES FOR LOW-INCOME RESIDENTIAL CUSTOMERS OF ELECTRICITY, NATURAL GAS, WATER, OR SEWER.

§24-2A-5. Special rates for certain water, sewer, or combined water and sewer utility customers.

1 (a) The commission may authorize a privately owned
2 water, sewer or combined water and sewer utility to
3 voluntarily implement a rate design featuring reduced rates
4 and charges for service for residential utility customers
5 receiving:

6 (1) Social Security Supplemental Security Income
7 (SSI);

8 (2) Temporary Assistance for Needy Families (TANF);

9 (3) Temporary Assistance for Needy Families-
10 Unemployed Parent Program (TANF-UP); or

11 (4) Assistance from the Supplemental Nutrition
12 Assistance Program (SNAP) if they are sixty years of age or
13 older.

14 (b) The special reduced rate offered by each water,
15 sewer, or combined water and sewer utility to its eligible
16 customers shall be a percentage less, which shall be
17 approved by the commission, than the rate that would be
18 applicable to such customers if they were not receiving any
19 of the four forms of assistance that confer eligibility for the
20 special reduced rates approved by the commission:
21 *Provided*, That such rate reduction shall not exceed 20
22 percent of the rate that would be otherwise applicable.

23 (c) Before any individual may qualify to receive the
24 special reduced rates, the following requirements must be
25 met:

26 (1) The special reduced rates may apply only to current
27 customers or to those persons who subsequently become
28 customers in their own right. If an SSI, TANF, TANF-UP
29 or SNAP recipient is living in a household that is served
30 under the name of a person who is not an SSI, TANF,
31 TANF-UP or SNAP recipient, that service may not be
32 changed or have been changed subsequent to July 1 , 2011,
33 to the name of the SSI, TANF, TANF-UP or SNAP

34 recipient in order to qualify for service under the special
35 reduced rates.

36 (2) The burden of proving eligibility for the special
37 reduced rates shall be on the customer requesting such rates.
38 The Department of Health and Human Resources shall
39 establish by rules and procedures:

40 (A) To inform persons receiving any of the four forms
41 of assistance that confer eligibility for the special reduced
42 rates about the availability of the special reduced rates;

43 (B) To assist applicants for the special reduced rates in
44 proving their eligibility therefor; and

45 (C) To assist water, sewer, or combined water and sewer
46 utilities offering the special reduced rates in determining on
47 a continuing basis the eligibility therefor of persons
48 receiving or applying for such rates.

49 The commission shall establish rules and procedures for
50 the application for and provision of service under the special
51 reduced rates and for the determination and certification of
52 revenue deficiencies resulting from the special reduced rates.

53 (3) In order to provide each eligible residential utility
54 customer the special reduced rates, each utility providing
55 the special reduced rates shall credit against amounts
56 otherwise owed by each customer an amount equal to the
57 difference between the total amount that each customer was
58 actually billed during the previous month and the total
59 amount that each customer would have been entitled to be
60 billed under the special reduced rates. Each credit shall be
61 fully reflected on the first bill issued to each customer after
62 approval of each customer's application for the special
63 reduced rates, except in cases where the interval between
64 the approval and the issuance of the next bill is so short that
65 it is administratively impracticable to do so, in which case,
66 such credits shall be fully reflected on the second bill issued
67 to each customer after approval of that customer's
68 application. If the interval between the approval and the

69 issuance of the next bill is 15 days or more, it may not be
70 deemed administratively impracticable to reflect the credit
71 on the customer's first bill.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-2. Discrimination prohibited.

1 No public utility subject to the provisions of this chapter
2 shall, directly or indirectly, by any special rate, rebate,
3 drawback or other device or method, charge, demand,
4 collect or receive from any person, firm or corporation, a
5 greater or less compensation, for any service rendered or to
6 be rendered, than it charges, demands, collects, or receives
7 from any other person, firm or corporation for doing a like
8 and contemporaneous service under the same or
9 substantially similar circumstances and conditions.

10 It shall be unlawful for any public utility subject to the
11 provisions of this chapter to make or give any undue or
12 unreasonable preference or advantage to any particular
13 person, company, firm, corporation or locality, or any
14 particular character of traffic or service, in any respect
15 whatsoever, or to subject any particular person, firm,
16 corporation, company or locality, or any particular character
17 of traffic or service, to any undue or unreasonable prejudice
18 or disadvantage in any respect whatsoever.

19 Nothing in this section shall be construed to prevent the
20 commission from:

21 (a) Authorizing or requiring any rate design consistent
22 with the purposes and policies set forth in §24-2A-1 *et seq.*
23 of this code; or

24 (b) Authorizing a private water, sewer, or combined
25 water and sewer utility to voluntarily implement a rate
26 design featuring reduced rates and charges for service to
27 qualifying low-income residential customers.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2019

CHAPTER 1

**(S. B. 2003 - By Senators Carmichael (Mr. President)
and Prezioso)**

[By Request of the Executive]

[Passed November 18, 2019; in effect from passage.]
[Approved by the Governor on November 20, 2019.]

AN ACT supplementing, amending, decreasing, and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2020, organization 0803, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, West Virginia voters ratified an amendment to the constitution, Roads to Prosperity Amendment of 2017, to provide for matching available federal funds for highway and bridge construction in this state and for general highway and secondary roads and bridge construction or improvements in each of the 55 counties in this state, by the issuance of bonds not to exceed \$1.6 billion in the aggregate to be paid for from the State Road Fund and the collection of annual state taxes as provided by the Legislature by general law; and

Whereas, The Legislature adopted House Concurrent Resolution 104 allowing the state to sell the fiscal year 2019 and fiscal year 2020 allocations of such bonds for an additional \$600 million, during the 2019 First Extraordinary Session; and

Whereas, The costs of issuance and additional debt service required for the issuance of the fiscal year 2019 and fiscal year 2020 allocations of such bonds were contemplated by the passage of Senate Bill 1006, increasing funding for the State Road Fund, during the 2017 First Extraordinary Session; and

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 2019, which included a statement of the State Road Fund, setting forth therein the cash balances and investments as of July 1, 2018, and further included the estimate of revenues for the fiscal year 2019, less regular appropriations for the fiscal year 2019 and that also sets forth therein the estimated cash balance and investments as of July 1, 2019, and further included the estimate of revenues for the fiscal year 2020, less regular appropriations for the fiscal year 2020; and

Whereas, The Governor submitted to the Legislature an Executive Message, dated June 17, 2019, which included a fiscal year 2019 revised estimate of revenues for the State Road Fund and a statement of the State Fund, State Road Fund for the fiscal years 2019 and 2020; and

Whereas, It appears from the Statement of 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 the total appropriation for the fiscal year ending June 30, 2020, to fund 9017, fiscal year 2020, organization 0803, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

III – Division of Highways –

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2020 Org 0803

		Appropriation	State Road Fund
1	2	Maintenance.....	23700 \$ 25,000,000

2 And, That the total appropriation for the fiscal year
 3 ending June 30, 2020, to fund 9017, fiscal year 2020,
 4 organization 0803, be supplemented and amended by
 5 increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

III – Division of Highways –

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2020 Org 0803

		Appropriation	State Road Fund
1	1	Debt Service	04000 \$ 25,000,000



CHAPTER 2

**(S. B. 2002 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed November 18, 2019; in effect from passage.]
[Approved by the Governor on November 20, 2019.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-11-26b; and to amend and reenact §62-16-5 and §62-16-6 of said code, all relating generally to certain convictions or charges for motor vehicle traffic control offenses and records thereof; providing that courts are without jurisdiction to expunge convictions for motor vehicle traffic control offenses for any person who held a commercial driver's license or permit or was operating a commercial motor vehicle at the time of the offense; providing that a court or other tribunal may not enter an order or take any action that will prevent a motor vehicle traffic control offense from appearing on an offender's commercial driving record; clarifying that courts are without jurisdiction to expunge convictions for offenses involving driving under the influence of alcohol or drugs; providing that a court or other tribunal may not enter an order or take any action with regard to a motor vehicle traffic control offense in violation of applicable federal laws and regulations; providing that a person charged with any crime involving driving under the influence of alcohol or drugs is not eligible to participate in a military service member court program, except where the offender is eligible to participate in the Motor Vehicle Test and Lock Program; clarifying that military service member courts may not enter an order or take any action that will prevent a motor vehicle traffic control offense from appearing on an offender's commercial driving record; limiting the authority of military service member courts to expunge certain

motor vehicle traffic offenses; and clarifying that a military service member court may not enter an order or take any action with regard to a motor vehicle traffic control offense in violation of applicable federal laws and regulations.

Be it enacted by the Legislature of West Virginia:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-26b. Limitation on expungement for certain motor vehicle traffic control offenses.

1 (a) Notwithstanding the provisions of §61-11-26,
2 §61-11-26a, and §62-16-1 *et seq.* of this code, no court or
3 other tribunal has the authority to:

4 (1) Order the expungement of a conviction for a motor
5 vehicle traffic control violation for a person who held a
6 commercial driver's license or permit or who was operating
7 a commercial motor vehicle at the time of the offense;

8 (2) Enter an order or take any action to mask a charge
9 or conviction, divert a charge, or modify the records of a
10 charge or conviction in a manner that would prevent an
11 offense from appearing on an offender's commercial
12 driving record; or

13 (3) Order the expungement of any conviction for driving
14 under the influence of alcohol or controlled substances, as
15 provided in §61-11-26 of this code.

16 (b) Notwithstanding any other provision of this code, no
17 court or other tribunal may enter an order or take any other
18 action related to a motor vehicle traffic control offense that
19 violates any applicable federal law or regulation, including,
20 but not limited to:

21 (1) The requirements or conditions contained in 23
22 U.S.C. §164 *et seq.* and 23 C.F.R. §1275 *et seq.*; and

23 (2) The requirements or conditions contained in 49
24 U.S.C. §31311 and 49 C.F.R. §384 *et seq.*

CHAPTER 62. CRIMINAL PROCEDURE.

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, except where
29 the military service member is eligible to participate in the
30 Motor Vehicle Test and Lock Program under §17C-5A-1 *et*
31 *seq.* of this code.

32 (c) *Written agreement.* — Participation in a Military
33 Service Members Court program, with the consent of both
34 the prosecutor and the court, shall be pursuant to a written
35 agreement. This written agreement shall set forth all of the
36 agreed upon provisions to allow the military service
37 member offender to proceed in the court. The offender shall
38 execute a written agreement with the court as to his or her
39 participation in the program and shall agree to all of the
40 terms and conditions of the program, including, but not
41 limited to, the possibility of sanctions or incarceration for
42 failing to comply with the terms of the program.

43 (d) Upon successful completion of a court program, the
44 judge shall dispose of an offender's case in the manner
45 prescribed by the written agreement and by the applicable
46 policies and procedures adopted by the court. Disposition
47 may include, but is not limited to, withholding criminal
48 charges, dismissal of charges, probation, deferred
49 sentencing, suspended sentencing, split sentencing, or a
50 reduced period of incarceration: *Provided*, That a military
51 service member court may not enter an order or take any
52 action to mask a charge or conviction, divert a charge, or
53 modify the records of a charge or conviction in a manner
54 that would prevent an offense from appearing on an
55 offender's commercial driving record.

**§62-16-6. Procedure; mental health and substance abuse
treatment; violation; termination.**

1 (a) *Procedure.* — Upon application, the court shall order
2 the offender to submit to an eligibility screening, a mental

3 health and drug/alcohol screening, and an assessment by the
4 Department of Veterans Affairs (VA) Veterans Justice
5 Outreach to provide information on the offender's mental
6 health or military service member status. The assessment
7 shall include a risks assessment and be based, in part, upon
8 the known availability of treatment resources available to the
9 court. The assessment shall also include recommendations
10 for treatment of the conditions which are indicating a need
11 for treatment under the monitoring of the court and reflect a
12 level of risk assessed for the individual seeking admission.
13 The court is not required to order an assessment if a valid
14 screening or assessment related to the present charge(s)
15 pending against the offender has been completed within the
16 previous 60 days.

17 (b) The court may order the offender to complete
18 substance abuse treatment in an outpatient, inpatient,
19 residential, or jail-based custodial treatment program, order
20 the offender to complete mental health counseling in an
21 inpatient or outpatient basis, comply with all physician
22 recommendations regarding medications, and complete all
23 follow-up treatment. The mental health issues for which
24 treatment may be provided include, but are not limited to,
25 post-traumatic stress disorder, traumatic brain injury, and
26 depression.

27 (c) *Mental health and substance abuse treatment.* —
28 The court may maintain a network of mental health
29 treatment programs and substance abuse treatment
30 programs representing a continuum of graduated mental
31 health and substance abuse treatment options commensurate
32 with the needs of offenders; these shall include programs
33 with the VA, the department, this state, and community-
34 based programs.

35 (d) *Violation.* — The court may impose reasonable
36 sanctions under the offender's written agreement, including,
37 but not limited to, imprisonment or dismissal of the offender
38 from the program. The court may reinstate criminal
39 proceedings against him or her for a violation of probation,

40 conditional discharge, or supervision hearing, if the court
41 finds from the evidence presented, including, but not limited
42 to, the reports or proffers of proof from the court's
43 professionals that:

44 (1) The offender is not performing satisfactorily in the
45 assigned program;

46 (2) The offender is not benefitting from educational
47 treatment or rehabilitation;

48 (3) The offender has engaged in criminal conduct
49 rendering him or her unsuitable for the program; or

50 (4) The offender has otherwise violated the terms and
51 conditions of the program or his or her sentence or is for any
52 reason unable to participate.

53 (e) *Termination.* — Upon successful completion of the
54 terms and conditions of the program, the court may dismiss
55 the original charges against the offender, successfully
56 terminate the offender's sentence, permit the offender to
57 enter into a plea agreement to a lesser offense, or otherwise
58 discharge him or her from any further proceedings against
59 him or her in the original prosecution.

60 (f) Nothing in this article shall be construed to permit a
61 military service member court or any other court or tribunal
62 to enter an order or take any other action that violates any
63 applicable federal law or regulation, including, but not
64 limited to:

65 (1) The requirements or conditions contained in 23
66 U.S.C. §164 *et seq.* and 23 C.F.R. §1275 *et seq.*; and

67 (2) The requirements or conditions contained in 49
68 U.S.C. 31311 and 49 C.F.R. §384 *et seq.*

●

CHAPTER 3

**(S. B. 2001 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed December 16, 2019; in effect from passage.]

AN ACT to amend and reenact §5B-2E-11 of the Code of West Virginia, 1931, as amended, relating to extending tax credits for certain tourism development and expansion projects authorized under the West Virginia Tourism Development Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.

§5B-2E-11. Termination.

1 The development office may not accept any new project
2 application after December 31, 2025, and all applications
3 submitted prior to January 1, 2026, that have not been
4 previously approved or not approved, shall be deemed not
5 approved and shall be null and void as of January 1, 2026.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

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2149 330	4088 143	4362 90
2338 218	4090 133	4363 257
2419 98	4091 134	4365 178
2478 312	4092 40	4375 249
2497 256	4094 41	4377 321
2602 89	4099 245	4378 317
2646 204	4102 274	4381 233
2696 162	4103 275	4388 6
2892 99	4108 276	4393 91
2922 55	4113 333	4396 73
2924 163	4123 295	4406 32
2961 271	4129 103	4409 298
2967 331	4130 166	4410 33
3039 102	4137 126	4411 34
3098 5	4141 167	4412 179
3127 116	4146 193	4414 279
4001 104	4149 194	4415 42
4003 190	4161 277	4417 250
4004 164	4165 118	4421 334
4007 272	4166 100	4422 280
4009 273	4176 296	4434 281
4015 36	4178 297	4437 288
4017 314	4179 278	4438 150
4019 332	4198 195	4439 335
4020 244	4217 211	4444 299
4022 176	4252 212	4447 282
4026 219	4275 213	4450 220
4030 350	4352 246	4452 336
4042 165	4353 247	4461 168
4058 191	4354 56	4464 221
4061 192	4359 196	4466 198
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The first column gives the number of the bill and the second column gives the chapter assigned to it.

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4478 223	4576 145	4717 54
4480 214	4581 170	4729 180
4484 135	4582 49	4737 181
4494 283	4585 45	4747 171
4496 200	4587 306	4748 310
4497 119	4589 351	4749 252
4499 234	4593 127	4760 152
4501 62	4600 74	4773 287
4502 201	4601 75	4777 253
4504 224	4607 251	4780 121
4509 169	4611 147	4790 122
4510 63	4615 92	4797 77
4513 235	4618 93	4803 254
4514 236	4619 37	4804 320
4515 237	4620 285	4823 308
4519 120	4621 35	4852 58
4522 225	4633 76	4859 302
4523 238	4634 105	4882 10
4524 7	4647 151	4925 123
4529 144	4655 286	4929 146
4530 226	4661 307	4946 78
4543 202	4665 289	4955 148
4544 57	4666 344	4958 227
4546 318	4668 94	4959 106
4551 44	4691 319	4969 338
4557 284	4693 4	

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46.....81	308..... 85	562 87
51.....101	310.....324	569 12
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136.....311	339.....206	576 157
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175.....153	449.....209	583 304
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4	4693	36.....	4015	68	523
5	3098	37.....	4619	69	532
6	4388	38.....	575	70	649
7	4524	39.....	711	71	654
8	4560	40.....	4092	72	729
9	4697	41.....	4094	73	4396
10.....	4882	42.....	4415	74	4600
11.....	150	43.....	4470	75	4601
12.....	569	44.....	4551	76	4633
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14.....	571	46.....	522	78	4946
15.....	572	47.....	529	79	597
16.....	573	48.....	615	80	35
17.....	725	49.....	4582	81	46
18.....	778	50.....	789	82	144
19.....	779	51.....	830	83	201
20.....	780	52.....	208	84	261
21.....	803	53.....	642	85	308
22.....	804	54.....	4717	86	490
23.....	805	55.....	2922	87	562
24.....	806	56.....	4354	88	765
25.....	812	57.....	4544	89	2602
26.....	843	58.....	4852	90	4362
27.....	844	59.....	472	91	4393
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99.....	2892	131.....	727	163.....	2924
100.....	4166	132.....	810	164.....	4004
101.....	51	133.....	4090	165.....	4042
102.....	3039	134.....	4091	166.....	4130
103.....	4129	135.....	4484	167.....	4141
104.....	4001	136.....	195	168.....	4461
105.....	4634	137.....	213	169.....	4509
106.....	4959	138.....	321	170.....	4581
107.....	42	139.....	510	171.....	4747
108.....	230	140.....	554	172.....	703
109.....	241	141.....	662	173.....	760
110.....	303	142.....	668	174.....	781
111.....	614	143.....	4088	175.....	839
112.....	707	144.....	4529	176.....	4022
113.....	723	145.....	4576	177.....	4077
114.....	750	146.....	4929	178.....	4365
115.....	842	147.....	4611	179.....	4412
116.....	3127	148.....	4955	180.....	4729
117.....	4069	149.....	232	181.....	4737
118.....	4165	150.....	4438	182.....	648
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The first column gives the chapter assigned and the second column gives the bill number.

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194	4149	226	4530	258	240
195	4198	227	4958	259	269
196	4359	228	470	260	288
197	4361	229	487	261	560
198	4466	230	500	262	647
199	4477	231	501	263	664
200	4496	232	517	264	746
201	4502	233	4381	265	747
202	4543	234	4499	266	748
203	547	235	4513	267	749
204	2646	236	4514	268	767
205	323	237	4515	269	797
206	339	238	4523	270	846
207	357	239	689	271	2961
208	364	240	312	272	4007
209	449	241	544	273	4009
210	652	242	706	274	4102
211	4217	243	770	275	4103
212	4252	244	4020	276	4108
213	4275	245	4099	277	4161
214	4480	246	4352	278	4179
215	180	247	4353	279	4414
216	686	248	4360	280	4422
217	690	249	4375	281	4434
218	2338	250	4417	282	4447
219	4026	251	4607	283	4494
220	4450	252	4749	284	4557
221	4464	253	4777	285	4620
222	4474	254	4803	286	4655
223	4478	255	534	287	4773
224	4504	256	2497	288	4437

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

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House Bills = 4 Digits

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291.....	676	312.....	2478	333.....	4113
292.....	712	313.....	734	334.....	4421
293.....	838	314.....	4017	335.....	4439
294.....	851	315.....	623	336.....	4452
295.....	4123	316.....	691	337.....	4558
296.....	4176	317.....	4378	338.....	4969
297.....	4178	318.....	4546	339.....	16
298.....	4409	319.....	4691	340.....	4714
299.....	4444	320.....	4804	341.....	6
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302.....	4859	323.....	307	344.....	4666
303.....	579	324.....	310	345.....	551
304.....	583	325.....	530	346.....	589
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117 47	150 5	206 31
118 34	151 6	207 46
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The first column gives the number of the bill and the second column gives the chapter assigned to it.

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1004 32	1019 16	1037 39
1006 35	1020 17	1038 24
1009 42	1021 18	1056 25
1012 37	1023 19	1057 26
1013 38	1024 20	1058 27
1015 13	1025 21	
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The first column gives the chapter assigned and the second column gives the bill number.

First Extraordinary Session, 2019

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4	149	20.....	1024	36	146
5	150	21.....	1025	37	1012
6	151	22.....	1026	38	1013
7	152	23.....	1027	39	1037
8	153	24.....	1038	40	144
9	154	25.....	1056	41	193
10.....	155	26.....	1057	42	1009
11.....	156	27.....	1058	43	111
12.....	157	28.....	115	44	112
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The first column gives the number of the bill and the second column gives the chapter assigned to it.

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