

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2023
First Extraordinary Session, 2023
Third Extraordinary Session, 2022
Fourth Extraordinary Session, 2022

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

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STEPHEN J. HARRISON
CLERK OF THE HOUSE



OFFICE OF THE CLERK OF THE HOUSE
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Robert Altmann
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CHAPTER 186

(Com. Sub. for S. B. 239 - By Senator Azinger, Takubo, and Deeds)

[Passed February 15, 2023; in effect 90 days from passage (May 16, 2023)]
[Approved by the Governor on February 24, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-31, relating to requiring the Commissioner of the Bureau for Behavioral Health to engage behavioral health providers, substance use disorder providers, municipal leaders, and county government leaders to study a breakdown of homeless demographic information throughout West Virginia; reporting the findings of the study to the President of the Senate, Speaker of the House of Delegates, and the Joint Committee on Government and Finance; and providing a date report is due.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-31. Commissioner to conduct study.

(a) The Commissioner of the Bureau for Behavioral Health shall engage the following stakeholders: Behavioral health providers, substance use disorder providers, municipal leaders, and county government leaders to study a breakdown of homeless demographic information throughout West Virginia. The study shall be responsible for:

(1) Presenting a breakdown of homeless demographic information throughout West Virginia and regionally;

(2) Quantifying and inventorying of homelessness resources by region;

(3) Conducting an epidemiological analysis of homeless populations in West Virginia;

(4) Identifying key metrics to measure homelessness across West Virginia in a more consistent manner;

(5) Conducting analysis of whether West Virginia's homeless populations concentrate in certain counties or municipalities and any reasons for such population concentrations;

(6) Determining if state policies cause the state's homeless population to relocate to certain counties or municipalities;

(7) Determining the percentage of homeless individuals that lived in another state or jurisdiction in the past three years or are from another state or jurisdiction; and

(8) Conducting an analysis of whether any health and human service benefits offered in West Virginia attract populations that are homeless or at risk of homelessness.

(b) On or before July 1, 2024, the commissioner shall submit a report of the findings of the study to the President of the Senate, Speaker of the House of Delegates, and the Joint Committee on Government and Finance for consideration of legislation that may be appropriate relating to the homeless in West Virginia.

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CHAPTER 187

(Com. Sub. for S. B. 476 - By Senator Tarr)

[Passed March 8, 2023; in effect from passage]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-31, relating to managed care contracts; providing that the Bureau for Medical Services is exempt from the requirements of the Purchasing Division with respect to managed care contracts; providing for exceptions; providing that the Bureau for Medical Services may not disrupt certain existing enrollments with managed care organizations; prohibiting the Bureau for Medical Services from redistributing or reassigning membership; providing for the integration of new managed care entrants; providing that no plan shall have preferential assignment of new members.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

†§9-5-31. Managed care organization contracts exempt from purchasing requirements; providing for exceptions.

(a) Notwithstanding any other provision to the contrary, the Bureau for Medical Services is exempt from all requirements of the Purchasing Division, authorized under §5A-3-1 *et seq.* of this code, with respect to managed care contracts: *Provided*, That for purposes of continuity of care, the Bureau for Medical Services may not:

†NOTE: S. B. 239 (Chapter 186), and S. B. 267 (Chapter 192), which passed prior to this act, also created a new Section 31. Therefore, this has been redesignated as Section 33 for the code.

(1) Disrupt existing WV Medicaid and WV Children's Health Insurance Plan enrollment within an existing managed care organization as part of any such purchasing exemption; or

(2) Redistribute or reassign membership of an existing managed care organization to any new, qualifying managed care entrant as part of any contract awarded pursuant to such exemption.

The Bureau for Medical Services shall integrate any and all new and qualifying managed care entrants into the state's auto-assignment logic for new members and shall publicize any eligible managed care organization for purposes of self-selection by the member. No plan shall have preferential assignment of new members and each plan will be assigned equally.

(b) The Bureau for Medical Services is not exempt from the requirements of the Purchasing Division, authorized under §5A-3-1 *et seq.* of this code, when soliciting a procurement for specialized populations, to include, but not be limited to, foster care.

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CHAPTER 188

**(Com. Sub. for H. B. 2002 - By Delegates Jeffries, Storch,
Hott, Kelly, Dillon, Pinson, Heckert, Street, Lucas, Miller and
Bridges)**

[Passed March 9, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §11-21-10a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-5K-7; and to amend said code by adding thereto a new article, designated §16-66-1, §16-66-2, and §16-66-3, all relating to providing support for families; increasing adoption tax credit; establishing eligibility of adopted children of West Virginia residents for early intervention services; establishing the West Virginia Mothers and Babies Pregnancy Support Program; defining terms; establishing which organizations are eligible for funding pursuant to program; allowing bureau to contract with management agency to provide program services; and establishing requirements and responsibilities of management agency.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-10a. Adoption tax credit.

A one time credit against the tax imposed by the provisions of this article shall be allowed as follows:

Nonfamily adoptions. — For nonfamily adoptions, the credit is equal to \$5,000 which may be taken in the year of the adoption of

each nonfamily child, whose age at adoption is under eighteen years. This credit may, at the option of the taxpayer, be taken over a period of three years.

For the purpose of this section and credit "nonfamily adoptions" means adoptions of a child or children by a taxpayer or taxpayers who are not the father, mother, or stepparent of the child.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5K. EARLY INTERVENTION SERVICES FOR CHILDREN WITH DEVELOPMENTAL DELAYS.

§16-5K-7. Early intervention services for adopted children.

(a) Effective July 1, 2023, a child or children adopted on and after that date whose adoptive parent or parents are residents of West Virginia shall be eligible for any early intervention services provided for families which may be offered by the Department of Health and Human Resources. These services shall include, but are not limited to, Right From the Start, Drug Free Moms and Babies, and Birth to Three.

(b) If an early intervention program has federally approved mandated eligibility requirements as a condition of the receipt of federal funds, an adoptive parent or parents and their newly adopted child or children may be required to meet those federally mandated eligibility requirements for participation in the program.

(c) The Department of Health and Human Resources shall recruit additional sites to expand the Drug Free Moms and Babies program and report back to the Legislature if additional funding becomes necessary to operate these sites.

(d) The Bureau for Medical Services shall seek approval of and implement a Medicaid state plan amendment to meet the requirements of this section if the program is offered through or funded by the state Medicaid program and a state Medicaid plan amendment would be necessary to effectuate the purposes of this section.

(e) Use of early intervention services are optional to an adoptive parent or parents and nothing in this section should be construed to require an adoptive parent or parents to use any early intervention service as provided in this section.

ARTICLE 66. SUPPORT FOR MOTHERS AND BABIES ACT.

§16-66-1. Definitions.

The following terms are defined:

"Abortion industry organization" means any organization that performs, prescribes, refers for, encourages or promotes abortion as an option for a pregnant woman, or owns, operates, or manages a facility where abortions are performed and prescribed.

"Organization" means the entire legal entity, including any entity or affiliate that controls, is controlled by, or is under common control with such an entity.

"Pregnancy help organization" means an organization that seeks to provide a range of services to pregnant women. Pregnancy help organizations do not perform, prescribe, refer for or encourage abortion, as defined above, nor do they affiliate with any organization that performs, prescribes, refers for, or encourages abortion. Pregnancy help organizations include, but are not limited to, organizations traditionally known as "crisis pregnancy organizations," maternity homes, adoption agencies, and social services agencies that provide material support and other assistance to pregnant women.

"Management agency" means an organization that contracts with the Bureau for Public Health, or department thereof to manage the West Virginia Mothers and Babies Pregnancy Support Program.

"Subcontractor" means a pregnancy help organization that contracts with the management agency to provide Pregnancy Support Program services to individuals.

§16-66-2. Establishing the West Virginia Mothers and Babies Pregnancy Support Program.

(a) There is hereby established the West Virginia Mothers and Babies Pregnancy Support Program under the Bureau for Public Health.

(b) A pregnancy help organization is eligible to receive funding from the program, subject to meeting the standards defined by the managing agency.

(c) An abortion industry organization may not receive funding from the program.

(d) Funds distributed under the program shall be distributed on a fee per service arrangement with a fee per service and hour arrangement as set by the management agency.

§16-66-3. Management agency.

(a) The bureau shall contract with a management agency that exclusively promotes and supports childbirth and is knowledgeable and supportive of pregnancy help organization operations to receive the funds and administer the program, as the program's management agency.

(b) The management agency may not perform, prescribe, refer for, advocate for, or encourage abortion; nor may they affiliate or hold any relationship with any abortion industry organization or any entity that controls, is controlled by, or is under common control with an abortion industry organization.

(c) The management agency shall be tasked with the following:

(1) Locating and advertising program participation to pregnancy help organizations within the state;

(2) Establishing qualification requirements for a pregnancy help organization participation, which include:

(A) Providing training and annual evaluations to their employees and volunteers;

(B) Maintaining policies and processes for child abuse reporting, medical emergencies, and/or addressing client complaints;

(C) Requiring a policy that pregnancy help organizations abide by all applicable federal and state laws; and

(D) Registering as a 501(c)(3) nonprofit organization.

(3) Establishing invoicing and reimbursement for pregnancy help organizations receiving funding under the program, including a fee or service schedule whereby costs for each service are set forth.

(4) Establishing statistical standards and other reporting requirements.

(5) Establishing an auditing procedure for pregnancy help organizations to ensure financial and operational accountability.

(d) The management agency shall enter into contracts with pregnancy help organizations to operate as subcontractors for serving individuals under the program.

●

CHAPTER 189

**(Com. Sub. for H. B. 2006 - By Delegates Summers, Toney,
Pinson, Gearheart, Mallow, W. Hall, Rohrbach, Hite,
Honaker, Lucas and Westfall)**

[Passed February 22, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 4, 2023.]

AN ACT to amend and reenact §5F-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5F-2-1 and §5F-2-2 of said code; to amend said code by adding thereto a new section designated §5F-2-1a; to repeal §9-1-1 of said code; to amend and reenact §9-1-2 of said code; to amend and reenact §9-2-1 of said code; to repeal §9-2-1a of said code; to amend and reenact §9-2-2, §9-2-5 and §9-2-6, of said code; to repeal §9-2-9 of said code; to amend and reenact §9-2-9a of said code; to repeal §9-2-13 of said code; to repeal §9-5-8, §9-5-8a and §9-5-8b of said code; to amend and reenact §16-1-1, §16-1-2, §16-1-3, §16-1-5 and §16-1-6 of said code; to amend said code by adding thereto new sections designated, §16-1-22, §16-1-22a, §16-1-22b and §16-1-22c of said code; to amend and reenact §16-29A-4 of said code; to amend and reenact §26-1-1, §26-1-2 and §26-1-3 of said code; to amend said code by adding thereto a new section, designated §26-1-4 of said code; to repeal §26-3-1, §26-3-2, §26-3-3, §26-3-4 and §26-3-5 of said code; to repeal §26-5-1 of said code; to repeal §26-5A-5a of said code; to repeal §26-8-1, §26-8-2 and §26-8-3 of said code; to repeal §26-9-1 and §26-9-2 of said code; to repeal §26-10-1 of said code; to repeal §26-11-1, §26-11-2, §26-11-3 and §26-11-4 of said code; to amend and reenact §48-14-401 of said code; to amend and reenact §48-18-101 of said code; and to amend and reenact §49-1-106 of said code, all relating to reorganizing the Department of Health and Human Resources; creating new agencies; creating new secretaries; setting forth qualifications for secretaries; setting forth salaries; setting forth

an organizational structure; providing legislative intent; codifying the Office of Shared Administration; setting forth powers of agencies; requiring coordination and cooperating between agencies; rearranging the code to reflect the reorganization of the departments; defining terms; set forth the qualifications of the inspector general; providing the Office of the Inspector General is an independent agency within the department; exempting the Department of Health Facilities from certain laws; removing specific health facilities from the code; requiring reporting; and providing internal effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created.

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

(1) Department of Administration;

(2) Department of Environmental Protection;

(3) Department of Health and Human Resources: *Provided*, That the Department of Health and Human Resources is terminated beginning January 1, 2024;

(4) Department of Homeland Security;

(5) Department of Revenue;

(6) Department of Transportation;

(7) Department of Commerce;

(8) Department of Veterans' Assistance;

(9) Department of Economic Development;

(10) Department of Tourism;

(11) Beginning January 1, 2024, the following:

(A) Department of Human Services; and

(B) Department of Health; and

(C) Department of Health Facilities.

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

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in §21-3A-1 *et seq.* of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.* of this code.

(2) Office of Miners' Health, Safety, and Training provided in §22A-1-1 *et seq.* of this code. The following boards are transferred to the Office of Miners' Health, Safety, and Training for purposes of administrative support and liaison with the Office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in §22A-6-1 *et seq.* of this code;

(B) Board of Miner Training, Education, and Certification provided in §22A-7-1 *et seq.* of this code; and

(C) Mine Inspectors' Examining Board provided in §22A-9-1 *et seq.* of this code.

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

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

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

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

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development;

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

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

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

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

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

(f) The Division of Culture and History as established in §29-1-1 *et seq.* of this code is continued as a separate independent agency within the Executive Branch as the Department of Arts, Culture, and History. All references throughout this code to the “Division of Culture and History” means the “Department of Arts, Culture, and History”.

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

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

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

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

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

(5) Oil and Gas Inspectors' Examining Board provided in §22C-7-1 *et seq.* of this code;

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

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

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

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

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

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

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

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

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

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

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

(1) West Virginia State Police;

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

(3) Division of Administrative Services;

(4) Division of Corrections and Rehabilitation;

(5) Fire Commission;

- (6) State Fire Marshal;
- (7) Board of Probation and Parole;
- (8) The West Virginia Fusion Center;
- (9) Division of Protective Services; and

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

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

- (1) Tax Division provided in §11-1-1 *et seq.* of this code;
- (2) Racing Commission provided in §19-23-1 *et seq.* of this code;
- (3) Lottery Commission and position of Lottery Director provided in §29-22-1 *et seq.* of this code;
- (4) Insurance Commissioner provided in §33-2-1 *et seq.* of this code;
- (5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 *et seq.* of this code and §60-2-1 *et seq.* of this code;
- (6) Board of Banking and Financial Institutions provided in §31A-3-1 *et seq.* of this code;
- (7) Lending and Credit Rate Board provided in §47A-1-1 *et seq.* of this code;
- (8) Division of Financial Institutions provided in §31A-2-1 *et seq.* of this code;
- (9) The State Budget Office provided in §11B-2-1 *et seq.* of this code;

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

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

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

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

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

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

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

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

(5) Aeronautics Commission provided in §29-2A-1 *et seq.* of this code;

(6) State Rail Authority provided in §29-18-1 *et seq.* of this code; and

(7) Public Port Authority provided in §17-16B-1 *et seq.* of this code.

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

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

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

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

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

(q) The Department of Economic Development as established in §5B-2-1 *et seq.* of this code is continued as a separate independent agency within the Executive Branch.

(r) The Department of Tourism as established in §5B-2I-1 *et seq.* of this code is continued as a separate independent agency within the Executive Branch.

§5F-2-1a. Termination of the department of health and human resources; transfer and incorporation of agencies and boards legislative intent; creation of new departments.

(a) It is the intent of the Legislature to devolve the functions of the Department of Health and Human Resources into three new and separate departments of the executive branch as provided in this Act over a period of transition that concludes with the termination of the Department of Health and Human Resources. It is the intent of the Legislature that the provisions of this Act be construed to achieve the restructuring and reallocation of the powers, duties and functions of the Department of Health and Human Resources to the three new departments created in this section in an orderly manner designed to maintain the delivery of services that have heretofore been provided by the Department of Health and Human Resources by the new departments during the transition and beyond the termination of the Department of Health and Human Resources without disruption and to streamline and, where possible, to share administrative and operative expenses where common to each of the new departments. To that end, the Secretary of the Department of Health and Human Resources, the Secretary of the Department of Human Services, the Secretary of the Department of Health and the Secretary of the Department of Health Facilities shall enter into a memorandum of understanding to effect the provisions of this Act that shall, at a minimum, create a Office of Shared Administration mutually administered by the secretaries that shall coordinate efforts with the Department of Administration to maximize efficiencies and function of services in an effort to contain expenses within the Department of Human Services, the Department of Health and the Department of Health Facilities. The Office of Shared Administration shall implement a plan to maximize function and efficiency administrative services for the purpose of streamlining administrative services and reducing expenses within the departments. The Office of Shared Administration shall complete implementation by June 30, 2024,

and shall provide quarterly updates to the Legislative Oversight Commission on Health and Human Resources Accountability.

(b) (1) The Department of Human Services created under §5F-1-2 of this code, beginning January 1, 2024, is a separate and distinct department of the executive branch. Beginning January 1, 2024, the following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are transferred to, incorporated in and administered as a part of the Department of Human Services:

(A) Bureau for Social Services;

(B) Bureau for Medical Services;

(C) Bureau for Child Support Enforcement;

(D) Bureau for Family Assistance;

(E) Bureau for Behavioral Health; and

(F) Any other agency or entity hereinafter established within the Department of Human Services by an act of the Legislature.

(2) Beginning January 1, 2024, when, as used in this code, it appears from the context of the terms “Department of Health and Human Resources” or “department” in lieu thereof that the term refers to the entity exercising the powers or duties of the entities specified in subdivision (1) of this subsection, those terms shall mean the Department of Human Services.

(c) (1) The Department of Health created under §5F-1-2 of this code, beginning January 1, 2024, is a separate and distinct department of the executive branch. Beginning January 1, 2024, the following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are transferred to, incorporated in and administered as a part of the Department of Health:

(A) Bureau for Public Health;

(B) Office of Emergency Medical Services;

(C) Office of the Chief Medical Examiner;

(D) Center for Threat Preparedness;

(E) Health Care Authority;

(F) Office of the Inspector General, which shall include:

(i) Office of Health Facility Licensure and Certification;

(ii) Board of Review;

(iii) Foster Care Ombudsman;

(iv) Olmstead Office;

(v) Investigations and Fraud Management;

(vi) Quality Control;

(vii) Mental Health Ombudsman;

(viii) WV Clearance for Access: Registry and Employment Screening; and

(ix) Human Rights Commission; and

(G) Any other agency or entity hereinafter established within the Department of Health by an act of the Legislature.

(2) Beginning January 1, 2024, when, as used in this code, it appears from the context of the terms “Department of Health and Human Resources” or “department” in lieu thereof that the term refers to the entity exercising the powers or duties of the entities specified in subdivision (1) of this subsection, those terms shall mean the Department of Health.

(d) (1) The Department of Health Facilities created under §5F-1-2 of this code, beginning January 1, 2024, is a separate and distinct department of the executive branch. Beginning January 1, 2024, the following state facilities, including all of the allied, advisory, affiliated, or related entities and funds associated with

any state facility, are transferred to, incorporated in and administered as a part of the Department of Health Facilities:

- (A) Hopemont Hospital;
- (B) Jackie Withrow Hospital;
- (C) John Manchin, Sr. Health Care Center;
- (D) Lakin Hospital;
- (E) Mildred Mitchell-Bateman Hospital;
- (F) Welch Community Hospital;
- (G) William R. Sharpe Jr. Hospital; and

(H) Any other agency or entity hereinafter established within the Department of Health Facilities by an act of the Legislature.

(2) Beginning January 1, 2024, when, as used in this code, it appears from the context of the terms “Department of Health and Human Resources” or “department” in lieu thereof that the term refers to the entity exercising the powers or duties of the entities specified in subdivision (1) of this subsection, those terms shall mean the Department of Health Facilities.

(3) Notwithstanding any other provision of this code to the contrary, before December 1, 2023, the Department of Health and Human Resources shall create and present to the Legislative Oversight Commission on Health and Human Resources Accountability a long-term sustainability plan for each state health facility.

(e) Any secretary may recommend that a bureau, office, board, commission or other state entity be included or excluded from the organization of the departments created in this section to the Joint Committee on Government and Finance and the Legislative Commission on Health and Human Resources Accountability.

(f) Except for powers, authority, and duties that have been delegated to the secretaries of the departments created under this

section and §5F-2-2 of this code, the position of administrator and the powers, authority, and duties of each administrator and agency are not affected by this act.

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

(h) Nothing in this section extends the powers of department secretaries to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

(i) All programs, orders, determinations, rules, permits, grants, contracts, certificates, bonds, authorizations and privileges which have been issued, promulgated, made, granted or allowed to become pursuant to authority provided by this code to the Department of Health and Human Resources or the Secretary of that Department that are in effect on the dates of the creation of the new departments as provided in this section shall continue in effect according to their terms until modified, terminated, superseded, set aside or revoked by the department or secretary that assumes authority over the subject matter of the same under the provisions of this Act.

§5F-2-2. Power and authority of secretary of each department.

(a) Notwithstanding any other provision of this code to the contrary, the secretary of each department shall have plenary power and authority within and for the department to:

(1) Employ and discharge within the office of the secretary employees as may be necessary to carry out the functions of the

secretary, which employees shall serve at the will and pleasure of the secretary;

(2) Cause the various agencies and boards to be operated effectively, efficiently, and economically and develop goals, objectives, policies, and plans that are necessary or desirable for the effective, efficient, and economical operation of the department;

(3) Eliminate or consolidate positions, other than positions of administrators or positions of board members and name a person to fill more than one position;

(4) Transfer permanent state employees between departments in accordance with the provisions of §5F-2-7 of this code;

(5) Delegate, assign, transfer, or combine responsibilities or duties to or among employees, other than administrators or board members;

(6) Reorganize internal functions or operations;

(7) Formulate comprehensive budgets for consideration by the Governor;

(8) Enter into contracts or agreements requiring the expenditure of public funds and authorize the expenditure or obligation of public funds as authorized by law: *Provided*, That the powers granted to the secretary to enter into contracts or agreements and to make expenditures or obligations of public funds under this provision shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors, or board members of the various departments, agencies, or boards that comprise and are incorporated into each secretary's department under this chapter;

(9) Acquire by lease or purchase property of whatever kind or character and convey or dispose of any property of whatever kind or character as authorized by law: *Provided*, That the powers granted to the secretary to lease, purchase, convey, or dispose of such property shall be exercised in accordance with §5A-3-1 *et*

seq., §5A-10-1 *et seq.*, and §5A-3-11 *et seq.* of this code: *Provided, however,* That the powers granted to the secretary to lease, purchase, convey, or dispose of such property shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors, or board members of the various departments, agencies, or boards that comprise and are incorporated into each secretary's department under this chapter;

(10) Conduct internal audits;

(11) Supervise internal management;

(12) Promulgate rules, as defined in §29A-1-2 of this code, to implement and make effective the powers, authority, and duties granted and imposed by the provisions of this chapter in accordance with the provisions of chapter 29A of this code;

(13) Grant or withhold written consent to the proposal of any rule, as defined in §29A-1-2 of this code, by any administrator, agency, or board within the department. Without written consent, no proposal for a rule shall have any force or effect;

(14) Delegate to administrators the duties of the secretary as the secretary may deem appropriate, from time to time, to facilitate execution of the powers, authority, and duties delegated to the secretary;

(15) Enter into memoranda of understanding; and

(16) Take any other action involving or relating to internal management not otherwise prohibited by law.

(b) The secretaries of the departments shall engage in a comprehensive review of the practices, policies, and operations of the agencies and boards within their departments to determine the feasibility of cost reductions and increased efficiency which may be achieved therein, including, but not limited to, the following:

(1) The elimination, reduction, and restriction of the state's vehicle or other transportation fleet;

(2) The elimination, reduction, and restriction of state government publications, including annual reports, informational materials, and promotional materials;

(3) The termination or rectification of terms contained in lease agreements between the state and private sector for offices, equipment, and services;

(4) The adoption of appropriate systems for accounting, including consideration of an accrual basis financial accounting and reporting system;

(5) The adoption of revised procurement practices to facilitate cost-effective purchasing procedures, including consideration of means by which domestic businesses may be assisted to compete for state government purchases; and

(6) The computerization of the functions of the state agencies and boards.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, none of the powers granted to the secretaries shall be exercised by the secretary if to do so would violate or be inconsistent with the provisions of any federal law or regulation, any federal-state program or federally delegated program or jeopardize the approval, existence, or funding of any program.

(d) The layoff and recall rights of employees within the classified service of the state as provided in §29-6-10(5) and §29-6-10(6) of this code shall be limited to the organizational unit within the agency or board and within the occupational group established by the classification and compensation plan for the classified service of the agency or board in which the employee was employed prior to the agency or board's transfer or incorporation into the department: *Provided*, That the employee shall possess the qualifications established for the job class. The duration of recall rights provided in this subsection shall be limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section shall be construed to abridge the rights of employees within the

classified service of the state as provided in §29-6-10 and §29-6-10a of this code.

(e) Notwithstanding any other provision of this code to the contrary, the secretary of each department shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 1. DEFINITIONS.

§9-1-1. Legislative purpose.

[Repealed.]

§9-1-2. Definitions.

The following words and terms when used in this chapter have the meanings indicated:

"Department" means the state division of human services: *Provided*, That beginning January 1, 2024, "department" means the Department of Human Services.

"Commissioner" means the commissioner of human services: *Provided*, That beginning January 1 2024, "commissioner" means the secretary of the Department of Human Services.

"Federal-state assistance" means and includes: (1) All forms of aid, care, assistance and services to or on behalf of persons, which are authorized by, and who are authorized to receive the same under and by virtue of, subchapters one, four, five, ten, fourteen, sixteen, eighteen and nineteen, chapter seven, Title 42, United States Code, as those subchapters have heretofore been and may hereafter be amended, supplemented and revised by acts of Congress, and as those subchapters so amended, supplemented and revised have heretofore been and may hereafter be supplemented by valid rules and regulations promulgated by authorized federal agents and agencies, and as those subchapters so amended, supplemented and revised have heretofore been and may hereafter

be supplemented by rules promulgated by the state division of human services or by the Department of Human Services, which rules shall be consistent with federal laws, rules and regulations, but not inconsistent with state law; and (2) all forms of aid, care, assistance and services to persons, which are authorized by, and who are authorized to receive the same under and by virtue of, any act of Congress, other than the federal social security act, as amended, for distribution through the state division of human services or the Department of Human Services to recipients of any form of aid, care, assistance and services to persons designated or referred to in (1) of this definition and to recipients of state assistance, including by way of illustration, surplus food and food stamps, which Congress has authorized the secretary of agriculture of the United States to distribute to needy persons.

"Federal assistance" means and includes all forms of aid, care, assistance and services to or on behalf of persons, which are authorized by, and who are authorized to receive the same under and by virtue of, any act of Congress for distribution through the state division of human services or the Department of Human Services, the cost of which is paid entirely out of federal appropriations.

"State assistance" means and includes all forms of aid, care, assistance, services and general relief made possible solely out of state, county and private appropriations to or on behalf of indigent persons, which are authorized by, and who are authorized to receive the same under and by virtue of, state division of human services' or Department of Human Services' rules.

"Assistance" means the three classes of assistance, namely: Federal-state assistance, federal assistance and state assistance.

"Indigent person" means any person who is domiciled in this state and who is actually in need as defined by division or department rules and has not sufficient income or other resources to provide for such need as determined by the state division of human services or the Department of Human Services.

"Domiciled in this state" means being physically present in West Virginia accompanied by an intention to remain in West Virginia for an indefinite period of time, and to make West Virginia his or her permanent home. The state division of human services or the Department of Human Services may by rules supplement the foregoing definition of the term "domiciled in this state", but not in a manner as would be inconsistent with federal laws, rules, and regulations applicable to and governing federal-state assistance.

"Medical services" means medical, surgical, dental and nursing services, and other remedial services recognized by law, in the home, office, hospital, clinic and any other suitable place, provided or prescribed by persons permitted or authorized by law to give such services; the services to include drugs and medical supplies, appliances, laboratory, diagnostic and therapeutic services, nursing home and convalescent care and such other medical services and supplies as may be prescribed by the persons.

"Secretary" means the secretary of the Department of Health and Human Resources: *Provided*, That beginning January 1, 2024, "secretary" means the secretary of the Department of Human Services.

"Estate" means all real and personal property and other assets included within the individual's estate as defined in the state's probate law.

"Services" means nursing facility services, home and community-based services, and related hospital and prescription drug services for which an individual received Medicaid medical assistance.

"State Medicaid agency" means the Bureau for Medical Services that is the federally designated single state agency charged with administration and supervision of the state Medicaid program.

ARTICLE 2. SECRETARY OF HUMAN SERVICES.

§9-2-1. Department of Human Services.

Until January 1, 2024, the division of human services within the Department of Health and Human Resources shall have those

powers and duties respecting the administration of the assistance programs as authorized, granted and imposed by this chapter and elsewhere by law.

Beginning January 1, 2024, the Department of Human Services is comprised of the agencies as provided in §5F-2-1a of this code, is charged with the administration of this chapter, and shall have those powers and duties respecting the administration of the assistance programs as authorized, granted and imposed by this chapter and elsewhere by law.

§9-2-1a. Department of Health and Human Resources.

[Repealed.]

§9-2-2. Secretary to be administrative head of department; appointment; not to hold other office or engage in political activity.

The Secretary of the Department of Human Services is the chief executive officer of that department and beginning January 1, 2024, is charged with the administration of this chapter. The Governor shall appoint the secretary, by and with the advice and consent of the Senate, for the term for which the Governor is elected, and the secretary shall serve at the will and pleasure of the Governor. The Secretary shall be paid an annual salary not to exceed \$175,000. Upon his or her initial appointment, which may be at any time after the effective date of this act, the Secretary shall take the oath of office described in this section and commence his or her duties. If appointed before January 1, 2024, the Secretary shall take the oath of office described in this section and commence such duties as determined by the Secretary to be necessary to prepare for the administration of this chapter.

Before entering upon the duties of his or her office, the secretary shall take and subscribe to the oath of office prescribed by section five, article four of the state Constitution.

The secretary shall not be a candidate for, or hold, any other public office or public employment under the federal government or under the government of this state or any of its political subdivisions, or be a member or officer of any political party

committee, or serve as an election official, or engage in any political activity, other than to vote, in behalf of, or in opposition to, any candidate, political party or public issue involved in an election. Any violation by the secretary of the provisions of this section shall automatically vacate his or her appointment as secretary.

§9-2-5. Administering the state assistance programs; information and data to be supplied by other agencies.

(a) The department shall administer the state assistance programs, for which responsibility it shall have:

(1) All powers, not inconsistent with state law, as may be necessary for this state to obtain maximum federal funds made available for federal-state assistance within whatever limits or restrictions may be imposed by, or may exist by reason of the amount of state funds appropriated for the assistance; and

(2) All powers, not inconsistent with state law, as may be necessary for the disbursement and distribution of assistance in as prompt, fair, orderly, efficient and economical manner as possible.

(b) Notwithstanding any other provision of this code to the contrary, each, agency, commission or board of state government shall make available to the department information and data it collects about any applicant for or recipient of any type assistance to determine if an applicant or recipient is qualified or eligible for any such assistance.

§9-2-6. Secretary of Department of Human Services; powers and duties.

In addition to the authority provided in §5F-2-2 of this code, the secretary shall:

(1) Coordinate efforts with the Secretary of Health and the Secretary of Health Facilities, including authority to share the expense of administrative services through a memorandum of understanding established by agreement of the secretaries as required under §5F-2-1a of this code;

(2) Promulgate, amend, revise, and rescind legislative rules and policies respecting qualifications for receiving assistance consistent with or permitted by federal laws, rules, and policies, but not inconsistent with state law: *Provided*, That rules and policies respecting qualifications shall permit the expenditure of state funds to pay for care rendered in any birthing center licensed under the provisions of §16-2E-1 *et seq.* of this code by a licensed nurse midwife or midwife as this occupation is defined in §30-15-7 of this code and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by §30-15-7 of this code;

(3) Obtain by purchase or lease grounds, buildings, office, or other space, equipment, facilities, and services as may be necessary for the execution and administration of the secretary's powers: *Provided*, That the provisions of §5A-10-1 *et seq.* of this code are followed;

(4) Contract with the federal government or its agencies, other states, political subdivisions of this state, corporations, associations, partnerships, or individuals: *Provided*, That the provisions of §5A-3-1 *et seq.* of this code are followed;

(5) Contract to implement professional health care, managed care, actuarial and health care-related monitoring, quality review/utilization, claims processing, and independent professional consultant contracts for the Medicaid program: *Provided*, That the provisions of §5A-3-1 *et seq.* of this code are followed.

(6) Accept gifts or grants, whether in money, land, services, or materials, which gift or gifts, if in the form of moneys, shall be placed in a separate fund and expended solely for the purpose of public assistance programs. No part of this special fund may revert to the general revenue funds of this state. No expenses incurred pursuant to this special fund may be a charge against the general funds of this state;

(7) Establish within the department an Office of Inspector General for the purpose of conducting and supervising

investigations, performing inspections, evaluations, and review, and providing quality control for the programs of the department. The Office of Inspector General shall be headed by the Inspector General who shall report directly to the secretary. Neither the secretary nor any employee of the department may prevent, inhibit, or prohibit the Inspector General or his or her employees from initiating, carrying out, or completing any investigation, inspection, evaluation, review, or other activity oversight of public integrity by the Office of the Inspector General. The secretary shall place within the Office of Inspector General any function he or she deems necessary. Qualification, compensation, and personnel practice relating to the employees of the Office of the Inspector General, including that of the position of Inspector General, shall be governed by the classified service provisions of §29-6-1 *et seq.* of this code and rules promulgated thereunder. The Inspector General shall supervise all personnel of the Office of Inspector General: *Provided*, That beginning January 1, 2024, the provisions of this subdivision expire and shall be superseded by the provisions of §16-1-22 of this code.

(8) Provide at department expense a program of continuing professional, technical, and specialized instruction for the personnel of the department;

(9) Pay from available funds all or part of the reasonable expenses incurred by a person newly employed by the department in moving his household furniture, effects, and immediate family from his or her place of residence in this state to his or her place of employment in this state; and to pay from available funds all or part of the reasonable expenses incurred by a department employee in moving his or her household furniture, effects, and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interests of the state, but no part of the moving expenses of any one such employee may be paid more frequently than once in 12 months or for any movement other than from one place of employment in this state to another place of employment in this state;

(10) Establish a program to provide reimbursement to employees of the department whose items of personal property, as

defined by the department by policy, are damaged during the course of employment or other work-related activity as a result of aggressive behavior by a client or patient receiving services from the department: *Provided*, That the reimbursement is limited to a maximum amount of \$250 per claim;

(11) Prepare and submit state plans which will meet the requirements of federal laws, rules governing federal-state assistance, and federal assistance, and which are not inconsistent with state law;

(12) Organize within the department a board of review, consisting of a chairman appointed by the secretary and as many assistants or employees of the department as may be determined by the secretary and as may be required by federal laws and rules respecting state assistance, federal-state assistance, and federal assistance, the board of review to have such powers of a shall review nature and such additional powers as may be granted to it by the secretary and as may be required by federal laws and rules respecting federal-state assistance and federal assistance: *Provided*, That beginning January 1, 2024, the provisions of this subdivision expire and shall be superseded by the provisions of §16-1-22 of this code.

(13) Provide by rules, review and appeal procedures within the department of Health and Human Resources as may be required by applicable federal laws and rules respecting state assistance, federal-state assistance, and federal assistance, and as will provide applicants for, and recipients of, all classes of welfare assistance an opportunity to be heard by the board of review, a member thereof, or individuals designated by the board, upon claims involving denial, reduction, closure, delay, or other action or inaction pertaining to public assistance: *Provided*, That beginning January 1, 2024, the provisions of this subdivision expire and shall be superseded by the provisions of §16-1-22 of this code.

(14) Provide by rules, consistent with requirements of applicable federal laws and rules, application forms and application procedures for public assistance;

(15) Provide locations for making applications for public assistance;

(16) Provide a citizen or group of citizens an opportunity to file objections and to be heard upon objections to the grant of public assistance;

(17) Delegate to the personnel of the department all powers and duties vested in the secretary;

(18) Make reports as may be required by applicable federal laws and rules respecting assistance;

(19) Invoke any legal, equitable, or special remedies for the enforcement of the provisions of this chapter;

(20) Require a provider, subgrantee, or other entity performing services on behalf of the department to comply with all applicable laws, rules, and written procedures pertaining to the program for which the entity is providing or coordinating services, including, but not limited to, policy manuals, statements of work, program instructions, or other similar agreements. When submitting a claim for payment, the entity shall certify that it has complied with all material conditions for payment. Knowingly and intentionally submitting a claim or billing for services performed in material violation of any law, rule, policy, or other written agreement shall constitute fraud and the agreement for provision of services shall terminate. The entity shall be required to repay the department for any payment under the program for which the provider was not entitled, regardless of whether the incorrect payment was the result of department error, fraud, or other cause. A demand for repayment or termination of agreement for provision of services shall be subject to the due process procedures pursuant to §29A-5-1 *et seq.* of this code. The provisions of this subdivision do not apply to fraud in the Medicaid program;

(21) Develop a data analytics pilot program to identify potential fraud and help guide policy objectives to eliminate future fraud;

(22) Cooperate with the Office of the Inspector General and take action on its findings; and

(23) Annually allocate Child Protective Services workers by districts of the Bureau for Social Services and report the allocation process to the Legislative Oversight Commission on Health and Human Resources Accountability by July 1 each year.

§9-2-9. Secretary to develop Medicaid monitoring and case management.

[Repealed.]

§9-2-9a. Agreements between the Secretary and three higher education institutions.

Any contract, agreement or memorandum of understanding between the secretary and West Virginia University, West Virginia School of Osteopathic Medicine or Marshall University for services is exempt from the provisions of §5A-3-1 *et seq.*, of this code: *Provided*, That any contract entered into under the provisions of subdivision five, section six of this article, for the provision of Medicaid services by a risk-bearing entity is not exempt from the provisions of §5A-3-1 *et seq.*, of this code.

§9-2-13. Judicial review of decisions of contested cases.

[Repealed.]

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-8. Authority to examine witnesses, administer oaths and take affidavits.

[Repealed.]

§9-5-8a. Authority to subpoena witnesses and documents when investigating the provision of medical assistance programs.

[Repealed.]

§9-5-8b. Authority of Investigations and Fraud Management Division to subpoena witnesses and documents.

[Repealed.]

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. DEPARTMENT OF HEALTH.

§16-1-1. Purpose.

It is the policy of this state to promote the physical and mental health of all of its citizens and to prevent disease, injury, and disability whenever possible. The state recognizes its responsibility to assist in the provision of essential public health services and establishes by this article a state public health system to work in conjunction with local boards of health to provide basic public health services that encourage healthy people in healthy communities. Until January 1, 2024, the Bureau for Public Health and the Department of Health and Human Resources shall have those powers and duties respecting the administration of the state public health system as authorized, granted and imposed by this chapter and elsewhere by law.

Beginning January 1, 2024, the Department of Health is comprised of the agencies as provided in §5F-2-1a of this code, is charged with the administration of this chapter, and shall have those powers and duties respecting the administration of the state public health system as authorized, granted and imposed by this chapter and elsewhere by law.

§16-1-2. Definitions.

As used in this article:

(1) "Basic public health services" means those services that are necessary to protect the health of the public;

(2) "Bureau" means the Bureau for Public Health in the department;

(3) "Combined local board of health" means one form of organization for a local board of health and means a board of health serving any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties;

(4) "Commissioner" means the commissioner of the bureau, who may be designated as the state health officer;

(5) "County board of health" means one form of organization for a local board of health and means a local board of health serving a single county;

(6) "Department" means the West Virginia Department of Health and Human Resources: *Provided*, That beginning January 1, 2024, as used in this chapter, "department" and "Department of Health and Human Resources" means the Department of Health.

(7) "Director" or "director of health" means the state health officer. Administratively within the department, the bureau through its commissioner carries out the public health functions of the department, unless otherwise assigned by the secretary;

(8) "Essential public health services" means the core public health activities necessary to promote health and prevent disease, injury, and disability for the citizens of the state. The services include:

(A) Monitoring health status to identify community health problems;

(B) Diagnosing and investigating health problems and health hazards in the community;

(C) Informing, educating, and empowering people about health issues;

(D) Mobilizing community partnerships to identify and solve health problems;

(E) Developing policies and plans that support individual and community health efforts;

(F) Enforcing laws and rules that protect health and ensure safety;

(G) Uniting people with needed personal health services and assuring the provision of health care when it is otherwise not available;

(H) Promoting a competent public health and personal health care workforce;

(I) Evaluating the effectiveness, accessibility, and quality of personal and population-based health services; and

(J) Researching for new insights and innovative solutions to health problems;

(9) "Local board of health", "local board", or "board" means a board of health serving one or more counties or one or more municipalities or a combination thereof;

(10) "Local health department" means the staff of the local board of health;

(11) "Local health officer" has the meaning ascribed in §16-2-2 of this code.

(12) "Municipal board of health" means one form of organization for a local board of health and means a board of health serving a single municipality;

(13) "Performance-based standards" means generally accepted, objective standards such as rules or guidelines against which public health performance can be measured;

(14) "Potential source of significant contamination" means a facility or activity that stores, uses, or produces substances or compounds with potential for significant contaminating impact if released into the source water of a public water supply;

(15) "Public groundwater supply source" means a primary source of water supply for a public water system which is directly drawn from a well, underground stream, underground reservoir, underground mine, or other primary source of water supplies which is found underneath the surface of the state;

(16) "Public surface water supply source" means a primary source of water supply for a public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments, or other primary sources of water supplies which are found on the surface of the state;

(17) "Public surface water influenced groundwater supply source" means a source of water supply for a public water system which is directly drawn from an underground well, underground river or stream, underground reservoir, or underground mine, and the quantity and quality of the water in that underground supply source is heavily influenced, directly or indirectly, by the quantity and quality of surface water in the immediate area;

(18) "Public water system" means:

(A) Any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of 25 individuals per day for at least 60 days per year, or which has at least 15 service connections, and shall include:

(i) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and

(ii) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system;

(B) A public water system does not include a system which meets all of the following conditions:

(i) Consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(ii) Obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition;

(iii) Does not sell water to any person; and

(iv) Is not a carrier conveying passengers in interstate commerce;

(19) "Public water utility" means a public water system which is regulated by the West Virginia Public Service Commission pursuant to the provisions of §24-1-1 *et seq.* of this code;

(20) "Secretary" means the secretary of the Department of Health and Human Resources: *Provided*, That beginning January 1, 2024, as used in this chapter, "secretary" means the secretary of the Department of Health;

(21) "Service area" means the territorial jurisdiction of a local board of health; and

(22) "Zone of critical concern" for a public surface water supply is a corridor along streams within a watershed that warrant more detailed scrutiny due to its proximity to the surface water intake and the intake's susceptibility to potential contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for stream flows, gradient, and area topography. The length of the zone of critical concern is based on a five-hour time-of-travel of water in the streams to the water intake, plus an additional one-fourth mile below the water intake. The width of the zone of critical concern is 1000 feet measured horizontally from each bank of the principal stream and 500 feet measured horizontally from each bank of the tributaries draining into the principal stream.

§16-1-3. Powers and duties of the Secretary.

(a) The secretary may establish a state public health system.

(b) As necessary for the effective, efficient, and economical operation of the system, the secretary may from time to time

delegate, assign, transfer, or combine responsibilities or duties to or among employees of the department.

(c) Within the limits of applicable federal law, the secretary may require every applicant for a license, permit, certificate of registration, or registration under this chapter to place his or her social security number on the application.

(d) The secretary may appoint advisory councils.

(e) (1) The Secretary of the Department of Health is the chief executive officer of that department and beginning January 1, 2024, is charged with the administration of this chapter. The Governor shall appoint the secretary, by and with the advice and consent of the Senate, for the term for which the Governor is elected, and the secretary shall serve at the will and pleasure of the Governor. The Secretary shall be paid an annual salary not to exceed \$175,000. Upon his or her initial appointment, which may be at any time after the effective date of this act, the Secretary shall take the oath of office described in this section and commence his or her duties. If appointed before January 1, 2024, the Secretary shall take the oath of office described in this section and commence such duties as determined by the Secretary to be necessary to prepare for the administration of this chapter.

(2) Before entering upon the duties of his or her office, the secretary shall take and subscribe to the oath of office prescribed by section five, article four of the state Constitution.

(3) The secretary shall not be a candidate for, or hold, any other public office or public employment under the federal government or under the government of this state or any of its political subdivisions, or be a member or officer of any political party committee, or serve as an election official, or engage in any political activity, other than to vote, in behalf of, or in opposition to, any candidate, political party or public issue involved in an election. Any violation by the secretary of the provisions of this section shall automatically vacate his or her appointment as secretary.

(4) In addition to the authority provided in §5F-2-2 of this code, the secretary shall:

(A) Coordinate efforts with the Secretary of Human Services and the Secretary of Health Facilities, including authority to share the expense of administrative services through a memorandum of understanding established by agreement of the secretaries as required under §5F-2-1a of this code;

(B) Establish a state public health system; and

(C) Cooperate with the Office of the Inspector General and take action on its findings;

(5) The secretary may:

(1) Within the limits of applicable federal law, the secretary may require every applicant for a license, permit, certificate of registration, or registration under this chapter to place his or her social security number on the application; and

(2) Appoint advisory councils.

(f) Any contract, agreement or memorandum of understanding between the secretary and West Virginia University, West Virginia School of Osteopathic Medicine or Marshall University for services is exempt from the provisions of §5A-3-1 *et seq.*, of this code.

§16-1-5. State health officer; Commissioner of the Bureau for Public Health; appointment; qualifications; term.

The Commissioner of the Bureau for Public Health may be designated the state health officer. The commissioner and the state health officer shall be appointed by the secretary. The commissioner shall be a person holding a doctorate degree in public health administration unless designated the state health officer. The state health officer shall be licensed under the laws of this state to practice medicine. The commissioner and the state health officer serve at the will and pleasure of the secretary and shall not be actively engaged or employed in any other business,

vocation, or employment, serving full-time in the duties of the office as prescribed by this article.

§16-1-6. Commissioner of the Bureau for Public Health; powers and duties.

(a) The commissioner is the chief executive, administrative and fiscal officer of the Bureau for Public Health and has the following powers and duties:

(1) To supervise and direct the fiscal and administrative matters of the bureau, and in that regard and in accordance with law, employ, fix the compensation of, and discharge all persons necessary for the proper execution of the public health laws of this state and the efficient and proper discharge of the duties imposed upon, and execution of powers vested in the commissioner by law and as directed by the secretary;

(2) To enforce all laws of this state concerning public health.

(3) To investigate the cause of disease, especially of epidemics and endemic conditions, and the means of prevention, suppression, or control of those conditions; the source of sickness and mortality, the effects of environment, employment, habits, and circumstances of life on the public health.

(4) To inspect and examine food, drink, and drugs offered for sale or public consumption in the manner the commissioner considers necessary to protect the public health and shall report all violations of laws and rules relating to the law to the prosecuting attorney of the county in which the violations occur;

(5) To make complaint or cause proceedings to be instituted against any person, corporation, or other entity for the violation of any public health law before any court or agency, without being required to give security for costs; the action may be taken without the sanction of the prosecuting attorney of the county in which the proceedings are instituted or to which the proceedings relate;

(6) To promote the provision of essential public health services to citizens of this state;

(7) To monitor the operation and coordination of the local boards of health and local health officers;

(8) To develop and maintain a state plan of operation that sets forth the needs of the state in the areas of public health; goals and objectives for meeting those needs; methods for achieving the stated goals and objectives; and needed personnel, funds, and authority for achieving the goals and objectives;

(9) To collect data as may be required to foster knowledge on the citizenry's health status, the health system, and costs of health care;

(10) To delegate to any appointee, assistant, or employee any and all powers and duties vested in the commissioner, including, but not limited to, the power to execute contracts and agreements in the name of the bureau: *Provided*, That the commissioner is responsible for the acts of his or her appointees, assistants, and employees;

(11) To transfer any patient or resident between hospitals and facilities and, by agreement with the state Commissioner of Corrections and Rehabilitation and otherwise in accord with law, accept a transfer of a resident of a facility under the jurisdiction of the state Commissioner of Corrections and Rehabilitation;

(12) To make periodic reports to the Governor and to the Legislature relative to specific subject areas of public health, or other matters affecting the public health of the people of the state;

(13) To accept and use for the benefit of the health of the people of this state, any gift or devise of any property or thing which is lawfully given: *Provided*, That if any gift is for a specific purpose shall be used as specified. Any profit which may arise from any gift or devise of any property or thing shall be deposited in a special revenue fund with the State Treasurer and shall be used only as specified by the donor or donors;

(14) To inspect and enforce rules to control the sanitary conditions of and license all institutions and health facilities as set forth in this chapter, including, but not limited to, schools, whether

public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption and places where trades or industries are conducted;

(15) To make inspections, conduct hearings, and to enforce the legislative rules concerning occupational and industrial health hazards, the sanitary condition of streams, sources of water supply, sewerage facilities, and plumbing systems, and the qualifications of personnel connected with the supplies, facilities or systems without regard to whether they are publicly or privately owned; and to make inspections, conduct hearings and enforce the legislative rules concerning the design of chlorination and filtration facilities and swimming pools;

(16) To provide in accordance with this subdivision for a program for the care, treatment, and rehabilitation of the parents of sudden infant death syndrome victims; for the training and employment of personnel to provide the requisite rehabilitation of parents of sudden infant death syndrome victims; for the education of the public concerning sudden infant death syndrome; for the education of police, employees, and volunteers of all emergency services concerning sudden infant death syndrome; and for requesting appropriation of funds in both federal and state budgets to fund the sudden infant death syndrome program;

(17) To establish and maintain a state hygienic laboratory as an aid in performing the duties imposed upon the commissioner, and to employ employees that may be necessary to properly operate the laboratory. The commissioner may establish branches of the state laboratory within the state that are necessary in the interest of the public health;

(18) To expend, for the purpose of performing the public health duties imposed on the bureau, or authorized by law, any sums appropriated by the Legislature. The commissioner may make advance payments to public and nonprofit health services providers when the commissioner determines it is necessary for the initiation

or continuation of public health services. The advance payments, being in derogation of the principle of payment only after receipt of goods or services, shall be authorized only after serious consideration by the commissioner of the necessity of the advance payments and shall be for a period no greater than 90 days in advance of rendition of service or receipt of goods and continuation of health services; and

(19) To exercise all other powers delegated to the commissioner by the secretary or by this chapter or otherwise in this code, to enforce all health laws, and to pursue all other activities necessary and incident to the authority and area of concern entrusted to the bureau or the commissioner.

(b) The commissioner shall establish within the Bureau for Public Health, a Center for Local Public Health. The center shall:

(1) Enhance the quality and availability of essential public health services throughout the state provided by local boards of health;

(2) Provide technical assistance and consultation to a local board of health agency;

(3) Allocate and distribute funding based upon performance based standards;

(4) Provide technical assistance to the local public health workforce;

(5) Facilitate bi-directional communication;

(6) Establish a uniform state-wide computer system for the reporting of public health data;

(7) Inventory the services provided by a local boards of health;

(8) Support sharing of services between local boards of health;

(9) Create a performance-based evaluation system based on standards established by legislative rule;

(10) Provide a quarterly training to ensure consistency in the application of state laws, legislative rules, and local health department rules; and

(11) Enforce compliance with performance standards.

§16-1-22. Office of the Inspector General.

(a) Beginning January 1, 2024, the Office of the Inspector General is continued within the Department of Health. The Office of Inspector General shall be headed by the Inspector General and is comprised of the offices as provided in §5F-2-1a of this code.

(b) (1) The Inspector General shall be appointed by the Governor, subject to the advice and consent of the Senate.

(A) The term of the Inspector General is 5 years.

(B) At the end of a term, the Inspector General is eligible to be reappointed for one additional term. The Inspector General shall continue to serve until a successor is appointed.

(C) If a vacancy occurs in the office, an interim Inspector General may be appointed as successor to serve for the remainder of the unexpired term.

(2) The Inspector General may be removed by the Governor only for:

(A) Misconduct in office;

(B) Persistent failure to perform the duties of the Office; or

(C) Conduct prejudicial to the proper administration of justice.

(c) The Inspector General shall be professionally qualified through experience or education in at least two of the following areas:

(1) Law;

(2) Auditing;

- (3) Government operations;
- (4) Financial management; or
- (5) Health policy.

(d) The Inspector General shall be paid an annual salary not to exceed \$175,000.

(e) Funding for the office shall be as provided in the state budget.

(f) The Inspector General:

(1) Shall conduct and supervise investigations, perform inspections, evaluations, and review, and provide quality control for the programs of the Department of Human Services, the Department of Health and the Department of Health Facilities.

(2) Shall investigate fraud, waste, abuse of departmental funds, and behavior in the Department of Human Services, the Department of Health and the Department of Health Facilities that threatens public safety or demonstrates negligence, incompetence, or malfeasance;

(3) Shall cooperate with and coordinate investigative efforts with the Medicaid Fraud Control Unit, and where a preliminary investigation establishes a sufficient basis to warrant referral, shall refer such matters to the Medicaid Fraud Control Unit;

(4) Shall cooperate with and coordinate investigative efforts with departmental programs and other state and federal agencies to ensure a provider is not subject to duplicative audits; and

(5) Shall be empowered to consult with the Legislature for policy development;

(6) (A) Organize a board of review, consisting of a chairman appointed by the Inspector General and as many assistants or employees of the department as may be determined by the Inspector General and as may be required by federal laws and rules respecting assistance, the board of review to have such powers of

a review nature and such additional powers as may be granted to it by the Inspector General and as may be required by federal laws and rules respecting assistance.

(B) Provide by rules, review and appeal procedures within the office as may be required by applicable federal laws and rules respecting assistance, and as will provide applicants for, and recipients of, all classes of assistance an opportunity to be heard by the board of review, a member thereof, or individuals designated by the board, upon claims involving denial, reduction, closure, delay, or other action or inaction pertaining to public assistance.

(7) (A) May subpoena any person or evidence, administer oaths, take and certify affidavits, and take depositions and other testimony for the purpose of investigating fraud, waste, abuse of departmental funds, or behavior in the departments that threatens public safety or demonstrates negligence, incompetence, or malfeasance.

(B) If a person fails to comply with a lawful order or subpoena issued under this subsection, on petition of the Inspector General or a designated Assistant Inspector General, a court of competent jurisdiction may compel:

- (i) Compliance with the order or subpoena; or
- (ii) Testimony or the production of evidence.

(C) Within 30 business days after receiving a complaint or allegation, the Inspector General shall respond to the individual who filed the complaint or allegation with:

(i) A preliminary indication of whether the Office of the Inspector General is able to investigate the complaint or allegation; and

(ii) If the Office of the Inspector General is unable to investigate the complaint or allegation because of a conflict of interest, the Office of the Inspector General shall refer the complaint or allegation to another unit of government or law enforcement.

(g) Neither the secretary nor any employee of the Department of Human Services, Department of Health or the Department of Health Facilities may prevent, inhibit, or prohibit the Inspector General or his or her employees from initiating, carrying out, or completing any investigation, inspection, evaluation, review, or other activity oversight of public integrity by the Office of the Inspector General.

(h) The Inspector General approves and submits his or her budget.

(i) The Inspector General shall supervise all personnel of the Office of the Inspector General. Qualification, compensation, and personnel practice relating to the employees of the Office of the Inspector General, shall be governed by the classified service.

§16-1-22a. Judicial review of decisions of contested cases.

(a) For purposes of this section:

(1) "Agency" means the Board of Review or the Bureau for Medical Services, as the case may be, that has been named as a party to any proceeding on appeal made pursuant to the provisions of this section.

(2) "Board of Review" or "Board" means the Board of Review operating pursuant to the provisions of §16-1-22 of this code.

(3) "Bureau" means the Bureau for Medical Services.

(b) The board shall provide a fair, impartial and expeditious grievance and appeal process to applicants or recipients of assistance as defined in §9-1-1 *et seq.* of this code. The bureau shall provide a fair, impartial and expeditious grievance and appeal process to providers of Medicaid services.

(c) Any party adversely affected or aggrieved by a final decision or order of the agency may seek judicial review of that decision by filing an appeal to the Intermediate Court of Appeals as provided in §29A-5-4 *et seq.*, of this code.

(d) The process established by this section is the exclusive remedy for judicial review of final decisions of the Board of Review and the Bureau for Medical Services.

§16-1-22b. Authority to subpoena witnesses and documents when investigating the provision of medical assistance programs.

The Inspector General and every duly appointed hearing examiner shall have the power to apply, on behalf of any party, to the circuit court of the county in which the hearing is to be held, or the circuit court in which the subpoena or subpoena duces tecum is to be served, or the judge of either such court in vacation, for the issuance of a subpoena or subpoena duces tecum to compel the attendance of witnesses or the production of documents, before any hearing or administrative tribunal convened to consider suspension or termination of any person or corporation from providing services under the medical assistance programs. The application for a subpoena duces tecum shall state with particularity any papers or documents requested and upon hearing, the applicant or party shall notify the court or judge, as the case may be, of the necessity therefor in such hearing. The court or judge thereof, prior to issuing the requested subpoena or subpoena duces tecum, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense. The party who applies for the subpoena or subpoena duces tecum shall pay the sheriff's fees required for service of these documents.

§16-1-22c. Authority of Investigations and Fraud Management Division to subpoena witnesses and documents.

(a) When the Investigations and Fraud Management Division of the Office of the Inspector General, which is charged with investigating welfare fraud and intra-agency employee misconduct, has credible information that indicates a person has engaged in an act or activity related to the Department of Human Services, the Department of Health and the Department of Health Facilities programs, benefits or intra-agency employee misconduct which is subject to prosecution, it may conduct an investigation to

determine if the act has been committed. To the extent necessary to the investigation, the Inspector General or an employee of the Office of the Inspector General may administer oaths or affirmations and issue subpoenas for witnesses and documents relevant to the investigation, including information concerning the existence, description, nature, custody, condition and location of any book, record, documents or other tangible thing and the identity and location of persons having knowledge of relevant facts or any matter reasonably calculated to lead to the discovery of admissible evidence.

When the Investigations and Fraud Management Division has probable cause to believe that a person has engaged in an act or activity which is subject to prosecution relating to the Department of Human Services, the Department of Health and the Department of Health Facilities programs, benefits or intra-agency employee misconduct, the Inspector General or an employee of the Office of the Inspector General may request search warrants and present and swear or affirm criminal complaints.

(b) If documents necessary to an investigation of the Investigations and Fraud Management Division appear to be located outside the state, the documents shall be made available by the person or entity within the jurisdiction of the state having control over such documents either at a convenient location within the state or, upon payment of necessary expenses to the division for transportation and inspection, at the place outside the state where these documents are maintained.

(c) Upon failure of a person to comply with a subpoena or a subpoena for the production of evidence or failure of a person to give testimony without lawful excuse and upon reasonable notice to all persons affected thereby, the Investigations and Fraud Management Division may apply to the circuit court of the county in which compliance is sought for appropriate orders to compel obedience with the provisions of this section.

(d) The Investigations and Fraud Management Division may not make public the name or identity of a person whose acts or conduct is investigated pursuant to this section or the facts

disclosed in an investigation except as the same may be used in any legal action or enforcement proceeding brought pursuant to this code or federal law.

ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE
AUTHORITY ACT.

**§16-29A-4. Creation of authority and board; status and
members of board.**

The West Virginia hospital finance authority is continued. The authority is a body corporate and a governmental instrumentality of the state. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties shall be deemed and held to be, and are determined to be, essential governmental functions and for a public purpose.

The authority shall be controlled, managed and operated by the seven-member board known as the West Virginia Hospital Finance Board, which is continued. The board shall consist of the secretary and the State Treasurer as members ex officio of the board. The other five members of the board shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall serve terms of two, three, four, five and six years, respectively. The successor of each such appointed member shall be appointed for a term of six years in the same manner as the original appointments were made, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. No more than three of the appointed board members shall at any one time belong to the same political party. Appointed board members may be reappointed to serve additional terms.

All members of the board shall be citizens of the state. Each appointed member of the board, before entering upon his or her duties, shall comply with the requirements of article one, chapter six of this code and give bond in the sum of \$25,000 in the manner provided in article two, chapter six of this code. The Governor may remove any board member for cause as provided in article six,

chapter six of this code. The secretary and the State Treasurer may each appoint a deputy to serve as a member of the board in their respective absences. Such deputy shall serve at his or her pleasure.

Four members of the board shall constitute a quorum, and the affirmative vote of four members shall be necessary for any action taken by vote of the board. No vacancy in the membership of the board shall impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority.

Annually, the board shall elect one of its appointed members as chairman and another as vice chairman and shall appoint a secretary-treasurer, who need not be a member of the board. The person appointed as secretary-treasurer, including a board member if he or she is so appointed, shall give bond in the sum of \$50,000 in the manner provided in §6-2-1 *et seq.*, of this code.

Members of the board shall not receive compensation for services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties. Any payments for compensation and expenses shall be paid from the funds of the authority, after appropriations and authorization by the Legislature, and no liability or obligation shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority.

There shall also be a director of the authority appointed by the board.

CHAPTER 26. STATE HEALTH FACILITIES.

ARTICLE 1. DEPARTMENT OF HEALTH FACILITIES.

§26-1-1. Department of Health Facilities.

(a) Beginning January 1, 2024, the Department of Health Facilities is comprised of the agencies as provided in §5F-2-1a of this code, is charged with the administration of this chapter, and shall have those powers and duties respecting the administration of

the assistance programs as authorized, granted and imposed by this chapter and elsewhere by law.

(b) The department is not subject to the requirements of §5A-3-1 *et seq.* and §5A-10-1 *et seq.* of this code.

(c) Employees hired on or after January 1, 2024, are not eligible for civil service as provided in §29-6-1 *et seq.*, of this code.

(d) Beginning January 1, 2024, as used in this chapter, “department” and “Department of Health and Human Resources” means the Department of Health Facilities.

§26-1-2. Secretary to be administrative head of department; appointment, qualifications, etc.; not to hold other office or engage in political activity.

(a) (1) The Secretary of the Department of Health Facilities is the chief executive officer of that department and beginning January 1, 2024, is charged with the administration of this chapter. The Governor shall appoint the secretary, by and with the advice and consent of the Senate, for the term for which the Governor is elected, and the secretary shall serve at the will and pleasure of the Governor. The Secretary shall be paid an annual salary not to exceed \$175,000. Upon his or her initial appointment, which may be at any time after the effective date of this act, the Secretary shall take the oath of office described in this section and commence his or her duties. If appointed before January 1, 2024, the Secretary shall take the oath of office described in this section and commence such duties as determined by the Secretary to be necessary to prepare for the administration of this chapter.

(2) Before entering upon the duties of his or her office, the secretary shall take and subscribe to the oath of office prescribed by section five, article four of the state Constitution.

(3) The secretary shall not be a candidate for, or hold, any other public office or public employment under the federal government or under the government of this state or any of its political subdivisions, or be a member or officer of any political party committee, or serve as an election official, or engage in any

political activity, other than to vote, in behalf of, or in opposition to, any candidate, political party or public issue involved in an election. Any violation by the secretary of the provisions of this section shall automatically vacate his or her appointment as secretary.

(b) Beginning January 1, 2024, as used in this chapter, “secretary” means the secretary of the Department of Health Facilities.

§26-1-3. Secretary of Department of Health Facilities; powers and duties.

(a) In addition to the authority provided in §5F-2-2 of this code, the secretary shall:

(1) Coordinate efforts with the Secretary of Human Services and the Secretary of Health, including authority to share the expense of administrative services through a memorandum of understanding established by agreement of the secretaries as required under §5F-2-1a of this code;

(2) Manage, direct, control, and govern state owned health facilities;

(3) Operate state health facilities and adopt rules pertaining to their operation;

(4) Protect the rights of clients served by state health facilities;

(5) Develop and implement critical performance indicators to be used to hold state hospitals accountable. The performance system indicators shall be implemented no later than January 1, 2025; and

(6) Cooperate with the Office of the Inspector General and take action on its findings.

(b) The Secretary may:

(1) Acquire by condemnation or otherwise any interest, right, privilege, land, or improvement and hold title to the land or

improvement, for the use or benefit of the state or a state hospital or facility, to sell, exchange or otherwise convey any interest, right, privilege, land, or improvement acquired or held by the state, state hospital, or state facility Any condemnation proceedings shall be conducted pursuant to §54-1-1 *et seq.* of this code;

(2) Receive donations;

(3) Accept, allocate, and spend any federal funds that may be made available to the state by the federal government; and

(4) Transfer residents between the facilities. The clinical director may accept transfer of residents from correctional institutions, subject to the provisions of §28-1-1 *et seq.* of this code.

(c) Any contract, agreement or memorandum of understanding between the secretary and West Virginia University, West Virginia School of Osteopathic Medicine or Marshall University for services is exempt from the provisions of §5A-3-1 *et seq.*, of this code.

§26-1-4. Supervision of each facility by administrator and clinical director.

Each facility shall have a chief executive officer denominated an "administrator." The administrator shall have the fiscal responsibility for the facility and the authority to manage and administer the financial, business, and personnel affairs of the facility under the direction of the secretary.

Each facility shall have a clinical director who shall have the responsibility for decisions involving clinical and medical treatment of patients.

ARTICLE 3. HOME FOR AGED AND INFIRM MEN AND WOMEN.

§26-3-1. Establishment; name; management; superintendent.

[Repealed.]

§26-3-2. Admission of inmates.

[Repealed.]

§26-3-3. Transfer of inmates of state hospitals.

[Repealed.]

§26-3-4. Transfer of inmates from the industrial school for boys.

[Repealed.]

§26-3-5. How expenses to be paid.

[Repealed.]

ARTICLE 5. JACKIE WITHROW HOSPITAL.

§26-5-1. Continuation; management; superintendent; qualifications of superintendent; division of fiscal, administrative and clinical duties; certain persons exempted from qualification requirements.

[Repealed.]

ARTICLE 5A. TUBERCULOSIS CONTROL.

§26-5A-5a. Return of escapees from state tuberculosis institutions.

[Repealed.]

ARTICLE 8. EMERGENCY HOSPITALS.

§26-8-1. Continuation; management; superintendent; qualifications of superintendent; division of fiscal, administrative and clinical duties; certain persons exempted from qualification requirements.

[Repealed.]

§26-8-2. Patients; expenses; disposition of receipts.

[Repealed.]

§26-8-3. Admission of deformed, crippled or defective children.

[Repealed.]

ARTICLE 9. HOPEMONT STATE HOSPITAL.

§26-9-1. Establishment and continuation; name and location; management; superintendent; qualifications of superintendent; division of fiscal, administrative and clinical duties; certain persons exempted from qualification requirements.

[Repealed.]

§26-9-2. Eligibility for admission of patients.

[Repealed.]

ARTICLE 10. HOSPITALS, HOMES AND SANITARIA FEES.

§26-10-1. Authority of commissioner of public institutions to establish; exonerating persons from payment.

[Repealed.]

ARTICLE 11. STATE EXTENDED CARE AND EMERGENCY FACILITIES.

§26-11-1. Management by director of health.

[Repealed.]

§26-11-2. Supervision of each facility by administrator; qualifications of administrator; clinical director.

[Repealed.]

§26-11-3. Guidelines for admissions; fees for the maintenance of persons.

[Repealed.]

§26-11-4. Transfer of residents; rules and regulations for maintenance of patients.

[Repealed.]

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

PART 4. WITHHOLDING FROM INCOME OF AMOUNTS PAYABLE AS SUPPORT.

§48-14-401. Support orders to provide for withholding from income.

(a) Every order entered or modified under the provisions of this article that requires the payment of child support or spousal support must include a provision for automatic withholding from income of the obligor in order to facilitate income withholding as a means of collecting support.

(b) Every support order heretofore or hereafter entered by a court of competent jurisdiction is considered to provide for an order of income withholding, notwithstanding the fact that the support order does not in fact provide for an order of withholding. Income withholding may be instituted under this part for any arrearage without the necessity of additional judicial or legal action.

(c) Every such order as described in subsection (a) of this section shall contain language authorizing income withholding for both current support and for any arrearages to commence without further court action as follows:

The order shall provide that income withholding shall begin immediately, without regard to whether there is an arrearage;

(A) When a child for whom support is ordered is included or becomes included in a grant of assistance from the division of human services, its successor the Department of Human Services beginning January 1, 2024, or a similar agency of a sister state for temporary assistance for needy families benefits, medical assistance only benefits or foster care benefits and is referred to the Bureau for Child Support Enforcement; or

(B) When the support obligee has applied for services from the Bureau for Child Support Enforcement created pursuant to §48-18-101 *et seq.*, of this code, or the support enforcement agency of another state or is otherwise receiving services from the Bureau for Child Support Enforcement as provided for in this chapter. In any case where one of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or in any case where there is filed with the court a written agreement between the parties which provides for an alternative arrangement, such order shall not provide for income withholding to begin immediately, pursuant to §48-14-403 of this code.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-101. Continuation of the bureau for child support enforcement.

(a) There is continued in the Department of Health and Human Resources the Bureau for Child Support Enforcement: *Provided*, That beginning January 1, 2024, for purposes of this article, the bureau is continued in the Department of Human Services, and the terms “department” and “Department of Health and Human Resources” means Department of Human Services. The bureau is under the immediate supervision of the commissioner, who is responsible for the exercise of the duties and powers assigned to the bureau under the provisions of this chapter. The bureau is designated as the single and separate organizational unit within this state to administer the state plan for child and spousal support according to 42 U.S.C. §654(3).

(b) The department shall cooperate with the Bureau for Child Support Enforcement. At a minimum, such cooperation shall require that the department:

(1) Notify the Bureau for Child Support Enforcement when the department proposes to terminate or provide public assistance payable to any obligee;

(2) Receive support payments made on behalf of a former or current recipient to the extent permitted by Title IV-D, Part D of the Social Security Act; and

(3) Accept the assignment of the right, title or interest in support payments and forward a copy of the assignment to the Bureau for Child Support Enforcement.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-106. Location of child welfare services; state and federal cooperation; juvenile services.

(a) The child welfare service of the state shall be located within and administered by the Bureau for Social Services. The Division of Corrections and Rehabilitation of the Department of Homeland Security shall administer the secure predispositional juvenile detention and juvenile correctional facilities of the state. Notwithstanding any other provision of this code to the contrary, the administrative authority of the Division of Corrections and Rehabilitation over any child or juvenile in this state extends only to those detained or committed to a secure detention facility or secure correctional facility operated and maintained by the division by an order of a court of competent jurisdiction during the period of actual detention or confinement in the facility.

(b) The Department of Health and Human Resources is designated as the state entity to cooperate with the United States Department of Health and Human Services and United States Department of Justice in extending and improving child welfare services, to comply with federal regulations, and to receive and expend federal funds for these services: *Provided*, That beginning January 1, 2024, the Department of Human Services is designated as the state entity to cooperate with the United States Department of Health and Human Services and United States Department of Justice in extending and improving child welfare services, to comply with federal regulations, and to receive and expend federal funds for these services. The Division of Corrections and

Rehabilitation of the Department of Homeland Security is designated as the state entity to cooperate with the United States Department of Health and Human Services and United States Department of Justice in operating, maintaining and improving juvenile correction facilities and centers for the predispositional detention of children, to comply with federal regulations, and to receive and expend federal funds for these services.

(c) The Division of Corrections and Rehabilitation of the Department of Homeland Security is authorized to operate and maintain centers for juveniles needing detention pending disposition by a court having juvenile jurisdiction or temporary care following that court action.

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CHAPTER 190

**(Com. Sub. for H. B. 2515 - By Delegates Howell, Clark,
Smith, Crouse, Jennings, Ferrell, Phillips, Honaker, Cannon,
Linville and Hott)**

[Passed March 9, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §9-3-1 and §9-3-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-1B-4; and to amend said code by adding thereto a new section, designated §21A-10-24, all relating to requiring certain agencies to work together to create an inventory of occupational and educational resources for certain persons qualified to receive assistance and to maintain and distribute that document; requiring that the Bureau for Family Assistance, the Higher Education Policy Commission, and Workforce West Virginia develop and maintain an inventory of available services and supports for individuals qualified to receive federal, federal-state, or state assistance and who wish to obtain a degree, secure workforce training, or reenter the workforce; requiring the Bureau for Family Assistance, the Higher Education Policy Commission, and Workforce West Virginia to maintain the document on their websites and to distribute the document via first-class mail upon request; and eliminating authority of Higher Education Policy Commission to restrict or regulate the carrying of concealed pistols or revolvers in certain circumstances.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.

§9-3-1. Application for and granting of federal-state or federal assistance.

(a) Any person domiciled in this state, who shall make, or have made in his or her behalf, an application therefor and who is otherwise in all respects qualified to receive the same, shall be granted federal-state assistance or federal assistance in such form and amount, to such extent, and for such period, as authorized by applicable federal and state laws, rules and regulations and as determined by the department in accordance with such laws, rules and regulations and within limits of available funds.

(b) In conjunction with the Higher Education Policy Commission and Workforce West Virginia, the Bureau for Family Assistance must compile and maintain a list of those services available to assist and support individuals who are qualified to receive federal, federal-state, or state assistance and who want to obtain a degree, secure workforce training, or reenter the workforce. This document must be maintained on the Bureau for Family Assistance's website and any hard copy requested for this document must be supplied to the person requesting the information via first-class mail.

§9-3-2. Application for and granting of state assistance.

(a) Any indigent person domiciled in this state, who shall make, or have made in his or her behalf, an application therefor and who is otherwise in all respects qualified to receive the same, shall be granted state assistance in such form and amount, to such extent, and for such period, as authorized by applicable state laws, rules and regulations of the department and as determined by the department in accordance with such laws, rules and regulations and within limits of available funds.

(b) In conjunction with the Higher Education Policy Commission and Workforce West Virginia, the Bureau for Family Assistance must compile and maintain a list of those services available to assist and support individuals who are qualified to receive federal, federal-state, or state assistance and who want to obtain a degree, secure workforce training, or reenter the

workforce. This document must be maintained on the Bureau for Family Assistance's website and any hard copy requested for this document must be supplied to the person requesting the information via first-class mail.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

***§18B-1B-4. Powers and duties of Higher Education Policy Commission.**

(a) The primary responsibility of the commission is to provide shared services in a cost-effective manner upon request to the state colleges and universities, the West Virginia Council for Community and Technical College Education, and the community and technical colleges; undertake certain statewide and regional initiatives as specifically designated in this chapter, including those related to the administration of grants and scholarships and including those in conjunction with the council; to review, confirm, or approve certain actions undertaken by governing boards, as delineated in this chapter; and assist in the development of policy that will achieve the goals, objectives and priorities found in §18B-1-1a and §18B-1D-1 of this code. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West Virginia Council for Community and Technical College Education and the powers and duties assigned to the governing boards. To that end, the commission has the following powers and duties relating to the governing boards under its jurisdiction:

(1) Develop and advance the public policy agenda pursuant to §18B-1D-1 *et seq.* of this code to address major challenges facing the state, including, but not limited to, the goals, objectives, and priorities established in this chapter;

*NOTE: This section was also amended by S. B. 10 (Chapter 174), which passed prior to this act.

(2) In conjunction with the council, propose emergency and legislative rules in accordance with §29A-3A-1 and §18B-1-6 of this code to establish a performance-based funding formula model the commission and council shall use, beginning in the fiscal year 2024 budget cycle, in developing their annual budget requests to ensure the fair and equitable distribution and use of public funds among the state's institutions of higher education, including the statutorily and administratively exempted schools. This funding formula model shall advance the goals of the state's postsecondary education system by emphasizing outcomes focused on student success and institutional mission achievement. The formula shall include a range of variables that shall be weighted in a manner that corresponds to each institution's mission and provides incentives for productivity improvements consistent with the goal of strengthening the state's economy and workforce by developing the most competitive and capable graduates in the nation. The rule shall, at a minimum:

(A) Establish a set of objective performance metrics that reflect and support the state's higher education goals and priorities and the methodology by which those metrics shall be used in the allocation of state funds;

(B) Ensure that a portion of each institution's base appropriation is allocated based on outcomes achieved over a defined period of time;

(C) Incentivize postsecondary program offerings that align with the state's higher education and workforce development priorities; and

(D) Establish safeguards to ensure stability of the funding formula model including, but not limited to, providing for periodic reviews of and revision to the performance metrics and funding methodology in addition to accounting for inflation;

(3) In collaboration with the council and the governing boards:

(A) Build public consensus around and sustain attention to a long-range public policy agenda. In developing the agenda, the

commission and council shall seek input from the Legislature, the Governor, the governing boards, and the State Board of Education and local school districts to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Assist governing boards in carrying out their duty effectively to govern the individual institutions of higher education;

(4) Serve as a point of contact to state policymakers:

(A) The Governor for the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the Legislative Oversight Commission on Education Accountability;

(5) Upon request, provide shared services to a state institution of higher education;

(6) Administer scholarship and grant programs as provided for in this code;

(7) Establish and implement the benchmarks and performance indicators for state colleges and universities necessary to measure institutional progress in achieving state policy priorities and institutional missions pursuant to §18B-1D-7 of this code;

(8) Establish a formal process for recommending capital investment needs and for determining priorities for state colleges and universities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process pursuant to §18B-19-1 *et seq.* of this code;

(9) Except the statutorily and administratively exempted schools, develop standards and evaluate governing board requests for capital project financing in accordance with §18B-19-1 *et seq.* of this code;

(10) Except the statutorily and administratively exempted schools, ensure that governing boards manage capital projects and facilities needs effectively, including review and approval of capital projects, in accordance with §18B-19-1 *et seq.* of this code;

(11) Acquire legal services as considered necessary, including representation of the commission, the governing boards, employees, and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(12) Employ a chancellor, and any interim chancellor employed shall meet all criteria required of the chancellor, pursuant to §18B-1B-5 of this code;

(13) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission and the council, in accordance with §18B-4-1 *et seq.* of this code;

(14) Provide suitable offices in Kanawha County for the chancellor, vice chancellors, and other staff;

(15) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, except the statutorily exempted schools, as proposed by the governing boards. The governing boards, except the governing boards of the statutorily exempted schools, must obtain approval from the commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package: *Provided*, That the commission shall receive notice, but need not approve or confirm, an increase in the compensation of an institutional president that is exactly in the ratio of compensation increases allocated to all institutional employees and approved by the governing board to expressly include the president;

(16) Assist and facilitate the work of the institutions to implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

(17) Approve and implement a uniform standard jointly with the council to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the State Board of Education and the state superintendent of schools;

(18) Jointly with the council and in conjunction with the West Virginia Network, support systemwide technology needs through leveraged consortium purchasing, software, database and networking support, and other services including, but not limited to, the following:

(A) Expanding distance learning and technology networks to enhance teaching and learning, and promoting access to quality educational offerings with minimum duplication of effort; and

(B) Increasing the delivery of instruction to nontraditional students, providing services to business and industry, and increasing the management capabilities of the higher education system.

(C) Notwithstanding any other provision of law or this code to the contrary, the council, commission, and governing boards are not subject to the jurisdiction of the Chief Technology Officer for any purpose;

(19) Propose rules in accordance with §29A-3A-1, *et seq.* and §18B-1-6 of this code to ensure that, within sound academic policy, a student may transfer and apply toward the requirements of any

postsecondary credential the maximum number of credits earned at any regionally accredited in-state or out-of-state institution of higher education in a manner that minimizes the need to repeat courses or incur additional costs. This requirement applies to transfer processes for all levels of postsecondary programs delivered at community and technical colleges, baccalaureate-degree-granting institutions, and graduate-degree-granting institutions;

(20) Propose rules in accordance with §29A-3A-1, *et seq.* and §18B-1-6 of this code to develop a program through which a student who has gained knowledge and skills through employment, participation in education, and training at vocational schools or other education institutions, or Internet-based education programs, may demonstrate by competency-based assessment that he or she has the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate's degree or a bachelor's degree at a state institution of higher education;

(21) Seek out and attend regional, national, and international meetings and forums on education and workforce development-related topics as, in the commission's discretion, are critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals, objectives, and priorities pursuant to §18B-1-1a and §18B-1D-1 *et seq.* of this code;

(22) Promulgate and implement a rule for governing boards and institutions to follow when considering capital projects pursuant to §18B-19-1 *et seq.* of this code, which rule shall provide for appropriate deference to the value judgments of governing boards and may not apply to the statutorily or administratively exempted schools;

(23) Submit to the appropriate agencies of the executive and legislative branches of state government an appropriation request that reflects recommended appropriations for the commission and the governing boards under its jurisdiction including the statutorily

and administratively exempted schools. The commission shall submit as part of its appropriation request the separate recommended appropriation request it received from the council, both for the council and for the governing boards under the council's jurisdiction. The commission annually shall submit the proposed allocations based on the funding formula model required by subdivision (a)(2) of this section;

(24) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to governing boards for qualifying noncapital expenditures incurred in providing services to students with physical, learning, or severe sensory disabilities;

(25) Pursuant to §29A-3A-1 *et seq.* and §18B-1-6 of this code, promulgate rules necessary or expedient to fulfill the purposes of this chapter and Chapter 18C of this code;

(26) Determine when a joint rule among the governing boards under its jurisdiction is necessary or required by law and, in those instances, in consultation with the governing boards under its jurisdiction, promulgate the joint rule;

(27) Promulgate and implement a rule jointly with the council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement;

(28) Promulgate a rule pursuant to §18B-10-1 of this code establishing tuition and fee policy for all governing boards under the jurisdiction of the commission, except the statutorily and administratively exempted schools. The rule shall include, but is not limited to, the following:

(A) Differences among institutional missions;

(B) Strategies for promoting student access;

(C) Consideration of charges to out-of-state students; and

(D) Any other policies as the commission and council consider appropriate;

(29) Notwithstanding any other provision of this code to the contrary sell, lease, convey, or otherwise dispose of all or part of any real property that it owns, in accordance with §18B-19-1 *et seq.* of this code;

(30) Provide policy analysis and research focused on issues affecting institutions of higher education generally or a geographical region thereof;

(31) Develop and approve institutional mission definitions except for the statutorily and administratively exempted schools: *Provided*, That the commission may use funds appropriated by the Legislature for incentive funds to influence institutional behavior in ways that are consistent with public priorities, including the statutorily and administratively exempted schools;

(32) Review and approve academic programs for governing boards under its jurisdiction, except the statutorily and administratively exempted schools. The review and approval includes use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes.

(A) The commission's authority to review and approve academic programs for the statutorily and administratively exempted schools is limited to programs that are proposed to be offered at a new location not presently served by that institution: *Provided*, That West Virginia University and the West Virginia University Institute of Technology are subject to the commission's authority as provided in §18B-1C-2 of this code.

(B) In reviewing and approving academic programs, the commission shall focus on the following policy concerns:

(i) New programs may not be implemented which change the institutional mission, unless the institution also receives approval for expanding the institutional mission;

(ii) New programs which require significant additional expense investments for implementation may not be implemented unless the institution demonstrates that:

(I) The expenses shall be addressed by effective reallocations of existing institutional resources; or

(II) The expenses can be legitimately spread out over future years and shall be covered by reasonably anticipated additional net revenues from new enrollments;

(iii) A new undergraduate program which is significantly similar to an existing program already in the geographic service area may not be implemented unless the institution requesting the new program demonstrates a compelling need in the service area that is not being met by the existing program: *Provided*, That the academic programs of the statutorily and administratively exempted schools are not to be taken into consideration except as it relates to academic programs offered at West Virginia University in Beckley and West Virginia University Institute of Technology in Beckley.

(C) The commission shall approve or disapprove proposed academic degree programs in those instances where approval is required as soon as practicable. The commission shall maintain by rule a format model by which a new program approval shall be requested by an institution. When a request for approval of a new program is submitted to the commission, the chancellor shall provide notice within two weeks as to whether the submission meets the required format, and if it does not the chancellor shall identify each specific deficiency and return the request to the institution. The institution may refile the request for approval with the commission to address any identified deficiencies. Within 30 days after the chancellor's confirmation that the request meets the required format, the commission shall either approve or disapprove the request for the new program. The commission may not withhold approval unreasonably.

(33) Distribute funds appropriated to the commission, including incentive and performance-based funds;

(34) Administer state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of rules necessary to administer those programs;

(35) Serve as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(36) Develop and distribute information, assessment, accountability and personnel systems for state colleges and universities, including maintaining statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(37) Jointly with the council, promulgate and implement rules for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state. The council has authority and responsibility for approval of all post-secondary courses or programs providing community and technical college education as defined in §18B-1-2 of this code;

(38) Develop, facilitate, and oversee statewide and regional projects and initiatives related to providing post-secondary education at the baccalaureate level and above such as those using funds from federal categorical programs or those using incentive and performance-based funds from any source;

(39) (A) For all governing boards under its jurisdiction, except for the statutorily exempted schools, review institutional operating budgets, review and approve capital budgets, and distribute incentive and performance-based funds.

(B) For the governing boards of the statutorily exempted schools, the commission shall distribute incentive and performance-based funds and may review and comment upon the institutional operating budgets and capital budgets. The commission's comments, if any, shall be made part of the governing board's minute record and shall be filed with the Legislative Oversight Commission on Education Accountability;

(40) Provide information, research, and recommendations to state colleges and universities relating to programs and vocations with employment rates greater than 90 percent within six months post-graduation; and

(41) Provide information, research, and recommendations to state colleges and universities on coordinating with the West Virginia State Board of Education about complimentary programs.

(b) In addition to the powers and duties provided in this section and any other powers and duties assigned to it by law, the commission has other powers and duties necessary or expedient to accomplish the purposes of this chapter and Chapter 18C of this code: *Provided*, That the provisions of this subsection do not shift management authority from the governing boards to the commission.

(c) The commission may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years, if the commission determines that either of the following conditions exist:

(1) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the governing board according to state law; or

(2) Other circumstances which, in the view of the commission, severely limit the capacity of the governing board to exercise its powers or carry out its duties and responsibilities.

The commission may not withdraw specific powers for a period exceeding two years. During the withdrawal period, the commission shall take all steps necessary to reestablish sound, stable and responsible institutional governance.

(d) On or after July 1, 2024, nothing in this section authorizes the commission to restrict or regulate the carrying of a concealed pistol or revolver by a person who holds a current and valid license to carry a concealed deadly weapon except as expressly authorized in §18B-4-5b of this code.

(e) In conjunction with Workforce West Virginia and the Bureau for Family Assistance, the Higher Education Policy Commission must compile and maintain a list of those services available to assist and support individuals who are qualified to receive federal, federal-state, or state assistance and who want to obtain a degree, secure workforce training, or reenter the workforce. This document must be maintained on the Higher Education Policy Commission's website, and any hard copy requested for this document must be supplied to the person requesting the information via first-class mail.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 10. UNEMPLOYMENT COMPENSATION.

§21A-10-24. List of services and support available to individuals who are qualified to receive federal, federal-state, or state assistance.

(a) In conjunction with the Higher Education Policy Commission and the Bureau for Family Assistance, Workforce West Virginia must compile and maintain a list of those services available to assist and support individuals who are qualified to receive federal, federal-state, or state assistance and who want to obtain a degree, secure workforce training, or reenter the workforce. This document must be maintained on Workforce West Virginia's website, and any hard copy requested for this document must be supplied to the person requesting the information via first-class mail.

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CHAPTER 191

(H. B. 3473 - By Delegates Linville and Maynor)

[Passed March 11, 2023; in effect July 1, 2023.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2E-10, relating to creating a taskforce on infrastructure deployment; setting forth purpose; defining a term; specifying membership of the taskforce and topics of study; requiring reporting; and providing sunset date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2E. DIG ONCE POLICY.

§17-2E-10. Taskforce on infrastructure deployment clearinghouse; reporting; sunset date.

(a) There is hereby created a taskforce under the leadership of the Commissioner of the Division of Highways, or his or her designee, for the purpose of studying best practices for the creation of a clearinghouse with information on public rights-of-way, including environmental and historic preservation content, that may reduce regulatory hurdles, lower costs, and increase the speed of infrastructure deployment. The purpose of the clearinghouse is to provide information relevant to infrastructure deployment, such as identifying public rights-of-way that may be readily accessed. For purposes of this section, “infrastructure deployment” means the deployment of underground infrastructure in public rights-of-way in West Virginia.

(b) The taskforce shall consist of the following:

(1) The Commissioner of the Division of Highways, or his or her designee;

(2) The Director of the Division of Environmental Protection, or his or her designee;

(3) The director of the historic preservation section of the Department of Arts, Culture, and History, or his or her designee;

(4) Any designee as may be selected by Miss Utility of West Virginia; and

(5) Any designees as may be selected by the Legislative Oversight Commission on Department of Transportation Accountability.

(c) The infrastructure deployment clearinghouse taskforce shall examine and report on the following:

(1) Regulatory hurdles affecting infrastructure deployment;

(2) The availability of information that may reduce regulatory hurdles;

(3) Information available, including environmental factors, historically-significant sites, and previously-disturbed ground as relevant to infrastructure deployment;

(4) Recommendations on ways to create a clearinghouse that contains information relevant to reduce regulatory hurdles, lower costs, and accelerate infrastructure deployment;

(5) Recommendations on restrictions that may be needed concerning access to clearinghouse information; and

(6) Other information and recommendations the taskforce deems important to create the clearinghouse and improve infrastructure deployment.

(d) The taskforce shall report and make recommendations to the Legislative Oversight Commission on Department of Transportation Accountability, including:

- (1) Status updates upon request; and
 - (2) Written recommendations, including any proposed legislation, by December 31, 2023.
- (e) The provisions of this section sunset and cease to have effect after March 31, 2024.



CHAPTER 192

(Com. Sub. for S. B. 267 - By Senators Takubo, Grady, and Plymale)

[Passed March 8, 2023; in effect 90 days from passage (June 6, 2023)]

[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §5-16-7f of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §9-5-31; to amend and reenact §33-15-4s of said code; to amend and reenact §33-16-3dd of said code; to amend and reenact §33-24-7s of said code; to amend and reenact §33-25-8p of said code; and to amend and reenact §33-25A-8s of said code, all relating to prior authorizations; defining terms; requiring prior authorizations and related communications to be submitted via an electronic portal; requiring electronic notification to the health care provider confirming receipt of the prior authorization; establishing timelines for compliance; providing communication via the portal regarding the current status of the prior authorization; reducing time frames for prior authorization requests; providing a time frame for a decision to be rendered after the receipt of additional information; providing a time frame for a claim to be submitted to audit; stating provisions pertaining to patient communications about step therapy protocols; establishing time frame for peer-to-peer appeals; reducing timeline for prior authorization appeal process; revising the percentage approval for a health care provider to be considered for an exemption from prior authorization criteria; revising time frame for prior authorization exemption process; removing limitation on prior authorization exemption that applied exemption to procedures used to justify granting of exemption; expanding auditing of prior authorization exemption process; requiring plan to give

health care practitioner rationale for revocation of exemption; providing for limitations to exemption; removing criteria related to electronic submission of pharmacy benefits; amending effective date; requiring oversight and data collection by the Office of the Insurance Commissioner and the Inspector General; and providing for civil penalties.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE, AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

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

§5-16-7f. Prior authorization.

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

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

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

"Prior authorization" means obtaining advance approval from the Public Employees Insurance Agency regarding the coverage of a service or medication.

(b) The Public Employees Insurance Agency shall require prior authorization forms, including any related communication, to be submitted via an electronic portal and shall accept one prior authorization for an episode of care. The portal shall be placed in an easily identifiable and accessible place on the Public Employees Insurance Agency's webpage and the portal web address shall be included on the insured's insurance card. The portal shall:

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

(2) Provide an electronic notification to the health care provider confirming receipt of the prior authorization request for forms submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the Public Employees Insurance Agency requires a prior authorization. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list shall be updated at least quarterly to ensure that the list remains current;

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

(5) Be prepared by July 1, 2024.

(c) The Public Employees Insurance Agency shall provide electronic communication via the portal regarding the current status of the prior authorization request to the health care provider.

(d) After the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the Public Employees Insurance Agency shall respond to the prior authorization request within five business days from the day on the electronic receipt of the prior authorization request: *Provided*, That the Public Employees Insurance Agency shall respond to the prior authorization request within two business days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

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

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

(e) If the information submitted is considered incomplete, the Public Employees Insurance Agency shall identify all deficiencies, and within two business days from the day on the electronic receipt of the prior authorization, request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner. The Public Employees Insurance Agency shall render a decision within two business day after receipt of the additional information submitted by the health care provider. If the health care practitioner fails to submit additional information, the prior authorization is considered denied and a new request shall be submitted.

(f) If the Public Employees Insurance Agency wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process within two business days from the day on the electronic receipt of the prior authorization request.

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

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

(i) If a prior authorization is rejected by the Public Employees Insurance Agency and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner, similar in specialty, education, and background. The Public Employees Insurance Agency's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this peer-to-peer appeal process shall take no longer than five business days from the date of the request of the peer-to-peer consultation. Time frames regarding the appeal of a decision on a prior authorization shall take no longer than 10 business days from the date of the appeal submission.

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

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

(k) If a health care practitioner has performed an average of 30 procedures per year and in a six-month time period during that year has received a 90 percent final prior approval rating, the Public Employees Insurance Agency shall not require the health care

practitioner to submit a prior authorization for at least the next six months, or longer if the Public Employees Insurance Agency allows: *Provided*, That at the end of the six-month time frame, or longer if the Public Employees Insurance Agency allows, the exemption shall be reviewed prior to renewal. If approved, the renewal shall be granted for a time period equal to the previously granted time period, or longer if the Public Employees Insurance Agency allows. This exemption is subject to internal auditing, at any time, by the Public Employees Insurance Agency and may be rescinded if the Public Employees Insurance Agency determines the health care practitioner is not performing services or procedures in conformity with the Public Employees Insurance Agency's benefit plan, it identifies substantial variances in historical utilization, or identifies other anomalies based upon the results of the Public Employees Insurance Agency's internal audit. The Public Employees Insurance Agency shall provide a health care practitioner with a letter detailing the rationale for revocation of his or her exemption. Nothing in this subsection may be interpreted to prohibit the Public Employees Insurance Agency from requiring a prior authorization for an experimental treatment, non-covered benefit, or any out-of-network service or procedure.

(l) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2024. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(m) The Insurance Commissioner shall request data on a quarterly basis, or more often as needed, to oversee compliance with this article. The data shall include, but not be limited to, prior authorizations requested by health care providers, the total number of prior authorizations denied broken down by health care provider, the total number of prior authorizations appealed by health care providers, the total number of prior authorizations approved after appeal by health care providers, the name of each gold card status physician, and the name of each physician whose gold card status was revoked and the reason for revocation.

(n) The Insurance Commissioner may assess a civil penalty for a violation of this section.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

†§9-5-31. Prior authorization.

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

"Episode of care" means a specific medical problem, condition, or specific illness being managed including tests, procedures, and rehabilitation initially requested by the health care practitioner, to be performed at the site of service, excluding out of network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medial problem, condition, or specific illness being managed may require a separate prior authorization.

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

"Prior authorization" means obtaining advance approval from the Bureau of Medical Services about the coverage of a service or medication.

(b) The Bureau of Medical Services shall require prior authorization forms, including any related communication, to be submitted via an electronic portal and shall accept one prior authorization for an episode of care. The portal shall be placed in an easily identifiable and accessible place on the Bureau of Medical

†NOTE: S. B. 239 (Chapter 186) which passed prior to this act, also created a new Section 31. Therefore, this has been redesignated as Section 32 for the code.

Services' webpage and the portal web address shall be included on the insured's insurance card. The portal shall:

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

(2) Provide an electronic notification to the health care provider confirming receipt of the prior authorization request for forms submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the Bureau of Medical Services requires a prior authorization. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list shall be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the Bureau of Medical Services requires a plan member to use step therapy protocols. This shall be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the Bureau of Medical Services and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by July 1, 2024.

(c) Provide electronic communication via the portal regarding the current status of the prior authorization request to the health care provider.

(d) After the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the Bureau of Medical Services shall respond to the prior authorization request within five business days from the day on the electronic receipt of the prior authorization request, except that the Bureau of Medical Services shall respond to the prior authorization request within two business days if the request is for medical care or other service for a condition where

application of the time frame for making routine or non-life-threatening care determinations is either of the following:

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

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

(e) If the information submitted is considered incomplete, the Bureau of Medical Services shall identify all deficiencies, and within two business days from the day on the electronic receipt of the prior authorization request, return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner. The Bureau of Medical Services shall render a decision within two business days after receipt of the additional information submitted by the health care provider. If the health care practitioner fails to submit additional information, the prior authorization is considered denied and a new request shall be submitted.

(f) If the Bureau of Medical Services wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process within two business days from the day on the electronic receipt of the prior authorization request.

(g) A prior authorization approved by the Bureau of Medical Services is carried over to all other managed care organizations and health insurers for three months if the services are provided within the state.

(h) The Bureau of Medical Services shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the Bureau of Medical Services and the health care practitioner who submitted the prior

authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner, similar in specialty, education, and background. The Bureau of Medical Services' medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this peer-to-peer appeal process shall take no longer than five business days from the date of the request of the peer-to-peer consultation. Time frames regarding the appeal of a decision on a prior authorization shall take no longer than 10 business days from the date of the appeal submission.

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

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

(k) If a health care practitioner has performed an average of 30 procedures per year and in a six-month time period during that year has received a 90 percent final prior approval rating, the Bureau of Medical Services may not require the health care practitioner to submit a prior authorization for at least the next six months or longer if the Bureau for Medical Services allows: *Provided*, That at the end of the six-month time frame, or longer if the Bureau for Medical Services allows, the exemption shall be reviewed prior to renewal. If approved, the renewal shall be granted for a time period equal to the previously granted time period, or longer if the Bureau for Medical Services allows. This exemption is subject to internal auditing at any time by the Bureau of Medical Services and may be rescinded if the Bureau of Medical Services determines the health care practitioner is not performing services or procedures in

conformity with the Bureau of Medical Services' benefit plan, it identifies substantial variances in historical utilization or identifies other anomalies based upon the results of the Bureau of Medical Services' internal audit. The Bureau for Medical Services shall provide a health care practitioner with a letter detailing the rationale for revocation of his or her exemption. Nothing in this subsection may be interpreted to prohibit the Bureau for Medical Services from requiring a prior authorization for an experimental treatment, non-covered benefit, or any out-of-network service or procedure. (l) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2024. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section. (m) The Inspector General shall request data on a quarterly basis, or more often as needed, to oversee compliance with this article. The data shall include, but not be limited to, prior authorizations requested by health care providers, the total number of prior authorizations denied broken down by health care provider, the total number of prior authorizations appealed by health care providers, the total number of prior authorizations approved after appeal by health care providers, the name of each gold card status physician, and the name of each physician whose gold card status was revoked and the reason for revocation.

(n) The Inspector General may assess a civil penalty for a violation of this section.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4s. Prior authorization.

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

"Episode of care" means a specific medical problem, condition, or specific illness being managed including tests, procedures, and

rehabilitation initially requested by the health care practitioner, to be performed at the site of service, excluding out of network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

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

"Prior authorization" means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b)The health insurer shall require prior authorization forms, including any related communication, to be submitted via an electronic portal and shall accept one prior authorization for an episode of care. The portal shall be placed in an easily identifiable and accessible place on the health insurer's webpage and the portal web address shall be included on the insured's insurance card. The portal shall:

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

(2) Provide an electronic notification to the health care provider confirming receipt of the prior authorization request for forms submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health insurer requires a prior authorization. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list shall be updated at least quarterly to ensure that the list remains current;

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

(5) Be prepared by July 1, 2024.

(c) Provide electronic communication via the portal regarding the current status of the prior authorization request to the health care provider.

(d) After the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within five business days from the day on the electronic receipt of the prior authorization request, except that the health insurer shall respond to the prior authorization request within two business days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

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

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

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

practitioner. The health insurer shall render a decision within two business days after receipt of the additional information submitted by the health care provider. If the health care provider fails to submit additional information, the prior authorization is considered denied and a new request shall be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process within two business days from the day on the electronic receipt of the prior authorization request.

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

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

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner, similar in specialty, education, and background. The health insurer's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this peer-to-peer appeal process shall take no longer than five business days from the date of the request of the peer-to-peer consultation. Time frames regarding the appeal of a decision on a prior authorization shall take no longer than 10 business days from the date of the appeal submission.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization may not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication does not exceed \$5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being

provided at discharge. After the three-day time frame, a prior authorization shall be obtained.

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

(k) If a health care practitioner has performed an average of 30 procedures per year and in a six-month time period during that year has received a 90 percent final prior approval rating, the health insurer may not require the health care practitioner to submit a prior authorization for at least the next six months, or longer if the insurer allows: *Provided*, That at the end of the six-month time frame, or longer if the insurer allows, the exemption shall be reviewed prior to renewal. If approved, the renewal shall be granted for a time period equal to the previously granted time period, or longer if the insurer allows. This exemption is subject to internal auditing, at any time, by the health insurer and may be rescinded if the health insurer determines the health care practitioner is not performing services or procedures in conformity with the health insurer's benefit plan, it identifies substantial variances in historical utilization, or identifies other anomalies based upon the results of the health insurer's internal audit. The insurer shall provide a health care practitioner with a letter detailing the rationale for revocation of his or her exemption. Nothing in this subsection may be interpreted to prohibit an insurer from requiring a prior authorization for an experimental treatment, non-covered benefit, or any out-of-network service or procedure.

(l) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2024. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(m) The Insurance Commissioner shall request data on a quarterly basis, or more often as needed, to oversee compliance with this article. The data shall include, but not be limited to, prior authorizations requested by health care providers, the total number of prior authorizations denied broken down by health care provider,

the total number of prior authorizations appealed by health care providers, the total number of prior authorizations approved after appeal by health care providers, the name of each gold card status physician, and the name of each physician whose gold card status was revoked and the reason for revocation.

(n) The Insurance Commissioner may assess a civil penalty for a violation of this section pursuant to §33-3-11 of this code.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3dd. Prior authorization.

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

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

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

"Prior authorization" means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b) The health insurer shall require prior authorization forms, including any related communication, to be submitted via an electronic portal and shall accept one prior authorization for an episode of care. The portal shall be placed in an easily identifiable

and accessible place on the health insurer's webpage and the portal web address shall be included on the insured's insurance card. The portal shall:

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

(2) Provide an electronic notification to the health care provider confirming receipt of the prior authorization request for forms submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health insurer requires a prior authorization. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list shall be updated at least quarterly to ensure that the list remains current;

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

(5) Be prepared by July 1, 2024.

(c) Provide electronic communication via the portal regarding the current status of the prior authorization request to the health care provider.

(d) After the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within five business days from the day on the electronic receipt of the prior authorization request: *Provided*, That the health insurer shall respond to the prior authorization request within two business days if the request is for medical care or other service for a condition where application of the time frame for

making routine or non-life-threatening care determinations is either of the following:

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

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

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies, and within two business days from the day on the electronic receipt of the prior authorization request, return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the time the return request is received by the health care practitioner. The health insurer shall render a decision within two business days after receipt of the additional information submitted by the health care provider. If the health care provider fails to submit additional information, the prior authorization is considered denied and a new request shall be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process within two business days from the day on the electronic receipt of the prior authorization request.

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

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

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

requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner, similar in specialty, education, and background. The health insurer's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this peer-to-peer appeal process shall take no longer than five business days from the date of request of the peer-to-peer consultation. Time frames regarding the appeal of a decision on a prior authorization shall taken no longer than 10 business days from the date of the appeal submission.

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

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

(k) If a health care practitioner has performed an average of 30 procedures per year and in a six-month time period during that year has received a 90 percent final prior approval rating, the health insurer may not require the health care practitioner to submit a prior authorization for at least the next six months, or longer if the insurer allows: *Provided*, That, at the end of the six-month time frame, or longer if the insurer allows, the exemption shall be reviewed prior to renewal. If approved, the renewal shall be granted for a time period equal to the previously granted time period, or longer if the insurer allows. This exemption is subject to internal auditing by the health insurer at any time and may be rescinded if the health insurer determines the health care practitioner is not performing services or procedures in conformity with the health insurer's benefit plan, it identifies substantial variances in historical utilization, or identifies or anomalies based upon the results of the

health insurer's internal audit. The insurer shall provide a health care practitioner with a letter detailing the rationale for revocation of his or her exemption. Nothing in this subsection may be interpreted to prohibit an insurer from requiring a prior authorization for an experimental treatment, non-covered benefit, or any out-of-network service or procedure.

(l) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2024. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(m) The Insurance Commissioner shall request data on a quarterly basis, or more often as needed, to oversee compliance with this article. The data shall include, but not be limited to, prior authorizations requested by health care providers, the total number of prior authorizations denied broken down by health care provider, the total number of prior authorizations appealed by health care providers, the total number of prior authorizations approved after appeal by health care providers, the name of each gold card status physician, and the name of each physician whose gold card status was revoked and the reason for revocation.

(n) The Insurance Commissioner may assess a civil penalty for a violation of this section pursuant to §33-3-11 of this code.

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

§33-24-7s. Prior authorization.

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

"Episode of care" means a specific medical problem, condition, or specific illness being managed including tests, procedures, and rehabilitation initially requested by the health care practitioner to

be performed at the site of service, excluding out of network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

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

"Prior authorization" means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b)The health insurer shall require prior authorization forms, including any related communication, to be submitted via an electronic portal and shall accept one prior authorization for an episode of care. The portal shall be placed in an easily identifiable and accessible place on the health insurer's webpage and the portal web address shall be included on the insured's insurance card. The portal shall:

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

(2) Provide an electronic notification to the health care provider confirming receipt of the prior authorization request for forms submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health insurer requires a prior authorization. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list shall be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health insurer requires a plan member to use step therapy protocols. This shall be conspicuous

on the prior authorization form. If the patient has completed step therapy as required by the health insurer and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, July 1, 2024.

(c) Provide electronic communication via the portal regarding the current status of the prior authorization request to the health care provider.

(d) After the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within five business days from the day on the electronic receipt of the prior authorization request: *Provided*, That the health insurer shall respond to the prior authorization request within two business days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

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

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

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies, and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner. The health insurer shall render a decision within two business days after receipt of the additional information submitted by the health

care provider. If the health care provider fails to submit additional information, the prior authorization is considered denied and a new request shall be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process within two business days from the day on the electronic receipt of the prior authorization request.

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

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

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner, similar in specialty, education, and background. The health insurer's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this peer-to-peer appeal process shall take no longer than five business days from the date of the request of the peer-to-peer consultation. Time frames regarding the appeal of a decision on a prior authorization shall take no longer than 10 business days from the date of the appeal submission.

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

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

(k) If a health care practitioner has performed an average of 30 procedures per year and in a six-month time period during that year has received a 90 percent final prior approval rating, the health insurer may not require the health care practitioner to submit a prior authorization for at least the next six months, or longer if the insurer allows: *Provided*, That, at the end of the six-month time frame, or longer if the insurer allows, the exemption shall be reviewed prior to renewal. If approved, this renewal, shall be granted for a time period equal to the previously granted time period, or longer if the insurer allows. This exemption is subject to internal auditing, at any time, by the health insurer and may be rescinded if the health insurer determines the health care practitioner is not performing services or procedures in conformity with the health insurer's benefit plan, it identifies substantial variances in historical utilization or identifies other anomalies based upon the results of the health insurer's internal audit. The insurer shall provide a health care practitioner with a letter detailing the rationale for revocation of his or her exemption. Nothing in this subsection may be interpreted to prohibit an insurer from requiring a prior authorization for an experimental treatment, non-covered benefit, or any out-of-network service or procedure.

(l) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2024. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(m) The Insurance Commissioner shall request data on a quarterly basis, or more often as needed, to oversee compliance with this article. The data shall include, but not be limited to, prior authorizations requested by health care providers, the total number of prior authorizations denied broken down by health care provider, the total number of prior authorizations appealed by health care providers, the total number of prior authorizations approved after appeal by health care providers, the name of each gold card status

physician, the name of each physician whose gold card status was revoked and the reason for revocation.

(n) The Insurance Commissioner may assess a civil penalty for a violation of this section pursuant to §33-3-11 of this code.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8p. Prior authorization.

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

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

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

"Prior authorization" means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b) The health insurer shall require prior authorization forms, including any related communication, to be submitted via an electronic portal and shall accept one prior authorization for an episode of care. These forms shall be placed in an easily identifiable and accessible place on the health insurer's webpage and the portal web address shall be included on the insured's insurance card. The portal shall:

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

(2) Provide an electronic notification to the health care provider confirming receipt of the prior authorization request for forms submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health insurer requires a prior authorization. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list shall be updated at least quarterly to ensure that the list remains current;

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

(5) Be prepared by July 1, 2024.

(c) Provide electronic communication via the portal regarding the current status of the prior authorization request to the health care provider.

(d) After the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within five business days from the day on the electronic receipt of the prior authorization request: *Provided*, That the health insurer shall respond to the prior authorization request within two business days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

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

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

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies, and within two business days from the day on the electronic receipt of the prior authorization request, return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner. The health insurer shall render a decision within two business days after receipt of the additional information submitted by the health care provider. If the health care provider fails to submit additional information the prior authorization is considered denied and a new request shall be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process within two business days from the day on the electronic receipt of the prior authorization request.

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

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

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner, similar in specialty, education, and background. The health insurer's medical director

has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this peer-to-peer appeal process shall take no longer than five business days from the date of the request of the peer-to-peer consultation. Time frames regarding the appeal of a decision on a prior authorization shall take no longer than 10 business days from the date of the appeal submission.

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

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

(k) If a health care practitioner has performed an average of 30 procedures per year and in a six-month time period during that year has received a 90 percent final prior approval rating, the health insurer may not require the health care practitioner to submit a prior authorization for at least the next six months, or longer if the insurer allows: *Provided*, That, at the end of the six-month time frame, or longer if the insurer allows, the exemption shall be reviewed prior to renewal. If approved, the renewal shall be granted for a time period equal to the previously granted time period, or longer is the insurer allows. This exemption is subject to internal auditing, at any time, by the health insurer and may be rescinded if the health insurer determines the health care practitioner is not performing services or procedures in conformity with the health insurer's benefit plan, it identifies substantial variance in historical utilization, or other anomalies based upon the results of the health insurer's internal audit. The insurer shall provide a health care practitioner with a letter detailing the rationale for revocation of his or her exemption. Nothing in this subsection may be interpreted to

prohibit an insurer from requiring a prior authorization for an experimental treatment, non-covered benefit, or any out-of-network service or procedure.

(l) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2024. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(m) The Insurance Commissioner shall request data on a quarterly basis, or more often as needed, to oversee compliance with this article. The data shall include, but not be limited to, prior authorizations requested by health care providers, the total number of prior authorizations denied broken down by health care provider, the total number of prior authorizations appealed by health care providers, the total number of prior authorizations approved after appeal by health care providers, the name of each gold card status physician, the name of each physician whose gold card status was revoked and the reason for revocation.

(n) The Insurance Commissioner may assess a civil penalty for a violation of this section pursuant to §33-3-11 of this code.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8s. Prior authorization.

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

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

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

"Prior authorization" means obtaining advance approval from a health maintenance organization about the coverage of a service or medication.

(b)The health maintenance organization shall require prior authorization forms, including any related communication, to be submitted via an electronic portal and shall accept one prior authorization for an episode of care. These forms shall be placed in an easily identifiable and accessible place on the health maintenance organization's webpage and the portal web address shall be included on the insured's insurance card. The portal shall:

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

(2) Provide an electronic notification to the health care provider confirming receipt of the prior authorization request for forms submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health maintenance organization requires a prior authorization. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list shall be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health maintenance organization requires a plan member to use step therapy protocols. This shall be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health maintenance organization and the step therapy has been unsuccessful, this shall

be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by July 1, 2024.

(c) Provide electronic communication via the portal regarding the current status of the prior authorization request to the health care provider.

(d) After the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health maintenance organization shall respond to the prior authorization request within five business days from the day on the electronic receipt of the prior authorization request, except that the health maintenance organization shall respond to the prior authorization request within two business days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

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

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

(e) If the information submitted is considered incomplete, the health maintenance organization shall identify all deficiencies, and within two business days from the day on the electronic receipt of the prior authorization request, return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner. The health insurer shall render a decision within two business days after receipt of the additional information submitted by the health care provider. If the health care provider fails to

submit the additional information, the prior authorization is considered denied and a new request shall be submitted.

(f) If the health maintenance organization wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process within two business days from the day on the electronic receipt of the prior authorization request.

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

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

(i) If a prior authorization is rejected by the health maintenance organization and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner, similar in specialty, education, and background. The health maintenance organization's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this peer-to-peer appeal process shall take no longer than five business days from the date of the request of the peer-to-peer consultation. Time frames regarding the appeal of a decision on a prior authorization shall take no longer than 10 business days from the date of the appeal submission.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization may not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication does not exceed \$5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being

provided at discharge. After the three-day time frame, a prior authorization shall be obtained.

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

(k) If a health care practitioner has performed an average of 30 procedures per year and in a six-month time period during that year has received a 90 percent final prior approval rating, the health maintenance organization may not require the health care practitioner to submit a prior authorization for at least the next six months or longer if the insurer allows: *Provided*, That at the end of the six-month time frame, or longer if the insurer allows, the exemption shall be reviewed prior to renewal. If approved, the renewal shall be granted for a time period equal to the previously granted time period, or longer if the insurer allows. This exemption is subject to internal auditing, at any time, by the health maintenance organization and may be rescinded if the health maintenance organization determines the health care practitioner is not performing services or procedures in conformity with the health maintenance organization's benefit plan, it identifies substantial variances in historical utilization, or identifies other anomalies based upon the results of the health maintenance organization's internal audit. The insurer shall provide a health care practitioner with a letter detailing the rationale for revocation of his or her exemption. Nothing in this subsection may be interpreted to prohibit an insurer from requiring prior authorization for an experimental treatment, non-covered benefit, or any out-of-network service or procedure. This subsection shall not apply to services or procedures where the benefit maximums or minimums have been required by statute or policy of the Bureau for Medical Services as it relates to the Medicaid Program.

(l) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2024. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(m) The Insurance Commissioner shall request data on a quarterly basis, or more often as needed, to oversee compliance with this article. The data shall include, but not be limited to, prior authorizations requested by health care providers, the total number of prior authorizations denied broken down by health care provider, the total number of prior authorizations appealed by health care providers, the total number of prior authorizations approved after appeal by health care providers, the name of each gold card status physician, the name of each physician whose gold card status was revoked and the reason for revocation.

(n) The Insurance Commissioner may assess a civil penalty for a violation of this section pursuant to §33-3-11 of this code.

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CHAPTER 193

**(Com. Sub. for S. B. 577 - By Senators Maroney, Woelfel,
Rucker, Deeds, Grady, Hamilton, Queen, Clements, Oliverio,
Woodrum, Jeffries, Chapman, Barrett, Roberts, Hunt, and
Taylor)**

[Passed March 11, 2023; to take effect January 1, 2024]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §5-16-2 and §5-16-7g of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-59-1 of said code, all relating to diabetes; defining terms; reducing copayments; adding coverage for devices; permitting testing equipment to be purchased without a prescription; and providing for effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

***§5-16-2. Definitions.**

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

"Agency" or "PEIA" means the Public Employees Insurance Agency created by this article.

"Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences in order to produce socially significant improvement in human behavior and includes

***NOTE:** This section was also amended by S. B. 268 (Chapter 241), which passed prior to this act.

the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

"Autism spectrum disorder" means any pervasive developmental disorder, including autistic disorder, Asperger's syndrome, Rett syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

"Certified behavior analyst" means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.

"Dependent" includes an eligible employee's child under the age of 26 as defined in the Patient Protection and Affordable Care Act.

"Device" means a blood glucose test strip, glucometer, continuous glucose monitor (CGM), lancet, lancing device, or insulin syringe used to cure, diagnose, mitigate, prevent, or treat diabetes or low blood sugar, but does not include insulin pumps.

"Director" means the Director of the Public Employees Insurance Agency created by this article.

"Distant site" means the telehealth site where the health care practitioner is seeing the patient at a distance or consulting with a patient's health care practitioner.

"Employee" means any person, including an elected officer, who works regularly full-time in the service of the State of West Virginia; and, for the purpose of this article only, the term "employee" also means any person, including an elected officer, who works regularly full-time in the service of a county board of education; a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the Public Employees Insurance program; a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties,

cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or intellectually and developmentally disabled facility established, operated, or licensed by the Secretary of the Department of Health and Human Resources pursuant to §27-2A-1 of this code and which is supported in part by state, county, or municipal funds; any person who works regularly full-time in the service of the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, or a governing board as defined in §18B-1-2 of this code; any person who works regularly full-time in the service of a combined city-county health department created pursuant to §16-2-1 *et seq.* of this code; any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code; and any person who works as a long-term substitute as defined in §18A-1-1 of this code in the service of a county board of education: *Provided*, That a long-term substitute who is continuously employed for at least 133 instructional days during an instructional term, and, until the end of that instructional term, is eligible for the benefits provided in this article until September 1 following that instructional term: *Provided, however*, That a long-term substitute employed fewer than 133 instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and upon election by a county board of education to allow elected board members to participate in the Public Employees Insurance Program pursuant to this article, any person elected to a county board of education shall be considered to be an "employee" during the term of office of the elected member. Upon election by the State Board of Education to allow appointed board members to participate in the Public Employees Insurance Program pursuant to this article, any person appointed to the State Board of Education is considered an "employee" during the term of office of the appointed member: *Provided further*, That the elected member of a county board of education and the

appointed member of the State Board of Education shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

On or after July 1, 1997, a person shall be considered an "employee" if that person meets the following criteria:

(A) Participates in a job-sharing arrangement as defined in §18A-1-1 *et seq.* of this code;

(B) Has been designated, in writing, by all other participants in that job-sharing arrangement as the "employee" for purposes of this section; and

(C) Works at least one-third of the time required for a full-time employee.

"Employer" means the State of West Virginia, its boards, agencies, commissions, departments, institutions, or spending units; a county board of education; a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the Public Employees Insurance Program; a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or intellectually and developmentally disabled facility established, operated, or licensed by the Secretary of the Department of Health and Human Resources pursuant to §27-2A-1 *et seq.* of this code and which is supported in part by state, county, or municipal funds; a combined city-county health department created pursuant to §16-2-1 *et seq.* of this code; and a corporation meeting the description set forth in §18B-12-3 of this code that is employing a 21st Century Learner Fellow pursuant to §18A-3-11 of this code but the corporation is

not considered an employer with respect to any employee other than a 21st Century Learner Fellow. Any matters of doubt as to who is an "employer" within the meaning of this article shall be decided by the director. The term "employer" does not include within its meaning the National Guard.

"Established patient" means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

"Finance board" means the Public Employees Insurance Agency finance board created by this article.

"Health care practitioner" means a person licensed under §30-1-1 *et seq.* of this code who provides health care services.

"Originating site" means the location where the patient is located, whether or not accompanied by a health care practitioner, at the time services are provided by a health care practitioner through telehealth, including, but not limited to, a health care practitioner's office, hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's home, and other nonmedical environments such as school-based health centers, university-based health centers, or the work location of a patient.

"Objective evidence" means standardized patient assessment instruments, outcome measurements tools, or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during, and after treatment is recommended to quantify progress and support justifications for continued treatment. The tools are not required but their use will enhance the justification for continued treatment.

"Person" means any individual, company, association, organization, corporation, or other legal entity.

"Plan" means a group hospital and surgical insurance plan or plans, a group prescription drug insurance plan or plans, a group

major medical insurance plan or plans, and a group life and accidental death insurance plan or plans.

"Prescription insulin drug" means a prescription drug that contains insulin and is used to treat diabetes, and includes at least one type of insulin in all of the following categories:

- (1) Rapid-acting;
- (2) Short-acting;
- (3) Intermediate-acting;
- (4) Long-acting;
- (5) Pre-mixed insulin products;
- (6) Pre-mixed insulin/GLP-1 RA products; and
- (7) Concentrated human regular insulin.

"Primary coverage" means individual or group hospital and surgical insurance coverage or individual or group major medical insurance coverage or group prescription drug coverage in which the spouse or dependent is the named insured or certificate holder.

"Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data; medication adherence monitoring; and interactive video conferencing with or without digital image upload.

"Retired employee" means an employee of the state who retired after April 29, 1971, and an employee of the Higher Education Policy Commission, the Council for Community and Technical College Education, a state institution of higher education, or a county board of education who retires on or after April 21, 1972, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system,

and whose last employer immediately prior to retirement under the state retirement system is a participating employer in the state retirement system and in the Public Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who are not covered by a state retirement system, but who are covered by a state-approved or state-contracted retirement program or a system approved by the director, shall, in the case of education employees, meet the minimum eligibility requirements of the State Teachers Retirement System, and in all other cases, meet the minimum eligibility requirements of the Public Employees Retirement System and may participate in the Public Employees Insurance Agency as retired employees upon terms as the director sets by rule as authorized in this article. Employers with employees who are, or who are eligible to become, retired employees under this article shall be mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to §5-16D-1 *et seq.* of this code. Nonstate employers may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only upon the written certification, under oath, of an authorized officer of the employer that the employer has no employees who are, or who are eligible to become, retired employees and that the employer will defend and hold harmless the Public Employees Insurance Agency from any claim by one of the employer's past, present, or future employees for eligibility to participate in the Public Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits to a retired employee of a nonstate employer which has opted out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

"Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio-only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education;

public health services; and health administration. The term does not include e-mail messages or facsimile transmissions.

"Virtual telehealth" means a new patient or follow-up patient for acute care that does not require chronic management or scheduled medications.

***§5-16-7g. Coverage for prescription insulin drugs.**

(a) A policy, plan, or contract that is issued or renewed on or after January 1, 2024, shall provide coverage for prescription insulin drugs and equipment to this section.

(b) Cost sharing for a 30-day supply of a covered prescription insulin drug may not exceed \$35 in aggregate, including situations where the covered person is prescribed more than one insulin drug, per 30-day supply, regardless of the amount or type of insulin needed to fill such covered person's prescription. Cost sharing for a 30-day supply of covered device(s) may not exceed \$100 in aggregate, including situations where the covered person is prescribed more than one device, per 30-day supply. Each cost-share maximum is covered regardless of the person's deductible, copayment, coinsurance, or any other cost-sharing requirement.

(c) Nothing in this section prevents the agency from reducing a covered person's cost sharing by an amount greater than the amount specified in this subsection.

(d) No contract between the agency or its pharmacy benefits manager and a pharmacy or its contracting agent shall contain a provision: (i) Authorizing the agency's pharmacy benefits manager or the pharmacy to charge; (ii) requiring the pharmacy to collect; or (iii) requiring a covered person to make a cost-sharing payment for a covered prescription insulin drug in an amount that exceeds the amount of the cost-sharing payment for the covered prescription insulin drug established by the agency as provided in subsection (b) of this section.

*NOTE: This section was also amended by S. B. 268 (Chapter 241), which passed prior to this act.

(e) The agency shall provide coverage for the following equipment and supplies for the treatment or management of diabetes for both insulin-dependent and noninsulin-dependent persons with diabetes and those with gestational diabetes: Blood glucose monitors, monitor supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for controlling blood sugar, and orthotics.

(f) The agency shall provide coverage for diabetes self-management education to ensure that persons with diabetes are educated as to the proper self-management and treatment of their diabetes, including information on proper diets. Coverage for self-management education and education relating to diet shall be provided by a health care practitioner who has been appropriately trained as provided in §33-53-1(k) of this code.

(g) The education may be provided by a health care practitioner as part of an office visit for diabetes diagnosis or treatment, or by a licensed pharmacist for instructing and monitoring a patient regarding the proper use of covered equipment, supplies, and medications, or by a certified diabetes educator or registered dietitian.

(h) A pharmacy benefits manager, a health plan, or any other third party that reimburses a pharmacy for drugs or services shall not reimburse a pharmacy at a lower rate and shall not assess any fee, charge-back, or adjustment upon a pharmacy on the basis that a covered person's costs sharing is being impacted.

ARTICLE 59. REQUIRED COVERAGE FOR HEALTH INSURANCE.

§33-59-1. Cost sharing in prescription insulin drugs.

(a) *Findings.* —

(1) It is estimated that over 240,000 West Virginians are diagnosed and living with type 1 or type 2 diabetes and another 65,000 are undiagnosed;

(2) Every West Virginian with type 1 diabetes and many with type 2 diabetes rely on daily doses of insulin to survive;

(3) The annual medical cost related to diabetes in West Virginia is estimated at \$2.5 billion annually;

(4) Persons diagnosed with diabetes will incur medical costs approximately 2.3 times higher than persons without diabetes;

(5) The cost of insulin has increased astronomically, especially the cost of insurance copayments, which can exceed \$600 per month. Similar increases in the cost of diabetic equipment and supplies, and insurance premiums have resulted in out-of-pocket costs for many West Virginia diabetics in excess of \$1,000 per month;

(6) National reports indicate as many as one in four type 1 diabetics underuse, or ration, insulin due to these increased costs. Rationing insulin has resulted in nerve damage, diabetic comas, amputation, kidney damage, and even death; and

(7) It is important to enact policies to reduce the costs for West Virginians with diabetes to obtain life-saving and life-sustaining insulin.

(b) As used in this section:

"Cost-sharing payment" means the total amount a covered person is required to pay at the point of sale in order to receive a prescription drug that is covered under the covered person's health plan.

"Covered person" means a policyholder, subscriber, participant, or other individual covered by a health plan.

"Device" means a blood glucose test strip, glucometer, continuous glucose monitor (CGM), lancet, lancing device, or insulin syringe used to cure, diagnose, mitigate, prevent, or treat diabetes or low blood sugar, but does not include insulin pumps;

"Health plan" means any health benefit plan, as defined in §33-16-1a(h) of this code, that provides coverage for a prescription insulin drug.

"Pharmacy benefits manager" means an entity that engages in the administration or management of prescription drug benefits provided by an insurer for the benefit of its covered persons.

"Prescription insulin drug" means a prescription drug that contains insulin and is used to treat diabetes.

(c) Each health plan shall cover at least one type of insulin in all the following categories:

- (1) Rapid-acting;
- (2) Short-acting;
- (3) Intermediate-acting;
- (4) Long-acting;
- (5) Pre-mixed insulin products;
- (6) Pre-mixed insulin/GLP-1 RA products; and
- (7) Concentrated human regular insulin.

(d) Notwithstanding the provisions of §33-1-1 *et seq.* of this code, an insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code which issues or renews a health insurance policy on or after January 1, 2023, shall provide coverage for prescription insulin drugs and equipment pursuant to this section.

(e) Cost sharing for a 30-day supply of a covered prescription insulin drug may not exceed \$35 in aggregate, including situations where the covered person is prescribed more than one insulin drug, per 30-day supply, regardless of the amount or type of insulin needed to fill such covered person's prescription. Cost sharing for a 30-day supply of covered device(s) may not exceed \$100 in aggregate, including situations where the covered person is

prescribed more than one device, per 30-day supply. Each cost-share maximum is covered regardless of the person's deductible, copayment, coinsurance or any other cost-sharing requirement.

(f) Nothing in this section prevents an insurer from reducing a covered person's cost sharing to an amount less than the amount specified in subsection (e) of this section.

(g) No contract between an insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code or its pharmacy benefits manager and a pharmacy or its contracting agent may contain a provision: (i) Authorizing the insurer's pharmacy benefits manager or the pharmacy to charge; (ii) requiring the pharmacy to collect; or (iii) requiring a covered person to make a cost-sharing payment for a covered prescription insulin drug in an amount that exceeds the amount of the cost-sharing payment for the covered prescription insulin drug established by the insurer pursuant to subsection (e) of this section.

(h) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code shall provide coverage for the following equipment and supplies for the treatment and/or management of diabetes for both insulin-dependent and non-insulin-dependent persons with diabetes and those with gestational diabetes: Blood glucose monitors, monitor supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for controlling blood sugar, and orthotics.

(i) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code shall include coverage for diabetes self-management education to ensure that persons with diabetes are educated as to the proper self-management and treatment of their diabetes, including information on proper diets.

(j) All health care plans must offer an appeals process for persons who are not able to take one or more of the offered prescription insulin drugs noted in subsection (c) of this section.

The appeals process shall be provided to covered persons in writing and afford covered persons and their health care providers a meaningful opportunity to participate with covered persons health care providers.

(k) Diabetes self-management education shall be provided by a health care practitioner who has been appropriately trained. The Secretary of the Department of Health and Human Resources shall promulgate legislative rules to implement training requirements and procedures necessary to fulfill provisions of this subsection: *Provided*, That any rules promulgated by the secretary shall be done after consultation with the Coalition for Diabetes Management, as established in §16-5Z-1 *et seq.* of this code.

(l) A pharmacy benefits manager, a health plan, or any other third party that reimburses a pharmacy for drugs or services shall not reimburse a pharmacy at a lower rate and may not assess any fee, charge-back, or adjustment upon a pharmacy on the basis that a covered person's costs sharing is being impacted.

(m) A prescription is not required to obtain a blood testing kit for ketones.

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CHAPTER 194

(Com. Sub. for S. B. 594 - By Senators Takubo, Maroney, and Nelson)

[Passed March 3, 2023; in effect from passage]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §33-15-4t of the Code of West Virginia, 1931, as amended; to amend and reenact §33-16-3ee of said code; to amend and reenact §33-24-7t of said code; to amend and reenact §33-25-8q of said code; and to amend and reenact §33-25A-8t of said code, all relating to cost-sharing calculations in insurance code and Health Savings Account eligibility.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4t. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

"Cost sharing" means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

"Drug" means the same as the term is defined in §30-5-4 of this code.

"Person" means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

"Pharmacy benefits manager" means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured's contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. § 18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manager shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this section.

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

(e) If under federal law application of subsection (b) of this section would result in Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans with respect to the deductible of such a plan after the enrollee has satisfied the minimum deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue Code, the requirements of subsection (b) of this section shall apply regardless of whether the minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3ee. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

"Cost sharing" means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

"Drug" means the same as the term is defined in §30-5-4 of this code.

"Person" means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

"Pharmacy benefits manager" means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured's contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. § 18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code, to implement the provisions of this section.

(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to

this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(e) If under federal law application of subsection (b) of this section would result in Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans with respect to the deductible of such a plan after the enrollee has satisfied the minimum deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue Code, the requirements of subsection (b) of this section shall apply regardless of whether the minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.

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

§33-24-7t. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

"Cost sharing" means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

"Drug" means the same as the term is defined in §30-5-4 of this code.

"Person" means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

"Pharmacy benefits manager" means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured's contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. § 18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manager shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code, to implement the provisions of this section.

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

(e) If under federal law application of subsection (b) of this section would result in Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans with respect to the deductible of such a plan after the enrollee has satisfied the minimum deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue Code, the requirements of subsection (b) of this section shall apply regardless of whether the minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8q. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

"Cost sharing" means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

"Drug" means the same as the term is defined in §30-5-4 of this code.

"Person" means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

"Pharmacy benefits manager" means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured's contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. § 18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code, to implement the provisions of this section.

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

(e) If under federal law application of subsection (b) of this section would result in Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this requirement shall

apply only for Health Savings Account-qualified High Deductible Health Plans with respect to the deductible of such a plan after the enrollee has satisfied the minimum deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue Code, the requirements of subsection (b) of this section shall apply regardless of whether the minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8t. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

"Cost sharing" means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

"Drug" means the same as the term is defined in §30-5-4 of this code.

"Person" means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

"Pharmacy benefits manager" means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured's contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. § 18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manager shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code, to implement the provisions of this section.

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

(e) If under federal law application of subsection (b) of this section would result in Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans with respect to the deductible of such a plan after the enrollee has satisfied the minimum deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue Code, the requirements of subsection (b) of this section shall apply regardless of whether the minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.

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CHAPTER 195

**(Com. Sub. for H. B. 2540 - By Delegates Westfall, Hott,
Espinosa and Rowe)**

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to repeal §33-12-32b of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §33-62-1, §33-62-2, §33-62-3, §33-62-4, §33-62-5, §33-62-6, §33-62-7, §33-62-8, §33-62-9, §33-62-10, §33-62-11, and §33-62-12, all relating to adopting the Travel Insurance Model Act; providing a short title; setting forth scope and purposes; providing definitions; providing licensing and registration requirements; setting forth annual license fee; requiring payment of premium taxes; specifying forms and rates; establishing acceptable and prohibited sales practices; making persons offering travel insurance subject to the Unfair Trade Practices Act; establishing requirements for travel administrators; allowing individual, group, or blanket travel insurance policies; granting the Insurance Commissioner enforcement powers; and providing rulemaking authority to the Insurance Commissioner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-32b. Travel Insurance Entity Producer Limited License Act.

[Repealed.]

ARTICLE 62. TRAVEL INSURANCE MODEL ACT.**§33-62-1. Short title.**

This article shall be known as the "Travel Insurance Model Act."

§33-62-2. Purposes and scope.

(a) The purpose of this article is to promote the public welfare by creating a comprehensive legal framework within which travel insurance may be sold in this state through the establishment of clear regulatory obligations for those involved in the development and distribution of travel insurance, preserving the unique aspects of travel protection plans, and protecting and benefiting consumers by encouraging fair and effective competition within the market.

(b) The requirements of this article shall apply to travel insurance, whether or not provided as part of a travel protection plan, where policies and certificates are delivered or issued for delivery in this state. This article shall not be applicable to cancellation fee waivers and travel assistance services, except as expressly provided herein.

(c) All other applicable provisions of chapter 33 of this code shall continue to apply to travel insurance, except that the specific provisions of this article shall supersede any general provisions of law that would otherwise be applicable to travel insurance.

§33-62-3. Definitions.

As used in this article:

(1) "Aggregator site" means a website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping;

(2) "Blanket travel insurance" means travel insurance issued to any eligible group providing coverage for specified circumstances and specific classes of persons defined in the policy with coverage

provided to all members of the eligible group without a separate charge to individual members of the eligible group;

(3) "Cancellation fee waiver" means a contractual agreement between a supplier of travel arrangements or travel services and its customer to waive some or all of the non-refundable cancellation fee or penalty provisions of the underlying travel contract between the supplier and customer with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance;

(4) "Commissioner" means the commissioner of insurance of this state;

(5) "Eligible group" means any of the following:

(A) Any entity engaged in the business of providing travel or travel services, including, but not limited to, tour operators, lodging providers, vacation property owners, hotels and resorts, travel clubs, travel agencies, property managers, cultural exchange programs, and common carriers, or the operator, owner, or lessor of a means of transportation of passengers, including, but not limited to, airlines, cruise lines, railroads, steamship companies, and public bus carriers;

(B) Any college, school, or other institution of learning covering students, teachers, or employees defined by reference to specified hazards incident to activities or operations of the institution of learning;

(C) Any employer covering any group of employees, volunteers, contractors, board of directors, dependents, or guests, defined by reference to specified hazards incident to activities or operations of the employer;

(D) Any sports team, camp, or sponsor thereof covering participants, members, campers, employees, officials, supervisors, or volunteers;

(E) Any religious, charitable, recreational, educational, or civic organization or branch thereof covering any group of members,

participants, or volunteers defined by reference to specified hazards incident to any activity or activities or operations sponsored or supervised by or on the premises of such organization or branch;

(F) Any financial institution or financial institution vendor, or parent holding company, trustee, or agent of or designated by one or more financial institution or financial institution vendor, under which accountholders, credit card holders, debtors, guarantors, or purchasers are insured;

(G) Any incorporated or unincorporated association, including labor unions, having a common interest, constitution, and bylaws, and organized and maintained in good faith for purposes other than obtaining insurance for members or participants of such association;

(H) Any trust or the trustees of a fund established, created, or maintained for the benefit of members or customers of one or more associations meeting the above requirements;

(I) Any entertainment production company covering any group of participants, volunteers, audience members, contestants, or workers;

(J) Any newspaper or other publisher covering its journalists and carriers;

(K) Any volunteer fire department, ambulance, rescue, police, court, or any first aid, civil defense, or other such volunteer group, or agency having jurisdiction thereof, covering all or any group of the members, participants, or volunteers of such group;

(L) Preschools, daycare institutions for children or adults, and senior citizen clubs;

(M) Any automobile or truck rental or leasing company covering a group of individuals who may become renters, lessees, or passengers defined by their travel status on the rented or leased vehicles. The common carrier, the operator, owner, or lessor of a means of transportation, or the automobile or truck rental or leasing

company, is the policyholder under a policy to which this section applies; or

(N) Any other group where the commissioner has determined that the members are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, and that issuance of the policy would not be contrary to the best interests of the public;

(5) "Fulfillment materials" means documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan's coverage and assistance details;

(6) "Group travel insurance" means travel insurance issued to any eligible group;

(7) "Limited lines travel insurance producer" means a:

(A) Licensed managing general agent or third party administrator;

(B) Licensed insurance producer, including a limited lines producer; or

(C) Travel administrator;

(8) "Offer and disseminate" means providing general information, including a description of the coverage and price, as well as processing the application, collecting premiums, and performing other non-licensable activities permitted by the state;

(9) "Primary certificate holder" means an individual person who elects and purchases travel insurance under a group policy;

(10) "Primary policyholder" means an individual person who elects and purchases individual travel insurance;

(11) "Travel administrator" means a person who directly or indirectly underwrites, collects charges, collateral, or premiums from, or adjusts or settles claims on residents of this state, in connection with travel insurance, except that a person shall not be

considered a travel administrator if that person's only actions that would otherwise cause it to be considered a travel administrator are among the following:

(A) A person working for a travel administrator to the extent that the person's activities are subject to the supervision and control of the travel administrator;

(B) An insurance producer selling insurance or engaged in administrative and claims related activities within the scope of the producer's license;

(C) A travel retailer offering and disseminating travel insurance and registered under the license of a limited lines travel insurance producer in accordance with this article;

(D) An individual adjusting or settling claims in the normal course of that individual's practice or employment as an attorney-at-law and who does not collect charges or premiums in connection with insurance coverage; or

(E) A business entity that is affiliated with a licensed insurer while acting as a travel administrator for the direct and assumed insurance business of an affiliated insurer;

(12) "Travel assistance services" means non-insurance services that may be distributed by limited lines travel insurance producers or other entities, and for which there is no indemnification for the travel protection plan customer based on a fortuitous event, nor any transfer or shifting of risk that would constitute the business of insurance. Travel assistance services include, but are not limited to, security advisories; destination information; vaccination and immunization information services; travel reservation services; entertainment; activity and event planning; translation assistance; emergency messaging; international legal and medical referrals; medical case monitoring; coordination of transportation arrangements; emergency cash transfer assistance; medical prescription replacement assistance; passport and travel document replacement assistance; lost luggage assistance; concierge services; and any other service that is furnished in connection with

planned travel. Travel assistance services are not insurance and not related to insurance;

(13) "Travel insurance" means insurance coverage for personal risks incident to planned travel, including, but not limited to:

(A) Interruption or cancellation of trip or event;

(B) Loss of baggage or personal effects;

(C) Damages to accommodations or rental vehicles;

(D) Sickness, accident, disability, or death occurring during travel;

(E) Emergency evacuation;

(F) Repatriation of remains; or

(G) Any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as approved by the commissioner.

Travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting six months or longer, including, for example, those working overseas as an expatriate or military personnel being deployed, or any other product that requires a specific insurance producer license;

(14) "Travel protection plans" means plans that provide one or more of the following: travel insurance, travel assistance services, and cancellation fee waivers; and

(15) "Travel retailer" means a business entity that makes, arranges, or offers travel services and may offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

§33-62-4. Licensing and registration.

(a) The commissioner may issue to an individual or business entity that has filed with the commissioner an application for such

limited license in a form and manner prescribed by the commissioner, a limited lines travel insurance producer license that authorizes the limited lines travel insurance producer to sell, solicit, or negotiate travel insurance through a licensed insurer. No person may act as a limited lines travel insurance producer or travel insurance retailer unless properly licensed or registered, respectively. The annual fee for a limited lines travel insurance producer license is \$200.

(b) A travel retailer may offer and disseminate travel insurance under a limited lines travel insurance producer business entity license only if the following conditions are met:

(1) The limited lines travel insurance producer or travel retailer provides to purchasers of travel insurance:

(A) A description of the material terms or the actual material terms of the insurance coverage;

(B) A description of the process for filing a claim;

(C) A description of the review or cancellation process for the travel insurance policy; and

(D) The identity and contact information of the insurer and limited lines travel insurance producer;

(2) At the time of licensure, the limited lines travel insurance producer shall establish and maintain a register on a form prescribed by the commissioner of each travel retailer that offers travel insurance on the limited lines travel insurance producer's behalf. The register shall be maintained and updated by the limited lines travel insurance producer and shall include the name, address, and contact information of the travel retailer and an officer or person who directs or controls the travel retailer's operations, and the travel retailer's federal tax identification number. The limited lines travel insurance producer shall submit such register to the commissioner upon reasonable request. The limited lines travel insurance producer shall also certify that the travel retailer registered complies with 18 U.S.C. § 1033. The grounds for the suspension, revocation, and the penalties applicable to resident

insurance producers under §33-12-24 of this code shall be applicable to the limited lines travel insurance producers and travel retailers;

(3) The limited lines travel insurance producer has designated one of its employees who is a licensed individual producer as the person (a "designated responsible producer" or "DRP") responsible for the limited lines travel insurance producer's compliance with the travel insurance laws, rules, and regulations of the state;

(4) The DRP, president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance producer's insurance operations comply with the fingerprinting requirements applicable to insurance producers in the resident state of the limited lines travel insurance producer;

(5) The limited lines travel insurance producer has paid all applicable insurance producer licensing fees as set forth in applicable state law; and

(6) The limited lines travel insurance producer requires each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which may be subject to review by the commissioner. The training material shall, at a minimum, contain instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.

(c) Limited lines travel insurance producers, and those registered under their licenses, are exempt from the examination requirements under §33-12-9 of this code and the pre-licensing and continuing education requirements of §33-12-8 of this code.

(d) Any travel retailer offering or disseminating travel insurance shall make available to prospective purchasers brochures or other written materials that:

(1) Provide the identity and contact information of the insurer and the limited lines travel insurance producer;

(2) Explain that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and

(3) Explain that an unlicensed travel retailer is permitted to provide general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the customer's existing insurance coverage.

(e) A travel retailer's employee or authorized representative, who is not licensed as an insurance producer may not:

(1) Evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

(2) Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

(3) Hold himself or itself out as a licensed insurer, licensed producer, or insurance expert.

(f) Notwithstanding any other provision in this chapter, a travel retailer whose insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer meeting the conditions stated in this article, is authorized to do so and receive related compensation, upon registration by the limited lines travel insurance producer as described in subdivision (2), subsection (b) of this section.

(g) *Responsibility.* — As the insurer designee, the limited lines travel insurance producer is responsible for the acts of the travel retailer and shall use reasonable means to ensure compliance by the travel retailer with this article.

(h) A licensee under this section is subject to the provisions of § 33-12-6b of this code as if it were an insurance agency.

(i) *License renewal.* — The commissioner shall annually renew, on the expiration date as provided in this subsection, the license of a licensee who qualifies and applies for renewal on a form prescribed by the commissioner and pays the fee set forth in subsection (a) of this section: *Provided*, That the commissioner may fix the dates of expiration of limited lines travel insurance producer licenses as he or she considers advisable for efficient distribution of the workload of his or her office:

(1) If the fixed expiration date would upon first occurrence shorten the period for which a license fee has been paid, no refund of unearned fee shall be made;

(2) If the fixed expiration date would upon first occurrence lengthen the period for which a license fee has been paid, the commissioner may charge no additional fee for the lengthened period;

(3) If a date is not fixed by the commissioner, each license shall, unless continued as provided in this subsection, expire at midnight on June 30 following issuance; and

(4) A licensee that fails to timely renew its license may reinstate its license, retroactive to the expiration date, upon submission of the renewal application within 12 months after the expiration date and payment of a penalty in the amount of \$50.

(j) *Appointment.* — Limited lines travel insurance producer may not act as an agent of an insurer unless the insurer appoints the limited lines travel insurance producer as its agent, as follows:

(1) The insurer shall file, in a format approved by the commissioner, a notice of appointment within 15 days from the date the agency contract is executed and shall pay a nonrefundable appointment processing fee in the amount of \$25: *Provided*, That an insurer may elect to appoint a limited lines travel insurance producer to all or some insurers within the insurer's holding company system or group by filing a single notice of appointment;

(2) Upon receipt of a notice of appointment, the commissioner shall verify within a reasonable time, not to exceed 30 days, that

the limited lines travel insurance producer is eligible for appointment: *Provided*, That the commissioner shall notify the insurer within five days of a determination that the limited lines travel insurance producer is ineligible for appointment;

(3) The insurer shall remit, no later than midnight on May 31 annually and in a manner prescribed by the commissioner, a renewal appointment fee for each appointed limited lines travel insurance producer in the amount of \$25; and

(4) The insurer shall maintain a current list of limited lines travel insurance producers appointed to accept applications on behalf of the insurer, and shall make the list available to the commissioner upon reasonable request for purposes of conducting investigations and enforcing the provisions of this chapter.

§33-62-5. Premium tax.

(a) A travel insurer shall pay premium tax, as provided in §33-3-14 and §33-3-14a of this code, on travel insurance premiums paid by any of the following:

(1) An individual primary policyholder who is a resident of this state;

(2) A primary certificate holder who is a resident of this state who elects coverage under a group travel insurance policy; or

(3) An eligible group policyholder that is a resident in, or has its principal place of business or the principal place of business of an affiliate or subsidiary in, this state that purchases a blanket travel insurance policy for eligible blanket group members, subject to any apportionment rules that apply across multiple taxing jurisdictions or that permit the insurer to allocate premium on an apportioned basis in a reasonable and equitable manner in those jurisdictions.

(b) An insurer shall obtain and maintain documentation necessary to determine the state to which premium tax should be reported based on information provided by the policyholder or certificate holder, as applicable, and shall report as premium only

the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

§33-62-6. Forms and rates.

(a) Notwithstanding any other provision of this chapter, travel insurance shall be classified and filed for purposes of rates and forms under an inland marine line of insurance: *Provided*, That travel insurance that provides coverage for sickness, accident, disability, or death occurring during travel, either exclusively or in conjunction with related coverages of emergency evacuation or repatriation of remains, may be filed under either an accident and health line of insurance or an inland marine line of insurance.

(b) All travel Insurance policies, certificates of insurance, endorsements, riders, and rates delivered, issued for delivery, or charged in this state shall be filed with the commissioner before being used. No policy, certificate of insurance, or endorsement shall be issued until the expiration of 30 days after it has been filed, unless the commissioner shall have given prior written approval.

(c) Eligibility and underwriting standards for travel insurance may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels, and the travel insurance offered as part of the travel protection plan may be offered as individual travel insurance, group travel insurance, or blanket travel insurance.

§33-62-7. Travel protection plans.

Travel protection plans may be offered for one price in this state if:

(1) The travel insurance, travel assistance services, and cancellation fee waivers are clearly delineated in the travel protection plan's fulfillment materials. The fulfillment materials shall include the travel insurance disclosures required under this code and the contact information for persons providing travel assistance services and cancellation fee waivers, as applicable; and

(2) The travel protection plan clearly discloses to the consumer at or prior to the time of purchase and fulfillment that it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable, and provides an opportunity for the consumer to obtain additional information regarding the features and pricing of each.

§33-62-8. Sales practices.

(a) All persons offering travel insurance to residents of this state are subject to the Unfair Trade Practices provisions of §33-11-1 *et seq.* of this code, except as otherwise provided in this section. In the event of a conflict between this article and other provisions of this chapter regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this article shall control.

(b) *Illusory Travel Insurance.* — Offering or selling a travel insurance policy that could never result in payment of any claims for any insured under the policy is an unfair trade practice under §33-11-1 *et seq.* of this code.

(c) Marketing.

(1) All documents provided to consumers prior to the purchase of travel insurance, including, but not limited to, sales materials, advertising materials, and marketing materials, shall be consistent with all travel insurance policy documents, including, but not limited to, forms, endorsements, policies, rate filings, and certificates of insurance.

(2) Travel insurance policies or certificates that contain preexisting condition exclusions must provide information and an opportunity to learn more about the preexisting condition exclusions any time prior to purchase, and in the coverage's fulfillment materials.

(3) The fulfillment materials and the information described in §33-62-4(b)(1) of this code shall be provided to a policyholder or certificate holder as soon as practicable, following the purchase of a travel protection plan. Unless the insured has either started a

covered trip or filed a claim under the travel insurance coverage, a policyholder or certificate holder may cancel a policy or certificate for a full refund of the travel protection plan price from the date of purchase of a travel protection plan until at least:

(A) Fifteen days following the date of delivery of the travel protection plan's fulfillment materials by postal mail; or

(B) Ten days following the date of delivery of the travel protection plan's fulfillment materials by means other than postal mail. For the purposes of this section, "delivery" means handing fulfillment materials to the policyholder or certificate holder or sending fulfillment materials by postal mail or electronic means to the policyholder or certificate holder.

(4) The company shall disclose in the policy fulfillment and documentation whether the travel insurance is primary or secondary to other applicable coverage.

(5) Where travel insurance is marketed directly to a consumer through an insurer's website or by others through an aggregator site, it shall not be an unfair trade practice or other violation of law where an accurate summary or short description of coverage is provided on the web page, so long as the consumer has access to the full provisions of the policy through electronic means.

(d) *Opt out.* — Unless otherwise permitted by this code or federal law, no person offering travel insurance or travel protection plans on an individual or group basis may do so using negative option or opt-out, which would require a consumer to take an affirmative action to deselect coverage, such as unchecking a box on an electronic form when the consumer purchases a trip.

(e) It shall be an unfair trade practice to market blanket travel insurance coverage as free.

(f) Where a consumer's destination jurisdiction requires insurance coverage, it shall not be an unfair trade practice to require that a consumer choose between the following options as a condition of purchasing a trip or travel package:

(1) Purchasing the coverage required by the destination jurisdiction through the travel retailer or limited lines travel insurance producer supplying the trip or travel package; or

(2) Agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements prior to departure.

§33-62-9. Travel administrators.

(a) Notwithstanding any other provisions of this chapter, no person shall act or represent itself as a travel administrator in this state unless that person:

(1) Is a licensed property and casualty insurance producer in this state for activities permitted under that producer license;

(2) Holds a valid managing general agent (MGA) license in this state pursuant to §33-37-1 *et seq.* of this code; or

(3) Holds a valid third-party administrator (TPA) license in this state pursuant to §33-46-1 *et seq.* of this code.

(b) A travel administrator and its employees are exempt from the licensing requirements of §33-12B-1 *et seq.* of this code.

(c) An insurer is responsible for the acts of a travel administrator administering travel insurance underwritten by the insurer, and is responsible for ensuring that the travel administrator maintains all books and records relevant to the insurer to be made available by the travel administrator to the commissioner upon request.

§33-62-10. Policy.

Travel insurance may be provided under an individual policy or under a group or blanket policy.

§33-62-11. Enforcement.

(a) The commissioner may conduct investigations or examinations of travel insurers, limited lines travel insurance producers, travel retailers, and travel administrators to enforce the

provisions of this article to protect resident travel insurance consumers.

(b) The commissioner may take action, following notice and a hearing pursuant to §33-2-13 of this code, as necessary or appropriate to enforce the provisions of this article, any order of the commissioner, and any other provision of state law to protect consumers of travel insurance in this state.

§33-62-12. Rulemaking.

The commissioner may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this article.



CHAPTER 196

(H. B. 3215 - By Delegate Riley)

[Passed March 2, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §8A-1-2, §8A-2-7, §8A-4-2, §8A-5-1, §8A-5-3, §8A-5-6, §8A-5-8, §8A-8-4, and §8A-8-5, of the Code of West Virginia, 1931, as amended, all relating to land use planning; modifying definitions; modifying the frequency of planning commission meetings; clarifying contents of subdivision and land development ordinances; addressing jurisdiction of planning commission; clarifying process for minor proposals; modifying provisions related to approval of major proposals; providing for flexibility in qualifications for county boards of zoning appeals; and modifying frequency of board of zoning appeals meetings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§8A-1-2. Definitions.

As used in this chapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) "Abandonment" means the relinquishment of property or a cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner or resuming the nonconforming use of the property for a period of one year.

(b) "Aggrieved" or "aggrieved person" means a person who:

(1) Is denied by the planning commission, board of subdivision and land development appeals, or the board of zoning appeals, in whole or in part, the relief sought in any application or appeal; or

(2) Has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience beyond that which other residents of the county or municipality may suffer.

(c) "Comprehensive plan" means a plan for physical development, including land use, adopted by a governing body, setting forth guidelines, goals and objectives for all activities that affect growth and development in the governing body's jurisdiction.

(d) "Conditional use" means a use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the board of zoning appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in the zoning ordinance.

(e) "Contiguous" means lots, parcels, municipal boundaries or county boundaries that are next to, abutting and having a boundary, or portion thereof, that is coterminous. Streets, highways, roads or other traffic or utility easements, streams, rivers, and other natural topography are not to be used to determine lots, parcels, municipal boundaries or county boundaries as contiguous.

(f) "Essential utilities and equipment" means underground or overhead electrical, gas, communications not regulated by the federal communications commission, water and sewage systems, including pole structures, towers, wires, lines, mains, drains, sewers, conduits, cables, fire alarm boxes, public telephone structures, police call boxes, traffic signals, hydrants, regulating and measuring devices and the structures in which they are housed, and other similar equipment accessories in connection therewith. Essential utility equipment is recognized in three categories:

(1) Local serving;

(2) Nonlocal or transmission through the county or municipality; and

(3) Water and sewer systems, the activities of which are regulated, in whole or in part, by one or more of the following state agencies:

(A) Public service commission; or

(B) Department of environmental protection; or

(C) The Department of Health and Human Resources.

(g) "Existing use" means use of land, buildings or activity permitted or in existence prior to the adoption of a zoning map or ordinances by the county or municipality. If the use is nonconforming to local ordinance and lawfully existed prior to the adoption of the ordinance, the use may continue to exist as a nonconforming use until abandoned for a period of one year: *Provided*, That in the case of natural resources, the absence of natural resources extraction or harvesting is not abandonment of the use.

(h) "Exterior architectural features" means the architectural character and general composition of the exterior of a structure, including, but not limited to, the kind, color and texture of the building material, and the type, design and character of all windows, doors, massing and rhythm, light fixtures, signs, other appurtenant elements and natural features when they are integral to the significance of the site, all of which are subject to public view from a public street, way or place.

(i) "Factory-built homes" means modular and manufactured homes.

(j) "Flood-prone area" means any land area susceptible to repeated inundation by water from any source.

(k) "Governing body" means the body that governs a municipality or county.

(l) "Historic district" means a geographically definable area, designated as historic on a national, state or local register, possessing a significant concentration, linkage or continuity of

sites, buildings, structures or objects united historically or aesthetically by plan or physical development.

(m) "Historic landmark" means a site, building, structure or object designated as historic on a national, state or local register.

(n) "Historic site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure whether standing, ruined or vanished, where the location itself possesses historical, cultural or archaeological value regardless of the value of any existing structure and designated as historic on a national, state or local register.

(o) "Improvement location permit" means a permit issued by a municipality or county, in accordance with its subdivision and land development ordinance, for the construction, erection, installation, placement, rehabilitation or renovation of a structure or development of land, and for the purpose of regulating development within flood-prone areas.

(p) "Infill development" means to fill in vacant or underused land in existing communities with new development that blends in with its surroundings.

(q) "Land development" means the development of one or more lots, tracts or parcels of land by any means and for any purpose, but does not include easements, rights-of-way or construction of private roads for extraction, harvesting or transporting of natural resources.

(r) "Manufactured home" means housing built in a factory according to the federal manufactured home construction and safety standards effective June 15, 1976.

(s) "Modular home" means housing built in a factory that meets state or local building codes where the homes will be sited.

(t) "Non-traditional zoning ordinance" means an ordinance that sets forth development standards and approval processes for land uses within the jurisdiction, but does not necessarily divide the jurisdiction into distinct zoning classifications or districts requiring

strict separation of different uses, and does not require a zoning map amendment.

(u) "Permitted use" means any use allowed within a zoning district, subject to the restrictions applicable to that zoning district and is not a conditional use.

(v) "Plan" means a written description for the development of land.

(w) "Planning commission" means a municipal planning commission, a county planning commission, a multicounty planning commission, a regional planning commission or a joint planning commission.

(x) "Plat" means a map of the land development that becomes its official recorded representation in the office of the clerk of the county commission where a majority of the land to be developed lies.

(y) "Preferred development area" means a geographically defined area where incentives may be used to encourage development, infill development or redevelopment in order to promote well designed and coordinated communities.

(z) "Public place" means any lots, tracts or parcels of land, structures, buildings or parts thereof owned or leased by a governing body or unit of government.

(aa) "Sprawl" means poorly planned or uncontrolled growth, usually of a low-density nature, within previously rural areas, that is land consumptive, auto-dependent, designed without respect to its surroundings, and some distance from existing development and infrastructure.

(bb) "Streets" means streets, avenues, boulevards, highways, roads, lanes, alleys and all public ways.

(cc) "Subdivision or partition" means the division of a lot, tract or parcel of land into two or more lots, tracts or parcels of land, or the recombination of existing lots, tracts, or parcels.

(dd) "Unit of government" means any federal, state, regional, county or municipal government or governmental agency.

(ee) "Urban area" means all lands or lots within the jurisdiction of a municipal planning commission.

(ff) "Utility" means a public or private distribution service to the public that is regulated by the Public Service Commission.

(gg) "Zoning" means the division of a municipality or county into districts or zones which specify permitted and conditional uses and development standards for real property within the districts or zones.

(hh) "Zoning map" means a map that geographically illustrates all zoning district boundaries within a municipality or county, as described within the zoning ordinance, and which is certified as the official zoning map for the municipality or county.

ARTICLE 2. PLANNING COMMISSIONS.

§8A-2-7. Planning commission meetings.

(a) When there is business to conduct, a planning commission shall meet at least quarterly. In any event, a planning commission shall meet at least semiannually and may meet more frequently at the request of the president or by two or more members.

(b) Notice for a special meeting must be in writing, include the date, time and place of the special meeting, and be sent to all members at least two days before the special meeting.

(c) Written notice of a special meeting is not required if the date, time and place of the special meeting were set in a regular meeting.

ARTICLE 4. SUBDIVISION AND LAND DEVELOPMENT ORDINANCE.

§8A-4-2. Contents of subdivision and land development ordinance.

(a) A subdivision and land development ordinance shall include the following provisions:

(1) A minor subdivision or land development process, including criteria, requirements and a definition of minor subdivision;

(2) The authority of the planning commission and its staff to approve a minor subdivision or land development;

(3) A major subdivision or land development process, including criteria and requirements;

(4) The authority of the planning commission to approve a major subdivision or land development;

(5) The standards for setback requirements, lot sizes, streets, sidewalks, walkways, parking, easements, rights-of-way, drainage, utilities, infrastructure, curbs, gutters, street lights, fire hydrants, storm water management and water and wastewater facilities;

(6) Standards for flood-prone or subsidence areas;

(7) A review process for subdivision or land development plans and plats by the planning commission;

(8) An approval process for subdivision or land development plans and plats by the planning commission, including the authority to approve subdivision or land development plans and plats with conditions;

(9) A process to amend final approved subdivision or land development plans and plats;

(10) A requirement that before development of the land is commenced, subdivision and land development plans and plats must be approved by the applicable planning commission, in accordance with the comprehensive plan, if a comprehensive plan has been adopted;

(11) A requirement that after approval of the subdivision or land development plat by the planning commission or by the

planning commission staff if approval has been appropriately delegated to staff, and before any construction on the land is commenced, the subdivision and land development plat shall be recorded in the office of the clerk of the county commission where a majority of the land to be developed lies;

(12) A schedule of fees to be charged which are proportioned to the cost of checking and verifying proposed plats;

(13) The process for granting waivers from the minimum standards of the subdivision and land development ordinance;

(14) Improvement location permit process, including a requirement that a structure or development of land is prohibited without an improvement location permit;

(15) The acceptable methods of payment to cover the cost of the water and sewer service infrastructure, which can include, but are not limited to, bonds, impact fees, escrow fees and proffers;

(16) The process for cooperating and coordinating with other governmental agencies affected by the subdivision and land development and use; and

(17) Penalties for violating the subdivision and land development ordinance.

(b) A subdivision and land development ordinance may include the following provisions:

(1) Establishing a board of subdivision and land development appeals with the same powers, duties and appeals process as set out for the board of zoning appeals under the provisions of article eight of this chapter;

(2) Requirements for green space, common areas, public grounds, walking and cycling paths, recreational trails, parks, playgrounds and recreational areas;

(3) Guidelines for the use of renewable energy systems and energy-conserving building design;

(4) Vested property right, including requirements;

(5) Exemptions of certain types of land development from the subdivision and land development ordinance requirements, including, but not limited to, single-family residential structures and farm structures; and

(6) Any other provisions consistent with the comprehensive plan the governing body considers necessary.

(c) All requirements, for the vesting of property rights contained in an ordinance enacted pursuant to this section that require the performance of any action within a certain time period for any subdivision or land development plan or plat valid under West Virginia law and outstanding as of January 1, 2010, shall be extended until July 1, 2012, or longer as agreed to by the municipality, county commission or planning commission. The provisions of this subsection also apply to any requirement that a use authorized pursuant to a special exception, special use permit, conditional use permit or other agreement or zoning action be terminated or ended by a certain date or within a certain number of years.

ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT PLAN AND PLAT.

§8A-5-1. Jurisdiction of planning commissions.

(a) A planning commission has the authority to:

(1) Approve a minor subdivision or land development application within its jurisdiction;

(2) Exempt an application for a minor subdivision or land development within its jurisdiction; and

(3) Approve a major subdivision or land development application within its jurisdiction.

(b) The staff of a planning commission has the authority to approve a minor subdivision or land development application

within its jurisdiction, if granted such authority by the governing body in the subdivision and land development ordinance.

(c) If a subdivision or land development plan and plat cannot be approved through the minor subdivision or land development process, then an applicant must use the major subdivision or land development approval process.

(d) If a governing body has adopted detailed standards for final plats as part of a subdivision and land development ordinance, the planning commission may delegate to its staff the authority to approve preliminary or provisional land development plan or subdivision plat that is consistent with the adopted standards for final plats and the requirements of the adopted subdivision and land development ordinance.

(e) The planning commission may delegate to its staff the authority to determine completeness, phasing, changes, and technical review for major subdivisions or land development applications, if a governing body has adopted detailed process provisions, procedures, or checklists for major subdivisions or land development applications: *Provided*, That a staff review does not take longer than would a planning commission review. Any applicant may request, in writing to the planning commission, that such a delegated review shall revert to a planning commission review, in which case the time required for review begins at the date of the request.

§8A-5-3. Application for minor subdivision or land development.

(a) An applicant submits a copy of a land development plat and the fees to the planning commission having jurisdiction over the land.

(b) Within seven days after the submission of the subdivision or land development plat, the staff of the planning commission shall offer to meet with the applicant to discuss the proposed subdivision or land development and the criteria used to classify the proposal as minor: *Provided*, That if the applicant requests such a meeting, staff shall meet with the applicant to discuss the

proposed subdivision or land development and the criteria used to classify the proposal as minor.

(c) The staff of the planning commission may make a site inspection of the proposed subdivision or land development.

(d) Within ten days after the submission of the subdivision or land development plat or within five days of the meeting, between the planning commission staff and the applicant, whichever comes later, the staff of the planning commission shall notify the applicant in writing whether the proposed subdivision or land development has been classified a minor subdivision or land development.

PART II. MAJOR SUBDIVISION OR LAND DEVELOPMENT PROCESS.

§8A-5-6. Application for major subdivision or land development.

(a) An applicant for approval of a major subdivision or land development plan and plat shall submit written application, a copy of the proposed land development plan and plat, and the fees to the planning commission having jurisdiction over the land.

(b) Within 45 days after receipt of the application, the planning commission, or its staff if the planning commission has delegated such authority, shall review the application for completeness and either accept or deny it: *Provided*, That if the planning commission's next regularly scheduled meeting that would meet public notice requirements is scheduled within 60 days of receipt of the application, it may review the application for completeness and either accept or deny it at its next regularly scheduled meeting.

(c) If the application is not complete, then the planning commission may deny the application and must notify the applicant in writing stating the reasons for the denial.

§8A-5-8. Approval of major subdivision or land development plans and plats.

(a) Upon written request of the applicant for a determination, the planning commission must determine by vote at the next regular meeting or at a special meeting, whether or not the

application is complete based upon a finding that the application meets the requirements set forth in its governing body's subdivision and land development ordinance. The planning commission may delegate this review to planning commission staff.

(b) If a governing body's subdivision and land development ordinance does not specify what may be included in a land development plan and plat, then the planning commission must determine that an application is complete if the application meets the requirements set forth in subsection (b), section seven of this article.

(c) At a meeting where the application is determined to be complete, the planning commission must set a date, time and place for a public hearing and a meeting to follow the public hearing to vote on the application. The public hearing must be held within 45 days: *Provided*, That if the planning commission's next regularly scheduled meeting that would meet public notice requirements is scheduled within 60 days of receipt of the application, it may hold the public hearing at its next regularly scheduled meeting. The planning commission shall notify the applicant of the public hearing and meeting in writing unless notice is waived in writing by the applicant. The planning commission must publish a public notice of the public hearing and meeting in a local newspaper of general circulation in the area at least 21 days prior to the public hearing.

(d) At a meeting at the conclusion of the public hearing or a meeting held within fourteen days after the public hearing, the planning commission shall vote to approve, deny or hold the application.

(e) The application may be held for additional information necessary to make a determination. An application may be held for up to forty-five days.

(f) The planning commission shall approve the application after the planning commission determines that an application is complete and meets the requirements of the governing body's

subdivision and land development ordinance; or if the governing body does not have a subdivision and land development ordinance or if the subdivision and land development ordinance does not specify what may be included in a subdivision or land development plan and plat, that the application meets the requirements set forth in subsection (b) section seven of this article.

(g) If the planning commission approves the application, then the planning commission shall affix its seal on the subdivision or land development plan and/or plat.

(h) If the planning commission approves the application with conditions, then the planning commission must specify those conditions.

(i) If the planning commission denies the application, then the planning commission shall notify the applicant in writing of the reasons for the denial. The applicant may request, one time, a reconsideration of the decision of the planning commission, which request for reconsideration must be in writing and received by the planning commission no later than ten days after the decision of the planning commission is received by the applicant.

ARTICLE 8. BOARD OF ZONING APPEALS.

§8A-8-4. County board of zoning appeals.

(a) A county board of zoning appeals shall have five members to be appointed by the governing body of the county.

(b) The members of a county board of zoning appeals must be:

(1) Residents of the county for at least three years preceding his or her appointment;

(2) Cannot be a member of the county planning commission;
and

(3) Cannot hold any other elective or appointive office in that county's government: *Provided*, That a member of the county

board of zoning appeals may also serve as a member of the county board of subdivision and land development appeals.

(c) Where only a portion of the county is zoned, the members of the board of zoning appeals for that part of the county that is zoned, must be:

(1) Residents of that part of the county that is zoned for at least three years preceding his or her appointment;

(2) Cannot be a member of the county planning commission; and

(3) Cannot hold any other elective or appointive office in the county government: *Provided*, That a member of the county board of zoning appeals may also serve as a member of the county board of subdivision and land development appeals.

(d) Upon the creation of a board of zoning appeals, the members shall be appointed for the following terms: One for a term of one year; two for a term of two years; and two for a term of three years. The terms shall expire on January 1, of the first, second and third year, respectively, following their appointment. Thereafter, members shall serve three-year terms. If a vacancy occurs, the governing body of the county shall appoint a member for the unexpired term.

(e) The governing body of the county may appoint up to three additional members to serve as alternate members of the county board of zoning appeals. The alternate members must meet the same eligibility requirements as set out in subsection (b) or subsection (c) of this section, as applicable. The term for an alternate member is three years. The governing body of the county may appoint alternate members on a staggered term schedule.

(f) An alternate member shall serve on the board when one of the regular members is unable to serve. The alternate member shall serve until a final determination is made in the matter to which the alternate member was initially called on to serve.

(g) The county board of zoning appeals shall establish rules and procedures for designating an alternate member. An alternate member shall have the same powers and duties of a regular board member.

(h) The members and alternate members of a county board of zoning appeals shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

§8A-8-5. Board of zoning appeals meetings.

(a) When there is business to conduct, a board of zoning appeals shall meet at least semiannually, and may meet more frequently at the written request of the chairperson or by two or more members.

(b) Notice for a special meeting must be in writing, include the date, time and place of the special meeting, and be sent to all members at least two days before the special meeting.

(c) Written notice of a special meeting is not required if the date, time and place of the special meeting were set in a regular meeting.

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CHAPTER 197

(H. B. 3443 - By Delegates Maynor, Linville, A. Hall and Ridenour)

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-1-15, relating to a development or improvement on land subject to review by the State Historic Preservation Office or by any other agency, office, or component of the Division of Culture and History; establishing the division shall not add any additional impediment to such review beyond those required by applicable Federal laws, rules, or regulations; and granting rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

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

All development or improvement on land, including any disturbance in a right-of-way, construction project, or infrastructure project, subject to review by the State Historic Preservation Office or by any other agency, office, or component of the Division of Culture and History for prehistorical, historical, archaeological, architectural, or cultural value shall be conducted in the most expedient manner possible. The division shall not add any additional impediment to such review beyond those required by applicable Federal laws, rules, and regulations and shall have no authority to comment, regulate, or otherwise cause another

governmental entity to comment upon or regulate, that activity, except in consideration for primacy or continued federal funding.

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



CHAPTER 198

(Com. Sub. for S. B. 335 - By Senator Woodrum)

[Passed March 6, 2023; in effect from passage]

[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §64-6-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Homeland Security to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature and directing certain agencies of the Department of Homeland Security to amend current legislative rules; relating to authorizing the Governor's Committee on Crime to promulgate a legislative rule relating to protocol for law enforcement response to domestic violence; relating to authorizing the Division of Emergency Management to promulgate a legislative rule relating to the National Flood Insurance Program; relating to authorizing the Fire Commission to promulgate a legislative rule relating to hazardous substance emergency response training programs; relating to authorizing the Fire Commission to promulgate a legislative rule relating to certification of home inspectors; relating to authorizing the Fire Commission to promulgate a legislative rule relating to volunteer firefighters' training equipment, and operating standards; relating to authorizing the Fire Marshal to promulgate a legislative rule relating to certification of electrical inspectors; relating to authorizing the Fire Marshal to promulgate a legislative rule relating to supervision of fire protection work; relating to authorizing the Fire Marshal to promulgate a legislative rule relating to electrician licensing; relating to authorizing the Fire Marshal to promulgate a legislative rule relating to certification of home inspectors;

relating to authorizing the State Police to promulgate a legislative rule relating to West Virginia State Police professional standards investigations, employee rights, early identification system, psychological assessment, and progressive discipline; and relating to directing the State Police to promulgate a legislative rule relating to modified vehicle inspections.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF
HOMELAND SECURITY TO PROMULGATE
LEGISLATIVE RULES.**

§64-6-1. Governor's Committee on Crime.

The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §48-27-1102 of this code, relating to the Governor's Committee on Crime (protocol for law enforcement response to domestic violence, 149 CSR 03), is authorized.

§64-6-2. Division of Emergency Management.

The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §15-5-20b of this code, modified by the Division of Emergency Management Security to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2022, relating to the Division of Emergency Management (National Flood Insurance Program, 170 CSR 07), is authorized.

§64-6-3. Fire Commission.

(a) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §15A-11-4 of this code, modified by the Fire Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2022, relating to the Fire Commission (hazardous substance emergency response training programs, 87 CSR 03), is authorized.

(b) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §15A-10-2 of this code, relating to the Fire Commission (certification of home inspectors, 87 CSR 05), is authorized.

(c) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §15A-11-9 of this code, modified by the Fire Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2022, relating to the Fire Commission (volunteer firefighters' training, equipment, and operating standards, 87 CSR 08), is authorized with the amendment set forth below:

On page 4, by striking out subdivision 4.1.9.

§64-6-4. Fire Marshal.

(a) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §29-3C-4 of this code, modified by the Fire Marshal to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2022, relating to the Fire Marshal (certification of electrical inspectors, 103 CSR 01), is authorized with the amendment set forth below:

On page 5, subsection 7.5, by striking out "Building Officials and Code Administration (BOCA)" and inserting in lieu thereof "International Code Council (ICC)".

(b) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §29-3D-4 of this code, modified by the Fire Marshal to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2022, relating to the Fire Marshal (supervision of fire protection work, 103 CSR 03), is authorized.

(c) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §29-3B-5 of this code, modified by the State Fire Marshal to meet the objections of the Legislative Rule-Making Review Committee and refiled in the

State Register on October 5, 2022, relating to the Fire Marshal (electrician licensing, 103 CSR 05), is authorized.

(d) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §15A-10-5 of this code, modified by the Fire Marshal to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2022, relating to the Fire Marshal (certification of home inspectors, 103 CSR 07), is authorized.

§64-6-5. State Police.

(a) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §15-2-25 of this code, modified by the State Police to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 14, 2022, relating to the State Police (West Virginia State Police professional standards investigations, employee rights, early identification system, psychological assessment, and progressive discipline, 81 CSR 10), is authorized.

(b) The legislature directs the State Police to amend the legislative rule filed in the State Register on April 4, 2012, authorized under §17C-15-48, relating to the State Police (modified vehicle inspections, 81 CSR 04), with the amendments set forth below:

On page 6, by striking out subdivision 4.2.4. and inserting a new subdivision 4.2.4.to read as follows:

"4.2.4. Fenders – Any attachment added to the body or fender of the vehicle to meet the requirements of this section shall be securely mounted and free of any sharp edges or protuberances.";

And,

On page 14, by striking out subdivision 4.8.11. and renumbering the remaining subdivisions.

CHAPTER 199

(Com. Sub. for S. B. 345 - By Senator Woodrum)

[Passed March 10, 2023; in effect from passage]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §64-7-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Revenue to promulgate legislative rules; authorizing the rules as filed, as modified, and as modified and amended by the Legislative Rule-Making Review Committee, and as amended by the Legislature; relating to authorizing the Division of Financial Institutions to promulgate a legislative rule relating to money transmission services; relating to authorizing the Insurance Commissioner to promulgate a legislative rule relating to suitability in annuity transactions; relating to authorizing the Insurance Commissioner to promulgate a legislative rule relating to pharmacy auditing entities and pharmacy benefit managers; relating to authorizing the Insurance Commissioner to promulgate a legislative rule relating to bail bondsmen in criminal cases; relating to authorizing the Lottery Commission to promulgate a legislative rule relating to West Virginia Lottery sports wagering; relating to authorizing the Tax Commissioner to promulgate a legislative rule relating to the valuation of producing and reserve oil, natural gas liquids, and natural gas for ad valorem property tax purposes; relating to authorizing the Tax Commissioner to promulgate a legislative rule relating to West Virginia Film Industry Investment Act; relating to authorizing the Tax Commissioner to promulgate a legislative rule relating to the Farm-to-Food Bank tax credit; relating to authorizing the Tax Commissioner to promulgate a legislative rule relating to property transfer tax; relating to authorizing the Tax Commissioner to promulgate a legislative

rule relating to municipal sales and use tax administration; and relating to authorizing the Tax Commissioner to promulgate a legislative rule relating to a personnel rule for the Tax Division.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Division of Financial Institutions.

The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §32A-2-7 of this code, modified by the Division of Financial Institutions to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 19, 2022, relating to the Division of Financial Institutions (money transmission services, 106 CSR 23), is authorized.

§64-7-2. Insurance Commissioner.

(a) The legislative rule filed in the State Register on July 19, 2022, authorized under the authority of §33-2-10 of this code, relating to the Insurance Commission (suitability in annuity transactions, 114 CSR 11B), is authorized with the amendment set forth below:

On page 1, section 2, by striking out the words "Nothing in this rule shall be construed to create or imply a private cause of action for a violation of this rule or to subject a producer to civil liability under the best interest standard of care outline in Section 5 of this rule or under standards governing the conduct of a fiduciary or a fiduciary relationship."

(b) The legislative rule filed in the State Register on July 19, 2022, authorized under the authority of §33-51-10 of this code, modified by the Insurance Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 20, 2022, relating to the Insurance Commission (pharmacy auditing entities and pharmacy benefit managers, 114 CSR 99), is authorized.

(c) The legislative rule filed in the State Register on August 17, 2022, authorized under the authority of §51-10-8 of this code, modified by the Insurance Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2022, relating to the Insurance Commission (bail bondsmen in criminal cases, 114 CSR 103), is authorized with the amendments set forth below:

On page 1, section 2, subdivision 2.4.1, by striking out the words "also referred to as "surety bondsmen.";

On page 1, section 2, subdivision 2.4.2, by striking out the words "also referred to as "professional bondsmen.";

On page 2, section 2, by striking out subsection 2.9, and inserting in lieu thereof a new subsection 2.9 to read as follows: "2.9. "Professional bondsman" means any person who has been approved and licensed by the Commissioner, and who pledges cash, an irrevocable letter of credit, an annuity purchased through an insurance company licensed and in good standing in this State, a bond issued by an insurance company licensed and in good standing in this State, or real estate with the Commissioner as security for bail bonds written in connection with a judicial proceeding, and charges, receives or is promised money or other things of value in exchange for his or her services.";

On page 2, section 2, by striking out subsection 2.10, and inserting in lieu thereof a new subsection 2.10 to read as follows: "2.10. "Securities" or "approved securities" means cash, an irrevocable letter of credit, an annuity purchased through an insurance company licensed and in good standing in this State, a bond issued by an insurance company licensed and in good standing in this State, a qualified power of attorney issued by an insurer pursuant to a producer underwriting agreement, or real estate located in this State that is unencumbered in, at least, the amount of minimum financial responsibility required as set forth in this rule.";

On page 2, section 2, by striking out subsection 2.11, and inserting in lieu thereof a new subsection 2.11 to read as follows:

"2.11. "Surety bondsman" means a person who:

2.11.1. Has been approved and licensed by the Commissioner as an insurance producer with a property and casualty line of authority and appointed by an insurer to execute or countersign bail bonds for the insurer through a qualified power of attorney in connection with judicial proceedings and charges, receives or is promised money or other things of value in exchange for his or her services; or

2.11.2. Posts approved security by providing the Commissioner with a qualified power of attorney issued by an insurer pursuant to a producer underwriting agreement and being approved and licensed by the Commissioner as an insurance producer with a limited lines surety line of authority and appointed by an insurer to execute or countersign bail bonds for the insurer in connection with judicial proceedings and charges, receives or is promised money or other things of value in exchange for his or her services.";

And,

On page 3, section 3, paragraph 3.2.1.b, by striking out the words "is a licensed insurance producer with a property and casualty line of authority, and".

§64-7-3. Lottery Commission.

The legislative rule filed in the State Register on July 21, 2022, authorized under the authority of §29-22D-4 of this code, relating to the Lottery Commission (West Virginia lottery sports wagering, 179 CSR 09), is authorized.

§64-7-4. Tax Commissioner.

(a) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §11-1C-5 of this code, modified by the Tax Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 17, 2022, relating to the Tax Commissioner (Valuation of producing and reserve oil, natural gas

liquids, and natural gas for ad valorem property tax purposes, 110 CSR 01J), is authorized.

(b) The legislative rule filed in the State Register on July 26, 2022, authorized under the authority of §11-13X-9 of this code, modified by the Tax Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2022, relating to the Tax Commissioner (West Virginia Film Industry Investment Act, 110 CSR 13X), is authorized with the amendment set forth below:

On page 6, section 4, paragraph 4.1.3.b.2, by striking the word "commercial,".

(c) The legislative rule filed in the State Register on March 25, 2022, authorized under the authority of §11-13DD-5 of this code, relating to the Tax Commissioner (Farm-to-Food Bank tax credit, 110 CSR 13DD), is authorized.

(d) The legislative rule filed in the State Register on March 25, 2022, authorized under the authority of §11-22-5 of this code, relating to the Tax Commissioner (property transfer tax, 110 CSR 22), is authorized.

(e) The legislative rule filed in the State Register on July 26, 2022, authorized under the authority of §11-10-11c of this code, modified by the Tax Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2022, relating to the Tax Commissioner (municipal sales and use tax administration, 110 CSR 28), is authorized.

(f) The legislative rule filed in the State Register on March 25, 2022, authorized under the authority of §11B-1-8 of this code, relating to the Tax Commissioner (personnel rule for the Tax Division, 110 CSR 42), is authorized.



CHAPTER 200

(Com. Sub. for S. B. 356 - By Senator Woodrum)

[Passed March 8, 2023; in effect from passage]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §64-8-1 *et seq.* of the Code of West Virginia, 1931, as amended; and to amend and reenact §64-12-5 of said code, all relating generally to authorizing certain agencies of the Department of Transportation to promulgate and repeal legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to administrative due process; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to examination and issuance of driver's license; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to denial, suspension, revocation, disqualification, restriction, nonrenewal, cancellation, administrative appeals, and reinstatement of driving privileges; authorizing the Division of Highways to promulgate a legislative rule relating to disposal, lease, and management of real property and appurtenant structures and relocation assistance; and authorizing the Department of Transportation, State Rail Authority to repeal a legislative rule relating to organization and meetings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of Motor Vehicles.

(a) The legislative rule filed in the State Register on July 30, 2022, authorized under the authority of §17A-2-9 of this code, relating to the Division of Motor Vehicles (administrative due process, 91 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 30, 2022, authorized under the authority of §17B-2-7 of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 16, 2022, relating to the Division of Motor Vehicles (examination and issuance of driver's license, 91 CSR 04), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2022, authorized under the authority of §17A-2-9 of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 16, 2022, relating to the Division of Motor Vehicles (denial, suspension, revocation, disqualification, restriction, nonrenewal, cancellation, administrative appeals, and reinstatement of driving privileges, 91 CSR 05), is authorized.

§64-8-2. Division of Highways.

The legislative rule filed in the State Register on July 21, 2022, authorized under the authority of §17-2A-8 of this code, modified by the Division of Highways to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2022, relating to the Division of Highways (disposal, lease, and management of real property and appurtenant structures and relocation assistance, 157 CSR 02), is authorized.

ARTICLE 12. REPEAL OF UNAUTHORIZED AND OBSOLETE RULES.

§64-12-5. Department of Transportation.

The legislative rule effective September 1, 2001, authorized under the authority of §29-18-4 of this code, relating to the Department of Transportation, State Rail Authority (organization and meetings, 172 CSR 01), is repealed.



CHAPTER 201

(Com. Sub. for S. B. 361 - By Senator Woodrum)

[Passed March 11, 2023; in effect from passage]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §64-9-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing and directing certain miscellaneous agencies and boards to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee, and as amended by the Legislature; relating to authorizing the Board of Accountancy to promulgate a legislative rule relating to board rules of professional conduct; relating to authorizing the Board of Acupuncture to promulgate a legislative rule relating to advertising by licensed acupuncturists; relating to authorizing the Board of Acupuncture to promulgate a legislative rule relating to standards of practice of acupuncture by licensed acupuncturists; relating to authorizing the Board of Acupuncture to promulgate a legislative rule relating to continuing education requirements; relating to authorizing the Department of Agriculture to promulgate a legislative rule relating to the West Virginia apiary rule; relating to authorizing the Department of Agriculture to promulgate a legislative rule relating to schedule of charges for inspection services: fruit; relating to authorizing the Department of Agriculture to promulgate a legislative rule relating to noxious weeds; relating to authorizing the Department of Agriculture to promulgate a legislative rule relating to Grade "A" pasteurized milk; relating to authorizing the Department of Agriculture to promulgate a legislative rule relating to inspection of nontraditional, domesticated animals; relating to authorizing the Department of Agriculture to promulgate a legislative rule

relating to hemp products; relating to authorizing the Department of Agriculture to promulgate a legislative rule relating to livestock care standards; relating to authorizing the Department of Agriculture to promulgate a legislative rule relating to farm-to-food bank tax credit; relating to authorizing the Department of Agriculture to promulgate a legislative rule relating to farmers markets; relating to authorizing the Athletic Commission to promulgate a legislative rule relating to administrative rules; relating to authorizing the Athletic Commission to promulgate a legislative rule relating to regulation of mixed martial arts; relating to authorizing the State Auditor to promulgate a legislative rule relating to standards for voluntary payroll deductions; relating to authorizing the Conservation Agency to promulgate a legislative rule relating to operation of West Virginia State Conservation Committee and conservation districts; relating to authorizing the Conservation Agency to promulgate a legislative rule relating to conservation district accounting and auditing standards; relating to authorizing the Board of Dentistry to promulgate a legislative rule relating to dental recovery networks; relating to authorizing the Board of Funeral Service Examiners to promulgate a legislative rule relating to funeral director, embalmer, apprentice, courtesy card holders, and funeral establishment requirements; relating to authorizing the Board of Funeral Service Examiners to promulgate a legislative rule relating to crematory requirements; relating to authorizing the Board of Funeral Service Examiners to promulgate a legislative rule relating to a fee schedule; relating to authorizing the Board of Landscape Architects to promulgate a legislative rule relating to registration of landscape architects; relating to authorizing the Board of Medicine to promulgate a legislative rule relating to licensing of physicians and podiatric physicians and disciplinary procedures for applicants, licensees, and credential holders; relating to authorizing the Board of Medicine to promulgate a legislative rule relating to relating to licensure, practice requirements, disciplinary and complaint procedures, continuing education, physician assistants; authorizing the Board of Medicine to promulgate a legislative rule relating to

collaborative pharmacy practice; relating to authorizing the Board of Medicine to promulgate a legislative rule relating to prohibiting sexual misconduct by health care practitioners; relating to authorizing the Board of Optometry to promulgate a legislative rule relating to optometric telehealth practice; relating to authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to osteopathic physician assistants; relating to authorizing the Board of Pharmacy to promulgate a legislative rule relating to licensure and practice of pharmacy; relating to authorizing the Board of Pharmacy to promulgate a legislative rule relating to the Uniform Controlled Substance Act; relating to authorizing the Board of Pharmacy to promulgate a legislative rule relating to Board of Pharmacy rules for registration of pharmacy technicians; relating to authorizing the Board of Pharmacy to promulgate a legislative rule relating to regulations governing pharmacy permit; relating to authorizing the Board of Pharmacy to promulgate a legislative rule relating to inspections; relating to authorizing the Board of Pharmacy to promulgate a legislative rule relating to the Donated Drug Repository Program; relating to authorizing the Psychologists to promulgate a legislative rule relating to code of conduct; relating to authorizing the Board of Registered Professional Nurses to promulgate a legislative rule relating to requirements for registration and licensure and conduct constituting professional misconduct; relating to authorizing the Board of Registered Professional Nurses to promulgate a legislative rule relating to advanced practice registered nurse licensure requirements; relating to authorizing the Board of Registered Professional Nurses to promulgate a legislative rule relating to limited prescriptive authority for nurses in advanced practice; relating to authorizing the Board of Registered Professional Nurses to promulgate a legislative rule relating to continuing education and competence; relating to authorizing the Board of Registered Professional Nurses to promulgate a legislative rule relating to fees for services rendered by the board; relating to authorizing the Board of Registered Professional Nurses to promulgate a legislative rule relating to practitioner requirements for accessing the West Virginia Controlled Substance Monitoring Program database;

relating to authorizing the Board of Registered Professional Nurses to promulgate a legislative rule relating to telehealth practice; requirements; definitions; relating to authorizing the Secretary of State to promulgate a legislative rule relating to early voting in-person satellite precincts; relating to authorizing the Secretary of State to promulgate a legislative rule relating to the Combined Voter Registration and Driver Licensing Fund; relating to authorizing the Secretary of State to promulgate a legislative rule relating to administrative procedures for the Nonpublic Funding for Election Administration Fund; relating to authorizing the State Treasurer to promulgate a legislative rule relating to enforcement of the Uniform Unclaimed Property Act; relating to authorizing the State Treasurer to promulgate a legislative rule relating to the Hope Scholarship Program; and relating to authorizing the State Treasurer to promulgate a legislative rule relating to Jumpstart Savings Program.

Be it enacted by the Legislature of West Virginia:

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

§64-9-1. Board of Accountancy.

The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §30-9-5 of this code, relating to the Board of Accountancy (board rules of professional conduct, 1 CSR 01), is authorized.

§64-9-2. Board of Acupuncture.

(a) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §30-36-14(f) of this code, modified by the Board of Acupuncture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 28, 2022, relating to the Board of Acupuncture (advertising by licensed acupuncturists, 32 CSR 05), is authorized.

(b) The legislative rule filed in the State Register on July 30, 2022, authorized under the authority of §30-36-7 of this code, modified by the Board of Acupuncture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 28, 2022, relating to the Board of Acupuncture (standards of practice of acupuncture by licensed acupuncturists, 32 CSR 06), is authorized with the amendment set forth below:

On page 2, by striking out section 6.1 and inserting in lieu thereof a new section 6.1 to read as follows:

Injection therapy- A practitioner shall be limited to perform pointpuncture injections using sterile disposable needles and sterile solutions. Injection therapy shall be the injection of sterile herbs, vitamins, minerals, homeopathic substance, or other similar substances specifically manufactured for injection into acupuncture points by means of sterile needles used primarily for this purpose. Permissible substances include saline, glucose, lidocaine, procaine, oriental herbs, vitamin B-12, traumeel, sarapin, and homeopathic substances. Practitioners trained in injection therapy must comply with the ability to perform resuscitative procedures, including access to epinephrine injections and nasal oxygen if their patient exhibits symptoms of anaphylaxis;

On page 3, by inserting a new section, designated section 6.3. to read as follows:

6.3. Hand washing – The acupuncturist shall vigorously scrub his or her hands with soap and warm water immediately before examining patients or handling acupuncture needles and other instruments and between patients.

(c) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §30-36-7 of this code, modified by the Board of Acupuncture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 28, 2022, relating to the Board of Acupuncture (continuing education requirements, 32 CSR 09), is authorized.

§64-9-3. Department of Agriculture.

(a) The legislative rule filed in the State Register on July 18, 2022, authorized under the authority of §19-13-4 of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2022, relating to the Department of Agriculture (West Virginia apiary rule, 61 CSR 02), is authorized with the amendment set forth below:

On page 2, by striking out all of section 3.1. and inserting in lieu thereof a new section 3.1. to read as follows:

3.1. The Commissioner shall furnish an application for registration of bees to all person known to keep bees. The Commissioner shall mail the applications during the month of June to all persons who have registered their bees during the previous year. Upon receipt of a properly executed bee registration application, the Commissioner shall issue a certificate of registration which will be based upon the information provided on the application.

(b) The legislative rule filed in the State Register on May 12, 2022, authorized under the authority of §19-2-10 of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2022, relating to the Department of Agriculture (schedule of charges for inspection services: fruit, 61 CSR 08B), is authorized.

(c) The legislative rule filed in the State Register on June 14, 2022, authorized under the authority of §19-12D-4 of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2022, relating to the Department of Agriculture (noxious weeds rule, 61 CSR 14A), is authorized.

(d) The legislative rule filed in the State Register on July 21, 2022, authorized under the authority of §19-11E-8(1) of this code,

modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2022, relating to the Department of Agriculture (Grade "A" pasteurized milk, 61 CSR 15), is authorized.

(e) The legislative rule filed in the State Register on November 15, 2021, authorized under the authority of §19-29-4 of this code, modified by the Agriculture Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 26, 2022, relating to the Agriculture Commissioner (inspection of nontraditional, domesticated animals, 61 CSR 23D), is authorized.

(f) The legislative rule filed in the State Register on July 28, 2022, authorized under the authority of §19-12E-7 of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2022, relating to the Department of Agriculture (hemp products, 61 CSR 30), is authorized.

(g) The legislative rule filed in the State Register on June 2, 2022, authorized under the authority of §19-1C-4 of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2022, relating to the Department of Agriculture (livestock care standards, 61 CSR 31), is authorized.

(h) The legislative rule filed in the State Register on May 18, 2022, authorized under the authority of §11-13DD-5(b) of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2022, relating to the Department of Agriculture (farm to food bank tax credit, 61 CSR 36), is authorized with the amendments set forth below:

On page 3, after "5.2.c." by inserting the following: "No more than \$200,000 of tax credits may be allocated to the Department of Agriculture in any fiscal year."

And,

On page 4, by striking out section 5.3 and inserting in lieu thereof a new section 5.3. to read as follows:

5.3. After review of the receipt form and any supporting documentation, and after ensuring that the limit of \$200,000 of tax credits per fiscal year has not been exceeded, the Department of Agriculture shall determine the amount, if any, of the tax credit due to the farming taxpayer. The amount of the credit is equal to 30 percent of the value of the donated edible agricultural products, but not to exceed \$5,000 during a taxable year.

(i) The legislative rule filed in the State Register on June 24, 2022, authorized under the authority of §19-35-4 of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2022, relating to the Department of Agriculture (farmers markets, 61 CSR 38), is authorized with the amendment set forth below:

On page 6, by striking out subdivision 6.2.h. and inserting in lieu thereof a new subdivision 6.2.h. to read as follows:

6.2.h. Any potentially hazardous freeze-dried foods.

§64-9-4. Athletic Commission.

(a) The legislative rule filed in the State Register on July 26, 2022, authorized under the authority of §29-5A-24 of this code, modified by the Athletic Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 20, 2022, relating to the Athletic Commission (administrative rules of the West Virginia State Athletic Commission, 177 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §29-5A-3a of this code, modified by the Athletic Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 20, 2022, relating to the Athletic Commission (regulation of mixed martial arts, 177 CSR 02), is authorized.

§64-9-5. State Auditor.

The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §12-3-13b of this code, relating to the State Auditor (standards for voluntary payroll deductions, 155 CSR 03), is authorized.

§64-9-6. Conservation Agency.

(a) The legislative rule filed in the State Register on July 12, 2022, authorized under the authority of §19-21A-4a of this code, modified by the Conservation Agency to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 20, 2022, relating to the Conservation Agency (operation of West Virginia State Conservation Committee and conservation districts, 63 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 12, 2022, authorized under the authority of §19-21A-4 of this code, modified by the Conservation Agency to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 20, 2022, relating to the Conservation Agency (conservation district accounting and auditing standards, 63 CSR 04), is authorized.

§64-9-7. Board of Dentistry.

The legislative rule filed in the State Register on July 22, 2022, authorized under the authority of §30-4-6 of this code, modified by the Board of Dentistry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2022, relating to the Board of Dentistry (dental recovery networks, 5 CSR 15), is authorized.

§64-9-8. Board of Funeral Service Examiners.

(a) The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §30-6-6 of this code, modified by the Board of Funeral Service Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2022, relating to the Board of Funeral Service Examiners (funeral director, embalmer, apprentice, courtesy card holders and funeral establishment requirements, 6 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §30-6-6 of this code, modified by the Board of Funeral Service Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2022, relating to the Board of Funeral Service Examiners (crematory requirements, 6 CSR 02), is authorized.

(c) The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §30-6-6 of this code, modified by the Board of Funeral Service Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2022, relating to the Board of Funeral Service Examiners (fee schedule, 6 CSR 07), is authorized.

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

The legislative rule filed in the State Register on July 30, 2022, authorized under the authority of §30-22-7 of this code, modified by the Board of Landscape Architects to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2022, relating to the Board of Landscape Architects (registration of landscape architects, 9 CSR 01), is authorized.

§64-9-10. Board of Medicine.

(a) The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §30-3-7(a) of this code,

relating to the Board of Medicine (licensing of physicians and podiatric physicians and disciplinary procedures for applicants, licensees, credential holders, 11 CSR 01A), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §30-3E-3 of this code, relating to the Board of Medicine (licensure, practice requirements, disciplinary and complaint procedures, continuing education, physician assistants, 11 CSR 01B), is authorized.

(c) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §30-5-7(c) of this code, relating to the Board of Medicine (collaborative pharmacy practice, 11 CSR 08), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2022, authorized under the authority of §30-3-14 of this code, relating to the Board of Medicine (prohibiting sexual misconduct by health care practitioners, 11 CSR 16), is authorized**

§64-9-11. Board of Optometry.

The legislative rule filed in the State Register on July 30, 2022, authorized under the authority of §30-1-26 of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 28, 2022, relating to the Board of Optometry (optometric telehealth practice, 14 CSR 12), is authorized with amendment set forth below:

On page 4, by striking out all of section 5.1. and inserting in lieu thereof a new section 5.1. to read as follows:

5.1. Nothing in this section shall be construed to invalidate §30-8A-3 or to permit use of any automated refractor or other automated or remote testing device to generate refractive data.

§64-9-12. Board of Osteopathic Medicine.

The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §30-3E-3 of this code, relating to

**NOTE: A period following "is authorized" was omitted from the enrolled bill.

the Board of Osteopathic Medicine (osteopathic physician assistants, 24 CSR 02), is authorized.

§64-9-13. Board of Pharmacy.

(a) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 17, 2022, relating to the Board of Pharmacy (licensure and practice of pharmacy, 15 CSR 01), is authorized with the amendments set forth below:

On page 10, subsection 4.3, after the word "to" by inserting the words "six";

And,

On page 40, by striking out the entirety of subdivision 24.1.b. and inserting in lieu thereof a new subdivision 24.1.b. to read as follows:

24.1.b. for drug regimen review of prescription orders for a patient in an institutional facility, for the pharmacist to authorize the dispensing and administration, provided the pharmacist is licensed to practice pharmacist care in West Virginia.

(b) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §60A-3-301 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 17, 2022, relating to the Board of Pharmacy (Uniform Controlled Substance Act, 15 CSR 02), is authorized.

(c) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 17, 2022, relating to the Board of

Pharmacy (registration of pharmacy technicians, 15 CSR 07), is authorized.

(d) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 17, 2022, relating to the Board of Pharmacy (pharmacy permits, 15 CSR 15), is authorized.

(e) The legislative rule filed in the State Register on April 4, 2022, authorized under the authority of §30-5-7 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 17, 2022, relating to the Board of Pharmacy (inspections, 15 CSR 19), is authorized.

(f) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §60B-1-8 of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 17, 2022, relating to the Board of Pharmacy (Donated Drug Repository Program, 15 CSR 20), is authorized.

§64-9-14. Psychologists.

The legislative rule filed in the State Register on September 7, 2022, authorized under the authority of §30-21-6 of this code, relating to the Board of Examiners of Psychologists (code of conduct, 17 CSR 06), is authorized.

§64-9-15. Board of Registered Professional Nurses.

(a) The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §30-7-4 of this code, relating to the Board of Registered Professional Nurses (requirements for registration and licensure and conduct constituting professional misconduct, 19 CSR 03), is authorized.

(b) The legislative rule filed in the State Register on July 26, 2022, authorized under the authority of §30-7-4 of this code, modified by the Board of Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 10, 2022, relating to the Board of Registered Professional Nurses (advanced practice registered nurse licensure requirements, 19 CSR 07), is authorized with the amendment set forth below:

On page 7, by inserting a new subsection 10.2., to read as follows:

10.2. In case of national recertification, any licensure suspension shall immediately be removed, and no further discipline may occur, if information is provided indicating that recertification has not lapsed.

(c) The legislative rule filed in the State Register on July 26, 2022, authorized under the authority of §30-7-15a of this code, modified by the Board of Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 10, 2022, relating to the Board of Registered Professional Nurses (limited prescriptive authority for nurses in advanced practice, 19 CSR 08), is authorized.

(d) The legislative rule filed in the State Register on July 26, 2022, authorized under the authority of §30-7-4 of this code, modified by the Board of Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 10, 2022, relating to the Board of Registered Professional Nurses (continuing education and competence, 19 CSR 11), is authorized.

(e) The legislative rule filed in the State Register on July 26, 2022, authorized under the authority of §30-7-4 of this code, modified by the Board of Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 10, 2022, relating to the Board of Registered Professional Nurses (fees for services

rendered by the board, 19 CSR 12), is authorized with the amendments set forth below:

On page 1, subsection 2.4., by striking out the number "30.00" and inserting in lieu thereof the number "20.00";

On page 2, subsection 2.8., by striking out the number "35.00" and inserting in lieu thereof the number "25.00";

And,

On page 2, by striking out subsection 2.20. and renumbering the remaining subsections.

(f) The legislative rule filed in the State Register on July 26, 2022, authorized under the authority of §60A-9-5a of this code, modified by the Board of Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 10, 2022, relating to the Board of Registered Professional Nurses (practitioner requirements for accessing the West Virginia Controlled Substance Monitoring Program database, 19 CSR 14), is authorized.

(g) The legislative rule filed in the State Register on July 26, 2022, authorized under the authority of §30-1-26 of this code, relating to the Board of Registered Professional Nurses (telehealth practice; requirements; definitions, 19 CSR 16), is authorized.

§64-9-16. Secretary of State.

(a) The legislative rule filed in the State Register on August 1, 2022, authorized under the authority of §3-3-2a of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 10, 2022, relating to the Secretary of State (early voting in-person satellite precincts, 153 CSR 13), is authorized.

(b) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §3-1A-6 of this code, modified by the Secretary of State to meet the objections of the

Legislative Rule-Making Review Committee and refiled in the State Register on November 10, 2022, relating to the Secretary of State (Combined Voter Registration and Driver Licensing Fund, 153 CSR 25), is authorized.

(c) The legislative rule filed in the State Register on August 1, 2022, authorized under the authority of §3-1A-9 of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 10, 2022, relating to the Secretary of State (administrative procedures for the Nonpublic Funding for Election Administration Fund, 153 CSR 54), is authorized.

§64-9-17. State Treasurer.

(a) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §36-8-28 of this code, modified by the State Treasurer to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2022, relating to the State Treasurer (enforcement of the Uniform Unclaimed Property Act, 112 CSR 05), is authorized.

(b) The legislative rule filed in the State Register on April 21, 2022, authorized under the authority of §18-31-9 of this code, modified by the Treasurer's Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2023, relating to the Treasurer's Office (Hope Scholarship Program, 112 CSR 18), is authorized.

(c) The legislative rule filed in the State Register on July 22, 2022, authorized under the authority of §18-30A-16 of this code, modified by the State Treasurer to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2022, relating to the State Treasurer (Jumpstart Savings Program, 112 CSR 20), is authorized.



CHAPTER 202

(Com. Sub. for S. B. 409 - By Senator Woodrum)

[Passed March 10, 2023; in effect from passage]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §64-10-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Commerce to promulgate legislative rules; authorizing the rules as filed, as modified, as modified and amended, and as amended by the Legislative Rule-Making Review Committee and as amended by Legislature; relating to authorizing the West Virginia Department of Economic Development to promulgate a legislative rule relating to the Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program; relating to authorizing the Division of Labor to promulgate a legislative rule relating to the West Virginia Board of Manufactured Housing Construction and Safety; relating to authorizing the Division of Labor to promulgate a legislative rule relating to supervision of plumbing work; relating to authorizing the Division of Labor to promulgate a legislative rule relating to regulation of heating, ventilating, and cooling work; relating to authorizing the Division of Labor to promulgate a legislative rule relating to registration of service persons and service agencies; relating to authorizing the Division of Labor to promulgate a legislative rule relating to registration of weighing and measuring devices used by businesses in commercial transactions; relating to authorizing the Division of Natural Resources to promulgate a legislative rule relating to hunting, fishing, and other outfitters and guides; relating to authorizing the Division of Natural Resources to promulgate a legislative rule relating to commercial whitewater outfitters; relating to authorizing the Division of Natural

Resources to promulgate a legislative rule relating to special motorboating regulations; and relating to authorizing the Division of Natural Resources to promulgate a legislative rule relating to miscellaneous permits and licenses.

Be it enacted by the Legislature of West Virginia:

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

§64-10-1. West Virginia Department of Economic Development.

The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §5B-8-2 of this code, modified by the West Virginia Department of Economic Development to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 1, 2022, relating to the West Virginia Department of Economic Development (Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program, 145 CSR 15), is authorized with the amendments set forth below:

On page 1, by striking out all of subsection 2.1. and inserting lieu thereof of a new subsection 2.1. to read as follows:

"2.1. The West Virginia Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program is established. It shall be administered by the Department of Economic Development. The purpose of this matching funds program is to foster job creation and economic development in the state. The Department of Economic Development may provide grants to eligible small businesses to prepare a competitive Phase I proposal, or match funds they receive from Small Business Innovation Research or Small Business Technology Transfer Phase I and Phase II awards. The Department of Economic Development will pay the grants from the fund known as the "Entrepreneurship and Innovation Investment Fund" created pursuant to W.Va. Code §5B-2-16.";

And,

On page 1, subsection 3.1. by striking out the words "West Virginia Department of Commerce" and inserting in lieu thereof the words "West Virginia Department of Economic Development".

§64-10-2. Division of Labor.

(a) The legislative rule filed in the State Register on July 26, 2022, authorized under the authority of §21-9-4 of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2022, relating to the Division of Labor (West Virginia Board of Manufactured Housing Construction and Safety, 42 CSR 19), is authorized.

(b) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §21-14-4 of this code, relating to the Division of Labor (supervision of plumbing work, 42 CSR 32), is authorized.

(c) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §21-16-5 of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2022, relating to the Division of Labor (regulation of heating, ventilating, and cooling work, 42 CSR 34), is authorized with the amendment set forth below:

On page 10, section 13.2., by striking out the word "plumbing" and inserting in lieu thereof the word "HVAC".

(d) The legislative rule filed in the State Register on November 30, 2021, authorized under the authority of §47-1-3 of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2022, relating to the Division of Labor (registration of service persons and service agencies, 42 CSR 35), is authorized.

(e) The legislative rule filed in the State Register on November 30, 2021, authorized under the authority of §47-1-3 of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2022, relating to the Division of Labor (registration of weighing and measuring devices used by businesses in commercial transactions, 42 CSR 36), is authorized.

§64-10-3. Division of Natural Resources.

(a) The legislative rule filed in the State Register on November 30, 2021, authorized under the authority of §20-7-7 of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 29, 2022, relating to the Division of Natural Resources (hunting, fishing, and other outfitters and guides, 58 CSR 11), is authorized with the amendment set forth below:

On page 4, by striking out all of sections 7.1., 7.2., 7.3., and 7.4. and inserting in lieu thereof a new section 7.1. to read as follows:

"7.1. The Division may refer violations of the provisions of this rule to the appropriate law enforcement or prosecutor's office for criminal prosecution."

(b) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §20-2-23a of this code, relating to the Division of Natural Resources (commercial whitewater outfitters, 58 CSR 12), is authorized with the amendment set forth below:

On page 18, section 15.1., by striking out all of section 15.1. and inserting in lieu thereof a new section 15.1. to read as follows:

"15.1. The Division may refer violations of the provisions of this rule to the appropriate law enforcement or prosecutor's office for criminal prosecution."

(c) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §20-7-22 of this code, relating to the Division of Natural Resources (special motorboating regulations, 58 CSR 27), is authorized.

(d) The legislative rule filed in the State Register on November 30, 2021, authorized under the authority of §20-1-7 of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 29, 2022, relating to the Division of Natural Resources (miscellaneous permits and licenses, 58 CSR 64), is authorized with the amendments set forth below:

On page 19, by striking out all of sections 8.1. and 8.2. in their entirety and inserting in lieu thereof a new section 8.1. to read as follows:

"8.1. The Division may refer violations of the provisions of this rule to the appropriate law enforcement or prosecutor's office for criminal prosecution."

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CHAPTER 203

(Com. Sub. for H. B. 2638 - By Delegates Foster and Kump)

[Passed March 2, 2023; in effect from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §64-2-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Administration to promulgate legislative rules; authorizing the rules as filed and as amended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Administration to promulgate a legislative rule relating to purchasing; and authorizing the Department of Administration to promulgate a legislative rule relating to parking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Administration.

(a) The legislative rule filed in the State Register on July 28, 2022, authorized under the authority of §5A-3-4 of this code, relating to the Department of Administration (purchasing, 148 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on October 15, 2021, authorized under the authority of §5A-10-3a of this code, relating to the Department of Administration (parking, 148 CSR 06), is authorized with the following amendments:

On page 2, section 5, by striking out section 5.1 and inserting in lieu thereof the following:

"5.1. Parking may be provided, at the discretion of the Secretary, to state spending units. The spending unit shall provide for parking in accordance with the parking allocation policies of the spending unit, subject to this rule. The fee to park, to be paid by the spending unit, shall be \$20 per month per employee using a designated parking space. Payment by the spending unit shall be made in accordance with the policies of the Secretary. The Secretary may charge a reasonable fee to replace a parking tag or access card issued to a public officer or employee which shall be paid by the public officer or employee."; and

On page 4, section 7, by striking out subsection 7.2 and inserting in lieu thereof the following:

"7.2. Payment. Payment of fines is required within 10 days of the time the ticket was issued to either the ticket receipt boxes provided by the Department of Administration, the address printed on the ticket, or to the Department's website, which must be clearly printed on the ticket. Fines not paid within 10 days are subject to double additional fines not to exceed \$20 each. A summons may be issued for tickets not paid within 14 days."



CHAPTER 204

(Com. Sub. for H. B. 2640 - By Delegate Foster)

[Passed March 6, 2023; in effect from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §64-3-1 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 and 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 standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements for operating permits; 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 quarrying and reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Recycling Assistance Grant Program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Reclamation of Abandoned and Dilapidated Properties Grant Program; and authorizing the Secretary's Office of the Department of Environmental Protection to promulgate a legislative rule relating to reclamation of solar and wind electricity generation facilities.

Be it enacted by the Legislature of West Virginia:

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

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

(a) The legislative rule filed in the State Register on July 21, 2022, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (standards of performance for new stationary sources, 45 CSR 16), is authorized.

(b) The legislative rule filed in the State Register on July 21, 2022, authorized under the authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2022, relating to the Department of Environmental Protection (requirements for operating permits, 45 CSR 30), is authorized with the amendment set forth below:

On page 39, subdivision 8.1.a.1, by striking the number “\$15,000” and inserting in lieu thereof the number “\$5,000”.

(c) The legislative rule filed in the State Register on July 21, 2022, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (emission standards for hazardous air pollutants, 45 CSR 34), is authorized.

(d) The legislative rule filed in the State Register on July 21, 2022, authorized under the authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 16, 2022, relating to the Department of Environmental Protection (control of ozone season nitrogen oxides emissions, 45 CSR 40), is authorized.

(e) The legislative rule filed in the State Register on May 26, 2022, authorized under the authority of §22-4-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee

and refiled in the State Register on October 6, 2022, relating to the Department of Environmental Protection (rules for quarrying and reclamation, 38 CSR 03), is authorized.

(f) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §22-15A-19 of this code, relating to the Department of Environmental Protection (recycling assistance grant program, 33 CSR 10), is authorized.

(g) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §22-15A-30 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 14, 2022, relating to the Department of Environmental Protection (Reclamation of Abandoned and Dilapidated Properties Grant Program, 33 CSR 13), is authorized with the following amendment:

On page 2, after subdivision 4.1.b., by inserting a new subdivision 4.1.c. to read as follows:

“4.1.c. This project shall give priority to structures near highly visible traffic areas, tourism corridors, and/or common open space.”

§64-3-2. Department of Environmental Protection – Secretary’s Office.

The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §22-32-7 of this code, relating to the Department of Environmental Protection – Secretary’s Office (reclamation of solar and wind electricity generating facilities, 60 CSR 11), is authorized with the following amendments:

On page 5, subparagraph 4.1.d.iii after the word, ‘slabs’ by inserting the words “to a minimum depth of 36 inches below the surface”;

On page 5, subsection 4.4 after the word “receipt” by adding the following:

“The department shall only deny an alternative decommissioning agreement if they determine that it will not result in the restoration of the property to a condition in which it can be used towards the same or a similar use as its use prior to the onset of the alternative decommissioning agreement.”;

And,

On page 7, by striking out subdivision 6.2.a and inserting in lieu thereof subdivision 6.2.a to read as follows:

“6.2.a. Estimated costs of decommissioning and salvage value as submitted by the owner in the decommissioning plan and in accordance with these rules with such costs estimated by the department using current machinery production handbooks and publications or other documented or substantiated cost estimates acceptable to the department.”



CHAPTER 205

(Com. Sub. for H. B. 2648 - By Delegate Foster)

[Passed March 6, 2023; in effect from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §64-5-1 *et seq.* of the Code of West Virginia, 1931, as amended, and to amend and reenact §64-12-2 of said code; all relating to generally authorizing the Department of Health and Human Resources to promulgate legislative rules; authorizing or rejecting the rules as filed and as modified by the Legislative Rule-Making Review Committee, and as amended by the Legislature, and directing the Department of Health and Human Resources to amend a current legislative rule; relating to directing the Department of Health and Human Resources to promulgate a legislative rule relating to food establishments; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to procedures pertaining to the Dangerousness Assessment Advisory Board; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to standards for local boards of health; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medical examiner requirements for postmortem inquiries; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to Medical Cannabis Program - grower and processors; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to Medical Cannabis Program – dispensaries; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to financial disclosures; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the Uniform Bill Database; relating

to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to development of methodologies to examine needs for substance use disorder treatment facilities within the state; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the Core Behavioral Health Crisis Services System; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to child care centers licensing; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults and vulnerable and transitioning youth group homes and programs in West Virginia; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to family child care facility licensing requirements; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to informal and relative family child care home registration requirements; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to informal and relative family child care home registration requirements; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to out-of-school-time child care center licensing requirements; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to goals for foster children; relating to authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to deemed head start child care center licenses; relating to rejecting the rule proposed by the Department of Health and Human Resources and the Insurance Commissioner relating to All-Payers Claims Database - Submission Manual; and relating to repealing the Department of Health and Human Resources and the Insurance Commissioner a legislative rule relating to All-Payer Claims Database – Data Submission Requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Department of Health and Human Resources.

(a) The legislature directs the Department of Health and Human Resources to amend the legislative rule filed in the State Register on April 30, 2021, authorized under the authority of §16-1-4 of this code, relating to the Department of Health and Human Resources (Food Establishments, 64 CSR 17), with the amendment set forth below:

On page 2, by striking out all of subdivision 3.1.h. and inserting in lieu thereof a new subdivision 3.1.h. to read as follows:

3.1.h. Chapter 6, section 6-501.115 is not applicable if the following conditions are met:

3.1.h.1. The dog is prohibited from entering any areas where food is being prepared

3.1.h.2. The dog owner will be asked to leave, if a dog creates a nuisance;

3.1.h.3. The establishment is licensed as a private club, restaurant, coffee shop, brew pub, or micro distillery;

3.1.h.4. The establishment has liability insurance for dog-related incidents;

3.1.h.5. Dog accidents are cleaned and sanitized. Dog waste stations are available. A written procedure shall be established and posted concerning dog accident cleanup; and

3.1.h.6. Signage is present indicating that the establishment is dog friendly.

(b) The legislative rule filed in the State Register on March 8, 2022, authorized under the authority of §27-6A-2 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review

Committee and refiled in the State Register on October 4, 2022, relating to the Department of Health and Human Resources (procedures pertaining to the Dangerousness Assessment Advisory Board, 64 CSR 26), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2022, authorized under the authority of §16-1-6 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 14, 2022, relating to the Department of Health and Human Resources (standards for local boards of health, 64 CSR 73), is authorized.

(d) The legislative rule filed in the State Register on July 25, 2022, authorized under the authority of §16-12-3 of this code, modified by the Department of Health and Human Resources to meet the objectives of the Legislative Rule-Making Review Committee and refiled in the State Register on October 14, 2022, relating to the Department of Health and Human Resources (medical examiner requirements for postmortem inquiries, 64 CSR 84), is authorized with the following amendment:

On page 14, by striking out all of section 13.5. and inserting in lieu thereof a new section 13.5 to read as follows:

“13.5. This section applies only to remains of persons whose death have been pronounced within the State of West Virginia or for remains of persons whose deaths have been pronounced in another state and does not have a prior authorization for cremation issued by the state in which the death occurred.”

(e) The legislative rule filed in the State Register on July 22, 2022, authorized under the authority of §16A-3-1 of this code, relating to the Department of Health and Human Resources (Medical Cannabis Program - grower and processors, 64 CSR 110), is authorized with the amendment set forth below:

On page 12, subdivision 8.1.d., by striking out the words “not to exceed 180 days” and inserting in lieu thereof the words “not less than 180 days”.

(f) The legislative rule filed in the State Register on July 22, 2022, authorized under the authority of §16A-3-1 of this code, relating to the Department of Health and Human Resources (Medical Cannabis Program - dispensaries, (64 CSR 112), is authorized with the amendment set forth below:

On page 12, subdivision 11.1.d., by striking out the words “not to exceed 180 days” and inserting in lieu thereof the words “not less than 180 days”.

(g) The legislative rule filed in the State Register on August 24, 2022, authorized under the authority of §16-29B-8 of this code, relating to the Department of Health and Human Resources (financial disclosure, 65 CSR 13), is authorized.

(h) The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §16-29B-24 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2022, relating to the Department of Health and Human Resources (Uniform Bill Database, 65 CSR 34), is authorized.

(i) The legislative rule filed in the State Register on June 22, 2022, authorized under the authority of §16-53-3 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 26, 2022, relating to the Department of Health and Human Resources (development of methodologies to examine needs for substance use disorder treatment facilities within the state, 69 CSR 13), is authorized.

(j) The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §16-42-6 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2022, relating to the Department of Health and Human Resources (Core

Behavioral Health Crisis Services System, 69 CSR 19), is authorized.

(k) The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 14, 2022, relating to the Department of Health and Human Resources (child care centers licensing, 78 CSR 01), is authorized.

(l) The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §27-17-3 of this code, relating to the Department of Health and Human Resources (minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults and vulnerable and transitioning youth group homes and programs in West Virginia, 78 CSR 03), is authorized.

(m) The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §49-2-121 of this code, relating to the Department of Health and Human Resources (family child care facility licensing requirements, 78 CSR 18), is authorized.

(n) The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 14, 2022, relating to the Department of Health and Human Resources (family child care home registration requirements, 78 CSR 19), is authorized with the amendments set forth below:

On page 13, subdivision 9.2.1.a, after the word, “signed” by inserting the words, “and dated”;

And,

On page 13, subdivision 9.2.1.a., after the word, “available” by inserting the words, “the date the pet it brought into the home,”.

(o) The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 14, 2022, relating to the Department of Health and Human Resources (informal and relative family child care home registration requirements, 78 CSR 20), is authorized.

(p) The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 14, 2022, relating to the Department of Health and Human Resources (out-of-school-time child care center licensing requirements, 78 CSR 21), is authorized.

(q) The legislative rule filed in the State Register on September 20, 2022, authorized under the authority of §49-2-126 of this code, relating to the Department of Health and Human Resources (goals for foster children, 78 CSR 25), is authorized.

(r) The legislative rule filed in the State Register on July 27, 2022, authorized under the authority of §49-2-115A of this code, relating to the Department of Health and Human Resources (deemed head start child care center licenses, 78 CSR 28), is authorized.

§64-5-2. Department of Health and Human Resources and the Insurance Commissioner.

The legislative rule filed in the State Register on July 29, 2022, authorized under the authority of §33-4A-8 of this code, relating to the Department of Health and Human Resources and the Insurance Commissioner (All-Payers Claims Database - Submission Manual, 114A CSR 03), is disapproved.

ARTICLE 12. REPEAL OF UNAUTHORIZED AND OBSOLETE RULES.**§64-12-2. Department of Health and Human Resources, the Insurance Commissioner, and the Chair of the Department of Health and Human Resources.**

The legislative rule effective April 1, 2022, authorized under the authority of §33-4A-8 of this code, relating to the Secretary of the Department of Health and Human Resources, the Insurance Commissioner, and Chair of the Department of Health and Human Resources (All-Payer Claims Database – Data Submission Requirements, 114A CSR 01), is repealed.

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CHAPTER 206

(S. B. 740)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §4-2A-2, §4-2A-3, §4-2A-4, §4-2A-5, §4-2A-6, and §4-2A-7 of the Code of West Virginia, 1931, as amended, all relating to compensation and expense reimbursement for members of the Legislature as recommended by the Citizens Legislative Compensation Commission; modifying the basic compensation to an amount equal to 75 percent of the per capita income in West Virginia; modifying the per diem expense allowance for members of the Legislature when in regular, extended, or extraordinary session; modifying the compensation, per diem expense allowance, and travel reimbursement paid to designated members of the Legislature when not receiving compensation for being in attendance during a regular, extended, or extraordinary session; modifying interim compensation paid to members of the Legislature; and modifying the per diem expense allowance for members of the Legislature who both commute and do not commute.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. COMPENSATION FOR AND EXPENSES OF MEMBERS OF THE LEGISLATURE.

§4-2A-2. Basic compensation for services; proration.

(a) Beginning in the calendar year 2025 and for each calendar year after that, each member of the Legislature shall receive as basic compensation for his or her services, per calendar year, the amount equal to 75 percent of the per capita income in West

Virginia as reported by the US Census Bureau on June 30 of the prior year, rounded down to the nearest \$1,000, to be paid as provided in subsection (b) of this section. In addition to the basic compensation, members shall receive the additional compensations as are expressly provided in §4-2A-3, §4-2A-4, and §4-2A-5 of this code. All other increased amounts or new amounts in respect to the compensation of members of the Legislature, set forth in the resolution of the Citizens Legislative Compensation Commission, dated January 23, 2023, and implemented in this section, and §4-2A-4, §4-2A-6, and §4-2A-8 of this code providing for new amounts or amounts increased to new amounts greater than those in force and effect on January 1, 2023, become effective for calendar year 2025 and each calendar year after that: *Provided*, That increased amounts or new amounts in respect to the expenses of members of the Legislature, set forth in said resolution, and implemented in §4-2A-6, and §4-2A-8 of this code providing for new amounts or amounts increased to new amounts greater than those in force and effect on January 1, 2023, become effective for calendar year 2025 and each calendar year after that.

(b) The basic compensation is payable as follows:

(1) In the year 2025, and every fourth year after that:

(A) Six thousand dollars in each of February, March, and April, payable at least twice per month; and

(B) The remainder of the amount allowed by subsection (a) of this section split equally in each of January, May, June, July, August, September, October, and November, payable at least twice per month;

(2) Beginning in 2026, in all years except those described in subdivision (1) of this subsection:

(A) Six thousand dollars in each of January, February and March, payable at least twice per month; and

(B) The remainder of the amount allowed by subsection (a) of this section split equally in each of April, May, June, July, August,

September, October, and November, payable at least twice per month.

(c) In the event of the death, resignation, or removal of a member of the Legislature and the appointment and qualification of his or her successor, the compensation provided in this section for the month in which the death, resignation, or removal of the member of the Legislature occurs shall be prorated between the original member and his or her successor on the basis of the number of days served, including Saturdays and Sundays in the month.

§4-2A-3. Compensation for members of the Legislature during any extension of regular session or during extraordinary session.

Each member of the Legislature shall receive, in addition to the basic compensation provided for in §4-2A-2 of this code, additional compensation of \$200 per day for each day of attendance in person upon any business of the Senate or House of Delegates, as the case may be, on each day upon which the Senate or House of Delegates is actually called to order during each extension of regular session or during extraordinary session of the Legislature. The additional compensation shall be paid, from time to time, during any extended session or extraordinary session, as prescribed by rules established by the Legislative Auditor.

§4-2A-4. Additional compensation for President of Senate, Speaker of House of Delegates, majority leaders, minority leaders, certain committee chairs and selected members of both houses.

(a) In addition to the basic and additional compensation provided in §4-2A-2 and §4-2A-3 of this code, the President of the Senate and the Speaker of the House of Delegates shall each receive additional compensation of:

(1) \$150 per day for each day actually served during any regular, extension of regular or extraordinary session as presiding officer, including Saturdays and Sundays; and

(2) \$200 per day for attending to legislative business when the Legislature is not in regular session: *Provided*, That no additional compensation shall be paid pursuant to this subdivision if the presiding officer is receiving compensation pursuant to §4-2A-3 or §4-2A-5 of this code.

(b) In addition to the basic and additional compensation provided in §4-2A-2 or §4-2A-3 of this code, the majority leaders and minority leaders of the Senate and of the House of Delegates shall each receive additional compensation of \$50 per day for each day actually served during any regular, extension of regular or during extraordinary session, including Saturdays and Sundays, as the selected legislative leaders of their respective political parties.

(c) The presiding officer and majority and minority leader compensation shall be paid, from time to time, during any such session or interim period, as the case may be, as may be prescribed by rules established by the Legislative Auditor.

(d) In addition to the basic and additional compensation provided in §4-2A-2 or §4-2A-3 of this code, the chairpersons of the committees on finance and committees on the judiciary of the respective houses and up to six additional persons from each house, to be named by the presiding officer, shall each receive an additional compensation of \$200 per day up to a maximum of 30 days for attending to legislative business when the Legislature is not in regular session: *Provided*, That no additional compensation shall be paid pursuant to this subdivision if the chairperson or additional person is receiving compensation pursuant to §4-2A-3 or §4-2A-5 of this code.

§4-2A-5. Interim compensation for members.

(a) In addition to the basic and any additional compensation provided for in §4-2A-2, §4-2A-3, and §4-2A-4 of this code, each member shall receive interim compensation of \$200 per day for each day actually engaged in the performance of interim duties *Provided*, That the total additional interim compensation payable to any member and his or her replacement, if any, on a committee

or commission under the provisions of this subsection shall not exceed the sum of \$6,000 per calendar year.

(b) In addition to the basic and any additional compensation provided for in §4-2A-2, §4-2A-3, and §4-2A-4 of this code and subsection (a) of this section, each member shall receive interim compensation of \$200 per day for each day actually engaged in the performance of legislative duties at a meeting of any legislative committee which meets between regular sessions of the Legislature and outside of regular interim meetings when authorized by the committee co-chairs and approved by the President of the Senate and the Speaker of the House of Delegates, not to exceed 15 days per calendar year.

§4-2A-6. Travel expenses.

(a) Each member of the Legislature is entitled to be reimbursed, upon submission of an expense voucher, for expenses incurred incident to travel in the performance of his or her duties as a member of the Legislature or any committee of the Legislature, whether the committee is operating under general law or resolution, including, but not limited to, attendance at party caucuses held in advance of the date of the assembly of the Legislature in regular session in odd-numbered years for the purpose of selecting candidates for officers of the two houses, at a rate equal to that paid by the travel management office of the Department of Administration for the most direct usually traveled route, if travel is by private automobile, or for actual transportation costs for direct route travel, if travel is by public carrier, or for any combination of those means of transportation actually used, plus the cost of necessary taxi service, tolls and parking fees in connection with the travel, but during any regular, extension of regular or extraordinary session, travel expenses shall not be paid to any member for more than one round trip to and from the seat of government and to and from his or her place of residence for each week of the session.

(b) In addition to the travel expense in subsection (a) of this section, the President of the Senate and the Speaker of the House of Delegates are entitled to be reimbursed as provided in subsection (a) of this section, upon submission of an expense voucher, for

expenses incurred incident to travel which is related to their duties as presiding officers of the respective houses of the Legislature, but which takes place when the Legislature is not in regular session.

(c) The rate paid for mileage pursuant to this section may change, from time to time, in accordance with changes in the reimbursement rates established by the travel management office of the Department of Administration, or its successor agency.

§4-2A-7. Reimbursement for expenses incurred during any session or interim assignment.

(a) Each member of the Legislature who does not commute daily shall receive the sum of \$175 per day as per diem allowance in connection with any regular, extended, extraordinary session, interim assignment or for any member authorized by the presiding officer. Any member of the Legislature who does commute daily shall receive the sum of \$75 per day as the per diem allowance and, in addition to the allowance, shall be reimbursed for overnight commuting expenses at the mileage rate equal to the amount paid by the travel management office of the Department of Administration for the most direct usually traveled route, if travel is by private automobile, or for actual transportation costs for direct route travel, if travel is by public carrier, or for any combination of the means of transportation actually used, plus the costs of necessary taxi service, tolls and parking fees in connection with the travel: *Provided*, That the total of this per diem allowance plus travel expense for a daily commuting member may not exceed \$175 per day. The amount for mileage paid pursuant to this subsection may change from time to time in accordance with changes in the level of reimbursement by the travel management office.

(b) The President of the Senate and the Speaker of the House of Delegates, the Chairman of the House Committee on Finance, the Chairman of the Senate Committee on Finance, the Chairman of the House Committee on the Judiciary, the Chairman of the Senate Committee on the Judiciary, and up to six additional persons from each house designated by the presiding officer pursuant to §4-2A-4 of this code, shall be reimbursed for travel at

the rate established in subsection (a) of this section, and shall further receive the per diem allowance established in the subsection in connection with business which is related to their duties as officers at the times when the Legislature is not in regular session.

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CHAPTER 207

(S. B. 508 - By Senators Azinger, Trump, and Weld)

[Passed March 10, 2023; in effect 90 days from passage (June 8, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §6B-3-5 of the Code of West Virginia, 1931, as amended, relating grass roots lobbying campaigns; modifying reporting thresholds for grass roots lobbying campaigns; and clarifying the disclosure of contributions made for the purpose of furthering grass roots lobbying campaigns.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. LOBBYISTS.

§6B-3-5. Grass roots lobbying campaigns.

(1) Any person who has made expenditures, not required to be reported under other sections of this chapter, exceeding \$5,000 in the aggregate within any three-month period or exceeding \$1,000 in the aggregate within any one-month period in presenting a program addressed to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation, shall be required to register and report, as provided in subsection (2) of this section, as a sponsor of a grass roots lobbying campaign.

(2) Within 30 days after becoming a sponsor of a grass roots lobbying campaign, the sponsor shall register by filing with the Ethics Commission a registration statement, in such detail as the commission shall prescribe, showing:

(a) The sponsor's name, address and business or occupation, and, if the sponsor is not an individual, the names, addresses, and

titles of the controlling persons responsible for managing the sponsor's affairs;

(b) The names, addresses and business or occupation of all persons organizing and managing the campaign, or hired to assist the campaign, including any public relations or advertising firms participating in the campaign, and the terms of compensation for all such persons;

(c) The names and addresses of each person contributing \$1,000 or more made for the purpose of furthering the campaign and the aggregate amount contributed;

(d) The purpose of the campaign, including the specific legislation, rules, rates, standards or proposals that are the subject matter of the campaign;

(e) The totals of all expenditures made or incurred to date on behalf of the campaign, which totals shall be segregated according to financial category, including, but not limited to, the following: Advertising, segregated by media, and, in the case of large expenditures (as provided by legislative rule of the commission), by outlet; contributions; entertainment, including meals and beverages; office expenses, including rent and the salaries and wages paid for staff and secretarial assistance, or the proportionate amount thereof paid or incurred for lobbying campaign activities; consultants; and printing and mailing expenses.

(3) Every sponsor who has registered under this section shall file reports with the commission, which reports shall be filed for the same time periods required for the filing of lobbyists' reports under the provisions of §6B-3-4 of this code.

(4) When the campaign has been terminated, the sponsor shall file a notice of termination with the final monthly report, which notice shall state the totals of all contributions and expenditures made on behalf of the campaign, in the same manner as provided for in the registration statement.

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CHAPTER 208

**(S. B. 146 - By Senators Trump, Woelfel, Oliverio, Jeffries,
Azinger, Stuart, Phillips, and Maynard)**

[Passed March 10, 2023; in effect 90 days from passage (June 8, 2023)]

[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §17A-6F-1, §17A-6F-2, §17A-6F-3, §17A-6F-5, §17A-6F-7, and §17A-6F-13 of the Code of West Virginia, 1931, as amended, all relating to the regulation of peer-to-peer car sharing program; modifying scope of regulation of peer-to-peer car sharing program; modifying certain definitions; modifying and eliminating certain provisions governing insurance coverage during car sharing period; modifying provision governing exclusions for vehicle liability insurance; clarifying provision governing exemption for vicarious liability; and inserting stylistic citation in notification requirements imposed on peer-to-peer car sharing programs.

Be it enacted by the Legislature of West Virginia:

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

§17A-6F-1. Scope.

This article is intended to govern the intersection of peer-to-peer car services, the state-regulated business of insurance, and state and local taxation of the business transaction and the airport and airport authorities authority to regulate peer-to-peer car services provided to airport customers This article does not void, abrogate, restrict, or affect any requirements of §17A-6D-1 *et seq.* of this code relating to daily passenger rental car business or §17A-

6A-1 *et seq.* of this code relating to motor vehicle dealers, distributors, wholesalers, and manufacturers.

§17A-6F-2. Definitions.

As used in this article:

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

"Peer-to-peer car sharing program" means a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration. "Peer-to-peer car sharing program" does not mean a service provider who is solely providing hardware or software as a service to a person or entity that is not effectuating payment of financial consideration for use of a shared vehicle. For purposes of this section, "hardware" does not mean a motor vehicle as defined by the provisions of §17A-1-1(b). "Peer-to-peer car sharing program" does not mean a "daily passenger rental car business" as licensed by the provisions of §17A-6D-1 *et seq.* of this code. "Peer-to-peer car sharing program" does not include a program provided to a business's own employees.

"Car sharing program agreement" means the terms and conditions applicable to a shared vehicle owner and a shared vehicle driver that govern the use of a shared vehicle through a peer-to-peer car sharing program.

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

"Shared vehicle driver" means an individual who has been authorized to drive the shared vehicle by the shared vehicle owner under a car sharing program agreement.

"Shared vehicle owner" means the registered owner, or a person or entity designated by the registered owner, of a vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program.

"Car sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car sharing start time, if applicable, as documented by the governing car sharing program agreement.

"Car sharing period" means the period of time that commences with the car sharing delivery period or, if there is no car sharing delivery period, that commences with the car sharing start time, and in either case ends at the car sharing termination time.

"Car sharing start time" means the time when the shared vehicle becomes subject to the control of the shared vehicle driver at or after the time the reservation of a shared vehicle is scheduled to begin as documented in the records of a peer-to-peer car sharing program.

"Car sharing termination time" means the earliest of the following events:

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

When the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver as communicated through a peer-to-peer car sharing program, and which alternatively agreed upon location shall be incorporated into the car sharing program agreement; or

When the shared vehicle owner or the shared vehicle owner's authorized designee, takes possession and control of the shared vehicle.

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

(a) A peer-to-peer car sharing program shall assume liability, except as provided in subsection (b) of this section, of a shared vehicle owner for bodily injury or property damage to third parties and uninsured and underinsured motorist losses during the car sharing period in an amount stated in the peer-to-peer car sharing program agreement which amounts may not be less than the minimum of applicable limits required by state law as set forth in §17D-4-2 and §33-6-31 of this code.

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

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

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

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

(d) A peer-to-peer car sharing program shall ensure that, during each car sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle liability insurance policy that provides insurance coverage which amounts may not be less than the amounts set forth in §17D-4-2 and §33-6-31 of this code and either:

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

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

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

(1) A shared vehicle owner;

(2) A shared vehicle driver;

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

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

(f) The insurance described in subsection (e) of this section that is satisfying the insurance requirement of subsection (d) of this section shall be the primary insurance during each car sharing period. If a claim occurs during the car sharing period in another state with minimum financial responsibility limits higher than required by §17D-4-2 of this code, the coverage maintained under subsection (e) of this section shall satisfy the minimum financial responsibility limits of such other state, up to the applicable policy limits that may exceed the minimum financial responsibility limits.

(g) The insurer, insurers, or peer-to-peer car sharing program providing coverage under subsections (d) and (e) of this section shall assume primary liability for a claim when:

(1) A dispute exists as to who was in control of the shared motor vehicle at the time of the loss, and the peer-to-peer car sharing program does not have available, did not retain, or fails to provide the information required by §17A-6F-6 of this code; or

(2) A dispute exists as to whether the shared vehicle was returned to the alternatively agreed upon location as required by

the definition of car sharing termination time as defined in §17A-6F-2 of this code.

(h) The insurer, insurers, or peer-to-peer car sharing program providing coverage under subsection (g) of this section may seek indemnity from a shared vehicle owner if the shared vehicle owner is determined to have been the operator of the shared vehicle at the time of the loss.

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

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

(k) Nothing in this article may be interpreted as either limiting or restricting:

(1) The liability of the peer-to-peer car sharing program for any act or omission of the peer-to-peer car sharing program itself that results in injury to any person as a result of the use of a shared vehicle through a peer-to-peer car sharing program; or

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

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

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

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

- (1) Liability coverage for bodily injury and property damage;
- (2) Uninsured and underinsured motorist coverage;
- (3) Medical payments coverage;
- (4) Comprehensive physical damage coverage; and
- (5) Collision physical damage coverage.

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

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

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

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

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

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

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

(2) Notify the shared vehicle owner of the requirements of subsection (b) of this section; and

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

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

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

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



CHAPTER 209

(Com. Sub. for S. B. 205 - By Senator Clements)

[Passed March 8, 2023; in effect 90 days from passage (June 6, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §17A-3-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto nine new sections, designated as §17A-3-14a, §17A-3-14b, §17A-3-14c, §17A-3-14d, §17A-3-14e, §17A-3-14f, §17A-3-14g, §17A-3-14h, and §17A-3-14i, all relating to registration plates; authorizing special registration plates; establishing fees; authorizing the suspension of registration of any owner who displays a damaged or illegible plate or otherwise fails to comply with legal requirements; voiding license plates issued or renewed and paid for by worthless check; authorizing Division of Motor Vehicles to accept or authorize electronic signatures; authorizing waiver of certain costs and fees related to special registration plates by concurrent resolution of the Legislature; and authorizing rulemaking by the Division of Motor Vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal. suspension of registration; electronic signatures.

(a) The division, upon registering a vehicle, shall issue to the owner one registration plate with a registration number consisting of a combination of letters, numerals, symbols, or characters in a configuration determined by the commissioner.

(b) Registration plates shall meet the following requirements:

(1) Plates must incorporate reflectorized material.

(2) Registration numbers shall be plainly readable from 100 feet during daylight.

(3) The commissioner may assign any additional feature to facilitate reciprocal agreements, facilitate interstate travel, promote highway safety, or promote the efficient operation of the division.

(c) The commissioner may suspend the registration of any owner who displays a damaged or illegible plate or otherwise fails to comply with the requirements of §17A-3-19 of this code.

(d) Any license plate issued or renewed pursuant to this chapter which is paid for by a check that is returned for nonsufficient funds is void without further notice to the applicant. The applicant may not reinstate the registration until the returned check is paid by the applicant in cash, money order, or certified check and all applicable fees assessed as a result thereof have been paid.

(e) In furtherance of the Uniform Electronic Transactions Act, §39A-1-1 *et seq.* of this code, the division may accept or authorize an electronic signature in any instance the law required to be enforced by the commissioner requires a signature or a pen and ink signature.

§17A-3-14a. Special registration plates for government officials.

(a) The Governor shall be issued two registration plates, on one of which shall be imprinted the numeral one and on the other the word one.

(b) State officials and judges may be issued special registration plates as follows:

(1) Upon appropriate application, the division shall issue to the Secretary of State, State Superintendent of Schools, Auditor, Treasurer, Commissioner of Agriculture, Attorney General, members of both houses of the Legislature, including elected active and former officials of both houses of the Legislature, active or retired or former justices of the Supreme Court of Appeals of West Virginia, judges of the Intermediate Court of Appeals, representatives and senators of the state in the Congress of the United States, active or retired on senior status judges of the West Virginia circuit courts, the judges of the United States district courts for the State of West Virginia, and judges of the United States Court of Appeals for the fourth circuit, if any of the judges are residents of West Virginia, a special registration plate for any vehicle owned by the official or his or her spouse.

(2) Each plate issued pursuant to this subsection shall bear any combination of letters and numbers, not to exceed an amount determined by the commissioner, and a designation of the office. Each plate shall supersede the regular numbered plate assigned to the official or his or her spouse during the official's term of office and while the vehicle is owned by the official or his or her spouse.

(3) The division shall charge an annual fee of \$15 for every registration plate issued pursuant to this subsection, which is in addition to all other fees required by this chapter.

(4) The division shall charge a special initial application fee of \$10 for every application received by a former or retired government official authorized to receive a plate in this section, which is in addition to all other fees required by this chapter.

§17A-3-14b. Special registration plates for military personnel.

(a) The division may continue to issue special plates for any plate class authorized by enactments of §17A-3-14 of this code prior to the year 2023 for active, retired, or honorably discharged military personnel, or the next of kin of a member of any branch of

the armed services of the United States killed in combat. The division shall charge an initial application fee of \$10 for each special registration plate issued pursuant to this section, which is in addition to all other fees required by this chapter. A surviving spouse may continue to use his or her deceased spouse's military license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(b) The applicant shall present documentation as determined by the commissioner as evidence of qualification for any plate authorized in this section.

(c) The division may issue a special registration plate pursuant to this section to any number of vehicles titled in the name of the applicant.

(d) If a new special plate as authorized in this section recognizes members of a military organization chartered by the United States Congress, the division may produce such plate upon receipt of a guarantee from the organization of a minimum of 100 applicants.

§17A-3-14c. Specially arranged registration plates.

Specially arranged registration plates for plate classes and special registration plate types authorized by the commissioner may be issued as follows:

(1) Upon appropriate application, any owner of a motor vehicle subject to registration, may request that the division issue a registration plate bearing specially arranged letters or numbers with the maximum number of letters or numbers to be determined by the commissioner. The division shall attempt to comply with the request wherever possible.

(2) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code regarding the orderly distribution of the plates: *Provided*, That for purposes of this subsection, the registration plates requested and issued shall include all plates bearing the numbers two through 2,000.

(3) An annual fee of \$15 shall be charged for each special registration plate issued pursuant to this section, which is in addition to all other fees required by this chapter.

§17A-3-14d. Special honorary military plates.

(a) The division may issue special plates to disabled veterans, recipients of the distinguished Purple Heart medal, recipients of the Congressional Medal of Honor, recipients of the Distinguished Service Cross, Navy Cross, and Air Force Cross, or veteran survivors of the attack on Pearl Harbor on December 7, 1941. Registration plates issued pursuant to this section are exempt from all registration fees otherwise required by the provisions of this chapter. A surviving spouse may continue to use the license plate of his or her deceased spouse that was issued pursuant to this section until the surviving spouse dies, remarries, or does not renew the license plate.

(b) A qualified applicant may obtain a second license plate as described in this section for use on a passenger vehicle titled in the name of the applicant. The division shall charge for the second plate a one-time fee of \$10, to be deposited into the State Road Fund, which is in addition to all other fees required by this chapter.

(c) The applicant shall present satisfactory proof as determined by the commissioner as evidence of qualification for any plate authorized in this section.

(d) An applicant qualified to receive a special plate under subsection (a) of this section, or qualified to receive a registration fee exemption under §17A-10-8(6) of this code as a former prisoner of war, may choose to transfer the registration fee exemptions to a special registration plate for military personnel for which the applicant also qualifies under §17A-3-14b of this code instead of receiving the honorary military plate pursuant to this section.

§17A-3-14e. Special registration plates for organizations.

(a) The division may continue to issue all special registration plates to organizations issued under a prior enactment of §17A-3-14 of this code.

(b) An organization requesting the creation and issuance of a special registration plate shall make application with the division. The application shall include sufficient information, as determined by the commissioner, to determine whether the special registration plate requested, and the organization making the application, meet all the requirements set forth in this section and legislative rule. The application shall include a proposed design, including lettering, logo, image, or message to be placed on the registration plate. The commissioner shall notify the organization of the commissioner's approval or disapproval of the application.

(c) (1) The commissioner may not begin the design or production of any license plates authorized and approved pursuant to this section until the organization which applied for the special registration plate has collected and submitted collectively to the division applications completed by at least 100 persons and collectively deposited with the division all fees necessary to cover the first year's basic registration, one-time design and manufacturing costs, and the first year additional annual fee for all of the submitted applications.

(2) By concurrent resolution of the Legislature, the requirement to collectively deposited with the division all fees necessary to cover the first year's basic registration, one-time design, and manufacturing costs may be waived for any organization.

(d) If the organization fails to submit the required number of applications and fees within six months of the effective date of the approval of the application for the plate by the commissioner, the plate may not be produced until a new application is submitted and is approved by the commissioner: *Provided*, That an organization that is unsuccessful in obtaining the minimum number of applications may not make a new application for a special plate until at least two years have passed since the approval of the previous application of the organization.

(e) The division shall charge a special initial application fee of \$25 for each special license plate in addition to all other fees required by this chapter. This special fee shall be collected by the division and deposited in the State Road Fund.

(f) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(g) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the organization for any number of vehicles titled in the name of a qualified registration plate applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the organization unless the organization has identified in the application that the special registration plate is desired to be made available for general issuance.

(h) The commissioner may discontinue the issuance or renewal of the registration of any special plate issued pursuant to this section if:

(1) The number of valid registrations for the specialty plate falls below 100 plates for at least 12 consecutive months; or

(2) The organization no longer exists or no longer meets the requirements of this section.

(i) If a new design is requested after issuance of a special registration plate, the organization shall pay the costs of design and any unused material from the previous design. In addition, the division shall charge a special initial application fee of \$25 for each newly designed special license plate in addition to all other fees required by this chapter.

§17A-3-14f. Special 10-year registration plates.

(a) The division may issue special 10-year registration plates as follows for any registration plate exempted from registration fees pursuant to any provision of this code or any restricted use antique motor vehicle license plate authorized by §17A-10-3a of this code: *Provided*, That the provisions of this subsection do not apply to any person who has had a special registration suspended for failure to maintain motor vehicle liability insurance as required by §17D-2A-3 of this code or failure to pay personal property taxes as required by §17A-3-3a of this code.

(b) An initial nonrefundable fee shall be charged for each special registration plate issued pursuant to this section, which is the total amount of fees required by §17A-3-3, §17A-10-3a, or §17A-10-15 of this code for the period requested.

§17A-3-14g. Special registration plates for first responders.

(a) The division may issue special emergency or volunteer registration plates as follows:

(1) Any owner of a motor vehicle who is a resident of the State of West Virginia and who is a certified paramedic or emergency medical technician, member of a paid fire department, member of the State Fire Commission, the State Fire Marshal, State Fire Marshal assistant, State Fire Administrator, or voluntary rescue squad member may apply for a special license plate for any number of Class A vehicles titled in the name of the qualified applicant which bears the insignia of the profession, group, or commission. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subsection shall bear the requested insignia in addition to the registration number issued to the applicant pursuant to the provisions of this article.

(2) Each application submitted pursuant to this subsection shall be accompanied by an affidavit signed by the fire chief or department head of the applicant stating that the applicant is justified in having a registration with the requested insignia, proof of compliance with all laws of this state regarding registration and licensure of motor vehicles, and payment of all required fees.

(3) Each application submitted pursuant to this subsection shall be accompanied by payment of a special initial application fee of \$10, which is in addition to all other fees required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(b) The division may issue special certified firefighter registration plates as follows:

(1) Any owner of a motor vehicle who is a resident of the State of West Virginia and who is a certified firefighter may apply for a

special license plate that bears the insignia of the profession for any number of Class A vehicles titled in the name of the qualified applicant. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subsection shall bear the requested insignia pursuant to the provisions of this article. Upon presentation of written evidence of certification as a certified firefighter, certified firefighters are eligible to purchase the special registration plate issued pursuant to this subsection.

(2) Each application submitted pursuant to this subsection shall be accompanied by an affidavit stating that the applicant is justified in having a registration with the requested insignia, proof of compliance with all laws of this state regarding registration and licensure of motor vehicles, and payment of all required fees. The firefighter certification department, section, or division of the West Virginia University fire service extension shall notify the commissioner in writing immediately when a firefighter loses his or her certification. If a firefighter loses his or her certification, the commissioner may not issue him or her a license plate under this subsection.

(3) Each application submitted pursuant to this subsection shall be accompanied by payment of a special initial application fee of \$10, which is in addition to all other fees required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(c) The division may issue special volunteer firefighter registration plates as follows:

(1) Any owner of a motor vehicle who is a resident of West Virginia and who is a volunteer firefighter may apply for a special license plate for any Class A vehicle titled in the name of the qualified applicant which bears the insignia of the profession in white letters on a red background. The insignia shall be designed by the commissioner and shall contain a fireman's helmet insignia on the left side of the license plate.

(2) Each application submitted pursuant to this subsection shall be accompanied by an affidavit signed by the applicant's fire chief,

stating that the applicant is a volunteer firefighter and is justified in having a registration plate with the requested insignia. The applicant must comply with all other laws of this state regarding registration and licensure of motor vehicles and must pay all required fees.

(3) Each application submitted pursuant to this subsection shall be accompanied by payment of a special one-time initial application fee of \$10, which is in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(d) The division may issue special registration plates to applicants supporting law-enforcement officers, to retired members of the West Virginia State Police, and to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency as follows:

(1) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner which recognizes, supports, and honors the men and women of law-enforcement and includes the words Back the Blue. Upon appropriate application, the division shall issue to any member of a municipal police department, sheriff's department, the State Police, or the law-enforcement division of the Division of Natural Resources who has been wounded in the line of duty and awarded a Purple Heart in recognition thereof by the West Virginia Chiefs of Police Association, the West Virginia Sheriffs' Association, the West Virginia Troopers Association, or the Division of Natural Resources a special registration plate for one vehicle titled in the name of the qualified applicant with an insignia appropriately designed by the commissioner.

(2) For special registration plates supporting law-enforcement officers, the division shall charge a special initial application fee of \$10 in addition to all other fees required by this chapter. This special fee shall be collected by the division and deposited in the State Road Fund. An annual fee of \$15 shall be charged for each plate supporting law-enforcement officers in addition to all other fees required by this chapter.

(3) Registration plates issued pursuant to this subsection to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency are exempt from the registration fees otherwise required by the provisions of this chapter. A surviving spouse may continue to use his or her deceased spouse's special registration plate until the surviving spouse dies, remarries, or does not renew the plate. Survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency may obtain a license plate as described in this subsection for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge for the second plate a one-time fee of \$10, to be deposited into the State Road Fund, which is in addition to all other fees required by this chapter.

(4) Upon appropriate application, the division may issue special registration plates designed by the commissioner for any number of vehicles titled in the name of the qualified applicant who offers sufficient proof of being a retired member of the West Virginia State Police. The division shall charge a special initial application fee of \$10 in addition to all other fees required by this chapter. This special fee shall be collected by the division and deposited in the State Road Fund.

§17A-3-14h. Special themed registration plates.

(a) The division may issue new special themed registration plates at the discretion of the commissioner and may continue to issue any special themed registration plate authorized under a prior enactment of §17A-3-14 of this code. The commissioner may discontinue the issuance or renewal of a special registration plate issued or authorized under this section at any time.

(b) Unless otherwise provided in this section, the division shall charge an initial application fee of \$10 and an annual fee of \$15 for each special themed registration plate in addition to all other fees required by this chapter.

(c) The division may not issue any special themed registration plate pursuant to subsection (a) of this section until at least 100

persons complete an application and deposit with the division a check to cover the first year's basic registration fee, initial application fee, and annual fee.

(d) The division may issue special nongame wildlife registration plates and special wildlife registration plates as follows:

(1) Upon appropriate application, the division shall issue a special registration plate displaying a species of West Virginia wildlife that shall display a species of wildlife native to West Virginia as prescribed and designated by the commissioner and the Director of the Division of Natural Resources.

(2) All annual fees collected pursuant to this section for nongame wildlife registration plates and wildlife registration plates shall be deposited in a special revenue account designated the Nongame Wildlife Fund and credited to the Division of Natural Resources under authority granted in Article VI, Section 56 of The Constitution of West Virginia.

(3) All initial application fees collected by the division for nongame wildlife registration plates and wildlife registration plates shall be deposited in the State Road Fund.

(e) Racing theme special registration plates:

(1) The division may issue a series of special registration plates displaying National Association for Stock Car Auto Racing themes.

(2) An annual fee of \$25 shall be charged for each special racing theme registration plate in addition to all other fees required by this chapter. All annual fees collected for each special racing theme registration plate shall be deposited into the State Road Fund.

(3) A special application fee of \$10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate in addition to all other fees

required by this chapter. All application fees shall be deposited into the State Road Fund.

§17A-3-14i. Manufacturing of certain special registration plates; rulemaking.

(a) For all registration plates authorized pursuant to the provisions of §17A-3-14a, §17A-3-14b, §17A-3-14c, §17A-3-14d, §17A-3-14e, §17A-3-14f, §17A-3-14g, and §17A-3-14h, the division is not required to keep a stockpile of such plates, but may create a process for the issuance of such plates by special order.

(b) The division may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to administer the issuance of all special registration plates authorized in this article.

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CHAPTER 210

(Com. Sub. for S. B. 455 - By Senator Phillips)

[Passed March 6, 2023; in effect 90 days from passage (June 4, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §17A-6-1 of the Code of West Virginia, 1931, as amended, relating to modifying requirements for used motor vehicle dealers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

§17A-6-1. Definitions.

(a) Unless the context in which used clearly requires a different meaning, as used in this article:

(1) "New motor vehicle dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling five or more new motor vehicles or new and used motor vehicles in any fiscal year of a type required to be registered under the provisions of this chapter, except, for the purposes of this article only, motorcycles.

(2) "Used motor vehicle dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling five 10 or more used motor vehicles, and projecting to sell 10 or more used motor vehicles, in any fiscal year of a type required to be registered under

the provisions of this chapter, except, for the purposes of this article only, motorcycles.

(3) "House trailer dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling new or used house trailers, or both, or new or used, or both, house trailers and trailers or new or used, or both, manufactured homes, and mobile homes.

(4) "Trailer dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling new or used trailers.

(5) "Motorcycle dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling new or used motorcycles.

(6) "Used parts dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling any used appliance, accessory, member, portion, or other part of any vehicle.

(7) "Wrecker/dismantler/rebuilder" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of dealing in wrecked or damaged motor vehicles or motor vehicle parts for the purpose of selling the parts thereof or scrap therefrom or who is in the business of rebuilding salvage motor vehicles for the purpose of resale to the public.

(8) "New motor vehicles" means all motor vehicles, except motorcycles and used motor vehicles, of a type required to be registered under the provisions of this chapter.

(9) "Used motor vehicles" means all motor vehicles, except motorcycles, of a type required to be registered under the provisions of this chapter which have been sold and operated, or which have been registered or titled, in this or any other state or jurisdiction.

(10) "House trailers" means all trailers designed and used for human occupancy on a continual nonrecreational basis, but may not include fold-down camping and travel trailers, mobile homes, or manufactured homes.

(11) "Trailers" means all types of trailers other than house trailers, and shall include, but not be limited to, pole trailers and semitrailers but excluding recreational vehicles.

(12) "Sales instrument" means any document resulting from the sale of a vehicle, which shall include, but not be limited to, a bill of sale, invoice, conditional sales contract, chattel mortgage, chattel trust deed, security agreement or similar document.

(13) "Sell", "sale", or "selling", in addition to the ordinary definitions of the terms, includes offering for sale, soliciting sales of, negotiating for the sale of, displaying for sale or advertising for sale, any vehicle, whether at retail, wholesale or at auction. "Selling", in addition to the ordinary definition of that term, also includes buying and exchanging.

(14) "Applicant" means any person making application for an original or renewal license certificate under the provisions of this article.

(15) "Licensee" means any person holding any license certificate issued under the provisions of this article.

(16) "Predecessor" means the former owner or owners or operator or operators of any new motor vehicle dealer business or used motor vehicle dealer business.

(17) "Established place of business" means, in the case of a new motor vehicle dealer, a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him or her, as the case may be, which is or is to be used exclusively for the

purpose of selling new motor vehicles or new and used motor vehicles, which shall have space under roof for the display of at least one new motor vehicle and facilities and space therewith for the servicing and repair of at least one motor vehicle, which servicing and repair facilities and space is adequate and suitable to carry out servicing and to make repairs necessary to keep and carry out all representations, warranties, and agreements made or to be made by the dealer with respect to motor vehicles sold by him or her, which is easily accessible to the public, which conforms to all applicable laws of this state and the ordinances of the municipality in which it is located, if any, which displays thereon at least one permanent sign, clearly visible from the principal public street or highway nearest the location and clearly stating the business which is or shall be conducted thereat, and which has adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on the business and to make the business available to inspection by the commissioner at all reasonable times: *Provided*, That each established place of business shall have a display area which may be outside or inside or a combination thereof of at least 1,200 square feet which is to be used exclusively for the display of vehicles which are offered for sale by the dealer, office space of at least 144 square feet and a telephone listed in the name of the dealership. Each established place of business shall be open to the public a minimum of 20 hours per week at least 40 weeks per calendar year with at least 10 of those hours being between the hours of 9:30 a.m. and 8:30 p.m., Monday through Saturday: *Provided, however*, That the requirement of exclusive use is met even though: (A) Some new and any used motor vehicles sold or to be sold by the dealer or sold or are to be sold at a different location or locations not meeting the definition of an established place of business of a new motor vehicle dealer, if each location is or is to be served by other facilities and space of the dealer for the servicing and repair of at least one motor vehicle, adequate and suitable as aforesaid, and each location used for the sale of some new and any used motor vehicles otherwise meets the definition of an established place of business of a used motor vehicle dealer; (B) house trailers, trailers or motorcycles are sold or are to be sold thereat, if, subject to the provisions of §17A-6-5 of this code, a separate license certificate is obtained for each type of vehicle business, which license certificate remains unexpired, unsuspended, and unrevoked; (C) farm machinery is sold thereat;

(D) accessory, gasoline and oil, or storage departments are maintained thereat, if the departments are operated for the purpose of furthering and assisting in the licensed business or businesses; and (E) the established place of business has an attached single residential rental unit with an outside separate entrance and occupied by a person or persons with no financial or operational interest in the dealership where the established place of business has space under roof for the display of at least three new motor vehicles and facilities and space therewith for the concurrent servicing and repair of at least two motor vehicles and otherwise meets the requirements set forth in this subdivision.

(18) "Farm machinery" means all machines and tools used in the production, harvesting or care of farm products.

(19) "Established place of business", in the case of a used motor vehicle dealer, means a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him or her, as the case may be, which is or is to be used ~~exclusively~~ for the purpose of selling used motor vehicles, which shall have facilities and space therewith for the servicing and repair of at least one motor vehicle, which servicing and repair facilities and space shall be adequate and suitable to carry out servicing and to make repairs necessary to keep and carry out all representations, warranties and agreements made or to be made by the dealer with respect to used motor vehicles sold by him or her, which is easily accessible to the public, conforms to all applicable laws of this state, and the ordinances of the municipality in which it is located, if any, which displays thereon at least one permanent sign, clearly visible from the principal public street or highway nearest the location and clearly stating the business which is or shall be conducted thereat, and which has adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on the business and to make the business available to inspection by the commissioner at all reasonable times: *Provided*, That ~~each established place of business shall have a display area which may be outside or inside or a combination thereof of at least one thousand two hundred square feet which is to be used exclusively for the display of vehicles which are offered for sale by the dealer, office space of at least one hundred forty four square feet and a~~

~~telephone listed in the name of the dealership. Each established place of business shall be open to the public a minimum of twenty hours per week at least forty weeks per calendar year with at least ten of those hours being between the hours of 9:30 a.m. and 8:30 p.m., Monday through Saturday. *Provided, however,* That if a used motor vehicle dealer has entered into a written agreement or agreements with a person or persons owning or operating a servicing and repair facility or facilities adequate and suitable as aforesaid, the effect of which agreement or agreements is to provide the servicing and repair services and space in like manner as if the servicing and repair facilities and space were located in or on the dealer's place of business, then, so long as the agreement or agreements are in effect, it is not necessary for the dealer to maintain the servicing and repair facilities and space at the place of business in order for the place of business to be an established place of business as herein defined. *Provided further,* That the requirement of exclusive use is met even though: (A) House trailers, trailers or motorcycles are sold or are to be sold thereat, if, subject to the provisions of section five of this article, a separate license certificate is obtained for each type of vehicle business, which license certificate remains unexpired, unsuspended and unrevoked; (B) farm machinery is sold thereat; (C) accessory, gasoline and oil, or storage departments are maintained thereat, if the departments are operated for the purpose of furthering and assisting in the licensed business or businesses; and (D) the established place of business has an attached single residential rental unit with an outside separate entrance and occupied by a person or persons with no financial or operational interest in the dealership where the established place of business has space under roof for the display of at least three motor vehicles and facilities and space therewith for the concurrent servicing and repair of at least two motor vehicles and otherwise meets the requirements set forth herein.~~

(20) "Established place of business", in the case of a house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer and wrecker or dismantler, means a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by the licensee, as the case may be, which is easily accessible to the public, which conforms to all

applicable laws of this state and the ordinances of the municipality in which it is located, if any, which displays thereon at least one permanent sign, clearly visible from the principal public street or highway nearest the location and clearly stating the business which is or shall be conducted thereat, and which has adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on the business and to make the business available to inspection by the commissioner at all reasonable times.

(21) "Manufacturer" means every person engaged in the business of reconstructing, assembling, or reassembling vehicles with a special type of body required by the purchaser if the vehicle is subject to the title and registration provisions of this code.

(22) "Transporter" means every person engaged in the business of transporting vehicles to or from a manufacturing, assembling, or distributing plant to dealers or sales agents of a manufacturer, or purchasers.

(23) "Recreational vehicle dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling new or used recreational vehicles, or both.

(24) "Motorboat" means any vessel propelled by an electrical, steam, gas, diesel or other fuel-propelled or -driven motor, whether or not the motor is the principal source of propulsion, but does not include a vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.

(25) "Motorboat trailer" means every vehicle designed for or ordinarily used for the transportation of a motorboat.

(26) "All-terrain vehicle" (ATV) means any motor vehicle designed for off-highway use and designed to travel on not less than three low-pressure or nonhighway tires, is 50 inches or less in width and intended by the manufacturer to be used by a single operator or is specifically designed by the manufacturer with seating for each passenger. "All-terrain vehicle" and ATV does not include mini trucks, golf carts, riding lawnmowers, or tractors.

(27) "Travel trailer" means every vehicle, mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use of such size or weight as not to require special highway movement permits when towed by a motor vehicle and of gross trailer area less than 400 square feet.

(28) "Fold-down camping trailer" means every vehicle consisting of a portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping or travel use.

(29) "Motor home" means every vehicle, designed to provide temporary living quarters, built into an integral part of or permanently attached to a self-propelled motor vehicle, chassis or van including: (1) Type A motor home built on an incomplete truck chassis with the truck cab constructed by the second-stage manufacturer; (2) Type B motor home consisting of a van-type vehicle which has been altered to provide temporary living quarters; and (3) Type C motor home built on an incomplete van or truck chassis with a cab constructed by the chassis manufacturer.

(30) "Snowmobile" means a self-propelled vehicle intended for travel primarily on snow and driven by a track or tracks in contact with the snow and steered by a ski or skis in contact with the snow.

(31) "Recreational vehicle" means a motorboat, motorboat trailer, all-terrain vehicle, travel trailer, fold-down camping trailer, motor home, snowmobile, or utility-terrain vehicle.

(32) "Major component" means any one of the following subassemblies of a motor vehicle: (A) Front clip assembly consisting of fenders, grille, hood, bumper, and related parts; (B) engine; (C) transmission; (D) rear clip assembly consisting of quarter panels and floor panel assembly; or (E) two or more doors.

(33) "Factory-built home" includes mobile homes, house trailers, and manufactured homes.

(34) "Manufactured home" has the same meaning as the term is defined in §21-9-2 of this code which meets the National Manufactured Housing Construction and Safety Standards Act of

1974 (42 U. S. C. § 5401 *et seq.*), effective on June 15, 1976, and the federal manufactured home construction and safety standards and regulations promulgated by the Secretary of the United States Department of Housing and Urban Development.

(35) "Mobile home" means a transportable structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to enactment of the federal Manufactured Housing Construction and Safety Standards Institute (ANSI) — A119.1 standards for mobile homes.

(36) "Utility terrain vehicle" means any motor vehicle with four or more low-pressure or nonhighway tires designed for off-highway use and is greater than 50 inches in width. "Utility terrain vehicle" does not include mini trucks, golf carts, riding lawnmowers, or tractors.

(b) Under no circumstances whatever may the terms "new motor vehicle dealer", "used motor vehicle dealer", "house trailer dealer", "trailer dealer", "recreational vehicle dealer", "motorcycle dealer", "used parts dealer" or "wrecker/dismantler/ rebuilder" be construed or applied under this article in such a way as to include a banking institution, insurance company, finance company, or other lending or financial institution, or other person, the state or any agency or political subdivision thereof, or any municipality, who or which owns or comes in possession or ownership of, or acquires contract rights, or security interests in or to, any vehicle or vehicles or any part thereof and sells the vehicle or vehicles or any part thereof for purposes other than engaging in and holding out to the public to be engaged in the business of selling vehicles or any part thereof.

(c) It is recognized that throughout this code the term "trailer" or "trailers" is used to include, among other types of trailers, house trailers. It is also recognized that throughout this code the term "trailer" or "trailers" is seldom used to include semitrailers or pole trailers. However, for the purposes of this article only, the term "trailers" has the meaning ascribed to it in subsection (a) of this section.

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CHAPTER 211

(Com. Sub. for S. B. 463 - By Senators Clements and Plymale)

[Passed March 8, 2023; in effect 90 days from passage (June 6, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §17E-1-9 of the Code of West Virginia, 1931, as amended, relating to commercial driver's license instruction permits

Be it enacted by the Legislature of West Virginia:

ARTICLE 17E. COMMERCIAL DRIVER'S LICENSE.

§17E-1-9. Commercial driver's license qualification standards.

(a) No person may be issued a commercial driver's license unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle, which complies with minimum federal standards established by federal regulations enumerated in 49 C.F.R. Part 383, Subparts G and H, and has satisfied all other requirements of the Federal Motor Carrier Safety Improvement Act of 1999 in addition to other requirements imposed by state law or federal regulations.

(b) *Third-party testing.* — The commissioner may authorize a person, including an agency of this or another state, an employer, private individual or institution, department, agency, or instrumentality of local government, to administer the skills test specified by this section so long as:

(1) The test is the same which would otherwise be administered by the state; and

(2) The party has entered into an agreement with the state that complies with the requirements of 49 C.F.R. Part 383.75.

(c) *Indemnification of driver examiners.* — No person who has been officially trained and certified by the state as a driver examiner, who administers a driving test, and no other person, firm, or corporation by whom or with which that person is employed or is in any way associated, may be criminally liable for the administration of the tests or civilly liable in damages to the person tested, other persons, or property unless for gross negligence or willful or wanton injury.

(d) The commissioner may waive the skills test specified in this section for a commercial driver license applicant who meets the requirements of 49 C.F.R. Part 383.77 and the requirements specified by the commissioner.

(e) A commercial driver's license or commercial driver's instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, when the person does not possess a valid or current medical certification status, or while the person's driver's license is suspended, revoked, or canceled in any state. A commercial driver's license may not be issued by any other state unless the person first surrenders all such licenses to the division: *Provided*, That a person who became subject to a disqualification from driving a commercial motor vehicle prior to possessing a commercial driver's license is not disqualified from possessing a commercial driver's license or commercial driver's license instruction permit so long as the mandatory revocation period specified in §17E-1-13(a)(3) of this code has elapsed, and the individual has completed the Safety and Treatment Program or other appropriate program prescribed by the division as required by §17E-1-13(a)(2) of this code.

(f) Commercial driver's instruction permit may be issued as follows:

(1) To an individual who holds a valid Class E or Class D driver's license and has passed the vision and written tests required for issuance of a commercial driver's license.

(2) The commercial instruction permit may not be issued for a period to exceed one year. The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven, who is 21 years of age or older, who is alert and unimpaired, and who occupies a seat beside the individual for the purpose of giving instruction or testing.

(3) Only to a person who is at least 18 years of age.

(4) The applicant for a commercial driver's instruction permit shall also be otherwise qualified to hold a commercial driver's license.



CHAPTER 212

(H. B. 2310 - By Delegate Howell)

[Passed March 3, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §17A-3-2 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §17A-3-2a; to amend and reenact §17A-6-10d of said code; to amend and reenact §17A-10-3a of said code; and to amend and reenact §17C-16-4, §17C-16-5, and §17C-16-6 of said code, all relating to motor vehicles; changing the interval of annual mandatory vehicle inspections to inspections every two years; doubling the charge for inspection stickers; increasing the maximum fee for an inspection to \$19 to account for inflation; providing an internal effective date; defining a term; exempting nonresident vehicles from registration requirement; allowing for optional nonresident vehicle registration and issuance of registration plates if applicable fees are paid; clarifying that nonresident vehicles are not subject to personal property taxes or vehicle inspection requirement; authorizing rulemaking by the Division of Motor Vehicles concerning nonresident vehicles; modifying definition and permissible uses of antique motor vehicles; authorizing the Division of Motor Vehicles to create an antique fleet plate program for owners with five or more antique motor vehicles; specifying requirements, validity period of registration, annual registration fee, and fee for temporary digital registration card for antique fleet plate program; and authorizing convenience fee for electronic submission of applications for temporary digital registration cards.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE AND
ANTITHEFT PROVISIONS.**

**ARTICLE 3. ORIGINAL AND RENEWAL OF
REGISTRATION; ISSUANCE OF CERTIFICATES OF
TITLE.**

§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

(a) Every motor vehicle, trailer, semitrailer, pole trailer, and recreational vehicle when driven or moved upon a highway is subject to the registration and certificate of title provisions of this chapter except:

(1) Any vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, lienholders, or nonresidents or under a temporary registration permit issued by the division as authorized under this chapter;

(2) Any implement of husbandry upon which is securely attached a machine for spraying fruit trees and plants of the owner or lessee or for any other implement of husbandry which is used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner of the implement and which is not operated on or over any public highway of this state for any other purpose other than for the purpose of operating it across a highway or along a highway other than an expressway as designated by the Commissioner of the Division of Highways from one point of the owner's land to another part of the owner's land, irrespective of whether or not the tracts adjoin: *Provided*, That the distance between the points may not exceed 35 miles, or for the purpose of taking it or other fixtures attached to the implement, to and from a repair shop for repairs. The exemption in this subdivision from registration and license requirements also applies to any vehicle described in this subsection or to any farm trailer owned by the owner or lessee of the farm on which the trailer is used, when the trailer is used by the owner of the trailer for the purpose of moving

farm produce and livestock from the farm along a public highway for a distance not to exceed 35 miles to a storage house or packing plant, when the use is a seasonal operation:

(A) The exemptions contained in this section also apply to farm machinery, tractors, and mini-trucks: *Provided*, That the machinery, tractors, and mini-trucks may use the highways in going from one tract of land to another tract of land regardless of whether the land is owned by the same or different persons. For the purposes of this section, "mini-truck" means a foreign-manufactured import or domestic-manufactured vehicle designed primarily for off-road use and powered by an engine ranging in size from 550cc to 660cc and weighing approximately 1,800 pounds;

(B) Any vehicle exempted under this subsection from the requirements of annual registration certificate and license plates and fees for the registration certificate and license plate may not use the highways between sunset and sunrise unless the vehicle is classified as a Class A motor vehicle with a farm-use exemption under the provisions of §17A-10-1 of this code and has a valid and current inspection sticker as required by the provisions of §17C-16-1 *et seq.* of this code and is traveling from one tract of land to another over a distance of 35 miles or less;

(C) Any vehicle exempted under this section from the requirements of annual registration certificate and license plates may use the highways as provided in this section whether the exempt vehicle is self-propelled, towed by another exempt vehicle or towed by another vehicle required to be registered;

(D) Any vehicle used as an implement of husbandry exempt under this section shall have the words "farm use" affixed to both sides of the implement in 10-inch letters. Any vehicle which would be subject to registration as a Class A or B vehicle if not exempted by this section shall display a farm-use exemption certificate on the lower driver's side of the windshield:

(i) The farm-use exemption certificate shall be provided by the commissioner and shall be issued annually by the assessor of the applicant's county of residence. The assessor shall issue a farm-use

exemption certificate to the applicant upon his or her determination pursuant to an examination of the property books or documentation provided by the applicant that the vehicle has been properly assessed as Class I personal property. Nothing in this section or any rule promulgated under the authority of chapter 29A of this code may be construed to require any applicant for a renewal of a farm use exemption certificate to appear personally before any assessor. The assessor shall charge a fee of \$2 for each certificate, which shall be retained by the assessor;

(ii) A farm-use exemption certificate shall not exempt the applicant from maintaining the security required by §17D-1-1 *et seq.* of this code on any vehicle being operated on the roads or highways of this state;

(iii) No person charged with the offense of operating a vehicle without a farm-use exemption certificate, if required under this section, may be convicted of the offense if he or she produces in court, or in the office of the arresting officer, a valid farm-use exemption certificate for the vehicle in question within five days;

(3) Any vehicle which is propelled exclusively by electric power obtained from overhead trolley wires though not operated upon rails;

(4) Any vehicle of a type subject to registration which is owned by the government of the United States;

(5) Any wrecked or disabled vehicle towed by a licensed wrecker or dealer on the public highways of this state;

(6) The following recreational vehicles are exempt from the requirements of annual registration, license plates and fees, unless otherwise specified by law, but are subject to the certificate of title provisions of this chapter regardless of highway use: Motorboats, all-terrain vehicles, utility terrain vehicles, and snowmobiles; and

(7) Any special mobile equipment as defined in §17A-1-1(r) of this code.

(b) Notwithstanding the provisions of subsection (a) of this section:

(1) Mobile homes or manufactured homes are exempt from the requirements of annual registration, license plates and fees;

(2) House trailers may be registered and licensed; and

(3) Factory-built homes are subject to the certificate of title provisions of this chapter.

(c) The division shall title and register low-speed vehicles if the manufacturer's certificate of origin clearly identifies the vehicle as a low-speed vehicle. The division may not title or register homemade low-speed vehicles or retrofitted golf carts and such vehicles do not qualify as low-speed vehicles in this state. In addition to all other motor vehicle laws and regulations, except as specifically exempted below, low-speed vehicles are subject to the following restrictions and requirements:

(1) Low-speed vehicles shall only be operated on private roads and on public roads and streets within the corporate limits of a municipality where the speed limit is not more than 25 miles per hour;

(2) Notwithstanding any provisions in this code to the contrary, low-speed vehicles shall meet the requirements of 49 C.F.R. §571.500 (2003);

(3) In lieu of periodic inspection, the owner of a low-speed vehicle shall, upon initial application for registration and each renewal thereafter, certify under penalty of false swearing, that all lights, brakes, tires, and seat belts are in good working condition; and

(4) Any person operating a low-speed vehicle must hold a valid driver's license, not an instruction permit.

§17A-3-2a. Registration of nonresident vehicles.

(a) A nonresident vehicle is not required to be registered pursuant to §17A-3-2 of this code: *Provided*, That a nonresident vehicle may be registered in this state and be issued a West Virginia

registration plate upon payment of all applicable fees to the division. For purposes of this subsection, the receipt and verification requirements of §17A-3-3a of this code do not apply.

(b) For purposes of this section, “nonresident vehicle” means a vehicle titled in this state under the provisions of §17A-4-11 of this code, which is not intended to spend a majority of service time on West Virginia roads, owned by a business whose principal place of business is not in this state, that is not a common carrier, and that maintains a local, national, or international fleet of vehicles.

(c) Nothing in this section subjects a nonresident vehicle to the inspection requirement set forth in §17A-16-4 of this code. A nonresident vehicle is not domiciled in any county in this state, and nothing in this section requires the imposition of personal property taxes within this state pursuant to §11-5-1 *et seq.* of this code.

(d) The division may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code and may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to accomplish the provisions of this section.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

§17A-6-10d. Special plates for nonprofit corporations engaged in research and development.

(a) Notwithstanding any of the other provisions of this article, a nonprofit corporation engaged in research and development using motor vehicles pursuant to §18B-12-1 *et seq.* of this code and affiliated with institutions of higher education may operate or move a vehicle, either owned or in the possession of the nonprofit corporation upon the highways of this state for purposes of transporting or testing that vehicle without first registering or titling the vehicle and displaying, in a manner prescribed by the commissioner, a special plate issued to the nonprofit corporation as provided in this section.

(b) Any nonprofit corporation as prescribed in subsection (a) of this section may make application to the commissioner upon a form prescribed by him or her for a certificate containing a general distinguishing number and for a special plate or plates. The applicant shall verify that it is a Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, nonprofit corporation and submit sufficient information, as may be required by the commissioner, that it is engaged in research and development of vehicles, special fuels, or equipment for motor vehicles.

(c) The commissioner, upon approving an application, may issue without charge to the applicant, a certificate containing the nonprofit corporation's name and address and its general distinguishing number. The commissioner may also issue without charge, a special plate or plates, as determined by the commissioner as necessary, that must be displayed on the vehicle. Each plate shall also contain a number or symbol distinguishing it from other plates bearing the same general distinguishing number.

(d) The nonprofit corporation that is issued a special plate pursuant to this section must keep written records as required by the commissioner concerning the operation of the vehicle. The records shall be open to inspection by any law-enforcement officer or division employee.

(e) This section does not apply to the use of any other vehicles owned, leased, or operated by the nonprofit corporation.

(f) A nonprofit corporation that has been issued a special plate is not required to comply with the bond or dealer recovery fund otherwise required under this article for that vehicle.

(g) A nonprofit corporation that has been issued a special plate shall furnish information, satisfactory to the commissioner, that the vehicle is covered by an appropriate insurance policy or proof of financial responsibility in amounts not less than the requirements of §17D-4-2 of this code.

(h) Vehicles operated by a nonprofit corporation pursuant to this section are exempt from the periodic motor vehicle inspection

and the displaying of the certificate of inspection otherwise required by §17C-16-1 *et seq.* of this code. However, a vehicle that has been issued a special plate pursuant to this section must be safe and may not, in any manner, endanger the driver, other vehicle occupants, other motorists, pedestrians, or the general public.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3a. Special registration of antique motor vehicles and motorcycles; definition, registration, and use of classic motor vehicles and classic motorcycles; customized antique plates.

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

"Antique motor vehicle" means any motor vehicle, regardless of weight, which is more than 25 years old and is owned solely as a collector's item.

"Antique military vehicle" means an antique motor vehicle, regardless of the vehicle's size or weight, that was manufactured for use in any country's military forces, and that is maintained to represent its military design and markings accurately, including a trailer meeting the same requirements, but not including a vehicle or trailer currently in service.

"Antique motorcycle" means any motorcycle which is more than 25 years old and is owned solely as a collector's item.

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

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

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

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

(2) The purpose of testing their operation, obtaining repairs or maintenance, and transportation to and from events as described in subdivision (1) of this subsection; and

(3) Recreational purposes: *Provided*, That a classic motor vehicle or a classic motorcycle as defined in this section may be registered under the applicable class at the applicable registration fee set forth in §17A-10-3 of this code and may be used for general transportation.

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

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

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

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

(4) The motor vehicle or motorcycle passes a periodic safety inspection; and

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

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

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

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

(g) Upon proper application pursuant to subsection (f) of this section, the commissioner shall approve an alternative registration insignia for an antique military vehicle that is compatible with the vehicle's original markings, including, but not limited to, the display of the vehicle's unique military identification number not to exceed eight characters on the bumper of the vehicle: *Provided*, That nothing in this section exempts the operator of an antique military vehicle from the requirements set forth in §17A-3-13 of this code. Pursuant to this subsection, an antique military vehicle is exempt from the requirement to display a registration plate if the exemption is necessary to maintain the vehicle's accurate military marking.

(h) The commissioner is hereby authorized to develop an antique fleet plate program to enable an owner of five or more antique motor vehicles to use a single registration plate on multiple antique motor vehicles. The owner is required to register with the Division of Motor Vehicles every antique motor vehicle upon which the plate will be displayed. The annual registration fee for an antique fleet plate is \$2 a year per registered antique motor vehicle. The antique fleet plate is valid for one year and must be renewed annually. The antique fleet plate may be used on a newly

acquired antique motor vehicle prior to titling: *Provided*, That the owner completes an application for a 30-day temporary digital registration card in the format established by the commissioner and displays such card upon request when operating the vehicle prior to titling and regular registration. The fee for a 30-day temporary digital registration card is \$10, and the commissioner is authorized to charge a convenience fee for electronic submission of the application.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 16. INSPECTION OF VEHICLES.

§17C-16-4. Superintendent of the West Virginia State Police to require periodic inspection; acceptance of certificate of inspection from another state; suspension of registration of unsafe vehicles.

(a) The Superintendent of the West Virginia State Police shall require that every motor vehicle, trailer, semitrailer, and pole trailer registered in this state be inspected once every two years and that an official certificate of inspection and approval be obtained for each vehicle: *Provided*, That the amendments made to this subsection during the 2023 regular session of the Legislature shall become effective on January 1, 2024.

The inspections shall be made and the certificates obtained with respect to the mechanism, brakes, and equipment of every vehicle designated by the superintendent.

The superintendent may make necessary rules for the administration and enforcement of this section and may designate any period or periods during which owners of any vehicles, subject to this section, shall display upon the vehicles certificates of inspection and approval or shall produce the certificates upon demand of any officer or employee of the State Police designated by the superintendent or any police or peace officer when authorized by the superintendent.

(b) The superintendent may authorize the acceptance in this state of a certificate of inspection and approval issued in another state having an inspection law similar to this chapter and may extend the time within which the resident owner of a vehicle which was not in this state during the time an inspection was required must obtain a certificate.

(c) At the request of the superintendent, the Commissioner of the Division of Motor Vehicles may suspend the registration of any vehicle which the superintendent determines is in such an unsafe condition that it constitutes a menace to safety, or which after notice and demand is not equipped as required in this chapter, or for which the vehicle's owner has not obtained the required certificate.

(d) If requested by the owner of the vehicle, the superintendent shall also cause to be inspected a Class A farm use motor vehicle exempt from annual registration certificate and licensing as provided in §17A-3-2 of this code. If the Class A farm use motor vehicle passes the inspection, the superintendent shall cause a certificate of inspection to be issued for that vehicle.

§17C-16-5. Permit for official inspection stations; fees for and certificate of inspection.

(a) The Superintendent of the State Police is responsible for the inspection as provided in this article and shall prescribe requirements and qualifications for official inspection stations. He or she shall select and designate the stations and shall issue permits for official inspection stations and furnish instructions and all necessary forms for the inspection of vehicles as required in this article and the issuance of official certificates of inspection and approval. The certificate of inspection shall be a paper sticker or decal to be affixed to the windshield of a motor vehicle, shall be serially numbered, and shall properly identify the official inspection station which issued it. A charge of \$6 per sticker shall be charged by the State Police to the inspection station, and the funds received shall be deposited into the State Treasury and

credited to the account of the State Police for application in the administration and enforcement of the provisions of this article and for the purchase of vehicles, equipment for vehicles, and maintenance of vehicles. The superintendent may exchange stickers or make refunds to official inspection stations for stickers on hand when permits are revoked or when, for any reason, the stickers become obsolete. The amendments made to this subsection during the 2023 regular session of the Legislature shall become effective on January 1, 2024.

(b) A person shall apply for a permit upon an official form prescribed by the superintendent and the superintendent shall grant permits only when the superintendent is satisfied that the station is properly equipped, has competent personnel to make the inspections and adjustments, and that the inspections and adjustments will be properly conducted. The superintendent, before issuing a permit, may require the applicant to file a bond with surety approved by the superintendent, conditioned that such applicant, as a station operator, will make compensation for any damage to a vehicle during an inspection or adjustment due to negligence on the part of the station operator or employees thereof.

(c) The superintendent shall properly supervise and cause inspections to be made of the stations. Upon finding that a station is not properly equipped or conducted, the superintendent may, upon a first violation, suspend the permit for a period of up to one year. Upon a second or subsequent finding that a station is not properly equipped or conducted, the superintendent shall permanently revoke and require the surrender of the permit. The superintendent may reinstate the permit of any person whose permit was permanently revoked prior to the effective date of this section upon a first finding that a station was not properly equipped or conducted, upon application, at any time after the expiration of six months from the time of revocation and shall reinstate the permit, upon application, after the expiration of one year. He or she shall maintain and post at his or her office and at any other places as he or she may select lists of all stations holding permits and of those whose permits have been suspended or revoked.

§17C-16-6. Assignment, transfer, and posting of official inspection station permit; issuance and record of certificate of inspection; inspection fee.

(a) No permit for an official inspection station shall be assigned or transferred or used at any location other than designated in the permit and every permit shall be posted in a conspicuous place at the station location designated in the permit.

(b) The person operating the station shall issue a certificate of inspection and approval, upon an official form, to the owner of a vehicle upon inspecting the vehicle and determining that its equipment required under this article is in good condition and proper adjustment, but otherwise no certificate shall be issued, except one issued pursuant to section two of this article. When required by the superintendent, a record and report shall be made of every inspection and every certificate issued.

(c) A fee of not more than \$19 may be charged for an inspection and any necessary headlight adjustment to proper focus, not including any replacement parts required, and the issuance of the certificate, but the imposition of the charge is not mandatory. The amendments made to this subsection during the 2023 regular session of the Legislature shall become effective on January 1, 2024.

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CHAPTER 213

**(H. B. 2506 - By Delegates Linville, Howell, Cannon,
Householder, Criss, Maynor, W. Hall, Espinosa, Riley,
Fehrenbacher and Chiarelli)**

[Passed February 1, 2023; in effect from passage.]
[Approved by the Governor on February 13, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17A-4-11, relating to creating a title clearinghouse for nonresident businesses; authorizing the Division of Motor Vehicles to regulate participation in the clearinghouse; authorizing the Division of Motor Vehicles to set fees for participants; and authorizing fleet registration.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-11. Title Clearinghouse.

(a) The Legislature finds that continuing advances in digital title technology have improved and are expected to continue to improve such that the Division of Motor Vehicles can produce a secure digital title with an efficiency that is sought by businesses in other states. The Legislature hereby authorizes the Division of Motor Vehicles to operate and regulate a title clearinghouse to produce titles for nonresident businesses.

(b) Any nonresident business may apply to participate in the title clearinghouse. Notwithstanding any code provision to the contrary, the division may produce a title for a non-resident business participant in accordance with this section.

(c) The division is authorized to establish a participation fee and title fees for participants. The title fees shall not be less than the fees assessed to residents of this state to obtain a title.

(d) The division shall require a participant to submit a penalty bond payable to the division in the sum of \$250,000, conditioned that the participant will not commit any fraud against any purchaser, seller, financial institution, the State of West Virginia or any other state through the use of the title clearinghouse.

(e) The division may issue emergency rules and propose legislative rules to implement the provisions of this section.

(f) The title clearinghouse is not intended to supplant any reciprocal agreements or compacts for title and registration entered by the division with other states and jurisdictions. If any provision of this section or rule is deemed to conflict with a reciprocal agreement or compact, the conflicting provision in this section or rule shall not apply.

(g) The commissioner is authorized to develop and manage a registration process designed for resident businesses maintaining a local, national or international fleet of vehicles.

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CHAPTER 214

**(Com. Sub. for H. B. 2530 - By Delegates Linville and Steele)
(By Request of the Department of Transportation)**

[Passed February 6, 2023; in effect ninety days from passage.]
[Approved by the Governor on February 15, 2023.]

AN ACT to amend and reenact §17A-6-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §17A-6B-10 of said code; and to amend and reenact §17A-6C-11, all relating to the extension of the expiration of temporary registration plates from sixty days to ninety days.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS
OR DISMANTLERS; SPECIAL PLATES;
TEMPORARY PLATES OR MARKERS.**

§17A-6-15. Temporary registration plates or markers.

(a) In order to permit a vehicle which is sold to a purchaser by a dealer to be operated on the streets and highways pending receipt of the annual registration plate from the division for such vehicle, the commissioner may, subject to the limitations and conditions hereinafter set forth, deliver temporary vehicle registration plates or markers to dealers who in turn may, subject to the limitations and conditions hereinafter set forth, issue the same to purchasers of vehicles, but such purchasers must comply with the pertinent provisions of this section.

(b) Application by a dealer to the commissioner for temporary registration plates or markers shall be made on the form and in the manner prescribed and furnished by the commissioner for such purpose and shall be accompanied by a fee of \$3 for each such temporary registration plate or marker. The commissioner may

require the fee to be remitted to the division in an electronic format. No refund or credit of fees paid by dealers to the commissioner for temporary registration plates or markers shall be allowed, except that in the event the commissioner discontinues the issuance of such temporary plates or markers, dealers returning temporary registration plates or markers to the commissioner may petition for and be entitled to a refund or a credit thereof. No temporary registration plates or markers shall be delivered by the commissioner to any dealer in house trailers only, and no such temporary plates or markers shall be issued for or used on any house trailer for any purpose.

(c) Every dealer who has made application for and received temporary registration plates or markers shall maintain in a manner prescribed by the commissioner, a record of all temporary registration plates or markers issued by him or her, and a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers which the commissioner may require. Every dealer who issues a temporary registration plate or marker shall notify the division in the manner prescribed by the commissioner. No temporary registration plates or markers may be delivered to any dealer until such dealer has fully accounted to the commissioner for the temporary registration plates or markers last delivered to such dealer, by showing the number issued to purchasers by such dealer and any on hand.

(d) A dealer may not issue, assign, transfer or deliver a temporary registration plate or marker to anyone other than the bona fide purchaser of the vehicle to be registered; nor may a dealer issue a temporary registration plate or marker to anyone possessing an annual registration plate for a vehicle which has been sold or exchanged, except a dealer may issue a temporary registration plate or marker to the bona fide purchaser of a vehicle to be registered who possesses an annual registration plate of a different class and makes application to the division to exchange such annual registration plate of a different class in accordance with the provisions of §17A-4-1 of this code; nor may a dealer lend to anyone, or use on any vehicle which he or she may own, a temporary registration plate or marker. It is unlawful for any dealer

to issue any temporary registration plate or marker knowingly containing any misstatement of fact, or knowingly to insert any false information upon the face thereof.

(e) Every dealer who issues temporary registration plates or markers shall affix or insert clearly and indelibly on the face of each temporary registration plate or marker in the manner prescribed by the commissioner, the date of issuance and expiration thereof, and the make and motor or serial number of the vehicle for which issued.

(f) If the commissioner finds that the provisions of this section or his or her directions are not being complied with by a dealer, he or she may suspend the right of such dealer to issue temporary registration plates or markers.

(g) Every person to whom a temporary registration plate or marker has been issued shall permanently destroy such temporary registration plate or marker immediately upon receiving the annual registration plate for such vehicle from the division: *Provided*, That if the annual registration plate is not received within 90 days of the issuance of the temporary registration plate or marker, the owner shall, notwithstanding the fact that the annual registration plate has not been received, immediately and permanently destroy the temporary registration plate or marker: *Provided, however*, That not more than one temporary registration plate or marker shall be issued to the same bona fide purchaser for the same vehicle.

(h) A temporary registration plate or marker shall expire and become void upon the receipt of the annual registration plate from the division or upon the rescission of the contract to purchase the vehicle in question, or upon the expiration of 90 days from the date of issuance, depending upon whichever event shall first occur.

(i) For the purpose of this section, the term "dealer" includes a wrecker/dismantler/rebuilder and, in the context of issuing temporary registration plates, any other business licensed by the division in accordance with the provisions of this chapter and authorized to issue temporary registration plates or markers.

(j) The commissioner may require participation in an electronic temporary plate issuance system by all dealers as a precondition for authority for a dealer to issue temporary license plates or markers.

ARTICLE 6B. LICENSE SERVICES.

§17A-6B-10. Temporary registration plates or markers.

(a) In order to permit a vehicle which is to be titled and registered to be operated on the streets and highways pending receipt of the annual registration plate from the division for such vehicle, the commissioner may, subject to the limitations and conditions hereinafter set forth, deliver temporary vehicle registration plates or markers to persons engaged in license service businesses who in turn may, subject to the limitations and conditions hereinafter set forth, issue the same to applicants for title and registration of vehicles, but such applicants must comply with the pertinent provisions of this section.

(b) Application by a license service business to the commissioner for such temporary registration plates or markers shall be made on the form prescribed and furnished by the commissioner for such purpose and shall be accompanied by a fee of \$3 for each such temporary registration plate or marker. No refund or credit of fees paid by license services to the commissioner for temporary registration plates or markers shall be allowed, except that in the event the commissioner discontinues the issuance of such temporary plates or markers, license services returning temporary registration plates or markers to the commissioner may petition for and be entitled to a refund or a credit thereof.

(c) Every license service who has made application for and received temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to the licensee, a record of all temporary registration plates or markers issued, and a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers which the commissioner may require.

Each such record shall be kept for a period of at least three years from the date of the making thereof.

Every licensee who issues a temporary registration plate or marker shall, within five working days after the issuance of such plate or marker, send to the division a copy of the temporary registration plate or marker certificate properly executed by the license service and the purchaser.

No temporary registration plates or markers may be delivered to any license service until such license service has fully accounted to the commissioner for the temporary registration plates or markers last delivered to such license service, by showing the number issued to purchasers by such license service and any on hand.

(d) A license service shall not issue, assign, or deliver a temporary registration plate or marker to anyone other than the bona fide applicant for title and registration of the vehicle to be registered. Not more than one temporary registration plate or marker shall be issued to the same bona fide applicant for the same vehicle. A license service shall not issue a temporary registration plate or marker to anyone possessing an annual registration plate for a vehicle which has been sold or exchanged, except a license service may issue a temporary registration plate or marker to the bona fide applicant of a vehicle to be registered who possesses an annual registration plate of a different class and makes application to the division to exchange such annual registration plate of a different class in accordance with the provisions of §17A-4-1 of this code. A license service shall not lend to anyone, or use on any vehicle which he or she may own, a temporary registration plate or marker.

It is unlawful for any license service to issue any temporary registration plate or marker which contains a misstatement of fact or false information.

No license service shall issue, assign, or deliver a temporary registration plate or marker to anyone unless and until the license service has physical possession of the application and appropriate

fees and taxes of the vehicle to be titled and registered. Such application, fees, and taxes shall be postmarked to the issuing agency or submitted to the Division of Motor Vehicles within 48 hours after issuance of the temporary plate or marker.

(e) Every license service who issues temporary registration plates or markers shall affix or insert clearly and indelibly on the face of each temporary registration plate or marker the date of issuance and expiration thereof, and the make, model, and serial number of the vehicle for which issued.

(f) If the commissioner finds that the provisions of this section or his or her directions are not being complied with by a license service, he or she may suspend the right of such license service to issue temporary registration plates or markers.

(g) A temporary registration plate or marker shall expire upon the receipt of the annual registration plate from the division, or upon the rescission of the contract to purchase the vehicle in question, or upon the expiration of 90 days from the date of issuance, depending upon which event occurs first.

(h) A license service may charge a fee not to exceed \$5 for issuing a temporary registration plate or marker.

ARTICLE 6C. AUTOMOBILE AUCTION BUSINESSES.

§17A-6C-11. Temporary registration plates or markers.

(a) In order to permit a vehicle which is to be titled and registered to be operated on the streets and highways pending receipt of the annual registration plate, the commissioner may, subject to the following limitations, deliver temporary vehicle registration plates or markers to persons engaged in the automobile auction business for issuance to applicants for title and registration of vehicles.

(b) An application by an automobile auction business to the commissioner for temporary registration plates or markers shall be made on the form prescribed and furnished by the commissioner and shall be accompanied by a fee of \$3 for each temporary

registration plate or marker. No refund or credit of fees paid by automobile auction businesses to the commissioner for temporary registration plates or markers is allowed, except in the event the commissioner discontinues the issuance of temporary plates or markers. Automobile auction businesses returning temporary registration plates or markers to the commissioner may petition for and be entitled to a refund or a credit.

(c) Every automobile auction business applying for and receiving temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to the licensee, a record of all temporary registration plates or markers issued and a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers which the commissioner may require. Each record shall be kept for a period of at least three years from the date issued. Every automobile auction business issuing a temporary registration plate or marker shall send to the division a copy of the temporary registration plate or marker certificate properly executed by the automobile auction business and the purchaser within five working days after the issuance of the plate or marker. No temporary registration plates or markers may be delivered to any automobile auction business until the business has fully accounted to the commissioner for the temporary registration plates or markers last delivered by showing the number issued to purchasers and the number remaining to be issued.

(d) An automobile auction business may not issue, assign, or deliver a temporary registration plate or marker to anyone other than the bona fide applicant for title and registration of the vehicle to be registered. Not more than one temporary registration plate or marker may be issued to the same bona fide applicant for the same vehicle. An automobile auction business may not issue a temporary registration or marker to anyone possessing an annual registration plate for a vehicle which has been sold or exchanged, except an automobile auction business may issue a temporary registration plate or marker to the bona fide applicant who possesses an annual registration plate of a different class and it may make application to the division to exchange the annual registration plate of a

different class in accordance with the provisions of §17A-4-1 of this code. An automobile auction business may not lend to anyone or use on any vehicle which it may own, a temporary registration plate or marker. It is unlawful for any automobile auction business to issue any temporary registration plate or marker which contains a misstatement of fact or false information.

(e) Every automobile auction business issuing temporary registration plates or markers shall affix or insert clearly and indelibly on the face of each temporary registration plate or marker the date of issuance, the date of expiration and the make, model, and serial number of the vehicle.

(f) If the commissioner finds that the provisions of this section or his or her directions are not being complied with by an automobile auction business, the commissioner may suspend the right of the automobile auction business to issue temporary registration plates or markers.

(g) A temporary registration plate or marker expires upon the receipt of the annual registration plate from the division, or upon the rescission of the contract to purchase the vehicle in question, or upon the expiration of 90 days from the date of issuance, whichever event occurs first.

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CHAPTER 215

**(Com. Sub. for H. B. 2569 - By Delegates Espinosa, Ridenour,
Clark, Ferrell, Steele, Criss, Barnhart, Hardy, Dean and
Howell)**

[Passed March 8, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-19-1, §20-19-2, §20-19-3, §20-19-4, §20-19-5, §20-19-6, §20-19-7, and §20-19-8, all relating to establishing the Motorsport Responsibility Act; providing legislative findings; defining terms; setting forth duties of motorsport operators; setting forth duties of motorsport participants; setting forth the liability of motorsport operators; setting forth the liability of motorsport participants; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. MOTORSPORT RESPONSIBILITY ACT.

§20-19-1. Legislative purposes.

The West Virginia Legislature finds that motorsport activities are engaged in by a large number of citizens of West Virginia and that such activities also attract to West Virginia a large number of nonresidents, significantly contributing to the economy of West Virginia. Since it is recognized that there are inherent risks in motorsport activities which should be understood by participants therein and which are essentially impossible for the operators of motorsport businesses to eliminate, it is the purpose of this article to define those areas of responsibility and those affirmative acts for which the operators of motorsport businesses shall be liable for loss, damage, or injury suffered by participants, and to further

define those risks which the participants expressly assume and for which there can be no recovery. It is the intent of the Legislature to expand the liability protections afforded with respect to motorsports and to not eliminate any other liability protections that may be available under statutory or common law.

§20-19-2. Definitions.

In this article, unless a different meaning plainly is required:

(1) "Driver training" means qualified instruction to enhance a vehicle operator's ability to learn vehicle control, provided by a motorsport facility.

(2) "Lessee" means any qualified person or organization with the necessary licenses and liability insurance meeting the motorsport operator's lease requirements to operate a motorsport facility.

(3) "Motorized vehicle" means an automobile, motorcycle, or any other vehicle propelled by power, other than muscular power, used to transport persons and which operates within the confines of a motorsport facility.

(4) "Motorsport activities" means driver training, vehicle storage, competitive racing, non-competitive driving events, exhibitions of speed, fairs or shows using motorized vehicles, or other forms of recreation involving the use of motor vehicles, including motorcycles.

(5) "Motorsport facility" means a speedway or racetrack designed and intended for motorsport activities.

(6) "Motorsport operator" means any person, partnership, corporation, lessee, or other organization, or any combination thereof offering motorsport activities.

(7) "Participant" means any person or organization using the services of a motorsport facility including, but not limited to, spectators, vehicle operators using either their own personally owned vehicle or a vehicle owned by the motorsport facility, or

vehicle passengers using either their own personally owned vehicle or a vehicle owned by the motorsport facility.

(8) "Spectator area" means a specified area within a motorsport facility intended for admission to the general public, whether or not an admission price is charged, or to which admitted persons of the general public have unrestricted access, including the grandstands and other general admission seating or viewing areas.

§20-19-3. Duties of motorsport operators.

(a) Every motorsport operator shall:

(1) Mark for identification purposes all equipment and vehicles used in the business;

(2) Maintain all equipment and vehicles used in the offering of motorsport activities in such condition that the equipment and vehicles are safe to operate or use as intended and recommended by the manufacturer;

(3) Provide facilities, equipment, and services conforming to safety and other requirements established by the rules promulgated by the Department of Economic Development;

(4) Provide or prepare facilities, equipment, and services for motorsports use as advertised or as agreed to by the motorsport operator and the participant;

(5) Procure and maintain commercial general liability insurance against claims for personal injury, death, and property damages occurring upon, in, or about the motorsport facility which affords protection to the limit of not less than \$1 million for injury or death of a single person, to the limit of \$2 million in the aggregate, and to the limit of not less than \$50,000 for property damage; and

(6) Maintain records for a period of at least three years from the date of the creation of the record of:

(A) Proof of insurance;

- (B) Inspection reports;
- (C) Maintenance records; and
- (D) Participant acknowledgement of risks and duties.

§20-19-4. Duties of motorsport participants.

(a) All participants:

(1) Shall comply with the rules or regulations established for use by the motorsport operator;

(2) Shall wear all safety equipment as recommended by the motorsport operator, or which might otherwise be required by law;

(3) Shall obey all rules or instructions announced by the motorsport operator with regard to the safe operation of the motorized vehicle he or she is operating;

(4) Shall, as to the motorsport operator, expressly assume the risk of and legal responsibility for any injury, loss, or damage to person or property which results from participation in operating a motorized vehicle, and caused by any of the following:

(A) Variations in terrain, slope, or angle of terrain including elevation changes;

(B) Surface or subsurface conditions including, but not limited to, rocks or debris;

(C) Turns in the racetrack; and

(D) Collisions with retaining walls, tire walls, trees, fences, other vehicles, or any property provided by the motorsport operator.

(b) Each participant shall have the sole individual responsibility for:

(1) Knowing the range of his or her ability to negotiate the course of the motorsport facility;

(2) Operating the motorized vehicle within the limits of the participant's own ability;

(3) Heeding all posted warnings;

(4) Operating only within the designated area and designated times as provided by the motorsport operator; and

(5) Refraining from acting in a manner which a reasonable person would believe to be likely to cause or contribute to the injury of any person.

§20-19-5. Liability of motorsport operators.

(a) A motorsport operator is liable for injury, loss, or damage caused by failure to follow the duties set forth in §20-19-3 of this code where the violation of duty is the proximate cause of the injury, loss, or damage suffered.

(b) A motorsport operator is not liable for any injury, loss, or damage to the extent caused by the negligence of any person who is not an agent or employee of the motorsport operator.

(c) A motorsport operator is not liable for any injury, loss, or damage to the extent caused by a participant's violation of any duty described in §20-19-4 of this code.

§20-19-6. Liability of motorsport participants.

(a) A participant is not liable for any injury, loss, or damage resulting from violations of the duties established in §20-19-4 of this code where the violation of the duty constitutes simple negligence on the part of the participant, or where the injury, loss, or damage is a result of the risks inherent in motorsports.

(b) A participant is liable for injury, loss, or damage resulting from violations of the duties established in §20-19-4 of this code where the violation of the duty constitutes gross negligence, willful and wanton conduct, or intentional acts on the part the participant, and is the proximate cause of the injury, loss, or damage suffered.

§20-19-7. Rules.

The Department of Economic Development shall promulgate rules pursuant to §29A-1-1 *et seq.* of this code, with respect to motorsport facilities operating in the state, which shall include at a minimum: (a) Safety requirements for equipment; (b) safety requirements for the design of racing surfaces; (c) safety requirements for the provision of run-off areas; (d) requirements for fire and emergency services; and (e) requirements for signage. The rules shall be promulgated and designed for the purpose of developing motorsport facilities as a recreational activity and additional tourist attraction in West Virginia and shall be approved by the West Virginia Motorsport Committee.

§20-19-8. No abrogation of common law and statutory defenses.

In a proceeding brought against a motor sports operator or participant, in addition to the liability protections provided for under this article, a motor sports operator or participant may assert any and all common law, statutory, or other defenses that may be available. A motorsports operator may require participants to sign anticipatory release and waiver of liability forms as a condition of participating as a spectator or vehicle operator, which signed waiver forms shall be admissible at trial in any action for damages by or on behalf of the person who executed the forms.

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CHAPTER 216

**(S. B. 4 - By Senators Maynard, Smith, Maroney, Woodrum,
Plymale, Jefferies, Hunt, and Caputo)**

[Passed February 7, 2023; in effect 90 days from passage (May 8, 2023)]
[Approved by the Governor on February 17, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-5-23, relating to authorizing Adopt-A-Trail volunteer programs for public lands under the jurisdiction of the Division of Natural Resources; providing for activities to be performed by volunteer groups; requiring volunteer project agreements with the division; requiring certain requirements in agreements; establishing minimum requirements for volunteer organizations; establishing certain limitations on activities performed by volunteer groups; and providing for project coordination and removal and disposal of trash and other items.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PARKS AND RECREATION.

§20-5-23. Establishment of Adopt-A-Trail program for paths and trails.

(a) The West Virginia Division of Natural Resources shall establish an Adopt-A-Trail program that will allow volunteer groups to assist in maintaining and enhancing trails on state- owned land.

(b) Subject to subsection (g) of this section, volunteer groups in the Adopt-A-Trail program may adopt any available trail or trail segment and may choose any one or more of the following activities:

- (1) Spring cleanups;
- (2) Litter collection;
- (3) Accessibility projects;
- (4) Special events;
- (5) Trail maintenance, enhancement, or realignment;
- (6) Public information and assistance; or
- (7) Training.

(c) Volunteer groups that want to participate in the Adopt-A-Trail program shall apply to the division on an application provided by the division. Applications shall be reviewed and approved or denied at the division's discretion. Groups may not perform any activity on a trail or trail segment until approved by the division with an Adopt-A-Trail agreement executed by all parties to the agreement. The division may provide for more than one volunteer group to adopt an eligible trail or trail segment.

(d) Adopt-A-Trail agreements shall include, but not be limited to, the following provisions:

- (1) Participating in the program for a term of at least two years;
- (2) Assisting with trail or path maintenance when applicable;
and
- (3) Complying with all reasonable requirements of the division.

(e) Volunteer groups shall consist of people who are 18 years or older. Participants 17 years of age or younger may participate, but must be accompanied by an adult who is 18 years of age or older with a close relationship or connection to any participant 17 years of age or younger. As with the Adopt-A-Highway and the Adopt-A-Stream Programs in this state, groups participating in the Adopt-A-Trail Program may include, but not be limited to, communities, families, individuals, members of 4-H or Future Farmers of America, scouting organizations, any faith-based

group, youth group, schools, college organizations, businesses, civic organizations, and government agencies.

(f) Activities performed by volunteer groups may not involve work that:

(1) Reduce hours or compensation of department or division employees;

(3) Could be performed by a laid-off department or division employee; or

(3) Are inconsistent with the terms of a collective bargaining agreement.

(g) If the division operates other programs in the vicinity of the trail that allows volunteers to participate in similar programs, the division shall coordinate these programs to provide for efficient and effective volunteer programs in the area.

(h) Adopted trails may be identified by a sign at a location along the adopted section bearing the Adopt-A-Trail logo and the name of the volunteer group after the group completes 50 hours of service.

(i) The division shall coordinate with the closest solid waste authority so that any tires, appliances, televisions, or trash may be properly disposed of with proper documentation.

(j) Collected litter will be placed at designated locations approved by the division. The division may coordinate with volunteers, local authorities, and state agencies for removal and disposal of collected litter. Garbage bags, safety training, and gloves are to be furnished by the program.

(k) The division may propose rules pursuant to §29A-3-1 *et seq.* of this code to carry out and implement the Adopt-A-Trail program.

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CHAPTER 217

(S. B. 161 - By Senators Blair (Mr. President), Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, and Woodrum)

[Passed January 20, 2023; in effect from passage]
[Approved by the Governor on January 24, 2023.]

AN ACT to amend and reenact §20-1-10 of the Code of West Virginia, 1931, as amended, relating to the authority of the Division of Natural Resources to manage and dispose of property; repealing the requirement to report items to the Public Land Corporation; and authorizing the division to dispose of certain property under the jurisdiction and control of the director.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-10. Property management.

(a) The division shall maintain at all times an accurate record of all of its lands, interests in lands, buildings, structures, equipment and other tangible properties and assets. The record shall reflect the location, utility, condition and estimated value of all such properties and assets. The division shall provide for the maintenance, preservation and custody of all such properties and assets.

(b) Subject to the provisions of §20-1-19 of this code, when any item or items or lands are deemed obsolete or are no longer needed the division shall have the authority, with the approval in

writing of the Secretary of Commerce, to sell, lease, or otherwise dispose of property that is under the jurisdiction and control of the director. The director may convey property in exchange for money, security or property, both real and personal, and any interest in such property, including lands and waters, which he or she deems suitable for the purposes of the division.

(c) The director shall select and designate a competent and qualified person as division property officer, who shall be responsible for the division's records relating to its properties and assets and for the maintenance, preservation, custody and disposition of all such properties and assets as herein provided.

(d) Subject to valid existing rights, division owned wildlife management area lands shall be open to access and use for recreational hunting and shooting except as limited by the division for reasons of public safety, fish and wildlife management or homeland security or as otherwise limited by law.

(e) The division shall exercise its authority consistent with subsection (d) to support, promote and enhance recreational hunting and shooting opportunities, to the extent authorized by statute. The division shall give preference to hunting and shooting over other uses of division owned wildlife management area lands.

(f) Division land management decisions and actions may not result in a net loss of habitat land acreage available for hunting and shooting opportunities on division owned wildlife management area lands that exists on the effective date of this section.

(g) On or before December 1, the division shall submit an annual report to the Governor and to the Joint Committee on Government and Finance, including the following:

(1) The acreage administered by the division that has been closed during the previous year to recreational hunting and the reasons for the closures; and

(2) The acreage administered by the division that, in order to comply with the provisions of subsection (f) was opened to recreational hunting to compensate for that acreage.

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CHAPTER 218

(S. B. 162 - By Senators Blair (Mr. President), Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, and Woodrum)

[Passed January 20, 2023; in effect from passage]
[Approved by the Governor on January 24, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-1-22, relating to authorizing the director of the Division of Natural Resources to lease state-owned pore spaces underlying state forests, natural and scenic areas, and management areas, and other lands under the jurisdiction and control of the director for carbon sequestration; prohibiting the leasing of pore spaces underlying state parks; establishing competitive bidding process; providing for procedures and requirements; and authorizing the director to directly award a pore space under certain circumstances when necessary for an economic development project.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-22. Authorizing the director to lease and develop pore spaces.

(a) The director may, with the approval in writing of the Secretary of Commerce, lease state-owned pore spaces underlying state forests, natural and scenic areas, wildlife management areas, and other lands under the jurisdiction and control of the director for

underground carbon sequestration: *Provided*, That the director is prohibited from leasing state-owned pore spaces underlying lands that are designated as state parks. Before entering into a lease, the director shall receive sealed bids therefor, after notice by publication as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be each county in which the affected lands are located, and on the Division's main website for a period of at least 14 days prior to entering into any lease pursuant to this section. The pore space development proposal so advertised shall be leased to the highest responsible bidder, who shall give bond for the proper performance of the lease as the director shall designate; but the director may reject any and all bids and re-advertise for bids. The development of pore spaces pursuant to this section shall be consistent with the requirements of §22-11B-1 *et seq.* of this code. The proceeds arising from any such lease shall be paid to the Treasurer of the State of West Virginia and shall be credited to the Division and used exclusively for the purposes of this chapter.

(b) Notwithstanding the competitive bidding process established in subsection (a), the director may, with the approval in writing of the Secretary of the Department of Commerce, directly award a pore space lease when the Secretary of the Department of Commerce and the Secretary of the Department of Economic Development certifies in writing to the director that the lease is a necessary component of an economic development project: *Provided*, That the lease shall afford a market value or greater royalty.

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CHAPTER 219

**(Com. Sub. for S. B. 200 - By Senators Hamilton, Roberts,
and Jeffries)**

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §20-2-5j of the Code of West Virginia, 1931, as amended, relating to adding mortally wounded elk, turkey, and wild boar to list of wounded animals that may be tracked and located using a leashed dog; allowing certain physically disabled hunters to allow dog handler to kill mortally wounded animal; and providing that mortally wounded animal shall count toward bag limit of hunter who fired initial shot.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5j. Leashed dogs for tracking mortally wounded deer, elk, turkey, wild boar, or bear.

(a) Notwithstanding any provision of this chapter to the contrary, a person who is legally hunting and reasonably believes he or she has mortally wounded a deer, elk, turkey, wild boar, or bear may use leashed dogs to track and locate the mortally wounded deer, elk, turkey, wild boar, or bear. The hunter is also permitted to use a dog handler of leashed dogs to track and locate the mortally wounded deer, elk, turkey, wild boar, or bear. The hunter or the dog handler shall always maintain physical control of the leashed dogs.

(b) The act of tracking a mortally wounded deer, elk, turkey, wild boar, or bear with a dog is hunting and the hunter and handler

are subject to all applicable laws and rules. It is unlawful for a hunter or dog handler to track deer, elk, turkey, wild boar, or bear with leashed dogs under the provisions of this section unless he or she is in possession of a valid hunting license issued pursuant to this article or is a person excepted from licensing requirements pursuant to this article, and all other lawful authorizations as prescribed in this article. The hunter shall accompany the dog handler and only the hunter may kill a mortally wounded deer, elk, turkey, wild boar, or bear. However, any hunter who is physically unable to accompany the handler in the tracking and locating of the mortally wounded deer, elk, wild turkey, boar, or bear may designate the handler to kill the deer, elk, wild turkey, boar, or bear when located by the handler. The deer, elk, turkey, wild boar, or bear shall count toward the bag limit of the hunter who fired the initial shot.

(c) Any dog handler providing tracking services for profit must be licensed as an outfitter or guide pursuant to §20-2-23 of this code.

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CHAPTER 220

**(Com. Sub. for S. B. 468 - By Senators Hamilton, Maynard,
Plymale, Taylor, Stuart, and Karnes)**

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §20-3-3a of the Code of West Virginia, 1931, as amended, relating to continuing the Cabwaylingo State Forest Trail System and developing the existing Hatfield-McCoy trail system solely for the purpose of providing access to state park and state forest recreational facilities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-3a. Cabwaylingo State Forest Trail System.

(a) The director, in consultation with the forestry director, may permit all-terrain vehicles (ATVs), off-highway recreational vehicles (ORVs), and utility-terrain vehicles (UTVs) to drive on roads and trails in Cabwaylingo State Forest, as designated and approved by the director. The director may establish special seasons and designate certain campgrounds and tent sites in the forest.

(b) The director, in consultation with the forestry director, may establish a special permit for purchase by the ATV and ORV users for road and trail access, and may close any areas, or parts thereof, to public use. Should the director establish such a special permit, it shall be unlawful, at any time, to operate an ATV or ORV on any roads and trails in Cabwaylingo State Forest without the special permit.

(c) The provisions of §20-15-1 *et seq.* of this code apply to the division, participants, outfitters, and licensees of the Cabwaylingo State Forest Trail System, though ORVs may be permitted.

(d) The Parks and Recreation Section of the Division of Natural Resources is prohibited from establishing any additional ATV, ORV, or UTV trail systems within state parks and state forests: *Provided*, That the Director of the Division of Natural Resources shall have the authority to authorize the development and use of certain connector trails, roads, and parking areas from private systems, including, without limitation, the Hatfield-McCoy systems, solely for the purpose of providing access to state park and state forest recreational facilities and lodging by ATV, ORV, and UTV trail system users.

(e) The Director of the Division of Natural Resources shall have authority to promulgate emergency legislative rules and legislative rules necessary to effectuate the provisions of this section.

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CHAPTER 221

**(S. B. 733 - By Senators Woodrum, Barrett, Hamilton, Hunt,
Jeffries, Phillips, Queen, Smith, Stuart, Swope, and Weld)**

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §20-2-421 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-2B-7 and §20-2B-8 of said code, all relating to wildlife licenses and stamps; clarifying right to carry firearm for self-defense without Class A-1 small arms hunting stamp; creating nonresident lifetime hunting, fishing, and trapping licenses; and establishing privileges of nonresident lifetime licenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-421. Class A-1 small arms hunting stamp.

A Class A-1 stamp is a small arms hunting stamp. Except for any person prohibited from possessing a firearm by state or federal law, a Class A-1 stamp may be issued to a person 18 years of age or older who is otherwise qualified and holds a valid resident or nonresident hunting license, or to a person who is a resident 65 years of age or older. A Class A-1 stamp entitles the licensee to hunt, as otherwise permitted by the provisions of this chapter, but only during small game and big game seasons as established annually by the director, with either a revolver or pistol which has a barrel at least four inches in length: *Provided*, That the Class A-1 stamp may not be valid unless the licensee has in his or her possession a valid resident or nonresident hunting license or is a resident 65 years of age or older: *Provided, however*, That while hunting, the licensee shall carry the revolver or pistol in an

unconcealed and easily visible place. Nothing in this section shall be construed to prohibit a person from carrying a firearm for self-defense who is not prohibited from possessing a firearm by state or federal law. The fee for the stamp is \$8. A lifetime Class A-1 stamp may be issued to anyone otherwise qualified and holding a valid Class A-L or, AB-L, E-L or EE-L license or to a resident 65 years of age or older. The lifetime Class A-1 stamp will be issued in a form prescribed by the director. The fee for a lifetime Class A-1 stamp is \$75. All fees collected for the issuance of the Class A-1 and lifetime Class A-1 stamps shall be deposited in the State Treasury and credited to the law-enforcement section of the Division of Natural Resources. The fees collected shall be paid out of the State Treasury on order of the director and used solely for law-enforcement purposes. Any person who becomes legally unable to possess a firearm shall immediately surrender the stamp to the Division of Natural Resources. A holder of a Class A-1 or lifetime Class A-1 stamp is required to purchase the appropriate base license before participating in the activities specified in this section, except as noted.

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-7. Lifetime hunting, fishing, and trapping licenses created.

(a) Pursuant to §20-2B-3 of this code, the director may issue the following lifetime hunting, fishing, and trapping licenses and for the lifetime of the licensee, the lifetime licenses serve in lieu of the equivalent annual license: Lifetime resident statewide hunting and trapping license; lifetime resident combination statewide hunting, fishing, and trapping license; lifetime resident statewide fishing license; and lifetime resident trout fishing license.

(b) The director shall propose a rule for legislative approval in accordance with §29A-3-1 *et seq.* of this code, setting fees for lifetime licenses. The fees for adult lifetime licenses shall be 23 times the fee for the equivalent annual licenses or stamps. The rule shall provide that the fee for any resident who has not reached his or her 15th birthday shall be:

(1) Forty percent of the adult fee set under rule for any resident who has not reached his or her first birthday;

(2) Fifty-five percent of the adult fee set under rule for any resident who is over one year old but has not reached his or her fifth birthday;

(3) Seventy-five percent of the adult fee set under rule for any resident who is over five years old but has not reached his or her 10th birthday; and

(4) Ninety percent of the adult fee set under rule for any resident who is over 10 years old but has not reached his or her 15th birthday.

The rule shall also provide that any resident who has not reached his or her 15th birthday and has been legally adopted shall be provided the same fee schedule, except the division shall use the date of entry of the order or decree of adoption as the licensee's date of birth for purposes of calculating the appropriate fee: *Provided*, That in addition to the provisions of this subsection for adopted children, foster parents may also purchase a lifetime license for their respective foster children under the same guidelines, except the division shall use the date of entry of the order placing the child in foster care as the licensee's date of birth for purposes of calculating the appropriate fee.

(c) Pursuant to §20-2B-3 of this code, the director may issue the following lifetime hunting, fishing, and trapping licenses and for the lifetime of the licensee, the lifetime licenses serve in lieu of the equivalent annual license: Lifetime nonresident statewide hunting and trapping license; lifetime; lifetime nonresident statewide fishing license; and lifetime nonresident bear hunting license.

(d) Pursuant to §20-2B-3 of this code, the director may issue the following lifetime hunting, fishing, and trapping stamps and for the lifetime of the licensee, the lifetime stamps serve in lieu of the equivalent annual stamp: Lifetime nonresident trout fishing stamp; lifetime nonresident archery deer hunting stamp; lifetime

nonresident muzzleloading deer hunting stamp; lifetime nonresident turkey hunting stamp; and lifetime nonresident national forest hunting, fishing, and trapping stamp.

(e) The director shall propose a rule for legislative approval in accordance with §29A-3-1 *et seq.* of this code, setting fees for nonresident lifetime licenses and stamps and shall have authority to promulgate emergency legislative rules necessary to make effective the provisions of this section by July 1, 2023. The fees for adult nonresident lifetime licenses and stamps shall be 23 times the fee for the equivalent annual licenses or stamps. The rule shall provide that the fee for any nonresident who has not reached his or her 15th birthday shall be:

(1) Forty percent of the adult fee set under rule for any nonresident who has not reached his or her first birthday;

(2) Fifty-five percent of the adult fee set under rule for any nonresident who is over one year old but has not reached his or her fifth birthday;

(3) Seventy-five percent of the adult fee set under rule for any nonresident who is over five years old but has not reached his or her 10th birthday; and

(4) Ninety percent of the adult fee set under rule for any nonresident who is over 10 years old but has not reached his or her 15th birthday.

§20-2B-8. Privileges of lifetime licensees.

(a) Pursuant to §20-2B-7 of this code, resident lifetime licensees shall be entitled to the same privileges and subject to the same restrictions as resident licensees possessing the equivalent annual license with the following exceptions:

(1) Class A-L, AB-L, B-L and O-L licenses shall be valid for the lifetime of the licensee;

(2) A Class O-L lifetime resident trout fishing license shall be issued only to residents of the state and shall be valid only when accompanied by a Class AB-L, B, B-L, X or XJ license; and

(3) No additional fee shall be required of Class A-L, AB-L or B-L licensees for the conservation stamp required by §20-2B-9 of this code. No additional fee shall be required of Class A-L or AB-L licensees for the Class BG stamp required by §20-2-42v of this code.

(b) Pursuant to §20-2B-7 of this code, nonresident lifetime licensees shall be entitled to the same privileges and subject to the same restrictions as nonresident licensees possessing the equivalent annual license with the following exceptions:

(1) Class E-L, EE-L, F-L and OO-L licenses shall be valid for the lifetime of the licensee; and

(2) No additional fee shall be required of Class E-L, EE-L, or F-L licensees for the nonresident conservation law-enforcement and sports education stamp required by §20-2B-10 of this code.

(3) A Class OO-L lifetime nonresident trout fishing license shall be issued only to nonresidents of the state and shall be valid only when accompanied by a Class F or F-L license; and

(4) A Class UU-L lifetime resident archery deer hunting stamp shall be issued only to nonresidents of the state and shall be valid only when accompanied by a Class E-L license; and

(5) A Class VV-L lifetime nonresident muzzleloading deer hunting stamp shall be issued only to nonresidents of the state and shall be valid only when accompanied by a Class E-L license; and

(6) A Class WW-L lifetime nonresident turkey hunting stamp shall be issued only to nonresidents of the state and shall be valid only when accompanied by a Class E-L license; and

(7) A Class I-L lifetime nonresident national forest hunting, trapping, and fishing stamp shall be issued only to nonresidents of the state and shall be valid only when accompanied by a Class E-L, EE-L, or F-L license.

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CHAPTER 222

**(Com. Sub. for H. B. 3122 - By Delegates Vance, Butler,
Burkhammer, Longanacre, Dean, Kirby, Dillon, Nestor,
Brooks, Toney and Cooper)**

[Passed February 23, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 4, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-51, relating to permitting certain types of rifles using an encapsulated propellant charge that loads from the breech, with the bullet loaded from the muzzle, during any muzzleloader season; and providing an exception.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-51. Use of certain rifles to hunt in muzzleloader season.

Notwithstanding any other provision of this code or any rule promulgated thereunder to the contrary, any person lawfully entitled to hunt may hunt with a singleshot muzzleloading pistol or singleshot muzzleloading rifle, having a bore diameter of not less than thirty-eight one-hundredths of an inch, using an encapsulated propellant charge that loads from the breech, with the projectile loaded from the muzzle, during any established muzzleloader season: *Provided*, That such muzzleloading pistol or muzzleloading rifle may not be used for hunting during the Mountaineer Heritage season.

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CHAPTER 223

(Com. Sub. for H. B. 3147 - By Delegates Storch, Howell and Clark)

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §20-17A-1 and §20-17A-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §20-17B-1, §20-17B-2, §20-17B-3, §20-17B-4, and §20-17B-5, all relating to the expansion of the Mountaineer Trail Network Recreation Authority and the creation of the Upper Ohio Valley Trail Network Recreation Authority; providing for legislative findings and purposes; providing for interconnection of recreational trail networks; providing for the creation of the Upper Ohio Valley Trail Network Recreation Authority and the establishment of the recreation area; providing recreational purposes; providing for a governing body and expenses; and providing for protection for private landowners.

Be it enacted by the Legislature of West Virginia:

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 17A. MOUNTAINEER TRAIL NETWORK RECREATION AUTHORITY.

§20-17A-1. Legislative findings; purpose.

The Legislature further finds that, with the cooperation of private landowners, there is an opportunity to provide trail-oriented recreation facilities primarily on private property in the mountainous terrain of the Potomac Highlands and north central West Virginia and that the facilities will provide significant economic and recreational benefits to the state and to the

communities in the Potomac Highlands and north central West Virginia through increased tourism in the same manner as whitewater rafting, snow skiing, and utility terrain motor vehicle riding benefit the state and communities surrounding those activities.

The Legislature further finds that the creation and empowering of a joint development entity to work with the landowners, county officials and community leaders, state and federal government agencies, recreational user groups, adjacent neighboring states and counties, and other interested parties to enable and facilitate the implementation of the facilities will greatly assist in the realization of these potential benefits.

The purpose of this article is to provide additional opportunities and regulatory authorization for recreational trail networks and to provide for increased access to recreational areas, including, but not limited to, creating a contiguous trail system that connects to the Upper Ohio Valley Trail Network Recreation Authority, the Elk River Trail, the Chesapeake and Ohio Canal Tow Path and any other trails in adjacent neighboring states that can be feasibly connected.

§20-17A-2. Continuation of Mountaineer Trail Network Recreation Authority and establishment of recreation area.

(a) There is hereby continued the Mountaineer Trail Network Recreation Authority consisting of representatives from the counties of Barbour, Doddridge, Grant, Harrison, Lewis, Marion, Mineral, Monongalia, Preston, Randolph, Ritchie, Taylor, Tucker, Upshur, and Wood organized pursuant to the provisions of §20-17-1 *et seq.* of this code. This authority is authorized to establish a Mountaineer Trail Network Recreation Area within the jurisdictions of those counties and the authority shall be subject to the powers, duties, immunities, and restrictions provided in §20-17-1 *et seq.* of this code. Visitors and participants in recreational activities within the trail network shall, in similar respects, be subject to the user requirements and prohibitions of §20-17-7 of this code.

(b) Notwithstanding subsection (a) of this section, an adjacent county may join the Mountaineer Trail Network Recreation Authority pursuant to the procedures set forth in §20-17-3(b) of this code.

(c) Notwithstanding subsection (a) of this section, the Mountaineer Trail Network Recreation Authority may merge with another multicounty trail network authority, pursuant to the procedures set forth in §20-17-3(c) of this code.

(d) The Mountaineer Trail Network Recreation Authority may set goals of connecting to the Upper Ohio Valley Trail Network Recreation Authority, the Elk River Trail, the Chesapeake and Ohio Canal Tow Path and any other trails in adjacent neighboring states that can be feasibly connected.

ARTICLE 17B. UPPER OHIO VALLEY TRAIL NETWORK RECREATION AUTHORITY.

§20-17B-1. Legislative findings; purpose.

The Legislature further finds that, with the cooperation of private landowners, there is an opportunity to provide trail-oriented recreation facilities primarily on private property in the Ohio River valley terrain of western counties in West Virginia and the northern panhandle of West Virginia and that the facilities will provide significant economic and recreational benefits to the state and to the communities in the Ohio River valley terrain of western counties in West Virginia and the northern panhandle of West Virginia through increased tourism in the same manner as whitewater rafting, snow skiing, and utility terrain motor vehicle riding benefit the state and communities surrounding those activities.

The Legislature further finds that the creation and empowering of a joint development entity to work with the landowners, county officials and community leaders, state and federal government agencies, recreational user groups, adjacent neighboring states and counties, and other interested parties to enable and facilitate the

implementation of the facilities will greatly assist in the realization of these potential benefits.

The purpose of this article is to provide additional opportunities and regulatory authorization for recreational trail networks and to provide for increased access to recreational areas, including, but not limited to, creating a contiguous trail system that connects to the Mountaineer Trail Network Recreation Authority and any other trails in adjacent neighboring states that can be feasibly connected.

§20-17B-2. Creation of Upper Ohio Valley Trail Network Recreation Authority and establishment of recreation area.

(a) There is hereby created the Upper Ohio Valley Trail Network Recreation Authority consisting of representatives from all counties in the northern panhandle – Hancock, Brooke, Ohio, and Marshall – and Ohio River valley counties to include Wetzel, Tyler, Pleasants, Wood, Jackson, Mason, and Cabell, organized pursuant to the provisions of §20-17-1 *et seq.* of this code. This authority is authorized to establish an Upper Ohio Valley Trail Network Recreation Area within the jurisdictions of those counties and the authority shall be subject to the powers, duties, immunities, and restrictions provided in §20-17-1 *et seq.* of this code. Visitors and participants in recreational activities within the trail network shall, in similar respects, be subject to the user requirements and prohibitions of §20-17-7 of this code.

(b) Notwithstanding subsection (a) of this section, an adjacent county may join the Upper Ohio Valley Trail Network Recreation Authority pursuant to the procedures set forth in §20-17-3(b) of this code.

(c) Notwithstanding subsection (a) of this section, the Upper Ohio Valley Trail Network Recreation Authority may merge with another multicounty trail network authority, pursuant to the procedures set forth in §20-17-3(c) of this code.

(d) Notwithstanding §20-17A-4 of this code, Monongalia County of the Mountaineer Trail Network Recreation authority shall serve as an ex-officio member of the Upper Ohio Valley Trail

Network Recreation Authority for the purposes of establishing the trail network and coordinating the two trail networks.

(e) The Upper Ohio Valley Trail Network Recreation Authority may set goals of connecting to the Mountaineer Trail Network and any other trails in adjacent neighboring states that can be feasibly connected.

§20-17B-3. Recreational purposes.

The permitted recreational purposes for the Upper Ohio Valley Trail Network Recreation Area include, but are not limited to, any one or any combination of the following recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, bicycling, mountain bicycling, running, cross-country running, nature study, winter sports and visiting, viewing or enjoying historical, archaeological, scenic, or scientific sites.

§20-17B-4. Governing body and expenses.

(a) The governing body of the authority shall be a board constituted according to the provisions of §20-17-4 of this code.

(b) All costs incidental to the administration of the authority, including office expenses, personal services expenses and current expenses, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

(c) All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and according to the requirements of §20-17-1 *et seq.* of this code. No liability or obligation may be incurred by the authority under this article beyond the extent to which moneys have been provided under the authority of this article.

§20-17B-5. Protection for private landowners.

Owners of land used by the authority shall have the full benefit of the limitations of liability provided in §20-17-8 of this code.

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CHAPTER 224

(H. B. 3328 - By Delegates Howell, Dean, Heckert and Zatezalo)

[Passed March 8, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-14-13, relating to allowing the Hatfield-McCoy Regional Recreation Authority to contract to build and maintain trails on private property with the consent of the property owner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

§20-14-13. Authorization to contract to build and maintain trails on private property.

The Hatfield-McCoy Regional Recreation Authority shall be authorized to contract to build and maintain trails on privately owned property, with the consent of the private property owner. This authorization shall allow the authority to build and/or maintain motorized and nonmotorized trails.



CHAPTER 225

(Com. Sub. for H. B. 3370 - By Delegates Howell and Storch)

[Passed March 11, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §20-5A-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §20-5A-3; and to amend said code by adding thereto a new section, designated §31-15-8b, all relating to establishing the State Parks Enhancement Loan Insurance Program; authorizing the board of trustees of the West Virginia State Parks and Recreation Endowment Fund to use the fund to facilitate or provide collateral for the program; providing that the program will provide for the guarantee of a loan made to an eligible private entity to be used exclusively for new or existing projects, developments, or attractions on properties of West Virginia State Parks and resorts that are constructed on U.S. Army Corps of Engineers property, wherein such properties and developments have no collateral for loans, and on any other property under the jurisdiction of the Division of Natural Resources, or on a hybrid tourism destination, to encourage economic development and tourism and increasing recreational opportunities; providing legislative findings and purpose; defining terms; establishing the State Parks Enhancement Loan Insurance Program; providing for the establishment of requirements and procedures for the issuance of loan insurance; limiting the amount of loan insurance through the program to \$10 million in the aggregate of the assets existing in the fund; providing that no more than \$5 million may be authorized for any project; providing that no amount of the fund's income from investments may be used to provide loan insurance; providing for application and additional procedures or guidelines for the program; requiring approval in writing from secretary of the Department of

Commerce, the secretary of the Department of Economic Development, and the secretary of the Department of Tourism to apply for loan insurance; requiring the board of trustees to cooperate with the West Virginia Economic Development Authority and authorizing the board of trustees to utilize the staff and resources of the authority for guidance and assistance in administering the program; providing additional powers and duties to the board of trustees; requiring reporting; and requiring that the West Virginia Economic Development Authority to facilitate the administration of the program and that its executive director make the authority's staff available to provide guidance and assistance for the administration of the program.

Be it enacted by the Legislature of West Virginia:

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 5A. STATE PARKS AND RECREATION ENDOWMENT FUND.

§20-5A-1. Establishment of fund; deposits; expenditures; investments; use of fund for the State Parks Enhancement Loan Insurance Program.

(a) There is created in the office of the State Treasurer a special revenue account fund to be known as the West Virginia State Parks and Recreation Endowment Fund.

(b) The following shall be deposited into the fund:

(1) The royalties received from the leasing of state-owned gas, oil, and other mineral rights beneath the Ohio River and its tributaries; and

(2) The proceeds of any gifts, grants, contributions, or other moneys accruing to the state which are specifically designated for inclusion in the fund.

(c) Expenditures from the fund shall be for the purposes set forth in this section and are to be made in accordance with

appropriation of the Legislature under the provisions of §12-3-1 *et seq.* of this code, and in compliance with the provisions of §11B-2-1 *et seq.* of this code: *Provided*, That income accruing from investments of the fund pursuant to this article shall be distributed or expended for either of the following purposes:

(1) Maintenance, repair, and improvement of any existing recreational facilities, including any supporting or related infrastructure and associated recreational features, all to provide uninterrupted enjoyment and public use of state parks, state forests, and state rail trails.

(2) Maintenance, repair, and procurement of any fixture, furnishing, and equipment necessary to provide uninterrupted enjoyment and public use of state parks, state forests, and state rail trails.

(d) The board of trustees established pursuant to this article shall invest the assets of the fund consistent with the provisions of §12-6-1 of this code. The board may accumulate investment income of the fund within the fund until the income, in the sole judgment of the board, can provide a significant supplement to the budget of the Division of Natural Resources. After that time, the board may direct expenditures from the income for the purposes set forth in this section.

(e) Notwithstanding any other provision of this article to the contrary, the assets of the fund may be used by the board of trustees to facilitate or provide collateral for the State Parks Enhancement Loan Insurance Program established in §20-5A-3 of this code: *Provided*, That no amount of the fund's income from investments may be used to provide loan insurance.

§20-5A-3. State Parks Enhancement Loan Insurance Program.

(a) *Legislative findings and purpose.*

(1) The Legislature finds that certain areas of the state currently have existing developments or attractions, including, but not limited to, developments in West Virginia State Parks and resorts that are constructed on U.S. Army Corps of Engineers property,

wherein such attractions and developments are unable to serve as collateral for loans. Because of this, the expansion of tourism and development projects in these areas is severely restricted or significantly impeded.

(2) The purpose of this section is to establish the State Parks Enhancement Loan Insurance Program, which may provide for the guarantee of a loan made to an eligible entity to be used exclusively for further development on these properties to encourage economic development and tourism.

(b) *Terms defined.* – As used in this section, unless the context clearly indicates otherwise:

(1) Board of trustees means the board provided for in §20-5A-2 of this code.

(2) Development project means any new project, or any project at any existing development or attraction, being pursued by a private entity, which has established a partnership or agreement with the division to operate on U.S. Army Corps of Engineers property, State Parks and resorts property, any other property under the jurisdiction of the division, or on a hybrid tourism destination, for the purpose of increasing recreational opportunities, tourism, and economic development.

(3) Director means the director of the Division of Natural Resources.

(4) Division means the Division of Natural Resources.

(5) Eligible entity means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture, or any other entity operating or intending to operate a development project, whether owned or leased, that receives the approval pursuant to this section to apply for an insurance agreement under the State Parks Enhancement Loan Insurance Program.

(6) Program means the State Parks Enhancement Loan Insurance Program.

(c) The State Parks Enhancement Loan Insurance Program is established. The program may insure the payment or repayment of all or any part of the principal of, prepayment premiums or penalties on, and interest on any form of debt instrument entered into by an eligible entity with a financial institution, including, but not limited to, banks, insurance companies and other institutions in the business of lending money. Eligible entities shall submit applications for loan insurance to the board of trustees. By a majority vote, the board of trustees may approve or deny any application. If approved, the board of trustees shall enter into an insurance agreement with the eligible entity and any necessary financial institution.

(d) In order to effectuate the purposes of this section, the board of trustees shall cooperate with the West Virginia Economic Development Authority pursuant to §31-15-8b of this code. The board of trustees may utilize the staff and resources of the authority for guidance and assistance in administering the program.

(e) The board of trustees may, subject to a recommendation by the director, establish additional requirements and procedures for the issuance of loan insurance; including, but not limited to, setting the premiums and fees to be paid to it for providing financial assistance under this section. The premiums and fees set by the board of trustees shall be payable in the amounts, at the time, and in the manner that the board of trustees, in its sole and absolute discretion, requires. The premiums and fees need not be uniform among transactions and may vary in amount: (1) Among transactions; and (2) at different stages during the terms of transactions.

(f) The board of trustees may, in its sole and absolute discretion, require the security it believes sufficient in connection with its insuring of the payment or repayment of any bonds, notes, debt, or other instruments: *Provided*, That the board of trustees may not require a security interest in the real property or permanent improvements which are part of the development project when the eligible entity will not hold ownership on the real or personal property of the development project.

(g) The obligations of the board of trustees under any insurance agreement entered into pursuant to this article shall not constitute a debt or a pledge of the faith and credit or taxing powers of this state, the division, or of any county, municipality, or any political subdivision of this state for the payment of any amount due thereunder or pursuant thereto, but the obligations evidenced by such insurance agreement shall be payable solely from the funds pledged for their payment.

(h) The board of trustees may not authorize any amount of loan insurance through the program that exceeds \$10 million in the aggregate of the assets existing in the West Virginia State Parks and Recreation Endowment Fund: *Provided*, That no more than \$5 million may be authorized for any project: *Provided, however*, That no amount of the fund's income from investments may be used to provide loan insurance. However, any amount of loan insurance issued by the board of trustees shall not require the encumbrance or otherwise segregation of funds within the West Virginia State Parks and Recreation Endowment Fund.

(i) The board of trustees may establish an application and additional procedures or guidelines for the program. Prior to submission of an application to the board of trustees, an eligible entity must receive approval in writing from the Secretary of the Department of Commerce, the Secretary of the Department of Economic Development, and the Secretary of the Department of Tourism.

(j) The West Virginia Department of Commerce shall maintain a list of approved projects using this loan insurance program and shall submit this list to the Joint Committee on Government and Finance in the form of an annual report for legislative review.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-8b. Facilitation of the State Parks Enhancement Loan Insurance Program.

The authority shall cooperate with the Division of Natural Resources and the Board of Trustees of the West Virginia State Parks and Recreation Endowment Fund to facilitate the administration of the State Parks Enhancement Loan Insurance Program established by §20-5A-3 of this code. The executive director shall make the authority's staff available to provide guidance and assistance for the administration of the program. Any requirement or restriction on the authority's loan insurance programs and other operations established by this article shall not be applicable to the administration of the State Parks Enhancement Loan Insurance Program.

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CHAPTER 226

(Com. Sub. for S. B. 83 - By Senators Takubo, Phillips, and Hamilton)

[Passed February 2, 2023; in effect 90 days from passage (May 3, 2023)]
[Approved by the Governor on February 9, 2023.]

AN ACT to amend and reenact §30-29-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §30-43-1, §30-43-2, and §30-43-3, all relating to tactical medical professionals; defining terms; authorizing to carry firearms; training and certification requirements; and protecting from civil or criminal liability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-3. Duties of the subcommittee.

(a) The subcommittee shall, by or pursuant to rules proposed for legislative approval in accordance with §29A-3-1 *et seq.* of this code:

(1) Provide funding for the establishment and support of law-enforcement training academies in the state;

(2) Establish standards governing the establishment and operation of the law-enforcement training academies, including regional locations throughout the state, in order to provide access to each law-enforcement agency in the state in accordance with available funds;

(3) Establish minimum law-enforcement instructor qualifications;

(4) Certify qualified law-enforcement instructors;

(5) Maintain a list of approved law-enforcement instructors;

(6) Promulgate standards governing the training, firearms qualification, and initial and ongoing professional certification of law-enforcement officers and the entry-level, law-enforcement training curricula. These standards shall require satisfactory completion of a minimum of 800 classroom hours as promulgated by legislative rule and shall provide that the required classroom hours shall be accumulated on the basis of a full-time curricula;

(7) Establish standards governing in-service, law-enforcement officer training curricula and in-service supervisory level training curricula;

(8) Certify organized criminal enterprise investigation techniques with a qualified anti-racial profiling training course or module;

(9) Establish standards governing mandatory training to effectively investigate organized criminal enterprises as defined in §61-13-1 *et seq.* of this code while preventing racial profiling, as defined in §30-29-10 of this code, for entry-level training curricula and for law-enforcement officers who have not received such training as certified by the subcommittee as required in this section;

(10) Establish procedures for implementation of a course in investigation of organized criminal enterprises which includes an anti-racial training module to be available on the Internet or otherwise to all law-enforcement officers. The procedures shall include the frequency with which a law-enforcement officer shall receive training in investigation of organized criminal enterprises and anti-racial profiling and a time frame for which all law-enforcement officers must receive such training: *Provided*, That all law-enforcement officers in this state shall receive such training no later than July 1, 2012. In order to implement and carry out the

intent of this section, the subcommittee may promulgate emergency rules pursuant to §29A-3-15 of this code;

(11) Certify or decertify or reactivate law-enforcement officers, as provided in §30-29-5 and §30-29-11 of this code;

(12) Establish standards and procedures for the reporting of complaints and certain disciplinary matters concerning law-enforcement officers and for reviewing the certification of law-enforcement officers. These standards and procedures shall provide for preservation of records and access to records by law-enforcement agencies and conditions as to how the information in those records is to be used regarding an officer's law-enforcement employment by another law-enforcement agency:

(A) The subcommittee shall establish and manage a database that is available to all law-enforcement agencies in the state concerning the status of any person's certification.

(B) Personnel or personal information not resulting in a criminal conviction is exempt from disclosure pursuant to the provisions of chapter 29B of this code;

(13) Seek supplemental funding for law-enforcement training academies from sources other than the fees collected pursuant to §30-29-4 of this code;

(14) Any responsibilities and duties as the Legislature may, from time to time, see fit to direct to the subcommittee;

(15) Establish standards and procedures for initial and ongoing training for law-enforcement officers responsible for investigating sexual assault cases involving adult victims. This training shall include instruction on:

(A) The neurobiology of trauma;

(B) Trauma-informed interviewing; and

(C) Investigative techniques;

(16) Submit, on or before September 30 of each year, to the Governor, the Speaker of the House of Delegates, the President of the Senate, and, upon request, to any individual member of the Legislature, a report on its activities during the previous year, and an accounting of funds paid into and disbursed from the special revenue account established pursuant to §30-29-4 of this code;

(17) Develop and promulgate rules for state, county, and municipal law-enforcement officers, law-enforcement agencies, and communications and emergency operations centers that dispatch law-enforcement officers with regard to the identification, investigation, reporting, and prosecution of suspected child abuse and neglect: *Provided*, That such rules and procedures must be consistent with the priority criteria prescribed by generally applicable department procedures; and

(18) Make recommendations to the Governor's Committee on Crime, Delinquency, and Correction for legislation related to the subcommittee's duties and responsibilities, or for research or studies by the Division of Administrative Services on topics related to the subcommittee's duties and responsibilities.

(19) Promulgate standards governing the training, firearms qualification, and initial and ongoing professional certification of a tactical medical professional, as defined in §30-43-1 of this code, on or before January 1, 2024. This training program shall include awarding a certificate upon successful completion of the program that qualifies the tactical medical professional to carry a firearm while on duty.

(b) In addition to the duties authorized and established by this section, the subcommittee may:

(1) Establish training to effectively investigate human trafficking offenses as defined in §61-2-1 *et seq.* of this code for entry-level training curricula and for law-enforcement officers who have not received such training as certified by the committee as required by this section; and

(2) Establish procedures for the implementation of a course in investigation of human trafficking offenses. The course may include methods of identifying and investigating human trafficking and methods for assisting trafficking victims. In order to implement and carry out the intent of this subdivision, the committee may promulgate emergency rules pursuant to §29A-3-15 of this code.

(c) Notwithstanding any provision of this code to the contrary, the subcommittee may deny an application for the establishment of a new law-enforcement training academy if it is determined by the subcommittee that no actual need exists for the establishment of additional law-enforcement training academies to meet the needs of existing law-enforcement agencies in the state.

ARTICLE 43. TACTICAL MEDICAL PROFESSIONALS.

§30-43-1. Definitions.

As used in this article:

(1) "Tactical medical professional" means a person who is an emergency medical service personnel, as defined in §16-4C-1 *et seq.* of this code, a nurse as defined in §30-7-1 *et seq.* of this code, a physician as defined in §30-3-4 or §30-14-1 *et seq.* of this code, or a physician assistant licensed pursuant to §30-3E-1 *et seq.* of this code, who is trained and certified in a nationally recognized tactical medical training program that is equivalent to Tactical Combat Casualty Care and Tactical Emergency Medical Support and who functions in the tactical or austere environment while attached to a law-enforcement agency of either this state or a political subdivision of this state.

§30-43-2. Tactical medical professional may carry firearm.

(a) A tactical medical professional may carry firearms while on duty in the same manner, to the same extent, and in the same areas as a law-enforcement officer of the law-enforcement agency the professional is serving, if:

(1) The law-enforcement agency that the tactical medical professional is serving has specifically authorized the professional to carry firearms while on duty; and

(2) The tactical medical professional has been awarded a certificate by the Law Enforcement Professional Standards Subcommittee of the Governor's Committee on Crime, Delinquency and Correction as provided for in §30-29-3 of this code, which certificate attests to satisfactory completion of law-enforcement training program that qualifies the tactical medical professional to carry firearms while on duty.

§30-43-3. Tactical medical professional protection from civil or criminal liability.

A tactical medical professional to whom this article applies and who is carrying one or more firearms under authority of this article has protection from potential civil or criminal liability for any conduct occurring while carrying the firearm or firearms to the same extent as a law enforcement officer of the law-enforcement agency the tactical medical professional is serving has such protection.

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CHAPTER 227

**(Com. Sub. for S. B. 208 - By Senators Caputo, Woelfel,
Oliverio, Rucker, Hamilton, Hunt, Chapman, Stuart, and
Deeds)**

[Passed March 2, 2023; in effect 90 days from passage (May 31, 2023)]
[Approved by the Governor on March 11, 2023.]

AN ACT to amend and reenact §30-29-5a of the Code of West Virginia, 1931, as amended, relating to criminal justice training for all law-enforcement officers and correction officers regarding individuals with autism spectrum disorders, Alzheimer's, and related dementias; and requiring that all current law-enforcement officers receive the course of basic training for appropriate interaction with and response to individuals with autism spectrum disorders, Alzheimer's, and related dementias every three years.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-5a. Criminal justice training regarding individuals with autism spectrum disorders; Alzheimer's and dementia.

(a) The Law-Enforcement Professional Standards Subcommittee shall establish within the basic training curriculum, a course for law-enforcement training programs for the training of law-enforcement officers and correction officers in appropriate interactions with individuals with autism spectrum disorders, Alzheimer's, and related dementias and shall develop guidelines for law enforcement response to individuals on the autism spectrum, individuals with Alzheimer's, or individuals with related dementias

who are victims or witnesses to a crime, or suspected or convicted of a crime.

(b) The course of instruction and the guidelines relating to autism spectrum disorders shall be developed and delivered by the West Virginia Autism Training Center, located at Marshall University. This course of instruction may stress positive responses to these individuals; provide for the de-escalation of potentially dangerous situations; provide an understanding of the different way these individuals process sensory stimuli and language, social communication, and language difficulties likely to affect interaction; and appropriate methods of interrogation. Training instructors shall always include adults with autism spectrum disorders and/or a parent or primary caretaker of an individual diagnosed with autism spectrum disorder.

(c) The training course of instruction relating to Alzheimer's and dementia shall be two hours long and based on evidence-informed research into the identification of persons with Alzheimer's and other dementias, risks such as wandering or elder abuse, and the best practices for law-enforcement officers interacting with such persons. The training course of instruction may be delivered by any qualified entity, organization, or person approved by the Law-Enforcement Professional Standards Subcommittee.

(d) As used in this section:

(1) "Agency" means the ability to make independent decisions and act in one's own best interests;

(2) "Alzheimer's" means a medical condition diagnosis of the most common type of dementia which is a gradually progressive type of brain disorder that causes problems with memory, thinking, and behavior;

(3) "Autism spectrum disorder" means a developmental disability characterized by persistent and significant deficits in social communication, social interaction, communication, and behavior, and may include the diagnosis of pervasive

developmental disorder, not otherwise specified, autistic disorder, and Asperger's Syndrome as defined in the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association;

(4) "Law-enforcement officer" means any officer of any West Virginia law-enforcement agency, or any state institution of higher education as defined in §30-29-1(6) of this code;

(5) "Related dementias" means a major neurocognitive disorder resulting in the loss of cognitive functioning, thinking, remembering, and reasoning to such an extent that it interferes with a person's daily life and activities, including, but not limited to, inability to control emotions and changes of personality; and

(6) "Training instructors" means professional experts, autistic adults, and/or the family member or primary caregiver of an autistic individual who deliver instruction and information.

(e) The autism spectrum disorder course of basic training for law-enforcement officers and correction officers may include at least three hours of instruction in the procedures and techniques described in this subsection:

(1) The nature and manifestation of autism spectrum disorders;

(2) Appropriate techniques for interviewing or interrogating an individual on the autism spectrum, including techniques to ensure the legality of statements made, and techniques to protect the rights of the individual;

(3) Techniques for locating an individual on the autism spectrum who runs away and is in danger, and returning the individual while causing as little stress as possible to the individual;

(4) Techniques for recognizing an autistic individual's agency while identifying potential abusive or coercive situations;

(5) Techniques for de-escalating a potentially dangerous situation to maximize the safety of both the law-enforcement officer or correction officer and the autistic individual;

(6) Techniques for differentiating between an individual on the autism spectrum from an individual who is belligerent, uncooperative, or otherwise displaying traits similar to the characteristics of an autistic individual;

(7) Procedures to identify and address challenges related to the safety and wellbeing of autistic individuals in a correctional facility; and

(8) The impact of interaction with law-enforcement officers or correction officers on autistic individuals.

(f) The Alzheimer's and related dementias course of basic training for law-enforcement officers and correction officers may include at least two hours of instruction in the procedures and techniques described in this subsection:

(1) Dementia, psychiatric, and behavioral symptoms;

(2) Communication issues, including how to communicate respectfully and effectively with the individual who has dementia in order to determine the most appropriate response and effective communication techniques to enhance collaboration with caregivers;

(3) Techniques for understanding and approaching behavioral symptoms and identifying alternatives to physical restraints;

(4) Identifying and reporting incidents of abuse, neglect, and exploitation to Adult Protective Services (APS) at West Virginia Department of Health and Human Services;

(5) Techniques for de-escalating a potentially dangerous situation to maximize the safety of both the law-enforcement officer or correction officer and the individual with Alzheimer's or related dementias;

(6) Protocols for contacting caregivers when a person with dementia is found wandering or during emergency or crisis situations;

(7) Local caregiving resources that are available for people living with dementia; and

(8) The impact of interaction with law-enforcement officers or correction officers on Alzheimer's and dementia individuals.

(g) All law-enforcement recruits may receive the course of basic training for law-enforcement officers, established in this section, as part of their required certification process. The course of basic training for law-enforcement officers may be taught as part of the "crisis intervention and conflict resolution" and "people with special needs" components of the training.

(h) All correction officer recruits may receive the course of basic training for correction officers, established in this section, as part of their required certification process.

(i) All current law-enforcement officers shall receive the course of basic training for law-enforcement officers, established in this section, as part of their mandated in-service training requirement every three years.

(j) The Commissioner of the Division of Corrections and Rehabilitation periodically may include within the in-service training curriculum a course of instruction on individuals with autism spectrum disorder, Alzheimer's, and related dementias, consistent with this section.

(k) The Law-Enforcement Professional Standards Subcommittee periodically may include within its in-service training curriculum, a course of instruction on individuals with autism spectrum disorder, Alzheimer's, and related dementias, consistent with this section.



CHAPTER 228

(S. B. 240 - By Senator Woodrum)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §30-1-12 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated as §30-1-12a; and to amend and reenact §30-1-13 of said code, all relating to professional licensing boards' collection and dissemination of certain records and information; providing for public access to the record of each board's proceedings; providing for public access to each board's register of applicants; stating information that must be provided in order to access the register of applicants; giving each board discretion to deny requests for the register of applicants; requiring each board to maintain a website that provides certain information about the board; defining terms; prohibiting the disclosure of sensitive personally identifiable information; providing that boards shall not be prohibited from providing information related to the qualifications and practice of licensees and registrants; providing that certain personal information of licensed practitioners shall not be disclosed; and requiring the roster of licensed practitioners to be posted on each board's website.

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.

§30-1-12. Record of proceedings; register of applicants; certified copies of records prima facie evidence; report to Governor and Legislature; public access.

(a) The secretary of every board shall keep a record of its proceedings and a register of all applicants for license or registration, showing for each the date of his or her application, his or her name, age, educational and other qualifications, mailing address, whether an examination was required, whether the applicant was rejected or a certificate of license or registration granted, the date of this action, the license or registration number, all renewals of the license or registration, if required, and any suspension or revocation thereof. The books and register, or a copy of any part thereof, certified by the secretary and attested by the seal of the board, shall be prima facie evidence of all matters recorded therein.

(b) The record of the board's proceedings shall be open to public inspection at all reasonable times and copies provided upon oral or written request after payment of a reasonable fee, as determined by the board in accordance with the provisions of §29B-1-3 of this code.

(c) The register of applicants shall be made available upon written request on a form prescribed by the board. The form shall require the requester to provide at least the following information:

- (1) Legal identity;
- (2) Purpose for which the register is sought;
- (3) A telephone number where the requester may be contacted by the board; and
- (4) Whether copies of the register are requested.

If requested, copies of the register shall be provided after payment of a reasonable fee, as determined by the board in accordance with the provisions of §29B-1-3 of this code.

The board may deny a request that the register, or copies thereof, be made available or provided if it determines, in its discretion, that the request is made for an improper purpose.

(d) On or before January 1 of each year in which the Legislature meets in regular session, the board shall submit to the Governor and to the Legislature a report of its activities for the preceding two years, containing the following information for that period:

(1) The total receipts and disbursements for each year;

(2) A list of amounts received in each year for the following categories of receipts:

(A) License applications, registrations, and renewals;

(B) Examination fees, if applicable;

(C) Other fees, including late fees, copying charges, and fees for printed certificates;

(D) Fines or penalties;

(E) Expense reimbursements from disciplinary actions; and

(F) Grants, special appropriations, or other sources of revenue not from fees;

(3) A list of amounts spent in each year for the following categories of expenditures:

(A) Personal services;

(B) Board member per diem compensation;

(C) Travel expenses and automobile mileage;

(D) Professional contracts;

(E) Rent;

(F) Office supplies;

(G) Postage;

(H) Entertainment and hosting;

(I) Insurance; and

(J) Bank costs;

(4) A complete list of the names of all persons newly licensed or registered;

(5) A table or list showing numbers of licensees or registrants by West Virginia county of practice or, for out-of-state licensees or registrants, by state of residence, and by specialty, if appropriate to the particular profession;

(6) Complaints filed and investigations opened by the board, with a brief classification of the nature of the complaint, together with the dates of compliance with the time requirements of §30-1-5(c) of this code, and the disposition, if any;

(7) In addition to complaints reported under the preceding subdivision, complaints resolved and investigations closed by the board, with a brief classification of the nature of the complaint, together with the dates of compliance with the time requirements of §30-1-5(c) of this code, and the disposition, if any; and

(8) Copies of the agendas for, and minutes of, board and committee or subcommittee meetings.

The report shall be certified by the president and the secretary of the board, and a copy of the report shall be filed with the Secretary of State and with the legislative librarian.

(e) To promote public access, the secretary of every board shall ensure that the address and telephone number of the board are included every year in the state government listings of the Charleston area telephone directory. Every board shall maintain a website that provides at least the following information:

(1) Name of each board member;

- (2) Names of all board staff;
- (3) Contact information for each staff member, including office telephone number, office location, and office mailing address;
- (4) A secure electronic means of contacting each staff member;
- (5) The roster of licensed or registered practitioners;
- (6) Copies of approved meeting minutes for meeting held during the preceding year;
- (7) A schedule of regular meeting days for each calendar year; and
- (8) Notice of each upcoming board meeting.

§30-1-12a. Prohibition against disclosure of personally identifiable information; exceptions.

(a) Definitions. —

"Personally identifiable information" or "PII" means any information that identifies, or can be used to identify, locate, contact, or impersonate a particular individual.

"Sensitive PII" means those elements of PII that must receive heightened protection due to legal or policy requirements, including, but not limited to:

- (1) Social Security numbers;
- (2) Credit card numbers;
- (3) Health and medical data;
- (4) Driver's License numbers; and
- (5) Individual financial account numbers.

(b) A board may not disclose sensitive PII of applicants, licensees, registrants, or other individuals except as necessary to

comply with West Virginia or federal law, court order, or subpoena.

(c) Nothing in §30-1-12 or §30-1-12a of this code shall prohibit a board from providing information related to the qualifications and practice of licensees and registrants on the board's website, including but not limited to educational and training qualifications, specialties, and practice addresses.

§30-1-13. Roster of licensed or registered practitioners.

The secretary of every board shall prepare and maintain a complete roster of the names of all persons licensed, or registered, and practicing in this state the profession or occupation to which such board relates, arranged alphabetically by name. Each board shall make the roster available upon request to any member of the public and shall also place and maintain the roster on its website.

CHAPTER 229

(S. B. 244 - By Senators Woodrum and Trump)

[Passed March 9, 2023; in effect 90 days from passage (June 7, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-30-1 and §5-30-2, all relating to making rosters of individuals who have obtained professional, occupational, and trade licenses, registrations, and certificates available to the public; stating purpose of article; and requiring entities that authorize individuals to practice a profession, occupation, or trade in this state to prepare and maintain a roster of authorized individuals and to make roster available to the public.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30. ROSTERS OF INDIVIDUALS AUTHORIZED TO PRACTICE PROFESSIONS, OCCUPATIONS, AND TRADES.

§5-30-1. Purpose of article.

The purpose of this article is to ensure and increase public confidence in state regulation of professions, occupations, and trades by making lists of all individuals who have obtained approval to practice in the state available to the public upon request and electronically.

§5-30-2. Roster of licensed, registered, or certified practitioners to be made available to the public.

The secretary or director of every board, commission, agency, or entity that issues licenses, registrations, or certificates, or

otherwise authorizes individuals to practice a profession, occupation, or trade in this state, shall prepare and maintain a complete roster of the names and mailing addresses of all persons licensed, registered, certified, or otherwise authorized to practice in this state the profession, occupation, or trade to which such board, commission, agency, or entity relates, arranged alphabetically by name and also by the municipalities or counties in which their mailing addresses are situated. Each such board, commission, agency, or entity shall make the roster available upon request to any member of the public and shall also place and maintain the roster on its website if it maintains one.

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CHAPTER 230

(Com. Sub. for S. B. 247 - By Senator Woodrum)

[Passed March 10, 2023; in effect 90 days from passage (June 8, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §30-1-9 of the Code of West Virginia, 1931, as amended, relating to making administrative appeals and judicial review of board action subject to provisions of the Administrative Procedures Act.

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.

§30-1-9. Administrative appeal of board action; judicial review.

(a) A person, not an applicant for or holder of a license to practice law, who has been denied a license or registration; whose certificate, license, registration, or authority has been suspended or revoked; or against whom disciplinary action has been otherwise imposed may appeal the final decision of the board.

(b) All proceedings in the appeal of the board's action, and any judicial review thereof, shall be conducted in accordance with the provisions of §29A-5-1 *et seq.* of this code and any procedural rules adopted by the board pursuant thereto.

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CHAPTER 231

**(Com. Sub. for S. B. 300 - By Senators Trump, Caputo,
Plymale, and Hamilton)**

[Passed March 2, 2023; in effect 90 days from passage (May 31, 2023)]
[Approved by the Governor on March 11, 2023.]

AN ACT to amend and reenact §30-29-1 of the Code of West Virginia, 1931, as amended, relating to law-enforcement training and certification; and modifying definition of "law-enforcement officer".

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

For the purposes of this article, unless a different meaning clearly appears in the context:

(1) "Approved law-enforcement training academy" means any training facility which is approved and authorized to conduct law-enforcement training as provided in this article;

(2) "Chief executive" means the Superintendent of the State Police; the chief Natural Resources police officer of the Division of Natural Resources; the sheriff of any West Virginia County; any administrative deputy appointed by the chief Natural Resources police officer of the Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement agency;

(3) "County" means the 55 major political subdivisions of the state;

(4) "Exempt rank" means any noncommissioned or commissioned rank of sergeant or above;

(5) "Governor's Committee on Crime, Delinquency, and Correction" or "Governor's committee" means the Governor's Committee on Crime, Delinquency, and Correction established as a state planning agency pursuant to §15-9-1 of this code;

(6) "Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests, and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of §18B-4-5 of this code, persons employed as hospital police officers in accordance with the provisions of §16-5B-19 of this code, and persons employed by the Public Service Commission as motor carrier inspectors and weight-enforcement officers charged with enforcing commercial motor vehicle safety and weight restriction laws, although those institutions and agencies may not be considered law-enforcement agencies. The term also includes those persons employed as county litter control officers charged with enforcing litter laws who have been trained and certified as law-enforcement officers and whose certification is currently active. The term also includes those persons employed as rangers by resort area districts in accordance with the provisions of §7-25-23 of this code, although no resort area district may be considered a law-enforcement agency: *Provided*, That the subject rangers shall pay the tuition and costs of training. As used in this article, the term "law-enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement agency, or to any watchman or special natural resources police officer, or to any litter control officer who is authorized and trained under the provisions of §7-1-3ff(d) of this code but is not trained and currently certified as a law-enforcement officer;

(7) "Law-enforcement official" means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

(8) "Municipality" means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

(9) "Pre-certified law-enforcement officer" means a person employed or offered employment by a West Virginia law-enforcement agency prior to his or her initial certification by the subcommittee. This term does not include a person employed or offered employment by a West Virginia law-enforcement agency whose certification status is inactive, suspended, or has been revoked;

(10) "Subcommittee" or "law-enforcement professional standards subcommittee" means the subcommittee of the Governor's Committee on Crime, Delinquency, and Correction created by §30-29-2 of this code; and

(11) "West Virginia law-enforcement agency" means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: *Provided*, That neither the Public Service Commission, nor any state institution of higher education, nor any hospital, nor any resort area district is a law-enforcement agency.

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CHAPTER 232

(Com. Sub. for S. B. 665 - By Senator Rucker)

[Passed March 10, 2023; in effect 90 days from passage (June 8, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §30-37-2 and §30-37-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-37-13, all relating to licensure requirements; amending the required hours of coursework for therapist licensure; defining terms; requiring a license to operate a massage establishment; providing establishment license requirements; prohibiting certain acts; providing for massage establishment licensure renewal, suspension, and revocation; specifying exemptions; requiring certain establishment licensees to have continuing education; and providing emergency rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 37. MASSAGE THERAPISTS.

§30-37-2. Definitions.

(a) "Board" means the West Virginia Massage Therapy Licensure Board.

(b) "Massage therapist" means a person licensed to practice the health care service of massage therapy under this article who practices or administers massage therapy to a client of either gender for compensation. No person licensed by the massage therapy licensure board may be referred to as a primary care provider nor be permitted to use such designation.

(c) "Massage therapy" means a health care service which is a scientific and skillful manipulation of soft tissue for therapeutic or remedial purposes, specifically for improving muscle tone, circulation, promoting health and physical well-being. Massage therapy includes massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications or other therapies which involve manipulation of the muscle and connective tissue of the body, for the purpose of enhancing health, reducing stress, improving circulation, aiding muscle relaxation, increasing range of motion, or relieving neuromuscular pain. Massage therapy does not include diagnosis or service which requires a license to practice medicine or surgery, osteopathic medicine, chiropractic, or podiatry, and does not include service performed by nurses, occupational therapists, or physical therapists who act under their own professional license, certificate or registration.

(d) "Massage establishment" means a place of business wherein massage therapy is practiced, with a physical site or premise, including mobile sites, licensed as required by this article, in which licensed massage therapists are employees or contractors practicing massage therapy on clients.

(e) "Sole practitioner" means a licensed massage therapist who is licensed pursuant to this article, who is not an employee or contractor of the sole practitioner or an establishment, and who provides massage therapy to clients at a specific location including, but not limited to, a rental space, home office space, offsite, or onsite space.

§30-37-7. Requirements for licensure; renewal of licenses; reinstatement; penalties.

(a) The board shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code, establishing a procedure for licensing of massage therapists. License requirements shall include the following:

(1) Completion of a program of massage education at a school approved by the West Virginia Council for Community and Technical College Education pursuant to §18B-2B-9 of this code or by a state agency in another state, the District of Columbia or a United States territory which approves educational programs and which meets qualifications for the National Certification Exam administered through the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) prior to February 1, 2015, the massage and bodywork licensing examination administered through the Federation of State Massage Therapy Boards (FSMTB) and any other board approved examination. This school shall require a diploma from an accredited high school, or the equivalent, and on July 1, 2023, upon adoption of the amendments to this section during the regular session of the Legislature, 2023, require completion of at least 625 hours of supervised academic instruction;

(2) Successful completion of the National Certification for Therapeutic Massage and Bodywork (NCTMB) examination, the Massage and Bodywork Licensing Examination (MBLEx), or any other board approved examination; and

(3) Payment of a reasonable fee every two years required by the board which shall compensate and be retained by the board for the costs of administration.

(b) A license to practice massage therapy issued by the board prior to July 1, 2006, shall for all purposes be considered a license issued under this section: *Provided*, That a person holding a license to practice massage therapy issued prior to July 1, 2006, must renew the license pursuant to the provisions of this article: *Provided, however*, That a person whose license was issued by the board prior to July 1, 2006, and whose license subsequently lapses may, in the discretion of the board, be subject to the licensing requirements of this section.

(c) In addition to provisions for licensure, the rules shall include:

(1) Requirements for completion of continuing education hours conforming to NCBTMB, FSMTB, or board approved guidelines; and

(2) Requirements for issuance of a reciprocal license to licensees of states with requirements which may include the successful completion of the NCTMB examination, MBLEx, or any other board approved examination.

(d) Subject to the provisions of subsection (b) of this section, the board may deny an application for renewal for any reason which would justify the denial of an application for initial licensure.

(e) Any person practicing massage therapy during the time his or her license has lapsed is in violation of this article and is subject to the penalties provided in this article.

(f) A massage therapist who is licensed by the board shall be issued a certificate and a license number. The current, valid license certificate shall be publicly displayed and available for inspection by the board and the public at a massage therapist's work site.

§30-37-13. Massage establishment license required; exemptions; renewals; suspension and revocation; and emergency rule-making authority.

(a) A place of business that is not a sole practitioner, that advertises or offers massage therapy or other massage services must be licensed by the board as a massage establishment as provided by §30-37-1 *et seq.* of this code.

(b) A massage establishment shall employ or contract only with massage therapists licensed in this state to perform massage therapy or other massage services. Documentation of the employment or contract relationship and verification that the licensed massage therapist is a United States citizen or a legal permanent resident with a valid work permit shall be maintained by the massage establishment, and shall be made available during any inspection or investigation. Required documentation for each

person providing massage therapy or other massage services shall include:

(1) A copy of the current active West Virginia massage therapist license;

(2) Proof of eligibility to work in the United States; and

(3) If an employee, a completed I-9 form, or if under an independent contractor or contract labor agreement, a copy of the contract signed by both the owner or operator of the establishment and the licensed massage therapist.

(c) An adult oriented business may not obtain a license from the board or operate as a massage establishment.

(d) Each applicant for a massage establishment shall:

(1) Submit a completed application on a board approved form; and

(2) Pay the appropriate fee as prescribed by the board by legislative rule.

(e) Exemptions:

(1) A place of business is not required to hold a massage establishment license under this article if:

(A) The place of business is owned by the federal government, the state, or a political subdivision of the state, or otherwise offers massage services as authorized under any other state issued professional or occupational license; or

(B) At the place of business, a licensed massage therapist practices as a sole practitioner.

(2) The sole practitioner does not use a business name or assumed name; or

(3) Uses a business name or an assumed name and provides the massage therapist's full legal name or license number in each

advertisement and each time the business name or assumed name appears in writing.

(f) A massage establishment license shall be renewed biennially on a form prescribed by the board, with the appropriate fee.

(g) Massage establishment requirements:

(1) A massage establishment shall post, in a prominent location, the board administered establishment license, the state license of each licensed massage therapist employed by the establishment, and any business licenses required by any state, municipality or local governmental entity.

(2) Properly maintain and secure for each client the initial consultation documents, all session notes, written consent documents, and related billing records; and

(3) Maintain a current list of all establishment employees and/or contractors on the premises at all times which includes:

(A) The full name; and

(B) License number and expiration date of the licensed as a massage therapist.

(h) A massage establishment may not:

(1) Employ or contract with an individual to perform massage services who is not a licensed massage therapist in this state and who is not a United States citizen or a legal resident with a valid work permit;

(2) Allow a nude or partially nude employee to provide massage therapy or other massage services to a customer;

(3) Allow any individual, including a client, license holder, or employee, to engage in sexual contact in the massage establishment;

(4) Allow any individual, including a license holder, employee, or contract employee, to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual; or

(5) Allow any individual, including a license holder, employee, or contract employee to reside on the premises of the massage establishment.

(i) A licensee of a massage establishment may be disciplined, including the suspension or revocation of the license for cause:

(1) Pursuant to the general provisions of §30-1-1 *et seq.* and §30-37-1 *et seq.* of this code;

(2) For violating any provision of this article;

(3) For violating any applicable state law, rule, or policy; and

(4) For violating any applicable local ordinance.

(j) A license to operate a massage establishment shall be required, starting on October 1, 2023, upon the enactment of this section by the regular session of the Legislature, 2023.

(k) All establishment license holders who are not licensed massage therapists, shall, beginning July 1, 2025, obtain two hours of continuing education on the laws and rules of massage therapy every two years and shall provide the certificate of completion to the board by October 1, 2025, and with the application for biennial renewal of the establishment license.

(l) The board shall propose emergency legislative rules pursuant to §29A-3-1 *et seq.* of this code to establish reasonable fees for the licensure of massage establishments, including the fee for the establishment license and any establishment inspection fees as deemed necessary by the board.

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CHAPTER 233

**(Com. Sub. for H. B. 2007 - By Delegates Foster, Chiarelli,
Horst, Clark, DeVault, Coop-Gonzalez, Brooks, Kirby,
Maynor, Adkins, and Ward)**

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-3-20; and to amend said code by adding thereto a new section, designated §30-14-17, all relating to prohibiting certain medical practices; defining terms; prohibiting irreversible gender reassignment surgery to a minor; prohibiting the providing of gender altering medication to a minor; providing exceptions; establishing an internal effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-20. Prohibited practice.

(a) For the purposes of this section:

"Biological sex" means the biological indication of male and female in the context of reproductive potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal and external genitalia present at birth, without regard to an individual's psychological, chosen, or subjective experience or gender.

"Gender" means the psychological, behavioral, social and cultural aspects of being male or female.

“Gender altering medication” means the prescribing or administering of the following for the purpose of assisting an individual with a gender transition:

(1) Puberty blocking medication to stop or delay normal puberty;

(2) Supraphysiologic doses of testosterone or other androgens to females; and

(3) Supraphysiologic doses of estrogen to males.

"Gender transition" means the process in which a person goes from identifying with and living as a gender that corresponds to the person's biological sex to identifying with and living as a gender different from the person biological sex and may involve social, legal, or physical changes.

"Irreversible gender reassignment surgery" means a medical procedure performed for the purpose of assisting an individual with a gender transition, including any of the following:

(1) Penectomy, orchiectomy, vaginoplasty, clitoroplasty, or vulvoplasty for biologically male patients or hysterectomy or ovariectomy for biologically female patients;

(2) Metoidioplasty, phalloplasty, vaginectomy, scrotoplasty, or implantation of erection or testicular prostheses for biologically female patients; and

(3) Augmentation mammoplasty for biological male patient and subcutaneous mastectomy for female patients.

(b) Except as otherwise provided in §30-3-20(c), a physician may not provide irreversible gender reassignment surgery or gender altering medication to a person who is under eighteen years of age.

(c) A physician may provide any of the following to a person who is under 18 years of age:

(1) Services provided to an individual born with a medically verifiable disorder of sex development, including, but not limited to, a person with external biological sex characteristics that are irresolvably ambiguous, such as an individual born with forty-six xx chromosomes with virilization, forty-six xy chromosomes with undervirilization, or having both ovarian and testicular tissue;

(2) Services provided to an individual when a physician has otherwise diagnosed a disorder of sexual development and in which the physician has determined through genetic or biochemical testing that the individual does not have normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action;

(3) The treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of gender transition procedures, whether or not these procedures were performed in accordance with state and federal law; and

(4) Any procedure undertaken because the individual suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the person in imminent danger of death, or impairment of a major bodily function unless surgery is performed.

(5) Pubertal modulating and hormonal therapy for severe gender dysphoria if:

(A) The minor has been diagnosed as suffering from severe gender dysphoria by no fewer than two medical or mental health providers with at least one being a mental health provider or adolescent medicine specialist, and both having relevant training in the diagnosis and treatment of severe gender dysphoria in adolescents;

(B) The diagnosing medical professionals express in written opinions that treatment with pubertal modulating and hormonal therapy is medically necessary to treat the minor's psychiatric symptoms and limit self-harm, or the possibility of self-harm, by the minor;

(C) The minor, the minor's parents, legal guardians, or person or other persons charged with medical decision-making for the minor, and the minor's primary physician agree in writing with the treatment with pubertal modulating and hormonal therapy for the minor;

(D) Any use of gender altering medication is for purposes of pubertal modulating and hormonal therapy limited to the lowest titratable dosage necessary to treat the psychiatric condition and not for purposes of gender transition; and

(E) Notwithstanding the provisions of paragraphs (A) through (D) of this subdivision where the minor is prepubescent, hormonal treatment may not be provided;

(d) The provisions of this section are effective on January 1, 2024.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-17. Prohibited practice.

(a) For the purposes of this section:

"Biological sex" means the biological indication of male and female in the context of reproductive potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal and external genitalia present at birth, without regard to an individual's psychological, chosen, or subjective experience or gender.

"Gender" means the psychological, behavioral, social and cultural aspects of being male or female.

"Gender altering medication" means the prescribing or administering of the following for the purpose of assisting an individual with a gender transition:

(1) Puberty blocking medication to stop or delay normal puberty;

(2) Supraphysiologic doses of testosterone or other androgens to females; and

(3) Supraphysiologic doses of estrogen to males.

"Gender transition" means the process in which a person goes from identifying with and living as a gender that corresponds to the person's biological sex to identifying with and living as a gender different from the person biological sex and may involve social, legal, or physical changes.

"Irreversible gender reassignment surgery" means a medical procedure performed for the purpose of assisting an individual with a gender transition, including any of the following:

(1) Penectomy, orchiectomy, vaginoplasty, clitoroplasty, or vulvoplasty for biologically male patients or hysterectomy or ovariectomy for biologically female patients;

(2) Metoidioplasty, phalloplasty, vaginectomy, scrotoplasty, or implantation of erection or testicular prostheses for biologically female patients; and

(3) Augmentation mammoplasty for biological male patient and subcutaneous mastectomy for female patients.

(b) Except as otherwise provided in §30-14-17(c), a physician may not provide irreversible gender reassignment surgery or gender altering medication to a person who is under eighteen years of age.

(c) A physician may provide any of the following to a person who is under 18 years of age:

(1) Services provided to an individual born with a medically verifiable disorder of sex development, including, but not limited to, a person with external biological sex characteristics that are irresolvably ambiguous, such as an individual born with forty-six xx chromosomes with virilization, forty-six xy chromosomes with undervirilization, or having both ovarian and testicular tissue;

(2) Services provided to an individual when a physician has otherwise diagnosed a disorder of sexual development and in which the physician has determined through genetic or biochemical testing that the individual does not have normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action;

(3) The treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of gender transition procedures, whether or not these procedures were performed in accordance with state and federal law; and

(4) Any procedure undertaken because the individual suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the person in imminent danger of death, or impairment of a major bodily function unless surgery is performed.

(5) Pubertal modulating and hormonal therapy for severe gender dysphoria if:

(A) The minor has been diagnosed as suffering from severe gender dysphoria by no fewer than two medical or mental health providers with at least one being a mental health provider or adolescent medicine specialist and both having relevant training in the diagnosis and treatment of severe gender dysphoria in adolescents;

(B) The diagnosing medical professionals express in written opinions that treatment with pubertal modulating and hormonal therapy is medically necessary to treat the minor's psychiatric symptoms and limit self-harm, or the possibility of self-harm, by the minor;

(C) The minor, the minor's parents, legal guardians, or person or persons charged with medical decision-making for the minor and the minor's primary physician agree in writing with the treatment with gender altering medication for the minor;

(D) Any use of gender altering medication is for purposes of pubertal modulating and hormonal therapy and is limited to the

lowest titratable dosage necessary to treat the psychiatric condition and not for purposes of gender transition; and

(E) Notwithstanding the provisions of paragraphs (A) through (D) of this subdivision where the minor is prepubescent, hormonal treatment may not be provided.

(d) The provisions of this section are effective on January 1, 2024.

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CHAPTER 234

**(Com. Sub. for H. B. 2754 - By Delegates Summers, Tully,
Forsht, Heckert, Petitto, Jeffries and Espinosa)**

[Passed March 7, 2023; in effect from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §30-5-7 and §30-5-12 of the Code of West Virginia, 1931, as amended, relating to immunizations performed in a pharmacy; permitting a pharmacy technician to perform an immunization; updating rulemaking authority; and reducing the age of a recipient.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-7. Rule-making authority.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to implement the provisions of this article and §60A-2-201 *et seq.*, §60A-3-301 *et seq.*, §60A-8-1 *et seq.*, §60A-9-1 *et seq.*, and §60A-10-1 *et seq.* of this code, including:

(1) Standards and requirements for a license, permit, and registration;

(2) Educational and experience requirements;

(3) Procedures for examinations and reexaminations;

(4) Requirements for third parties to prepare, administer or prepare, and administer examinations and reexaminations;

(5) The passing grade on the examination;

(6) Procedures for the issuance and renewal of a license, permit, and registration;

(7) A fee schedule;

(8) Continuing education requirements;

(9) Set standards for professional conduct;

(10) Establish equipment and facility standards for pharmacies;

(11) Approve courses and standards for training pharmacist technicians;

(12) Regulation of charitable clinic pharmacies;

(13) Regulation of mail-order pharmacies: *Provided*, That until the board establishes requirements that provide further conditions for pharmacists who consult with or who provide pharmacist care to patients regarding prescriptions dispensed in this state by a mail-order pharmacy, the pharmacist in charge of the out-of-state mail-order pharmacy shall be licensed in West Virginia and any other pharmacist providing pharmacist care from the mail-order pharmacy shall be licensed in the state where the pharmacy is located;

(14) Agreements with organizations to form pharmacist recovery networks;

(15) Create an alcohol or chemical dependency treatment program;

(16) Establish a ratio of pharmacy technicians to on-duty pharmacist operating in any outpatient, mail order, or institutional pharmacy;

(17) Regulation of telepharmacy;

(18) The minimum standards for a charitable clinic pharmacy and rules regarding the applicable definition of a pharmacist-in-charge, who may be a volunteer, at charitable clinic pharmacies: *Provided*, That a charitable clinic pharmacy may not be charged

any applicable licensing fees and such clinics may receive donated drugs;

(19) Establish standards for substituted drug products;

(20) Establish the regulations for E-prescribing;

(21) Establish the proper use of the automated data processing system;

(22) Registration and control of the manufacture and distribution of controlled substances within this state;

(23) Regulation of pharmacies;

(24) Sanitation and equipment requirements for wholesalers, distributors, and pharmacies;

(25) Procedures for denying, suspending, revoking, reinstating, or limiting the practice of a licensee, permittee, or registrant;

(26) Regulations on prescription paper as provided in §16-5-27 of this code;

(27) Regulations on controlled substances as provided in §60A-2-201 *et seq.* of this code;

(28) Regulations on manufacturing, distributing, or dispensing any controlled substance as provided in §60A-3-301 of this code;

(29) Regulations on wholesale drug distribution as provided in §60A-8-1 *et seq.* of this code;

(30) Regulations on controlled substances monitoring as provided in §60A-9-1 *et seq.* of this code;

(31) Regulations on Methamphetamine Laboratory Eradication Act as provided in §60A-10-1 *et seq.* of this code;

(32) Establish and maintain an official prescription paper program; and

(33) Any other rules necessary to effectuate the provisions of this article.

(b) The board may provide an exemption to the pharmacist-in-charge requirement for the opening of a new retail pharmacy or during a declared emergency.

(c) The board, the Board of Medicine, and the Board of Osteopathic Medicine shall jointly agree and propose rules concerning collaborative pharmacy practice for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

(d) The board, with the advice of the Board of Medicine and the Board of Osteopathic Medicine, shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to perform influenza and pneumonia immunizations on a person of 18 years of age or older. These rules shall provide, at a minimum, for the following:

(1) Establishment of a course, or provide a list of approved courses, in immunization administration. The courses shall be based on the standards established for such courses by the Centers for Disease Control and Prevention in the public health service of the United States Department of Health and Human Services;

(2) Definitive treatment guidelines which shall include, but not be limited to, appropriate observation for an adverse reaction of an individual following an immunization;

(3) Prior to administration of immunizations, a pharmacist shall have completed a board- approved immunization administration course and completed an American Red Cross or American Heart Association basic life-support training, and maintain certification in the same;

(4) Continuing education requirements for this area of practice;

(5) Reporting requirements for pharmacists administering immunizations to report to the primary care physician or other

licensed health care provider as identified by the person receiving the immunization;

(6) Reporting requirements for pharmacists administering immunizations to report to the West Virginia Statewide Immunization Information;

(7) That a pharmacist may not delegate the authority to administer immunizations to any other person, unless administered by a licensed pharmacy intern or registered pharmacy technician under the direct supervision of a pharmacist of whom the pharmacist, the pharmacist technician and intern have successfully completed all board-required training; and

(8) Any other provisions necessary to implement the provisions of this section.

(e) The Board of Medicine and the Board of Osteopathic Medicine shall propose joint rules, by July 1, 2023, for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to permit a licensed pharmacist, pharmacy technician or pharmacy intern to administer immunizations in accordance with definitive treatment guidelines for immunizations promulgated by the latest notice from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), including, but not limited to, the CDC's recommended immunization schedule for adults, children, and adolescents. In addition, the joint rules shall permit a licensed pharmacist, pharmacy technician or pharmacy intern to administer immunizations in accordance with definitive treatment guidelines for immunizations promulgated by the latest notice from the CDC, including, but not limited to, the CDC's recommended immunization schedule for adults, children, and adolescents to a person age 3 through 17, with written informed parental consent and there are no contraindications to that patient receiving that vaccine. These rules shall provide, at a minimum, the same provisions contained in subsections (d)(1) through (d)(8), inclusive, of this section.

(f) All of the board's rules in effect and not in conflict with these provisions shall remain in effect until they are amended or rescinded.

§30-5-12. Scope practice for registered pharmacy technician.

(a) A registered pharmacy technician shall, under the direct supervision of the licensed pharmacist, perform at a minimum the following:

- (1) Assist in the dispensing process;
- (2) Receive new written or electronic prescription drug orders;
- (3) Compound;
- (4) Stock medications;

(5) Complete a list of a patient's current prescription and nonprescription medications to provide for medication reconciliation;

(6) Supervise registered pharmacy technicians and pharmacy technician trainees;

(7) Medical records screening;

(8) Administer immunizations, as provided by legislative rule; and

(9) Perform pharmacy technician product verification, where no clinical judgment is necessary and the pharmacist makes the final verification; if the registered pharmacy technician furnishes to the Board an affidavit signed and dated by the supervising pharmacist-in-charge of the facility which will employ the applicant attesting to the applicant's competency in the advanced areas of practice that he or she will practice; and has either:

(A) Worked as a full-time registered pharmacy technician holding a pharmacy technician endorsement in West Virginia for at least the previous two years; or

(B) Worked as a full-time registered pharmacy technician holding a pharmacy technician license in good standing in another jurisdiction for at least the previous two years.

(b) A registered pharmacy technician may perform the following under indirect supervision of a licensed pharmacist:

- (1) Process medical coverage claims; and
- (2) Cashier.

(c) A registered pharmacy technician may not perform the following:

- (1) Drug regimen review;
- (2) Clinical conflict resolution;
- (3) Contact a prescriber concerning prescription drug order clarification or therapy modification;
- (4) Patient counseling;
- (5) Dispense process validation;
- (6) Prescription transfer;
- (7) Receive new oral prescription drug orders;
- (8) An act within the practice of pharmacist care that involves discretion or independent professional judgment; or
- (9) A function which the registrant has not been trained and the function has not been specified in a written protocol with competency established.

(d) Indirect supervision of a registered pharmacy technician is permitted to allow a pharmacist to take one break of no more than 30 minutes during any contiguous eight-hour period. The pharmacist may leave the pharmacy area but may not leave the building during the break. When a pharmacist is on break, a pharmacy technician may continue to prepare prescriptions for the

pharmacist(s) verification. A prescription may not be delivered until the pharmacist has verified the accuracy of the prescription, and counseling, if required, has been provided to or refused by the patient.

(e) A pharmacy that permits indirect supervision of a pharmacy technician during a pharmacist(s) break shall have either an interactive voice response system or a voice mail system installed on the pharmacy phone line in order to receive new prescription orders and refill authorizations during the break.

(f) The pharmacy shall establish protocols that require a registered pharmacy technician to interrupt the pharmacist's break if an emergency arises.

(g) A registered pharmacy technician who has obtained a nuclear pharmacy technician endorsement, may under the direct supervision of the licensed nuclear pharmacist, perform the following:

- (1) Assist in the dispensing process;
- (2) Receive new written or electronic prescription drug orders;
- (3) Mix compound ingredients for liquid products, suspensions, ointments, mixes, or blend for tablet granulations and capsule powders;
- (4) Prepare radiopharmaceuticals;
- (5) Record keeping;
- (6) File and organize prescriptions;
- (7) Create reports;
- (8) Inventory tasks;
- (9) Handle raw materials and intermediate or finished products;

(10) Perform general maintenance as required on pumps, homogenizers, filter presses, tablet compression machines, and other like machines;

(11) Perform standard operating procedures to meet current good manufacturing practices (GMP);

(12) Maintain records;

(13) Monitor and verify quality in accordance with statistical process or other control procedures; and

(14) Stock medications.

(h) A registered pharmacy technician who has obtained a nuclear pharmacy technician endorsement may not perform the following:

(1) Drug regimen review;

(2) Clinical conflict resolution;

(3) Contact a prescriber concerning prescription drug order clarification or therapy modification;

(4) Receive new oral prescription drug orders.

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CHAPTER 235

**(H. B. 2967 - By Delegates Cooper, Smith, Hillenbrand, Steele,
Longanacre, Ridenour, Sheedy, Butler, Honaker and Crouse)**

[Passed March 11, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §30-1B-1, §30-1B-2, §30-1B-3, and §30-1B-4 of the Code of West Virginia, 1931, as amended; and to repeal §30-1B-5 and §30-1B-7 of said code, all relating to licensure to practice professions and occupations; stating findings; establishing standards for licensure of military-trained applicants; creating an exception for the practices of law, medicine, and osteopathic medicine; mandating boards act on applications from military-trained applicants not later than 15 days after receipt; providing for conditions for issuance of authorization to practice occupation or trade to military-trained applicants; prohibiting board from charging fee for initial authorization to practice; establishing standards for licensing spouses of current military members; creating an exception for the practices of law, medicine, and osteopathic medicine; mandating boards act on applications from spouses not later than 15 days after receipt; prohibiting boards from charging fee to spouse of military member for initial authorization to practice; and providing for temporary authorization to practice while application is pending.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. PROVISIONS APPLICABLE TO MILITARY MEMBERS AND THEIR SPOUSES.

§30-1B-1. Legislative findings and declarations.

The Legislature finds that:

(1) In recognition of the enormous sacrifices made by members of the Armed Forces of the United States of America and their families in voluntary service to this state and our nation, the citizens of West Virginia must endeavor to find new and innovative ways to improve the lives of military families and support their personal and professional growth;

(2) Many current and former members of the United States Armed Forces have acquired extensive academic, professional and occupational training and experience in various professions and occupations while serving in the Armed Forces, comparable to or exceeding that required in this state to register for examination or qualify for licensure, certification, or registration for similar or related occupations and professions;

(3) Veterans of the armed forces and the spouses of current members who return or relocate to this state are frequently delayed in beginning employment as professionals because of issues with obtaining licenses, certifications or registrations upon arrival or return to West Virginia;

(4) Because of the training and experiences these individuals have and the challenges they may face when seeking licensure, certification, or registration, it is in the best interests of this state to ease these burdens and ensure the boards in this chapter use the relevant experiences of these men and women to ensure they are able to find employment as quickly as possible.

§30-1B-2. Licensure for individuals with military training and experience.

(a) Except as provided in subsection (c) of this section, and notwithstanding any other provision of this Code to the contrary, all boards referred to in this chapter shall issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this state if, upon application to a board, the military-trained applicant satisfies the following conditions:

(1) Has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the board from which the applicant is seeking licensure, certification, or registration in this state:

(A) Completed a military program of training;

(B) Completed testing or equivalent training and experience;
and

(C) Performed in the occupational specialty;

(2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the board in this state for at least two of the five years preceding the date of the application under this section; and

(3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this state at the time the act was committed and has no pending complaints.

(b) No later than 15 days following receipt of an application from a military-trained applicant, the board shall either issue a license, certification, registration, or notify an applicant when the applicant's military training or experience does not satisfy the requirements for licensure, certification, or registration and specify the criteria or requirements that the board determined that the applicant failed to meet and the basis for that determination. If a military-trained applicant has a pending complaint under §30-1B-3(a)(3), the board shall notify the applicant no later than 15 days following the board receiving written notice of the disposition of the pending complaint.

(c) A board shall issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this state if the military-trained applicant, upon application to the board, satisfies the following conditions:

(1) Presents official, notarized documentation, such as a U.S. Department of Defense Form 214 (DD-214), or similar substantiation, attesting to the applicant's military occupational specialty certification and experience in an occupational field within the board's purview; and

(2) Passes a proficiency examination offered by the board to military-trained applicants in lieu of satisfying the conditions set forth in subsection (a) of this section; However, if an applicant fails the proficiency examination, then the applicant may be required by the board to satisfy those conditions.

(d) In any case where a proficiency examination is not offered routinely by a board, the board shall design a fair proficiency examination for military-trained applicants to obtain licensure, certification, or registration under this section. If a proficiency examination is offered routinely by a board, that examination shall satisfy the requirements of this section.

(e) All relevant experience of a military service member in the discharge of official duties shall be credited in the calculation of years of practice in an occupation as required under subsection (a) of this section.

(f) A nonresident licensed, certified, or registered under this section shall be entitled to the same rights and subject to the same obligations as required of a resident licensed, certified, or registered by all boards referred to in this chapter.

(g) Nothing in this section may be construed to apply to the practice of law under §30-2-1 *et seq.* of this code, the practice of medicine under article § 30-3-1 *et. seq.* of this code, or the practice of osteopathic medicine under article § 30-14-1 *et seq.* of this code.

(h) Nothing in this section may be construed to prohibit a military-trained applicant from proceeding under the existing licensure, certification, or registration requirements established by a board referred to in this chapter.

(i) A board may not charge a military-trained applicant an initial application fee for a license, certification, registration, or

temporary practice permit issued pursuant to this section: *Provided*, That nothing in this subsection may be construed to prohibit a board from charging its ordinary fee for a renewal application or prohibit a third party from charging actual costs for a service such as a background check.

§30-1B-3. Licensure for military spouses.

(a) Notwithstanding any other provision of this code to the contrary, all boards referred to in this chapter shall issue a license, certification, or registration to a military spouse to allow the spouse of an active duty military member who is a resident of this state who is assigned to state, or federal active duty in this state to lawfully practice the spouse's occupation in this state if, upon application to a board, the spouse satisfies the following conditions:

(1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure, certification, or registration of the board for which the applicant is seeking licensure, certification, or registration in this state;

(2) Can demonstrate competency in the occupation through methods as determined by the board, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section;

(3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this state at the time the act was committed; and

(4) Is in good standing; has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit; and has no pending complaints.

(b) No later than 15 days following receipt of an application from a spouse the board shall either issue a license, certification,

registration, or notify an applicant when the applicant's training or experience does not satisfy the requirements for licensure, certification, or registration and specify the criteria or requirements that the board determined that the applicant failed to meet and the basis for that determination. If an applicant who is a military spouse has a pending complaint under §30-1B-(a)(4), the board shall notify the applicant no later than 15 days following the board receiving written notice of the disposition of the pending complaint.

(c) All relevant experience of a military spouse, including full-time and part-time experience, regardless of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under subsection (a) of this section.

(d) A nonresident licensed, certified, or registered under this section is entitled to the same rights and subject to the same obligations as required of a resident licensed, certified, or registered by all boards referred to in this chapter.

(e) Nothing in this section may be construed to apply to the practice of law under article §30-2-1 *et seq.* of this code, the practice of medicine under article § 30-3-1 *et. seq.* of this code, or the practice of osteopathic medicine under article § 30-14-1 *et seq.* of this code.

(f) Nothing in this section may be construed to prohibit a spouse from proceeding under the existing licensure, certification, or registration requirements established by a board referred to in this chapter.

(g) A board may not charge a military spouse an initial application fee for a license, certification, registration, or temporary practice permit issued pursuant to this section: *Provided*, That nothing in this subsection may be construed to prohibit a board from charging its ordinary fee for a renewal application or prohibit a third party from charging actual costs for a service such as a background check.

§30-1B-4. Temporary licensure.

All boards referred to in this chapter shall issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure under sections two and three of this section no later than 15 days following receipt of an application; if that jurisdiction has licensure, certification, or registration standards substantially equivalent to the standards for licensure, certification, or registration of a board in this state. The temporary practice permit shall be issued using the same information as provided by the applicant in the licensure application and remain valid for the later of one year or the required renewal date for the occupation the temporary practice permit was issued for or until a license, certification, or registration is granted by the board. A temporary practice permit may be denied or revoked for a pending complaint after notice is provided to the military-trained applicant or military spouse as set forth under §30-1B-2(a)(3), §30-1B-3(a)(3), or §30-1B-3(a)(4) of this article.

§30-1B-5. Temporary licensure, certification or registration of spouses of persons on military active duty; waiver of certain license, certification or registration fees.

[Repealed.]

§30-1B-7. Data Collection.

[Repealed.]

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CHAPTER 236

(H. B. 3141 - By Delegates Summers and Tully)

[Passed March 6, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §30-4-3 and §30-4-8a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-4-25; all relating to the practice of dentistry; providing for updated definitions; modifying the requirements of dental specialists; and specifying duties during declared public health emergencies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-3. Definitions.

As used in §30-4-1 *et seq.*, §30-4A-1 *et seq.*, and §30-4B-1 *et seq.* of this code, the following words and terms have the following meanings:

"AAOMS" means the American Association of Oral and Maxillofacial Surgeons;

"AAPD" means the American Academy of Pediatric Dentistry;

"ACLS" means advanced cardiac life support;

"ADA" means the American Dental Association;

"AMA" means the American Medical Association;

"ASA" means American Society of Anesthesiologists;

"Anxiolysis/minimal sedation" means removing, eliminating, or decreasing anxiety by the use of a single anxiety or analgesia medication that is administered in an amount consistent with the manufacturer's current recommended dosage for the unsupervised treatment of anxiety, insomnia, or pain, in conjunction with nitrous oxide and oxygen. This does not include multiple dosing or exceeding current normal dosage limits set by the manufacturer for unsupervised use by the patient at home for the treatment of anxiety;

"Approved dental hygiene program" means a program that is approved by the board and is accredited, or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association;

"Approved dental school, college, or dental department of a university" means a dental school, college, or dental department of a university that is approved by the board and is accredited, or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association;

"Authorize" means that the dentist is giving permission or approval to dental auxiliary personnel to perform delegated procedures in accordance with the dentist's diagnosis and treatment plan;

"BLS" means basic life support;

"Board" means the West Virginia Board of Dentistry;

"Business entity" means any firm, partnership, association, company, corporation, limited partnership, limited liability company, or other entity;

"Central nervous system anesthesia" means an induced, controlled state of unconsciousness or depressed consciousness produced by a pharmacologic method;

"Certificate of qualification" means a certificate authorizing a dentist to practice a specialty;

"CPR" means cardiopulmonary resuscitation;

"Conscious sedation/moderate sedation" means an induced, controlled state of depressed consciousness, produced through the administration of nitrous oxide and oxygen and/or the administration of other agents whether enteral or parenteral, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

"CRNA" means certified registered nurse anesthetist;

"Defibrillator" means an electronic device that applies an electric shock to the heart to restore the normal functional rhythm of a fibrillating, nonfunctional heart and includes an Automatic Electronic Defibrillator (AED);

"Delegated procedures" means those procedures specified by law or by rule of the board and performed by dental auxiliary personnel under the supervision of a licensed dentist;

"Dentist anesthesiologist" means a dentist who is trained in the practice of anesthesiology and has completed an additional approved anesthesia education course;

"Dental anesthesiology" is the specialty of dentistry and discipline of anesthesiology encompassing the art and science of managing pain, anxiety, and overall patient health during dental, oral, maxillofacial, and adjunctive surgical or diagnostic procedures throughout the entire perioperative period. The specialty is dedicated to promoting patient safety as well as access to care for all dental patients, including the very young and patients with special health care needs;

"Dental assistant" means a person qualified by education, training, or experience who aids or assists a dentist in the delivery of patient care in accordance with delegated procedures as

specified by the board by rule or who may perform nonclinical duties in the dental office;

"Dental auxiliary personnel" or "auxiliary" means dental hygienists and dental assistants who assist the dentist in the practice of dentistry;

"Dental hygiene" means the performance of educational, preventive or therapeutic dental services and as further provided in §30-4-11 of this code and legislative rule;

"Dental hygienist" means a person licensed by the board to practice and who provides dental hygiene and other services as specified by the board by rule to patients in the dental office and in a public health setting;

"Dental laboratory" means a business performing dental laboratory services;

"Dental laboratory services" means the fabricating, repairing, or altering of a dental prosthesis;

"Dental laboratory technician" means a person qualified by education, training, or experience who has completed a dental laboratory technology education program and who fabricates, repairs, or alters a dental prosthesis in accordance with a dentist's work authorization;

"Dental office" means the place where the licensed dentist and dental auxiliary personnel are practicing dentistry;

"Dental prosthesis" means an artificial appliance fabricated to replace one or more teeth or other oral or peri-oral structure in order to restore or alter function or aesthetics;

"Dental public health" is the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice which considers the community to be the patient rather than any individual. It is concerned with the dental health education of the public, with applied dental research, and with the administration of

group dental care programs as well as the prevention and control of dental diseases on a community basis;

"Dentist" means an individual licensed by the board to practice dentistry;

"Dentistry" means the evaluation, diagnosis, prevention, and treatment, of diseases, disorders, and conditions of the oral cavity and the maxillofacial, adjacent, and associated structures and their impact on the human body;

"Direct supervision" means supervision provided by a licensed dentist who is physically present in the dental office or treatment facility when procedures are being performed;

"Endodontics" is the branch of dentistry which is concerned with the morphology, physiology, and pathology of the human dental pulp and periradicular tissues. Its study and practice encompass the basic and clinical sciences including biology of the normal pulp, the etiology, diagnosis, prevention, and treatment of diseases and injuries of the pulp and associated periradicular conditions;

"Facility permit" means a permit for a facility where sedation procedures are used that correspond with the level of anesthesia provided;

"General anesthesia" means an induced, controlled state of unconsciousness in which the patient experiences complete loss of protective reflexes, as evidenced by the inability to independently maintain an airway, the inability to respond purposefully to physical stimulation or the inability to respond purposefully to verbal command;

"Deep conscious sedation/general anesthesia" includes partial loss of protective reflexes while the patient retains the ability to independently and continuously maintain an airway;

"General supervision" means a dentist is not required to be in the office or treatment facility when procedures are being performed, has personally authorized the procedures to be

completed, and will evaluate the treatment provided at a future appointment, by the dental auxiliary personnel;

"Health care provider BLS/CPR" means health care provider basic life support/cardiopulmonary resuscitation;

"License" means a license to practice dentistry or dental hygiene;

"Licensee" means a person holding a license;

"Mobile dental facility" means any self-contained facility in which dentistry or dental hygiene will be practiced which may be moved, towed, or transported from one location to another;

"Portable dental unit" means any non-facility in which dental equipment, utilized in the practice of dentistry, is transported to and utilized on a temporary basis in an out-of-office location, including, but not limited to, patients' homes, schools, nursing homes, or other institutions;

"Oral medicine" is the specialty of dentistry responsible for the oral health care of medically complex patients and for the diagnosis and management of medically related disorders or conditions affecting the oral and maxillofacial region;

"Oral pathology" is the specialty of dentistry and discipline of pathology that deals with the nature, identification, and management of diseases affecting the oral and maxillofacial regions. It is a science that investigates the causes, processes, and effects of these diseases. The practice of oral pathology includes research and diagnosis of diseases using clinical, radiographic, microscopic, biochemical, or other examinations;

"Oral and maxillofacial radiology" is the specialty of dentistry and discipline of radiology concerned with the production and interpretation of images and data produced by all modalities of radiant energy that are used for the diagnosis and management of diseases, disorders, and conditions of the oral and maxillofacial region;

"Oral and maxillofacial surgery" is the specialty of dentistry which includes the diagnosis, surgical and adjunctive treatment of diseases, injuries, and defects involving both the functional and aesthetic aspects of the hard and soft tissues of the oral and maxillofacial region;

"Orofacial pain" is the specialty of dentistry that encompasses the diagnosis, management and treatment of pain disorders of the jaw, mouth, face and associated regions, which specialty is dedicated to the evidenced-based understanding of the underlying pathophysiology, etiology, prevention, and treatment of these disorders and improving access to interdisciplinary patient care. These disorders as they relate to orofacial pain include but are not limited to temporomandibular muscle and joint (TMJ) disorders, jaw movement disorders, neuropathic and neurovascular pain disorders, headache, and sleep disorders;

"Orthodontics and dentofacial orthopedics" is the dental specialty that includes the diagnosis, prevention, interception, and correction of malocclusion, as well as neuromuscular and skeletal abnormalities of the developing or mature orofacial structures;

"PALS" means pediatric advanced life support;

"Pediatric dentistry" is an age-defined specialty that provides both primary and comprehensive preventive and therapeutic oral health care for infants and children through adolescence, including those with special health care needs;

"Pediatric patient" means infants and children;

"Periodontics" is that specialty of dentistry which encompasses the prevention, diagnosis, and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes and the maintenance of the health, function, and aesthetics of these structures and tissues;

"Physician anesthesiologist" means a physician, medical doctor, or doctor of osteopathy who is specialized in the practice of anesthesiology;

"Prosthodontics" is the dental specialty pertaining to the diagnosis, treatment planning, rehabilitation and maintenance of the oral function, comfort, appearance and health of patients with clinical conditions associated with missing or deficient teeth and/or oral and maxillofacial tissues using biocompatible substitutes;

"Public health practice" means treatment or procedures in a public health setting which shall be designated by a rule promulgated by the board to require direct, general, or no supervision of a dental hygienist by a dentist;

"Public health setting" means hospitals, schools, correctional facilities, jails, community clinics, long-term care facilities, nursing homes, home health agencies, group homes, state institutions under the West Virginia Department of Health and Human Resources, public health facilities, homebound settings, accredited dental hygiene education programs, and any other place designated by the board by rule;

"Qualified monitor" means an individual who by virtue of credentialing and/or training is qualified to check closely and document the status of a patient undergoing anesthesia and observe utilized equipment;

"Relative analgesia/minimal sedation" means an induced, controlled state of minimally depressed consciousness, produced solely by the inhalation of a combination of nitrous oxide and oxygen or single oral premedication without the addition of nitrous oxide and oxygen in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

"Specialty" means the practice of a certain branch of dentistry;

"Subcommittee" means West Virginia Board of Dentistry Subcommittee on Anesthesia; and

"Work authorization" means a written order for dental laboratory services which has been issued by a licensed dentist.

§30-4-8a. Dental specialties.

(a) The Board of Dentistry may issue a dental specialty license authorizing a dentist to represent himself or herself to the public as a specialist, and to practice as a specialist, upon proper application and fee for each specialty and as provided pursuant to the provisions of this article.

(b) A dentist may not represent himself or herself to the public as a specialist, nor practice as a specialist, unless the individual:

(1) Has successfully completed a board-recognized dental specialty/advanced education program accredited by the Commission on Dental Accreditation;

(2) Holds a general dental license in this state; and

(3) Has completed any additional requirements set forth in state law or rules and has been issued a dental specialty license by the board.

(c) Specialties recognized by the board and the educational requirements for obtaining a specialty license shall include:

(1) Dental public health. — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of one full-time academic year of at least eight calendar months, each of graduate or post-graduate education, internship, or residency.

(2) Endodontics. — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time academic years of at least eight calendar months, each of graduate or post-graduate education, internship, or residency.

(3) Oral and maxillofacial surgery. — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of three full-time academic years of at least eight calendar months, each of graduate or post-graduate education, internship, or residency.

(4) Oral and maxillofacial radiology. — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time years of at least eight calendar months each, of graduate or post-graduate education, internship, or residency.

(5) Orthodontics and dentofacial orthopedics. — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time academic years of at least eight calendar months, each of graduate or post-graduate education, internship, or residency. In addition, any applicant for an orthodontic and dentofacial orthopedic specialty certificate shall submit verification of successful completion of the American Board of Orthodontics written examination.

(6) Pediatric dentistry. — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time academic years of at least eight calendar months, each of graduate or post-graduate education, internship, or residency.

(7) Periodontics. — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time academic years of at least eight calendar months, each of graduate or post-graduate education, internship, or residency.

(8) Prosthodontics. — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time academic years of at least eight calendar months, each of graduate or post-graduate education, internship, or residency.

(9) Oral pathology. — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time academic years of at least eight calendar months, each of graduate or post-graduate education, internship, or residency.

(10) Dental anesthesiology. — In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time academic years, accredited by the Commission on Dental Accreditation of the American Dental Association, through (1) a graduate or post-graduation education;

(2) an internship; or (3) a residency. Each full-time academic year must have consisted of at least eight calendar months.

(11) Oral medicine. – In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time academic years, accredited by the Commission on Dental Accreditation of the American Dental Association, through (1) a graduate or post-graduation education; (2) an internship; or (3) a residency. Each full-time academic year must have consisted of at least eight calendar months.

(12) Orofacial pain. – In order to qualify for this specialty, the licensee shall have successfully completed a minimum of two full-time academic years, accredited by the Commission on Dental Accreditation of the American Dental Association, through (1) a graduate or post-graduation education; (2) an internship; or (3) a residency. Each full-time academic year must have consisted of at least eight calendar months.

(d) The licensee shall limit his or her practice of dentistry only to the specialty or specialties in which he or she is licensed and in which he or she holds himself or herself out to the public as a specialist.

(e) If a licensee lists his or her services in a telephone directory or on the internet, then the licensee shall only list those specialties in which he or she practices in his or her office or offices.

(f) The limitation of practice is removed for purposes of volunteering services in organized health clinics and at charitable events.

§30-4-25. Declared public health emergencies.

During a declared public health emergency, dentists and dental hygienists with a local anesthesia certificate, may administer vaccines, perform FDA-authorized diagnostic tests to screen patients for infectious diseases, triage medical patients, and perform other ancillary medical procedures and activities as requested by medical personnel.



CHAPTER 237

(H. B. 3203 - By Delegates Steele, Hornby, Young and Lucas)

[Passed March 11, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §30-40-3, §30-40-4, §30-40-5, §30-40-9, §30-40-11, §30-40-12, §30-40-13, §30-40-14, §30-40-15, §30-40-16, §30-40-17, §30-40-18, §30-40-19, §30-40-20, §30-40-21, §30-40-22, §30-40-25, and §30-40-26 of the Code of West Virginia, 1931, as amended; and to repeal §30-40-27 of said code, all relating to the West Virginia Real Estate License Act; amending definitions; modifying the applicability of the article; requiring certain fees to be deposited into the Treasury of the state daily; eliminating requirements for certain information to be included on applications for licensure; modifying qualifications for obtaining broker's license; providing restrictions on the entities that may be issued a salesperson's license; clarifying and amending requirements for prelicense education; modifying requirements for licensing based on licensure in another jurisdiction; modifying continuing education requirements; eliminating certain requirements for persons holding a broker's license; modifying requirements for license certificates issued by the Real Estate Commission; requiring a licensed broker to reconcile trust accounts; eliminating a prohibition on financial institutions that maintain trust accounts from requiring a certain minimum balance; clarifying language related to when commission may refuse a license or revoke, suspend, or impose any other sanction against a licensee; modifying the procedure for commission to administer complaints; modifying procedure for judicial review of decisions or final orders of the commission; clarifying language regarding criminal penalties; clarifying language related to suits for collection of compensation; requiring licensees to disclose in writing whether the licensee

represents the seller, the buyer, the seller and the buyer, the landlord, the tenant, or the landlord and the tenant; and repealing an outdated section of code governing the duration of existing licenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30-40-3. License required.

It is unlawful for any person to engage in directly or indirectly, or to advertise or hold himself or herself out as engaging in or carrying on the business or act in the capacity of a real estate broker, associate broker, or salesperson within this state without first obtaining a license as provided for in this article. Prior to practicing real estate brokerage in this state, a license shall be obtained from the commission even if the person or entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker in this state.

§30-40-4. Definitions.

Unless the context used clearly requires a different meaning, as used in this article:

"Applicant" means any person who is making application to the commission for a license.

"Associate broker" means any person who qualifies for a broker's license, but who is employed or engaged by a licensed broker to engage in any activity regulated by this article, in the name of and under the direct supervision of the licensed broker.

"Broker" means any person who for compensation or with the intention or expectation of receiving or collecting compensation:

(1) Lists, sells, purchases, exchanges, options, rents, manages, leases, or auctions any interest in real estate; or

(2) Directs or assists in the procuring of a prospect calculated or intended to result in a real estate transaction; or

(3) Advertises or holds himself or herself out as engaged in, negotiates, or attempts to negotiate, or offers to engage in any activity enumerated in subdivision (1) of this subsection.

"Cancelled" means a license that was not renewed by December 31 of the year in which license expired;

"Commission" means the West Virginia Real Estate Commission as established §30-40-6 of this code.

"Compensation" means fee, commission, salary, or other valuable consideration, in the form of money or otherwise.

"Designated broker" means a person holding a broker's license who has been appointed by a partnership, association, corporation, or other form of business organization engaged in the real estate brokerage business, to be responsible for the acts of the business and to whom the partners, members, or board of directors have delegated full authority to conduct the real estate brokerage activities of the business organization.

"Distance education" means courses of asynchronous instruction in which instruction takes place through media where the teacher and student are separated by time.

"Entity" means a business, company, corporation, limited liability company, association, or partnership.

"Expired" means a license that was not renewed by July 1.

"Inactive" means a licensee who is not authorized to conduct any real estate business and is not required to comply with any continuing education requirements.

"License" means a license to act as a broker, associate broker, or salesperson.

"Licensee" means a person holding a license.

"Member" means a commissioner of the Real Estate Commission.

"Principal" means a person or entity that authorizes a licensee to act on his, her, or its behalf.

"Real estate" means any interest or estate in land, and anything permanently affixed to land.

"Salesperson" means a person employed or engaged by or on behalf of a broker to do or deal in any activity included in this article, in the name of and under the direct supervision of a broker, other than an associate broker: *Provided*, That for the purposes of receiving compensation, a salesperson may designate an entity to receive any compensation payable to the salesperson, including, but not limited to, a limited liability corporation or an S-corporation.

"Team" means any group of two or more associate brokers and/or salespersons, and other non-licensed professionals, affiliated with the same broker or company acting as one agent representative for the principal.

§30-40-5. Scope of practice; exceptions.

(a) The practice of real estate brokerage includes acting in the capacity of a broker, associate broker, or salesperson as defined in §30-40-4 of this code.

(b) The practice of real estate brokerage does not include the activities normally performed by an appraiser, mortgage company, lawyer, engineer, contractor, surveyor, home inspector, or other professional who may perform an ancillary service in conjunction with a real estate transaction.

(c) The provisions of this article do not apply to:

(1) Any person acting on his or her own behalf as owner or lessor of real estate.

(2) The regular employees of an owner of real estate, who perform any acts regulated by this article, where the acts are incidental to the management of the real estate: *Provided*, That the employee does not receive additional compensation for the act and does not perform the act as a vocation.

(3) Attorneys-at-law: *Provided*, That attorneys-at-law shall be required to submit to the written examination required under §30-40-12 of this code in order to qualify for a broker's license: *Provided, however*, That an attorney-at-law who is licensed as a real estate broker prior to July 1, 1980, is exempt from the written examination required under §30-40-12 of this code.

(4) Any person holding, in good faith, a valid power of attorney from the owner or lessor of the real estate.

(5) Any person acting as a receiver, trustee, administrator, executor, guardian, conservator, or under the order of any court or under the authority of a deed of trust or will.

(6) A public officer while performing his or her official duties.

(7) Any person acquiring or disposing of any interest in timber or minerals, or acquiring or disposing of properties for easements and rights of way.

(8) Any person employed exclusively to act as the management or rental agent for the real estate of one person or entity.

(9) Any person properly licensed pursuant to the provisions of §19-2C-1 *et seq.* of this code when conducting an auction, any portion of which contains any leasehold or estate in real estate, only when the person so licensed is retained to conduct an auction by:

(A) A receiver or trustee in bankruptcy;

(B) A fiduciary acting under the authority of a deed of trust or will; or

(C) A fiduciary of a decedent's estate.

(10) Any person employed by a broker in a noncommissioned secretarial or clerical capacity who may in the normal course of employment, be required to:

(A) Disseminate brokerage preprinted and predetermined real estate sales and rental information;

(B) Accept and process rental reservations or bookings for a period not to exceed 30 consecutive days in a manner and procedure predetermined by the broker;

(C) Collect predetermined rental fees for the rentals which are to be promptly tendered to the broker;

(D) Make appointments on behalf of the broker or licensed salesperson with buyers and sellers of real estate and potential buyers and sellers of real estate; or

(E) Any combination thereof.

§30-40-9. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the commission shall be deposited into the treasury of the state, daily, into a special revenue fund known as the "real estate license fund" which is continued.

(b) Except as may be provided in §30-40-10 of this code, the commission shall retain the amounts in the special revenue fund from year to year and no funds collected under this article may be used by the commission for any purpose other than the administration and enforcement of this article. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(c) Any amounts received as administrative fines imposed pursuant to this article shall be deposited into the General Revenue Fund of the State Treasury.

§30-40-11. Application for license.

The commission shall only issue an original license to an applicant if he or she:

(a) Submits an application, in writing, on a form prescribed by the commission which shall contain, but is not limited to:

(1) The applicant's Social Security number;

(2) A clear record indicating all jurisdictions where the applicant holds or has held any professional license;

(3) A clear record indicating if the applicant has been convicted of any criminal offense or if there is any criminal charge pending against the applicant, or a member or officer of the brokerage business, at the time of application;

(b) Is at least 18 years of age;

(c) Is a high school graduate or the holder of an equivalency diploma;

(d) Is trustworthy, of good moral character, and competent to transact the business of a broker, associate broker, or salesperson;

(e) Has paid the appropriate fee, if any, which shall accompany all applications for original license or renewal;

(f) Has submitted to a state and national criminal history record check, as set forth in this subsection: *Provided*, That an applicant for a license who is an attorney at law may submit a letter of good standing from the West Virginia State Bar in lieu of submitting to a state and national criminal history record check;

(1) This requirement is found not to be against public policy.

(2) The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(3) The applicant shall meet all requirements necessary to complete the state and national criminal history record check, including:

(A) Submitting fingerprints for the purposes set forth in this subsection; and

(B) Authorizing the commission, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

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

(A) To the individual who is the subject of the criminal history record check;

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

(C) Pursuant to a court order.

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

(6) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(7) Before implementing the provisions of this subsection, the commission shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code. The rules shall set forth the requirements and procedures for the criminal history record check and must be consistent with standards established by the Federal Bureau of Investigation and the National Crime Prevention and Privacy Compact as authorized by 42 U. S. C. A. §14611, *et seq.*

§30-40-12. Qualifications for broker's license.

(a) An applicant for a broker's license shall:

(1) Submit evidence satisfactory to the commission of either:
(i) Real estate experience as a licensed real estate salesperson during the two years prior to the date of application showing the applicant's representation of a buyer or seller in a minimum of 10

closed transactions; if the applicant is engaged solely in the leasing or renting of real estate, representation of the landlord or tenant in a minimum of 10 closed transactions of at least one year in duration; or if the applicant is engaged solely in the management of a real estate brokerage company, active involvement in a minimum of 20 closed transactions; or (ii) regardless of the number of years as a licensed salesperson: a minimum of 20 closed transactions; if the applicant is engaged solely in the leasing or renting of real estate, representation of the landlord or tenant in a minimum of 20 closed transactions of at least one year duration; or if the applicant is engaged solely in the management of a real estate brokerage company, active involvement in a minimum of 30 closed transactions. For the purposes of this section, a "closed transaction" means a transaction that resulted in the real estate being conveyed from seller to buyer in which the applicant represented the seller, buyer, or both, or a transaction that resulted in the consummation of a lease of no less than one year in duration in which the applicant represented either the landlord or tenant of the real estate;

(2) Submit satisfactory evidence of having completed the required education course as provided for in §30-40-14 of this code; and

(3) Successfully pass the examination or examinations provided by the commission.

(b) No broker's license shall be issued in the name of an entity except through one of its members or officers.

(c) No broker's license may be issued in the name of an entity unless each member or officer who will engage in the real estate business, obtains a license as a real estate salesperson or associate broker.

§30-40-13. Qualifications for salesperson's license.

(a) An applicant for a salesperson's license shall:

(1) Submit satisfactory evidence of having completed the required education course as provided in §30-40-14 of this code; and

(2) Successfully pass the examination or examinations provided by the commission.

(b) No salesperson's license may be issued in the name of an entity except through one of its members or officers.

(c) No salesperson's license may be issued in the name of an entity unless each member or officer, who will engage in the real estate business, obtains a license as a real estate salesperson or associate broker.

§30-40-14. Prelicense education.

(a) Applicants for a broker's license shall provide evidence satisfactory to the commission that he or she has completed at least 180 clock-hours, equivalent to 12 college semester credit hours, in a course or courses approved by the commission: *Provided*, That an applicant for a broker's license who holds a salesperson's license in this state shall be required to provide evidence that he or she has completed an additional 90 clock-hours, equivalent to six college semester hours, in a course or courses approved by the commission.

(b) Applicants for a salesperson's license shall provide evidence satisfactory to the commission that he or she has completed 90 clock-hours, equivalent to six college semester credit hours, in a course or courses approved by the commission.

(c) Any course required by subsection (a) or (b) of this section shall have been completed during the three-year period preceding the date of application in order to be accepted by the commission.

§30-40-15. Licensing based on licensure in another jurisdiction.

(a) The commission may recognize a valid license issued by another jurisdiction as satisfactorily qualifying an applicant who is licensed to practice real estate brokerage in another jurisdiction to obtain a comparable license in this state: *Provided*, That the applicant has qualified for license in another jurisdiction by examination and by complying with all the provisions for obtaining

a license in that jurisdiction and the jurisdiction affords the same privilege to licensees of this state.

(b) In order to obtain a license in this state, an applicant under this section shall:

(1) Submit the application on a form prescribed by the commission and fee, if any;

(2) Pass the West Virginia state law portion of the licensure examination approved by the commission;

(3) Submit a certification of licensure showing that the applicant possesses an active license to practice real estate brokerage in another jurisdiction;

(4) Submit record(s) showing all disciplinary actions imposed against the applicant by any jurisdiction in which the applicant holds or held a license, if any; and

(5) For non-resident applicants, submit an irrevocable written designation that appoints the executive director of the commission to act as the non-resident licensee's agent, upon whom all judicial and other process or legal notices directed to the licensee may be served. The designation shall stipulate and agree that service upon the executive director is equivalent to personal service upon the licensee. A copy of the designation of appointment, certified by the seal of the commission, may be admitted into evidence with the same force and affect as the original. The executive director shall mail a copy of any process or legal notice immediately upon receipt, by certified mail, to the last known business address of the licensee. No judgment by default may be taken in any action or proceeding until after 30 days of mailing and then only upon certification by the executive director that a copy of the judicial, other process or legal notice was mailed as required.

§30-40-16. Continuing professional education.

(a) Every licensee shall complete seven hours of continuing professional education for each fiscal year, with each hour equaling 50 minutes of instruction. For brokers and associate brokers, three

of the required seven hours shall be from the broker-level education curriculum approved by the commission.

(b) Upon application for the renewal of a real estate license on active status, each licensee shall furnish satisfactory evidence, as established by the commission, that he or she has completed seven hours of approved continuing professional education during the term of the previous license.

(c) When a licensee in an inactive status makes application to revert to an active status, he or she shall furnish satisfactory evidence to the commission that he or she has completed the approved continuing professional education that would have been required for active status at the time the license was renewed.

(d) Approval from the commission shall be obtained by each provider and instructor and for any course prior to any advertising or offering of the course.

(e) Real estate-related continuing education courses provided by or approved by the real estate appraiser licensing and certification board, the Division of Highways, the West Virginia State Bar, or other agency of this state shall be recognized as approved by the commission.

(f) If approved in advance by the commission, distance education courses may be used to satisfy the continuing education requirement.

(g) Any licensee holding a license on July 1, 1969, and continuously thereafter, shall be exempt from the continuing professional education requirement.

§30-40-17. Place of business; branch offices; display of certificates; custody of license certificates; change of address; change of employer by a salesperson or associate broker; license certificates; term of license.

(a) Every person holding a broker's license under the provisions of this article shall:

(1) Have and maintain a definite place of business within this state, which shall be a room or rooms used for the transaction of real estate business and any allied business. The definite place of business shall be designated in the license certificate issued by the commission and the broker may not transact business at any other location, unless such other location is properly licensed by the commission as a branch office;

(2) Conspicuously display his or her branch office license in each branch office;

(3) Make application to the commission before changing the address of any office or within 10 days after any change;

(4) Maintain in his or her custody and control the license of each associate broker and salesperson affiliated with him or her; and

(5) Promptly return the license of any associate broker or salesperson whose affiliation with the broker is terminated.

(b) Every person holding an associate broker's or salesperson's license under the provisions of this article shall:

(1) Conduct real estate brokerage activities only under the direct supervision and control of his or her affiliated broker, which shall be designated in the license certificate; and

(2) Promptly make application to the commission of any change of employing broker: *Provided*, That it shall be unlawful to perform any act contained in this article, either directly or indirectly, after affiliation has been terminated until the associate broker or salesperson has made application to the commission for a change of affiliated broker and the application is approved.

(c) The commission shall issue a license certificate which shall:

(1) Be in such form and size as shall be prescribed by the commission;

(2) Display the seal of the commission and shall contain such other information as the commission may prescribe: *Provided*, That a salesperson's and an associate broker's license shall show the name of the broker by whom he or she is affiliated;

(3) If an active licensee, be mailed or delivered to the broker's main office address;

(4) If an inactive licensee, be held in the commission office; and

(5) Be valid for a period that coincides with the fiscal year beginning on July 1 and ending on June 30.

§30-40-18. Trust fund accounts.

(a) Every person licensed as a broker under the provisions of this article who does not immediately deliver all funds received, in relation to a real estate transaction, to his or her principal or to a neutral escrow depository shall maintain and reconcile one or more trust fund accounts in a recognized financial institution and shall place all funds therein: *Provided*, That nothing contained herein shall require a broker to maintain a trust fund account if the broker does not hold any money in trust for another party.

(b) Funds that shall be deposited into a trust fund account include, but are not limited to, earnest money deposits, security deposits, rental receipts, auction proceeds, and money held in escrow at closing.

(c) Each trust fund account shall be established at a financial institution which is insured against loss by an agency of the federal government and the amount deposited therein cannot exceed the amount that is insured against loss.

(d) Each trust fund account shall provide for the withdrawal of funds without notice.

(e) No trust fund account may earn interest or any other form of income, unless specifically authorized by commission rule.

(f) The broker may not commingle his or her own funds with trust funds and the account may not be pledged as collateral for a loan or otherwise utilized by the broker in a manner that would violate his or her fiduciary obligations in relation to the trust funds: *Provided*, That nothing contained herein prevents the broker from depositing a maximum of \$100 of his or her own money in the trust fund account to maintain a minimum balance in the account.

(g) The broker shall be the designated trustee of the account and shall maintain complete authority and control over all aspects of each trust fund account, including signature authority: *Provided*, That only one other member or officer of a corporation, association, or partnership, who is licensed under the provisions of this article, may be authorized to disburse funds from the account: *Provided, however*, That if disbursements from a trust fund account require two signatures, one additional member or officer may be a signatory as provided in this section.

(h) The broker shall, at a minimum, maintain records of all funds deposited into the trust fund account, which shall clearly indicate the date and from whom the money was received, date deposited, date of withdrawal, to whom the money belongs, for whose account the money was received, and other pertinent information concerning the transaction. All records shall be open to inspection by the commission or its duly authorized representative at all times during regular business hours at the broker's place of business.

(i) The broker shall cause the financial institution wherein a trust fund account is maintained to execute a statement, prepared by the commission, which shall include, but is not limited to:

(1) Exact title of the account as registered by the financial institution;

(2) The account number of the trust fund account;

(3) Identification of all persons authorized to make withdrawals from the account;

(4) Name and address of the financial institution;

(5) Title of the person executing the statement on behalf of the financial institution;

(6) Date the statement was executed; and

(7) Certification that the financial institution will notify the Real Estate Commission if any checks drawn against the account are returned for insufficient funds and that the financial institution does not require a minimum balance in excess of the amount authorized in subsection (f) of this section.

(j) The broker shall execute a statement authorizing the commission, or its duly authorized representative, to make periodic inspections of the trust fund account and to obtain copies of records from any financial institution wherein a trust fund account is maintained. A copy of any authorization shall be accepted by any financial institution with the same force and effect as the original.

(k) The broker shall notify the commission, within 10 days of the establishment of or any change to a trust fund account.

§30-40-19. Refusal, suspension, or revocation of a license.

(a) The commission may refuse a license for reasonable cause or revoke, suspend, or impose any other sanction against a licensee if the licensee:

(1) Obtains, renews, or attempts to obtain or renew a license, for himself, herself, or another, through the submission of any application or other writing that contains false, fraudulent, or misleading information;

(2) Makes any substantial misrepresentation;

(3) Makes any false promises or representations of a character likely to influence, persuade, or induce a person involved in a real estate transaction;

(4) Pursues a course of misrepresentation or makes false promises or representations through agents or any medium of advertising or otherwise;

- (5) Uses misleading or false advertising;
- (6) Uses any trade name or insignia of membership in any organization in which the licensee is not a member;
- (7) Acts for more than one party in a transaction without the knowledge and written consent of all parties for whom he or she acts;
- (8) Fails, within a reasonable time, to account for or to remit moneys or other assets coming into his or her possession, which belong to others;
- (9) Commingles moneys belonging to others with his or her own funds;
- (10) Advertises or displays a "for sale", "for rent", or other such sign on any property without an agency relationship being established or without the owner's knowledge and written consent;
- (11) Advertises any property on terms other than those authorized by the owner;
- (12) Fails to disclose, on the notice of agency relationship form promulgated by the commission, whether the licensee represents the seller, buyer, or both;
- (13) Fails to voluntarily furnish copies of the notice of agency relationship, listing contract, sale contract, lease contract, or any other contract to each party executing the same;
- (14) Pays or receives any rebate, profit, compensation, commission, or other valuable consideration, resulting from a real estate transaction, to or from any person other than the licensee's principal: *Provided*, That this subsection may not be construed to prevent the sharing of compensation or other valuable consideration between licensed brokers;
- (15) Induces any person to a contract to break the contract for the purpose of substituting a new contract with a third party;

(16) Accepts compensation as a salesperson or associate broker for any act specified in this article from any person other than his or her broker;

(17) Pays compensation to any person for acts or services performed either in violation of this article or the real estate licensure laws of any other jurisdiction;

(18) Pays compensation to any person knowing that they will pay a portion or all of that which is received, in a manner that would constitute a violation of this article if it were paid directly by a licensee of this state;

(19) Violates any provision of this article, any rule, or any order or final decision issued by the commission;

(20) Procures an attorney for any client or customer, or solicits legal business for any attorney-at-law;

(21) Engages in the unlawful or unauthorized practice of law as defined by the Supreme Court of Appeals of West Virginia;

(22) Commits or is a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or other device whereby any other person relies upon the word, representation, or conduct of the licensee;

(23) Continues in the capacity of, or accepts the services of, any broker, associate broker, or salesperson who is not properly licensed;

(24) Fails to disclose any information within his or her knowledge or to produce any document, book, or record in his or her possession for inspection of and copying by the commission or its duly authorized representatives;

(25) Accepts payment other than cash or its equivalent as earnest money or other deposit unless this fact is disclosed in the contract to which the deposit relates;

(26) Accepts, takes, or charges any undisclosed compensation on expenditures made by or on behalf of the licensee's principal;

(27) Discriminates against any person involved in a real estate transaction which is in violation of any federal or state anti-discrimination law, including any fair housing law;

(28) Fails to preserve for five years following its consummation, records relating to any real estate transaction;

(29) Fails to maintain accurate records on the broker's trust fund account;

(30) If a broker, fails to supervise all associate brokers and salespersons affiliated with him or her;

(31) Breaches a fiduciary duty owed by a licensee to his or her principal in a real estate transaction;

(32) Directs any party to a real estate transaction in which the licensee is involved, to any lending institution for financing or to any affiliated business with the expectation of receiving a financial incentive, rebate, or other compensation, without first obtaining from his or her principal the signed acknowledgment of and consent to the receipt of the financial incentive, rebate, or other compensation: *Provided*, That this subsection may not be construed to prevent the sharing of compensation or other valuable consideration between licensed brokers;

(33) Represents to any lending institution, or other interested party either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon;

(34) Fails to disclose to an owner the licensee's true position if he or she directly or indirectly through a third party, purchases for himself or herself or acquires or intends to acquire any interest in or any option to purchase the property;

(35) Lends a broker's license to any person, including a salesperson, or permits a salesperson to operate as a broker;

(36) Has been convicted in a court of competent jurisdiction in this or any other jurisdiction of forgery, embezzlement, obtaining money under false pretense, bribery, larceny, extortion, conspiracy to defraud, any other similar offense, a crime involving moral turpitude, or a felony;

(37) Engages in any act or conduct which constitutes or demonstrates bad faith, incompetency, untrustworthiness, or dishonest, fraudulent, or improper dealing;

(38) Induces any person to alter, modify, or change another licensee's fee or commission for brokerage services, without that licensee's prior written consent;

(39) Negotiates a real estate transaction directly with any person that is represented exclusively by another broker, unless the conduct is specifically authorized by the other broker;

(40) Obtains, negotiates, or attempts to obtain or negotiate a contract whereby the broker is entitled to a commission only to the extent that the sales price exceeds a given amount, commonly referred to as a net listing;

(41) Fails or refuses, on demand, to furnish copies of a document to a person whose signature is affixed to the document;

(42) In the case of an associate broker or salesperson, represents or attempts to represent a broker other than his or her employing broker;

(43) Fails to reduce a bona fide offer to writing;

(44) Guarantees, or authorizes or permits another licensee to guarantee, future profits which may result from a real estate transaction;

(45) Is disciplined by another jurisdiction if at least one of the grounds for that discipline is the same as or equivalent to one of the grounds for discipline in this article; or

(46) Engages in any other act or omission in violation of professional conduct requirements of licensees established by legislative rule of the commission.

(b) The provisions of this section shall be liberally construed in order to carry out the objectives and purposes of this article.

(c) As used in this section:

(1) The words "convicted in a court of competent jurisdiction" mean a plea of guilty or nolo contendere entered by a person or a verdict of guilt returned against a person at the conclusion of a trial;

(2) A certified copy of a conviction order entered in a court is sufficient evidence to demonstrate a person has been convicted in a court of competent jurisdiction.

(d) Every person licensed by the commission has an affirmative duty to report, in a timely manner, any known or observed violation of this article or the rules, orders, or final decisions of the commission.

(e) The revocation of a broker's license shall automatically suspend the license of every associate broker and salesperson affiliated with the broker: *Provided*, That the commission shall issue a replacement license for any licensee so affected to a new broker, without charge, if a proper application is submitted to the commission during the same license term.

§30-40-20. Complaints; investigation.

(a) Upon the initiation of a complaint by the commission or the filing of a complaint by another person, the commission may ascertain the facts and if warranted hold a hearing for the suspension or revocation of a license, or the imposition of sanctions against a licensee: *Provided*, That no disciplinary action may be brought against a licensee upon any complaint that is filed more than two years after the acts or omissions alleged in the complaint or, where the licensee is alleged to have engaged in fraud, deceit, or misrepresentation, more than two years after the date at which

the complainant discovered, or through reasonable diligence should have discovered, the alleged unprofessional conduct. Time limits for the filing of a complaint shall be tolled during any period in which material evidence necessary for the commission's evaluation or use is unavailable to the commission due to an ongoing criminal investigation or prosecution.

(b) All complaints shall be submitted in writing on a form prescribed by the commission, and shall fully describe the acts or omissions constituting the alleged violation(s) of this article or rules promulgated thereunder.

(c) Upon initiation or receipt of the complaint, the commission shall provide a copy of the complaint to the licensee for his or her response to the allegations contained in the complaint. The accused party shall file an answer within 20 days of the date of service. Failure of the licensee to file a timely response may be considered an admission of the allegations in the complaint: *Provided*, That nothing contained herein may prohibit the accused party from obtaining an extension of time to file a response, if the commission, its executive director, or other authorized representative permits the extension.

(d) The commission may cause an investigation to be made into the facts and circumstances giving rise to the complaint and any person licensed by the commission has an affirmative duty to assist the commission, or its authorized representative, in the conduct of its investigation.

(e) After receiving the licensee's response and reviewing any information obtained through investigation, the commission shall determine if probable cause exists that the licensee has violated any provision of this article or the rules.

(f) If a determination that probable cause exists for disciplinary action, the commission may hold a hearing in compliance with §30-40-21 of this code or may dispose of the matter informally through a consent agreement or otherwise.

§30-40-21. Hearings; judicial review; cost of proceedings.

(a) Hearings shall be conducted in accordance with the provisions of §29A-5-1 *et seq.* of this code and the commission's rules.

(b) Hearings shall be held at a time and place determined by the commission, but in no event less than 30 days after the notice of hearing is given.

(c) Any member has the authority to administer oaths and to examine any person under oath.

(d) If, after hearing, the commission determines the licensee has violated any provision of this article, or the commission's rules, a formal decision shall be prepared which contains findings of fact, conclusions of law, and specifically lists the disciplinary actions imposed.

(e) The commission may elect to have an administrative law judge or hearing examiner conduct the hearing. If the commission makes this election, the administrative law judge or hearing examiner, at the conclusion of a hearing, shall prepare a proposed order which shall contain findings of fact and conclusions of law. The commission may request that disciplinary actions imposed be a part of the proposed order, or the commission may reserve this obligation for its consideration. The commission may accept, reject, or modify the decision of the administrative law judge or hearing examiner.

(f) Any person adversely affected by any decision or final order made by the commission, after a hearing, is entitled to judicial review pursuant to the provisions of §29A-5-4 of this code.

(g) In addition to any other sanction imposed, the commission may require a licensee to pay the costs of the proceeding.

§30-40-22. Criminal penalties for violations.

(a) In addition to the sanctions imposed by the commission pursuant to this article, any person violating a provision of this

article or the commission's rules is guilty of a misdemeanor. Any person convicted of a first violation shall be fined not less than \$1,000 nor more than \$2,000, or confined in jail not more than 90 days, or both fined and confined;

(b) Any person convicted of a second or subsequent violation shall be fined not less than \$2,000 nor more than \$5,000, or confined in jail for a term not to exceed one year, or both fined and confined;

(c) Any corporation, association, or partnership convicted of a first violation of this article or the commission's rules, shall be fined not less than \$2,000 nor more than \$5,000;

(d) Any corporation, association, or partnership convicted of a second or subsequent violation, shall be fined not less than \$5,000 nor more than \$10,000;

(e) Any officer, member, employee, or agent of a corporation, association, or partnership, shall be subject to the penalties herein prescribed for individuals;

(f) Each day a violation of this article continues constitutes a separate offense;

(g) In addition to the penalties herein provided, if any person receives compensation for acts or services performed in violation of this article, he or she shall also be subject to a penalty of not less than the value of the compensation received nor more than three times the value of the compensation received, as may be determined by a court of competent jurisdiction. Any penalty may be recovered by a person aggrieved as a result of a violation of this article;

(h) The penalties provided in this section do not apply to a violation of the duties or obligations of a financial institution under the certification required by §30-40-18(j)(7) of this code by a financial institution providing trust fund account services to a broker.

§30-40-25. Collection of compensation.

No person may bring or maintain any action in any court of this state for the recovery of compensation for the performance of any act or service for which a broker's license is required, without alleging and proving that he or she was the holder of a valid broker's license at all times during the performance or rendering of any act or service: *Provided*, That an associate broker or salesperson may institute suit in his or her own name for the recovery of compensation from his or her affiliated broker for acts or services performed while affiliated with the broker.

§30-40-26. Duties of licensees.

Every broker, associate broker, and salesperson owes certain inherent duties to the consumer which are required by virtue of the commission granting a license under this article. The duties include, but are not limited to:

(a) At the time of securing any contract whereby the broker is obligated to represent a principal to a real estate transaction, every licensee shall supply a true legible copy of the contract to each person signing the contract.

(b) Any contract in which a broker is obligated to represent a principal to a real estate transaction shall contain a definite expiration date, and no provision may be included in any contract whereby the principal is required to notify the broker of his or her intention to cancel the contract after the definite expiration date.

(c) No provision may be inserted in any contract for representation that would obligate the person signing the contract to pay a fee, commission, or other valuable consideration to the broker, after the contract's expiration date, if the person subsequently enters into a contract for representation with a different broker.

(d) Every licensee shall disclose in writing, on the notice of agency relationship form promulgated by the commission, whether the licensee represents the seller, the buyer, the seller and the buyer, the landlord, the tenant, or the landlord and the tenant. The

disclosure shall be made prior to any person signing any contract for representation by a licensee or a contract for the sale or purchase of real estate.

(e) Every licensee shall promptly deliver to his or her principal, every written offer received.

(f) Every licensee shall make certain that all the terms and conditions of a real estate transaction are contained in any contract prepared by the licensee.

(g) At the time of securing the signature of any party to a contract, the licensee shall deliver a true copy of the contract to the person whose signature was obtained.

(h) Upon the final acceptance or ratification of any contract, the licensee shall promptly deliver a true copy to each party that has signed the contract.

§30-40-27. Duration of existing licenses.

[Repealed.]

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CHAPTER 238

(Com. Sub. for H. B. 3261 - By Delegate Young)

[Passed March 11, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §30-30-16 of the Code of West Virginia, 1931, as amended; and to further amend said code by adding thereto a new section, designated §49-2-110a all relating to social work and child welfare generally; directing that provisional social workers who are laid off or ill during the four year provisional licensure period may request the West Virginia Board of Social Work allow a reasonable interruption in service and allow additional time to complete the licensure requirements; declaring a crisis exists in certain parts of the state due to an absence of child protective services, youth services workers, youth case workers and support staff; defining affected geographical areas; establishing a three year pilot program in two judicial circuits; designating the 14th and 23rd judicial circuits as the pilot program judicial circuits; authorizing the hiring of persons not on the

Be it enacted by the Legislature of West Virginia:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 30. SOCIAL WORKERS.

§30-30-16. PROVISIONAL LICENSE TO PRACTICE AS A SOCIAL WORKER.

(a) To be eligible for a provisional license to practice as a social worker, the applicant must:

- (1) Submit an application to the board;

(2) Be at least 18 years of age;

(3) Have a baccalaureate degree in a related field, as provided by legislative rule;

(4) Have obtained regular supervised employment, or the reasonable promise of regular supervised employment, contingent upon receiving a provisional license, in a critical social work workforce shortage position, area, or setting requiring a social work license: *Provided*, That such employment shall not be as an independent practitioner, contracted employee, sole proprietor, consultant, or other nonregular employment;

(5) Have satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant;

(6) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in an acknowledged substance abuse treatment and/or recovery program, may be considered;

(7) Not have been convicted of a felony in any jurisdiction within five years preceding the date of application for license, which conviction remains unreversed;

(8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of social work, which conviction remains unreversed; and

(9) Meet any other requirements established by the board.

(b) The board shall promulgate emergency rules, in accordance with §29A-3-15 of this code, to implement the provisions of subsection (a) of this section.

(c) A provisionally licensed social worker may become a licensed social worker by completing the following:

(1) Be continuously employed for four years as a social worker and supervised: *Provided*, That should an individual lose his or her employment due to a reduction in force, or be unable to work due to medical reasons, the individual may request that the Board allow for a reasonable interruption in continuous employment and provide additional time for the individual to complete the requirements of the provisional license. The board shall promulgate by legislative rule the supervision requirements;

(2) Complete 12 credit hours of core social work study from a program accredited by the council on social work education, as defined by legislative rule, within the four-year provisional license period;

(3) Complete continuing education as required by legislative rule; and

(4) Pass an examination approved by the board.

(d) On or before July 1, 2020, the Legislative Auditor shall cause to be performed a performance audit of the provisional license to practice as a social worker application process and the application process by which a provisional licensee may become a licensed social worker.

(e) Any employee of the Department of Health and Human Resources with a provisional license as of the effective date of this section who opted to take the department-provided courses previously allowed has until June 30, 2022, to convert his or her license to a social work license or provisional license under this section. If the individual cannot or desires not to complete this process, he or she shall be eligible for registration as provided in §30-30-30 of this code.

CHAPTER 49. CHILD WELFARE.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-110a Bureau of Social Service authority to hire and employ workers who are not social workers in geographical areas of critical shortage.

(a) The Legislature hereby finds that there is a crisis in West Virginia in certain geographical regions of the state, that is caused by an absence of people employed by the Department of Health and Human Resources as child protective services workers, youth case workers, and support staff for these positions.

(b) Notwithstanding any other provisions of this code to the contrary, the Bureau of Social Services, pursuant to the provisions of this section, may establish a pilot program to employ persons who do not hold a social worker's license and persons who are not on the social work register to work for the bureau as child protective services workers, youth case workers and support staff, in geographical areas of critical shortage of this state.

(c) For purposes of this pilot program and this section, "geographical areas of critical shortage" means the counties comprising the 14th judicial circuit and the 23rd judicial circuit as of the effective date of the amendments to the section enacted during the 2023 regular session of the Legislature.

(d) Workers hired by the bureau under this section to work in geographical areas of critical shortage may be employed by the bureau and work in said geographical areas as child protective services workers, youth service workers, case managers, clerical staff and in other related positions for the bureau. Wherever possible, workers hired pursuant to this section shall be supervised by a licensed social worker.

(e) The provisions of this section shall operate independently of, and in addition to, any other provisions of law or policy that allow persons to be employed in these jobs, and the provisions of this section do not eliminate any other provisions of law that permit persons to be employed in the jobs described in this section.

(f) In order for a person to be eligible for employment under this section, he or she shall:

(1) Be at least 18 years of age.

(2)(A) Have an associate's degree or higher in social work, human services, sociology, psychology, or social services from an

accredited college, university, community and technical college, community college or junior college; or

(B) Be an honorably retired law enforcement officer or be an honorably retired parole officer or honorably retired federal or state probation officer.

(3) Provide to the bureau three letters of recommendation from persons not related to the applicant.

(4) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the bureau, be evidenced by participation in an acknowledged substance abuse treatment and/or recovery program, may be considered;

(5) Satisfy the requirements of the West Virginia Clearance for Access Registry and Employment Screening Act, §16-49-1 *et seq.* of this code; and

(6) Satisfy the requirements provided in §30-1-24 of this code.

(C) Meet any other requirements established by the bureau.

(g) The bureau shall provide training to any and all persons hired and employed hereunder, as the bureau deems appropriate.

(h) The provisions of this section authorizing the hiring of persons shall sunset, expire, and be of no force and effect on or after the 31st day of December 2026, but shall not serve to require the termination of persons hired pursuant to this section.

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CHAPTER 239

(Com. Sub. for H. B. 3317 - By Delegates Summers and Tully)

[Passed March 3, 2023; in effect from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §30-1-7a of the Code of West Virginia, 1931, as amended, relating to continuing education requirements; establishing requirements for initial license; establishing timeframe for completion of continuing education training for initial license; removing continuing education requirements; removing associated continuing education completion timeframes; and removal of waiver process.

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.

§30-1-7a. Continuing education.

(a) A board referred to in this chapter shall establish continuing education requirements as a prerequisite to license renewal. A board shall develop continuing education criteria appropriate to its discipline, which shall include, but not be limited to, course content, course approval, hours required, and reporting periods.

(b) Notwithstanding any other provision of this code, a person issued an initial license to practice medicine and surgery, a license to practice podiatry or licensed as a physician assistant by the West Virginia Board of Medicine; a person issued a license to practice dentistry by the West Virginia Board of Dental Examiners; a person issued a license to practice optometry by the West Virginia Board of Optometry, a person licensed as a pharmacist by the West Virginia Board of Pharmacy; a person licensed to practice

registered professional nursing or licensed as an advanced nurse practitioner by the West Virginia Board of Examiners for Registered Professional Nurses; a person licensed as a licensed practical nurse by the West Virginia State Board of Examiners for Licensed Practical Nurses; and a person licensed to practice medicine and surgery as an osteopathic physician and surgeon, or licensed or certified as an osteopathic as physician assistant by the West Virginia Board of Osteopathy shall complete drug diversion training, best-practice prescribing of controlled substances training, and training on prescribing and administering an opioid antagonist if that person prescribes, administers, or dispenses a controlled substance as that term is defined in §60A-1-101 of this code.

A person who receives his or her initial license or certificate from any of the boards set forth in this section shall complete the continuing education requirements set forth in this section within one year of receiving his or her initial license from that board.

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CHAPTER 240

**(S. B. 237 - By Senators Nelson, Queen, Swope, Grady, Boley,
Azinger, Hamilton, Plymale, Roberts, Deeds, Barrett, Hunt,
Trump, and Jeffries)**

[Passed March 6, 2023; to take effect July 1, 2023]
[Approved by the Governor on March 13, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §5-10-22m and §5-10-22n; and to amend said code by adding thereto two new sections, designated §18-7A-26x and §18-7A-26y, all relating to the Public Employees Retirement System and the State Teachers Retirement System; providing a one-time bonus of \$1,500 for certain annuitants; and increasing the minimum monthly benefit for certain annuitants.

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.**

§5-10-22m. One-time bonus payment for certain annuitants.

(a) As an additional bonus payment to other retirement allowances provided, a one-time bonus payment to retirement benefits shall be paid to retirants of the system as provided in subsection (b) of this section. The one-time bonus payment shall equal \$1,500 and shall be paid on or before December 31, 2023.

(b) The one-time bonus payment provided by this section applies to any retirant age 70 as of July 1, 2023, who has at least 20 years of total service as of July 1, 2023, and whose monthly annuity is less than \$1,000. This bonus payment is subject to any applicable limitations under Section 415 of the Internal Revenue Code of 1986, as amended.

(c) The one-time bonus payment provided by this section shall be payable pro rata to any beneficiary of a qualifying retirant who currently receives an annuity or other benefit payable by the system.

§5-10-22n. Minimum benefit for certain annuitants.

(a) For purposes of this section:

(1) "Elected public official" means any member of the Legislature or any member of the legislative body of any political subdivision; and

(2) "Temporary legislative employee" means any employee of the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, including the Joint Committee on Government and Finance, whose employment is classified as temporary and who is employed to perform services required by the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, as the case may be, for regular sessions, extraordinary sessions and/or interim meetings of the Legislature.

(b) If the retirement annuity of a retirant (or, if applicable, his or her beneficiary) at least 70 years of age as of July 1, 2023, with at least 25 years of total service as of July 1, 2023, is less than \$1,000 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the retirant (or if applicable, his or her beneficiary) beginning on or before December 31, 2023, shall be increased to \$1,000 per month: *Provided*, That any year of total service while an elected public official or a temporary legislative employee may not be taken into account for purposes of this section.

(c) Notwithstanding any provision of subsection (b) of this section to the contrary, if the retirement annuity of a beneficiary at least 70 years of age as of July 1, 2023, of a retirant who chose option B – 50 percent joint and survivor annuity as provided in §5-10-24 of this code and who had at least 25 years of total service is less than \$500 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the beneficiary shall be increased to \$500 per month beginning on or before December 31, 2023: *Provided*, That any year of total service while an elected public official or a temporary legislative employee may not be taken into account for purposes of this section.

(d) The payment of any minimum benefit under this section is in lieu of, and not in addition to, the payments of any retirement benefit or supplemental benefit or incentives otherwise provided by law: *Provided*, That the minimum benefit provided in this section is subject to any limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended, and §5-10-27a of this code.

(e) Any minimum benefit conferred in this section is not retroactive to the time of retirement and applies only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26x. One-time bonus payment for certain annuitants.

(a) As an additional bonus payment to other retirement allowances provided, a one-time bonus payment to retirement benefits shall be paid to retirants of the retirement system as provided in subsection (b) of this section. The one-time bonus payment shall equal \$1,500 and shall be paid on or before December 31, 2023.

(b) The one-time bonus payment provided in this section applies to any retirant age 70 as of July 1, 2023, who has at least 20 years of service as of July 1, 2023, and whose monthly annuity is less than \$1,000. This one-time bonus payment is subject to any applicable limitations under Section 415 of the Internal Revenue Code of 1986, as amended.

(c) The one-time bonus payment provided by this section shall be payable pro rata to any beneficiary of a qualifying retirant who currently receives an annuity or other benefit payable by the retirement system.

§18-7A-26y. Minimum benefit for certain retired members.

(a) If the retirement annuity of a retirant (or applicable beneficiary thereof) at least 70 years of age with at least 25 years of total service as of July 1, 2023, is less than \$1,000 per month (including any supplemental or additional benefits provided by this article), then the monthly retirement annuity for the retirant, beginning on or before December 31, 2023, shall be increased to \$1,000 per month: *Provided*, That any year of service while an employee of an institution of higher education may not be taken into account for purposes of this section if his or her salary was capped under the retirement system at \$4,800 per year pursuant to §18-7A-14a of this code.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, if the retirement annuity of a beneficiary at least 70 years of age as of July 1, 2023, of a retirant who chose option B – 50 percent joint and survivor annuity under the retirement system and who had at least 25 years of total service is less than \$500 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the beneficiary shall be increased to \$500 per month beginning on or before December 31, 2023: *Provided*, That any year of service while an employee of an institution of higher education may not be taken into account for purposes of this section if his or her salary was capped under the retirement system at \$4,800 per year pursuant to §18-7A-14a of this code.

(c) The payment of any minimum benefit under this section is in lieu of, and not in addition to, the payments of any retirement annuity or supplemental or additional benefits otherwise provided by this article: *Provided*, That the minimum benefit provided in this section is subject to any limitations thereon under Section 415 of the Internal Revenue Code of 1986, as the same may be amended, and §18-7A-28a of this code.

(d) Any minimum benefit conferred in this section is not retroactive to the time of retirement and applies only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.



CHAPTER 241

(Com. Sub. for Com. Sub. for S. B. 268 - By Senators Takubo, Hamilton, Queen, Plymale, Deeds, and Nelson)

[Passed March 6, 2023; in effect from passage]
[Approved by the Governor on March 17, 2023.]

AN ACT to amend and reenact §5-16-2, §5-16-3, §5-16-4, §5-16-5 of the Code of West Virginia, 1931, as amended; to repeal §5-16-5b of said code; to amend and reenact §5-16-7, §5-16-7b, §5-16-7c, §5-16-7g, §5-16-8, §5-16-9, §5-16-10, §5-16-11, §5-16-13, §5-16-14, §5-16-15, §5-16-16, §5-16-18, §5-16-23, §5-16-25, and §5-16-26 of said code; to repeal 5-16-28 of said code; and to amend said code by adding thereto three new sections, designated §5-16-30, §5-16-31, and §5-16-32, all relating generally to the West Virginia Public Employees Insurance Act; providing definitions; removing antiquated reporting requirement; imposing fiduciary responsibility on finance board members and requiring training; providing requirements for actuary opinions and financial plans; modifying levels of reimbursements to health care providers; modifying public hearing requirements; providing for the use of Governor's revenue estimates; requiring director to provide certain information to the board; requiring that certain actuary opinions and financial plans include, but not be limited to, the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, at a level of 80 percent for the employer and 20 percent for employees beginning with the plan year for fiscal year 2024; providing for retention of excess revenues; terminating the Post-July 1, 2010, Employee Trust Fund; removing limitations on benefits for certain services provided for autism spectrum disorder; moving certain provisions of law to other places within the code;

modifying provisions relating to coverage for reconstructive surgery following mastectomies; modifying provisions relating to coverage for prescription insulin drugs; providing for health and wellness programs; require PEIA to use networks to provide care to members out of state; clarifying language allowing a PEIA plan to provide benefits for retired employees and their spouses and dependents; requiring employees to pay actuarial value of plan for spouse coverage in certain circumstances; requiring programs that qualify for favorable income tax treatment; providing for optional dental, optical, disability, and prepaid retirement plan, and audiology and hearing-aid service plans, and preferred provider plans; providing for employers' payment of PEIA costs; providing for coverage of members of the Legislature; providing for reserve fund and quarterly reports; requiring an independent actuarial study of financial solvency of plan; and providing that amendments made to article shall be incorporated into the plan beginning with plan year 2024.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES' INSURANCE ACT.

***§5-16-2. Definitions.**

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

"Agency" or "PEIA" means the Public Employees Insurance Agency created by this article.

"Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences in order to produce socially significant improvement in human behavior and includes the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

***NOTE:** This section was also amended by S. B. 577 (Chapter 193), which passed subsequent to this act.

"Autism spectrum disorder" means any pervasive developmental disorder, including autistic disorder, Asperger's syndrome, Rett syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

"Certified behavior analyst" means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.

"Dependent" includes an eligible employee's child under the age of 26 as defined in the Patient Protection and Affordable Care Act.

"Device" means a blood glucose test strip, glucometer, continuous glucose monitor (CGM), lancet, lancing device, or insulin syringe used to cure, diagnose, mitigate, prevent, or treat diabetes or low blood sugar, but does not include insulin pumps.

"Director" means the Director of the Public Employees Insurance Agency created by this article.

"Distant site" means the telehealth site where the health care practitioner is seeing the patient at a distance or consulting with a patient's health care practitioner.

"Employee" means any person, including an elected officer, who works regularly full-time in the service of the State of West Virginia; and, for the purpose of this article only, the term "employee" also means any person, including an elected officer, who works regularly full-time in the service of a county board of education; a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the Public Employees Insurance program; a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns;

any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or intellectually and developmentally disabled facility established, operated, or licensed by the Secretary of the Department of Health and Human Resources pursuant to §27-2A-1 of this code and which is supported in part by state, county, or municipal funds; any person who works regularly full-time in the service of the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, or a governing board as defined in §18B-1-2 of this code; any person who works regularly full-time in the service of a combined city-county health department created pursuant to §16-2-1 *et seq.* of this code; any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code; and any person who works as a long-term substitute as defined in §18A-1-1 of this code in the service of a county board of education: *Provided*, That a long-term substitute who is continuously employed for at least 133 instructional days during an instructional term, and, until the end of that instructional term, is eligible for the benefits provided in this article until September 1 following that instructional term: *Provided, however*, That a long-term substitute employed fewer than 133 instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and upon election by a county board of education to allow elected board members to participate in the Public Employees Insurance Program pursuant to this article, any person elected to a county board of education shall be considered to be an "employee" during the term of office of the elected member. Upon election by the State Board of Education to allow appointed board members to participate in the Public Employees Insurance Program pursuant to this article, any person appointed to the State Board of Education is considered an "employee" during the term of office of the appointed member: *Provided further*, That the elected member of a county board of education and the appointed member of the State Board of Education shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of

doubt as to who is an employee within the meaning of this article shall be decided by the director.

On or after July 1, 1997, a person shall be considered an "employee" if that person meets the following criteria:

(A) Participates in a job-sharing arrangement as defined in §18A-1-1 *et seq.* of this code;

(B) Has been designated, in writing, by all other participants in that job-sharing arrangement as the "employee" for purposes of this section; and

(C) Works at least one-third of the time required for a full-time employee.

"Employer" means the State of West Virginia, its boards, agencies, commissions, departments, institutions, or spending units; a county board of education; a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the Public Employees Insurance Program; a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or intellectually and developmentally disabled facility established, operated, or licensed by the Secretary of the Department of Health and Human Resources pursuant to §27-2A-1 *et seq.* of this code and which is supported in part by state, county, or municipal funds; a combined city-county health department created pursuant to §16-2-1 *et seq.* of this code; and a corporation meeting the description set forth in §18B-12-3 of this code that is employing a 21st Century Learner Fellow pursuant to §18A-3-11 of this code but the corporation is not considered an employer with respect to any employee other than a 21st Century Learner Fellow. Any matters of doubt as to

who is an "employer" within the meaning of this article shall be decided by the director. The term "employer" does not include within its meaning the National Guard.

"Established patient" means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

"Finance board" means the Public Employees Insurance Agency finance board created by this article.

"Health care practitioner" means a person licensed under §30-1-1 *et seq.* of this code who provides health care services.

"Originating site" means the location where the patient is located, whether or not accompanied by a health care practitioner, at the time services are provided by a health care practitioner through telehealth, including, but not limited to, a health care practitioner's office, hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's home, and other nonmedical environments such as school-based health centers, university-based health centers, or the work location of a patient.

"Objective evidence" means standardized patient assessment instruments, outcome measurements tools, or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during, and after treatment is recommended to quantify progress and support justifications for continued treatment. The tools are not required but their use will enhance the justification for continued treatment.

"Person" means any individual, company, association, organization, corporation, or other legal entity.

"Plan" means a group hospital and surgical insurance plan or plans, a group prescription drug insurance plan or plans, a group major medical insurance plan or plans, and a group life and accidental death insurance plan or plans.

"Prescription insulin drug" means a prescription drug that contains insulin and is used to treat diabetes, and includes at least one type of insulin in all of the following categories:

- (1) Rapid-acting;
- (2) Short-acting;
- (3) Intermediate-acting;
- (4) Long-acting;
- (5) Pre-mixed insulin products;
- (6) Pre-mixed insulin/GLP-1 RA products; and
- (7) Concentrated human regular insulin.

"Primary coverage" means individual or group hospital and surgical insurance coverage or individual or group major medical insurance coverage or group prescription drug coverage in which the spouse or dependent is the named insured or certificate holder.

"Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data; medication adherence monitoring; and interactive video conferencing with or without digital image upload.

"Retired employee" means an employee of the state who retired after April 29, 1971, and an employee of the Higher Education Policy Commission, the Council for Community and Technical College Education, a state institution of higher education, or a county board of education who retires on or after April 21, 1972, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system, and whose last employer immediately prior to retirement under the state retirement system is a participating employer in the state

retirement system and in the Public Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who are not covered by a state retirement system, but who are covered by a state-approved or state-contracted retirement program or a system approved by the director, shall, in the case of education employees, meet the minimum eligibility requirements of the State Teachers Retirement System, and in all other cases, meet the minimum eligibility requirements of the Public Employees Retirement System and may participate in the Public Employees Insurance Agency as retired employees upon terms as the director sets by rule as authorized in this article. Employers with employees who are, or who are eligible to become, retired employees under this article shall be mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to §5-16D-1 *et seq.* of this code. Nonstate employers may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only upon the written certification, under oath, of an authorized officer of the employer that the employer has no employees who are, or who are eligible to become, retired employees and that the employer will defend and hold harmless the Public Employees Insurance Agency from any claim by one of the employer's past, present, or future employees for eligibility to participate in the Public Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits to a retired employee of a nonstate employer which has opted out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

"Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio-only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include e-mail messages or facsimile transmissions.

"Virtual telehealth" means a new patient or follow-up patient for acute care that does not require chronic management or scheduled medications.

§5-16-3. Composition of Public Employees Insurance Agency.

(a) The Public Employees Insurance Agency consists of the director, the finance board, the advisory board, and any employees who may be authorized by law. The director shall be appointed by the Governor, with the advice and consent of the Senate, and serve at the will and pleasure of the Governor. The director shall have at least three years' experience in health or governmental health benefit administration as his or her primary employment duty prior to appointment as director. The director shall receive actual expenses incurred in the performance of official business. The director shall employ any administrative, technical, and clerical employees required for the proper administration of the programs provided in this article. The director shall perform the duties that are required of him or her under the provisions of this article and is the Chief Administrative Officer of the Public Employees Insurance Agency. The director may employ a deputy director.

(b) Except for the director, his or her personal secretary, the deputy director, and the chief financial officer, all positions in the agency shall be included in the classified service of the civil service system pursuant to §29-6-1 *et seq.* of this code.

(c) The director is responsible for the administration and management of the Public Employees Insurance Agency as provided in this article and in connection with his or her responsibility may make all rules necessary to effectuate the provisions of this article. Nothing in §5-16-4 or §5-16-5 of this code limits the director's ability to manage on a day-to-day basis the group insurance plans required or authorized by this article, including, but not limited to, administrative contracting, studies, analyses and audits, eligibility determinations, utilization management provisions and incentives, provider negotiations, provider contracting and payment, designation of covered and noncovered services, offering of additional coverage options or cost containment incentives, pursuit of coordination of benefits,

and subrogation, or any other actions which would serve to implement the plan or plans designed by the finance board. The director is to function as a benefits management professional and should avoid political involvement in managing the affairs of the Public Employees Insurance Agency.

(d) The director may, if it is financially advantageous to the state, operate the Medicare retiree health benefit plan offered by the agency based on a plan year that runs concurrent with the calendar year. Financial plans as addressed in section five of this article shall continue to be on a fiscal-year basis.

(e) The director should make every effort to evaluate and administer programs to improve quality, improve health status of members, develop innovative payment methodologies, manage health care delivery costs, evaluate effective benefit designs, evaluate cost sharing and benefit-based programs, and adopt effective industry programs that can manage the long-term effectiveness and costs for the programs at the Public Employees Insurance Agency to include, but not be limited to:

- (1) Increasing generic fill rates;
- (2) Managing specialty pharmacy costs;
- (3) Implementing and evaluating medical home models and health care delivery;
- (4) Coordinating with providers, private insurance carriers, and, to the extent possible, Medicare to encourage the establishment of cost-effective accountable care organizations;
- (5) Exploring and developing advanced payment methodologies for care delivery such as case rates, capitation, and other potential risk-sharing models and partial risk-sharing models for accountable care organizations and medical homes;
- (6) Adopting measures identified by the Centers for Medicare and Medicaid Services to reduce cost and enhance quality;

(7) Evaluating the expenditures to reduce excessive use of emergency room visits, imaging services, and other drivers of the agency's medical rate of inflation;

(8) Recommending cutting-edge benefit designs to the finance board to drive behavior and control costs for the plans;

(9) Implementing programs to encourage the use of the most efficient and high-quality providers by employees and retired employees;

(10) Identifying employees and retired employees who have multiple chronic illnesses and initiating programs to coordinate the care of these patients;

(11) Initiating steps to adjust payment by the agency for the treatment of hospital-acquired infections and related events consistent with the payment policies, operational guidelines, and implementation timetable established by the Centers of Medicare and Medicaid Services. The agency shall protect employees and retired employees from any adjustment in payment for hospital acquired infections; and

(12) Initiating steps to reduce the number of employees and retired employees who experience avoidable readmissions to a hospital for the same diagnosis-related group illness within 30 days of being discharged by a hospital in this state or another state consistent with the payment policies, operational guidelines, and implementation timetable established by the Centers of Medicare and Medicaid Services.

§5-16-4. Public Employees Insurance Agency Finance Board.

(a) The Public Employees Insurance Agency Finance Board is continued and consists of the Secretary of the Department of Administration or his or her designee, as a voting member, and 10 members appointed by the Governor, with the advice and consent of the Senate, for terms of four years and each may serve until his or her successor is appointed and qualified. Members may be reappointed for successive terms. No more than six members, including the Secretary of the Department of Administration, may

be of the same political party. Members of the board shall satisfy the qualification requirements provided for by subsection (b) of this section. The Governor shall make appointments necessary to satisfy the requirements of subsection (b) of this section to staggered terms as determined by the Governor.

(b) (1) Of the 10 members appointed by the Governor with advice and consent of the Senate:

(A) One member shall represent the interests of education employees. The member shall hold a bachelor's degree, shall have obtained teacher certification, shall be employed as a teacher for a period of at least three years prior to his or her appointment, and shall remain a teacher for the duration of his or her appointment to remain eligible to serve on the board.

(B) One member shall represent the interests of public employees. The member shall be employed to perform full- or part-time service for wages, salary, or remuneration for a public body for a period of at least three years prior to his or her appointment and shall remain an employee of a public body for the duration of his or her appointment to remain eligible to serve on the board.

(C) One member shall represent the interests of retired employees. The member shall meet the definition of retired employee as provided in §5-16-2 of this code.

(D) One member shall represent the interests of a participating political subdivision. The member shall have been employed by a political subdivision for a period of at least three years prior to his or her appointment and shall remain an employee of a political subdivision for the duration of his or her appointment to remain eligible to serve on the board. The member may not be an elected official.

(E) One member shall represent the interests of hospitals. The member shall have been employed by a hospital for a period of at least three years prior to his or her appointment and shall remain an employee of a hospital for the duration of his or her appointment to remain eligible to serve on the board.

(F) One member shall represent the interests of non-hospital health care providers. The member shall have owned his or her non-hospital health care provider business for a period of at least three years prior to his or her appointment and shall maintain ownership of his or her non-hospital health care provider business for the duration of his or her appointment to remain eligible to serve on the board.

(G) Four members shall be selected from the public at large, meeting the following requirements:

(i) One member selected from the public at large shall generally have knowledge and expertise relating to the financing, development, or management of employee benefit programs;

(ii) One member selected from the public at large shall have at least three years of experience in the insurance benefits business;

(iii) One member selected from the public at large shall be a certified public accountant with at least three years of experience with financial management and employee benefits program experience; and

(iv) One member selected from the public at large shall be a health care actuary or certified public accountant with at least three years of financial experience with the health care marketplace.

(2) No member of the board may be a registered lobbyist.

(3) All appointments shall be selected to represent the different geographical areas within the state and all members shall be residents of West Virginia. No member may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty, neglect of fiduciary duty, or other specific responsibility imposed by this article or gross immorality.

(4) All members of the board shall have a fiduciary responsibility to protect plan assets for the benefit of plan participants.

(5) Beginning July 1, 2023, and every year thereafter, all board members shall complete fiduciary training and timely complete any conflict-of-interest forms required to serve as a fiduciary.

(c) The Secretary of the Department of Administration shall serve as chair of the finance board, which shall meet at times and places specified by the call of the chair or upon the written request to the chair by at least two members. The Director of the Public Employees Insurance Agency shall serve as staff to the board. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting. Six members shall constitute a quorum. The board shall pay each member the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties for each day or portion of a day engaged in the discharge of official duties.

(d) Upon termination of the board and notwithstanding any provisions of this article to the contrary, the director is authorized to assess monthly employee premium contributions and to change the types and levels of costs to employees only in accordance with this subsection. Any assessments or changes in costs imposed pursuant to this subsection shall be implemented by legislative rule proposed by the director for promulgation pursuant to §29A-3-1 *et seq.* of this code. Any employee assessments or costs previously authorized by the finance board shall then remain in effect until amended by rule of the director promulgated pursuant to this subsection.

§5-16-5. Powers and duties of the finance board.

(a) The purpose of the finance board is to bring fiscal stability to the Public Employees Insurance Agency through development of annual financial plans and long-range plans designed to meet the agency's estimated total financial requirements, taking into account all revenues projected to be made available to the agency and apportioning necessary costs equitably among participating employers, employees, and retired employees and providers of health care services.

(b) The finance board shall retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group health insurance plans, to estimate the total financial requirements of the Public Employees Insurance Agency for each fiscal year and to review and render written professional opinions as to financial plans proposed by the finance board. The actuary shall also assist in the development of alternative financing options and perform any other services requested by the finance board or the director. All reasonable fees and expenses for actuarial services shall be paid by the Public Employees Insurance Agency. Any financial plan or modifications to a financial plan approved or proposed by the finance board shall be submitted to and reviewed by the actuary and may not be finally approved and submitted to the Governor and to the Legislature without the actuary's written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the agency, including incurred but unreported claims, for the fiscal year for which the plan is proposed.

(c) All financial plans shall establish:

(1) The minimum level of reimbursement at 110 percent of the Medicare amount for all providers: *Provided*, That the plan shall reimburse a West Virginia hospital that provides inpatient medical care to a beneficiary, covered by the state and non-state plans, at a minimum rate of 110 percent of the Medicare diagnosis-related group rate for the admission, or the Medicare per diem, per day rate applicable to a critical access hospital, as appropriate: *Provided, however*, That the rates established pursuant to this subdivision do not apply to any Medicare primary retiree health plan.

(2) Any necessary cost-containment measures for implementation by the director;

(3) The levels of premium costs to participating employers; and

(4) The types and levels of cost to participating employees and retired employees.

The financial plans may provide for different levels of costs based on the insureds' ability to pay. The finance board may establish different levels of costs to retired employees based upon length of employment with a participating employer, ability to pay, or other relevant factors. The financial plans may also include optional alternative benefit plans with alternative types and levels of cost. The finance board may develop policies which encourage the use of West Virginia health care providers.

In addition, the finance board may allocate a portion of the premium costs charged to participating employers to subsidize the cost of coverage for participating retired employees, on such terms as the finance board determines are equitable and financially responsible.

(d)(1) The finance board shall prepare an annual financial plan for each fiscal year. The finance board chairman shall request the actuary to estimate the total financial requirements of the Public Employees Insurance Agency for the fiscal year.

(2) The finance board shall prepare a proposed financial plan designed to generate revenues sufficient to meet all estimated program and administrative costs of the Public Employees Insurance Agency for the fiscal year. The proposed financial plan shall allow for no more than 30 days of accounts payable to be carried over into the next fiscal year. Before final adoption of the proposed financial plan, the finance board shall request the actuary to review the plan and to render a written professional opinion stating whether the plan will generate sufficient revenues to meet all estimated program and administrative costs of the Public Employees Insurance Agency for the fiscal year. The actuary's report shall explain the basis of its opinion. If the actuary concludes that the proposed financial plan will not generate sufficient revenues to meet all anticipated costs, then the finance board shall make necessary modifications to the proposed plan to ensure that all actuarially determined financial requirements of the agency will be met.

(3) Upon obtaining the actuary's opinion, the finance board shall conduct at least two public hearings in each congressional

district to receive public comment on the proposed financial plan, shall review the comments, and shall finalize and approve the financial plan.

(4) For each fiscal year, the Governor shall provide his or her estimate of total revenues to the finance board no later than October 15 of the preceding fiscal year: *Provided*, That for the prospective financial plans required by this section, the Governor shall estimate the revenues available for each fiscal year of the plans based on the estimated percentage of growth in general fund revenues: *Provided, however*, That the director and finance board may only use revenue estimates from the Governor as necessary to maintain an actuarially recommended reserve fund and to maintain premium cost-sharing percentages as required in this article: *Provided, further*, That the director and finance board may not incorporate revenue sources into the finance board plan beyond the premium cost-sharing percentages as required in this article. The director shall provide the number of covered lives for the current fiscal year and a five-year analysis of the costs for covering paid claims to the finance board no later than October 15 of the preceding year. The finance board shall submit its final approved financial plan after obtaining the necessary actuary's opinion, which opinion shall include, but not be limited to, the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, at a level of 80 percent for the employer and 20 percent for employees, to the Governor and to the Legislature no later than January 1 preceding the fiscal year. The financial plan for a fiscal year becomes effective and shall be implemented by the director on July 1 of the fiscal year. In addition to each final approved financial plan required under this section, the finance board shall also simultaneously submit financial statements based on generally accepted accounting practices (GAAP) and the final approved plan restated on an accrual basis of accounting, which shall include allowances for incurred but not reported claims. The financial statements and the accrual-based financial plan restatement shall not affect the approved financial plan.

(e) The provisions of §29A-1-1 *et seq.* of this code shall not apply to the preparation, approval and implementation of the financial plans required by this section.

(f) By January 1 of each year, the finance board shall submit to the Governor and the Legislature a prospective financial plan for a period not to exceed five years for the programs provided in this article. Factors the board shall consider include, but are not limited to, the trends for the program and the industry; the medical rate of inflation; utilization patterns; cost of services; and specific information such as average age of employee population, active to retiree ratios, the service delivery system, and health status of the population.

(g) The prospective financial plans shall be based on the estimated revenues submitted in accordance §5-16-5(d)(4) of this code and shall include an average of the projected cost-sharing percentages of premiums and an average of the projected deductibles and copays for the various programs. Each plan year, the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, shall be at a level of 80 percent for the employer and 20 percent for employees, except for the employers provided in §5-16-18(d) of this code whose premium cost-sharing percentages shall be governed by that subsection. After the submission of the initial prospective plan, the board may not increase costs to the participating employers or change the average of the premiums, deductibles, and copays for employees, except in the event of a true emergency. If the board invokes the emergency provisions, the cost shall be borne between the employers and employees in proportion to the cost-sharing ratio for that plan year. For purposes of this section, "emergency" means that the most recent projections demonstrate that plan expenses will exceed plan revenues by more than one percent in any plan year. The aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, may be offset, in part, by a legislative appropriation for that purpose.

(h) The finance board shall meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the Public Employees Insurance Agency. The board shall review actual costs incurred, any revised cost estimates provided by the actuary, expenditures, and any other factors affecting the fiscal stability of the plan, and may make any additional modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met. The finance board may not increase the types and levels of cost to employees during its quarterly review except in the event of a true emergency.

(i) For any fiscal year in which legislative appropriations differ from the Governor's estimate of general and special revenues available to the agency, the finance board shall, within 30 days after passage of the budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.

(j) In the event the revenues in a given year exceed the expenses, the amount of revenues in excess of the expenses shall be retained by the Public Employees Insurance Agency to offset future premium increases.

§5-16-5b. Creation of trust for retirees hired on or after July 1, 2010.

[Repealed.]

§5-16-7. Authorization to establish plans; mandated benefits; optional plans; separate rating for claims experience purposes.

(a) The agency shall establish plans for those employees herein made eligible and establish and promulgate rules for the administration of these plans subject to the limitations contained in this article. These plans shall include:

(1) Coverages and benefits for x-ray and laboratory services in connection with mammograms when medically appropriate and consistent with current guidelines from the United States

Preventive Services Task Force; pap smears, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or the American College of Obstetricians and Gynecologists; and a test for the human papilloma virus when medically appropriate and consistent with current guidelines from either the United States Preventive Services Task Force or the American College of Obstetricians and Gynecologists, when performed for cancer screening or diagnostic services on a woman age 18 or over;

(2) Annual checkups for prostate cancer in men age 50 and over;

(3) Annual screening for kidney disease as determined to be medically necessary by a physician using any combination of blood pressure testing, urine albumin or urine protein testing, and serum creatinine testing as recommended by the National Kidney Foundation;

(4) For plans that include maternity benefits, coverage for inpatient care in a duly licensed health care facility for a mother and her newly born infant for the length of time which the attending physician considers medically necessary for the mother or her newly born child. No plan may deny payment for a mother or her newborn child prior to 48 hours following a vaginal delivery or prior to 96 hours following a caesarean section delivery if the attending physician considers discharge medically inappropriate;

(5) For plans which provide coverages for post-delivery care to a mother and her newly born child in the home, coverage for inpatient care following childbirth as provided in subdivision (4) of this subsection if inpatient care is determined to be medically necessary by the attending physician. These plans may include, among other things, medicines, medical equipment, prosthetic appliances, and any other inpatient and outpatient services and expenses considered appropriate and desirable by the agency; and

(6) Coverage for treatment of serious mental illness:

(A) The coverage does not include custodial care, residential care, or schooling. For purposes of this section, "serious mental illness" means an illness included in the American Psychiatric Association's diagnostic and statistical manual of mental disorders, as periodically revised, under the diagnostic categories or subclassifications of:

- (i) Schizophrenia and other psychotic disorders;
- (ii) Bipolar disorders;
- (iii) Depressive disorders;
- (iv) Substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders;
- (v) Anxiety disorders; and
- (vi) Anorexia and bulimia.

With regard to a covered individual who has not yet attained the age of 19 years, "serious mental illness" also includes attention deficit hyperactivity disorder, separation anxiety disorder, and conduct disorder.

(B) The agency shall not discriminate between medical-surgical benefits and mental health benefits in the administration of its plan. With regard to both medical-surgical and mental health benefits, it may make determinations of medical necessity and appropriateness and it may use recognized health care quality and cost management tools including, but not limited to, limitations on inpatient and outpatient benefits, utilization review, implementation of cost-containment measures, preauthorization for certain treatments, setting coverage levels, setting maximum number of visits within certain time periods, using capitated benefit arrangements, using fee-for-service arrangements, using third-party administrators, using provider networks, and using patient cost sharing in the form of copayments, deductibles, and coinsurance. Additionally, the agency shall comply with the financial requirements and quantitative treatment limitations specified in 45 CFR 146.136(c)(2) and (c)(3), or any successor

regulation. The agency may not apply any nonquantitative treatment limitations to benefits for behavioral health, mental health, and substance use disorders that are not applied to medical and surgical benefits within the same classification of benefits: *Provided*, That any service, even if it is related to the behavioral health, mental health, or substance use diagnosis if medical in nature, shall be reviewed as a medical claim and undergo all utilization review as applicable;

(7) Coverage for general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed health care individuals in conjunction with dental care if the covered person is:

(A) Seven years of age or younger or is developmentally disabled and is an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual, or other medically compromising condition of the individual and for whom a superior result can be expected from dental care provided under general anesthesia.

(B) A child who is 12 years of age or younger with documented phobias or with documented mental illness and with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth, or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(8) (A) All plans shall include coverage for diagnosis, evaluation, and treatment of autism spectrum disorder in individuals ages 18 months to 18 years. To be eligible for coverage and benefits under this subdivision, the individual must be diagnosed with autism spectrum disorder at age eight or younger. Such plan shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist and in accordance with a treatment plan

developed from a comprehensive evaluation by a certified behavior analyst for an individual diagnosed with autism spectrum disorder.

(B) The coverage shall include, but not be limited to, applied behavior analysis which shall be provided or supervised by a certified behavior analyst. This subdivision does not limit, replace, or affect any obligation to provide services to an individual under the Individuals with Disabilities Education Act, 20 U. S. C. §1400 *et seq.*, as amended from time to time, or other publicly funded programs. Nothing in this subdivision requires reimbursement for services provided by public school personnel.

(C) The certified behavior analyst shall file progress reports with the agency semiannually. In order for treatment to continue, the agency must receive objective evidence or a clinically supportable statement of expectation that:

(i) The individual's condition is improving in response to treatment;

(ii) A maximum improvement is yet to be attained; and

(iii) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.

(D) To the extent that the provisions of this subdivision require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of insurance plans offered by the Public Employees Insurance Agency.

(9) For plans that include maternity benefits, coverage for the same maternity benefits for all individuals participating in or receiving coverage under plans that are issued or renewed on or after January 1, 2014: *Provided*, That to the extent that the provisions of this subdivision require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148,

as amended, the specific benefits that exceed the specified essential health benefits shall not be required of a health benefit plan when the plan is offered in this state.

(10) (A) Coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code:

(i) Immunoglobulin E and nonimmunoglobulin E-medicated allergies to multiple food proteins;

(ii) Severe food protein-induced enterocolitis syndrome;

(iii) Eosinophilic disorders as evidenced by the results of a biopsy; and

(iv) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract (short bowel).

(B) The coverage required by paragraph (A) of this subdivision shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(C) For purposes of this subdivision, "medically necessary foods" or "medical foods" shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: *Provided*, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(D) The provisions of this subdivision shall not apply to persons with an intolerance for lactose or soy.

(11) The cost for coverage of children's immunization services from birth through age 16 years to provide immunization against

the following illnesses: Diphtheria, polio, mumps, measles, rubella, tetanus, hepatitis-b, hemophilia influenzae-b, and whooping cough. Any contract entered into to cover these services shall require that all costs associated with immunization, including the cost of the vaccine, if incurred by the health care provider, and all costs of vaccine administration be exempt from any deductible, per visit charge, and copayment provisions which may be in force in these policies or contracts. This section does not require that other health care services provided at the time of immunization be exempt from any deductible or copayment provisions.

(12) The provision requiring coverage for 12-month refill for contraceptive drugs codified at §33-58-1 of this code.

(13) The group life and accidental death insurance herein provided shall be in the amount of \$10,000 for every employee.

(b) The agency shall make available to each eligible employee, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance as established under the rules of the agency. In addition, each employee is entitled to have his or her spouse and dependents, as defined by the rules of the agency, included in the optional coverage, at full cost to the employee, for each eligible dependent.

(c) The finance board may cause to be separately rated for claims experience purposes:

(1) All employees of the State of West Virginia;

(2) All teaching and professional employees of state public institutions of higher education and county boards of education;

(3) All nonteaching employees of the Higher Education Policy Commission, West Virginia Council for Community and Technical College Education, and county boards of education; or

(4) Any other categorization which would ensure the stability of the overall program.

(d) The agency shall maintain the medical and prescription drug coverage for Medicare-eligible retirees by providing coverage through one of the existing plans or by enrolling the Medicare-eligible retired employees into a Medicare-specific plan, including, but not limited to, the Medicare/Advantage Prescription Drug Plan. If a Medicare-specific plan is no longer available or advantageous for the agency and the retirees, the retirees remain eligible for coverage through the agency.

(e) The agency shall establish procedures to authorize treatment with a nonparticipating provider if a covered service is not available within established time and distance standards and within a reasonable period after service is requested, and with the same coinsurance, deductible, or copayment requirements as would apply if the service were provided at a participating provider, and at no greater cost to the covered person than if the services were obtained at or from a participating provider.

(f) If the Public Employees Insurance Agency offers a plan that does not cover services provided by an out-of-network provider, it may provide the benefits required in paragraph (A), subdivision (6), subsection (a) of this section if the services are rendered by a provider who is designated by and affiliated with the Public Employees Insurance Agency, and only if the same requirements apply for services for a physical illness.

(g) In the event of a concurrent review for a claim for coverage of services for the prevention of, screening for, and treatment of behavioral health, mental health, and substance use disorders, the service continues to be a covered service until the Public Employees Insurance Agency notifies the covered person of the determination of the claim.

(h) Unless denied for nonpayment of premium, a denial of reimbursement for services for the prevention of, screening for, or treatment of behavioral health, mental health, and substance use disorders by the Public Employees Insurance Agency shall include the following language:

(1) A statement explaining that covered persons are protected under this section, which provides that limitations placed on the access to mental health and substance use disorder benefits may be no greater than any limitations placed on access to medical and surgical benefits;

(2) A statement providing information about the internal appeals process if the covered person believes his or her rights under this section have been violated; and

(3) A statement specifying that covered persons are entitled, upon request to the Public Employees Insurance Agency, to a copy of the medical necessity criteria for any behavioral health, mental health, and substance use disorder benefit.

(i) On or after June 1, 2021, and annually thereafter, the Public Employees Insurance Agency shall submit a written report to the Joint Committee on Government and Finance that contains the following information regarding plans offered pursuant to this section:

(1) Data that demonstrates parity compliance for adverse determination regarding claims for behavioral health, mental health, or substance use disorder services and includes the total number of adverse determinations for such claims;

(2) A description of the process used to develop and select:

(A) The medical necessity criteria used in determining benefits for behavioral health, mental health, and substance use disorders; and

(B) The medical necessity criteria used in determining medical and surgical benefits;

(3) Identification of all nonquantitative treatment limitations that are applied to benefits for behavioral health, mental health, and substance use disorders and to medical and surgical benefits within each classification of benefits;

(4) The results of analyses demonstrating that, for medical necessity criteria described in subdivision (2) of this subsection and for each nonquantitative treatment limitation identified in subdivision (3) of this subsection, as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to benefits for behavioral health, mental health, and substance use disorders within each classification of benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to medical and surgical benefits within the corresponding classification of benefits;

(5) The Public Employees Insurance Agency's report of the analyses regarding nonquantitative treatment limitations shall include at a minimum:

(A) Identify factors used to determine whether a nonquantitative treatment limitation will apply to a benefit, including factors that were considered but rejected;

(B) Identify and define the specific evidentiary standards used to define the factors and any other evidence relied on in designing each nonquantitative treatment limitation;

(C) Provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to design each nonquantitative treatment limitation, as written, and the written processes and strategies used to apply each nonquantitative treatment limitation for benefits for behavioral health, mental health, and substance use disorders are comparable to, and are applied no more stringently than, the processes and strategies used to design and apply each nonquantitative treatment limitation, as written, and the written processes and strategies used to apply each nonquantitative treatment limitation for medical and surgical benefits;

(D) Provide the comparative analysis, including the results of the analyses, performed to determine that the processes and

strategies used to apply each nonquantitative treatment limitation, in operation, for benefits for behavioral health, mental health, and substance use disorders are comparable to, and are applied no more stringently than, the processes and strategies used to apply each nonquantitative treatment limitation, in operation, for medical and surgical benefits; and

(E) Disclose the specific findings and conclusions reached by the Public Employees Insurance Agency that the results of the analyses indicate that each health benefit plan offered by the Public Employees Insurance Agency complies with paragraph (B), subdivision (6), subsection (a) of this section; and

(6) After the initial report required by this subsection, annual reports are only required for any year thereafter during which the Public Employees Insurance Agency makes significant changes to how it designs and applies medical management protocols.

(j) The Public Employees Insurance Agency shall update its annual plan document to reflect its comprehensive parity compliance. An annual report shall also be filed with the Joint Committee on Government and Finance and the Public Employees Insurance Agency Finance Board.

§5-16-7b. Coverage for telehealth services.

(a) The plan shall provide coverage of health care services provided through telehealth services if those same services are covered through face-to-face consultation by the policy.

(b) The plan may not exclude a service for coverage solely because the service is provided through telehealth services.

(c) The plan shall provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company for virtual telehealth encounters. The plan shall provide reimbursement for a telehealth service for an established patient, or care rendered on a consulting basis to a patient located in an acute care facility, whether inpatient or outpatient, on the same basis and at the same rate under a contract, plan, agreement, or policy as if

the service is provided through an in-person encounter rather than provided via telehealth.

(d) The plan may not impose any annual or lifetime dollar maximum on coverage for telehealth services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits pursuant to the provisions of or the requirements of this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services that is not equally imposed upon all terms and services covered under the policy, contract, or plan.

(e) An originating site may charge the plan a site fee.

(f) The coverage required by this section shall include the use of telehealth technologies as it pertains to medically necessary remote patient monitoring services to the full extent that those services are available.

§5-16-7c. Required coverage for reconstruction surgery following mastectomies.

(a) The plan shall provide, in a case of a participant or beneficiary who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, coverage for:

(1) All stages of reconstruction of the breast on which the mastectomy has been performed;

(2) Surgery and reconstruction of the other breast to produce a symmetrical appearance; and

(3) Prostheses and physical complications of mastectomy, including lymphedemas in a manner determined in consultation with the attending physician and the patient. Coverage shall be provided for a minimum stay in the hospital of not less than 48 hours for a patient following a radical or modified mastectomy and not less than 24 hours of inpatient care following a total

mastectomy or partial mastectomy with lymph node dissection for the treatment of breast cancer. Nothing in this section shall be construed as requiring inpatient coverage where inpatient coverage is not medically necessary or where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the plan. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter in the summary plan description or similar document.

(b) The plan may not:

(1) Deny a patient eligibility, or continued eligibility, to enroll or renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section; and

(2) Penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section.

***§5-16-7g. Coverage for prescription insulin drugs.**

(a) A policy, plan, or contract that is issued or renewed on or after January 1, 2023, shall provide coverage for prescription insulin drugs and equipment pursuant to this section.

(b) Cost sharing for a 30-day supply of a covered prescription insulin drug may not exceed \$35 in aggregate, including situations where the covered person is prescribed more than one insulin drug, per 30-day supply, regardless of the amount or type of insulin needed to fill such covered person's prescription. Cost sharing for a 30-day supply of covered device(s) may not exceed \$100 in aggregate, including situations where the covered person is prescribed more than one device, per 30-day supply. Each cost-

*NOTE: This section was also amended by S. B. 577 (Chapter 193), which passed subsequent to this act.

share maximum is covered regardless of the person's deductible, copayment, coinsurance, or any other cost-sharing requirement.

(c) Nothing in this section prevents the agency from reducing a covered person's cost sharing by an amount greater than the amount specified in this subsection.

(d) No contract between the agency or its pharmacy benefits manager and a pharmacy or its contracting agent shall contain a provision: (i) Authorizing the agency's pharmacy benefits manager or the pharmacy to charge; (ii) requiring the pharmacy to collect; or (iii) requiring a covered person to make a cost-sharing payment for a covered prescription insulin drug in an amount that exceeds the amount of the cost-sharing payment for the covered prescription insulin drug established by the agency as provided in subsection (b) of this section.

(e) The agency shall provide coverage for the following equipment and supplies for the treatment or management of diabetes for both insulin-dependent and noninsulin-dependent persons with diabetes and those with gestational diabetes: Blood glucose monitors, monitor supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for controlling blood sugar, and orthotics.

(f) The agency shall provide coverage for diabetes self-management education to ensure that persons with diabetes are educated as to the proper self-management and treatment of their diabetes, including information on proper diets. Coverage for self-management education and education relating to diet shall be provided by a health care practitioner who has been appropriately trained as provided in §33-53-1(k) of this code.

(g) The education may be provided by a health care practitioner as part of an office visit for diabetes diagnosis or treatment, or by a licensed pharmacist for instructing and monitoring a patient regarding the proper use of covered equipment, supplies, and medications, or by a certified diabetes educator or registered dietitian.

(h) A pharmacy benefits manager, a health plan, or any other third party that reimburses a pharmacy for drugs or services shall not reimburse a pharmacy at a lower rate and shall not assess any fee, charge-back, or adjustment upon a pharmacy on the basis that a covered person's costs sharing is being impacted.

§5-16-8. Conditions of insurance program.

The insurance plans provided for in this article shall be designed by the Public Employees Insurance Agency:

(1) To provide a reasonable relationship between the hospital, surgical, medical, and prescription drug benefits to be included and the expected reasonable and customary hospital, surgical, medical, and prescription drug expenses as established by the director to be incurred by the affected employee, his or her spouse, and his or her dependents. The establishment of reasonable and customary expenses by the Public Employees Insurance Agency pursuant to the preceding sentence is not subject to chapter §29A-1-1 *et seq.* of this code;

(2) To include reasonable controls which may include deductible and coinsurance provisions applicable to some or all of the benefits, and shall include other provisions, including, but not limited to, copayments, preadmission certification, case management programs, and preferred provider arrangements;

(3) To prevent unnecessary utilization of the various hospital, surgical, medical, and prescription drug services available;

(4) To provide reasonable assurance of stability in future years for the plans;

(5) To provide major medical insurance for the employees covered under this article;

(6) To provide certain group life and accidental death insurance for the employees covered under this article;

(7) To include provisions for the coordination of benefits payable by the terms of the plans with the benefits to which the

employee, or his or her spouse, or his or her dependents may be entitled by the provisions of any other group hospital, surgical, medical, major medical, or prescription drug insurance, or any combination thereof;

(8) To provide a cash incentive plan for employees, spouses, and dependents to increase utilization of, and to encourage the use of, lower cost alternative health care facilities, health care providers, and generic drugs. The plan shall be reviewed annually by the director and the advisory board;

(9) To provide health and wellness programs and resources impacting various components of health and wellness. PEIA may explore, review, evaluate, and offer a variety of health and wellness programming and resources to meet the needs of its members. These programs are voluntary for participants and are separate and distinct from any medical benefit;

(10) To provide a program, to be administered by the director, for a patient audit plan with reimbursement up to a maximum of \$1,000 annually to employees for discovery of health care provider or hospital overcharges when the affected employee brings the overcharge to the attention of the plan. The hospital or health care provider shall certify to the director that it has provided, prior to or simultaneously with the submission of the statement of charges for payments, an itemized statement of the charges to the employee participant for which payment is requested of the plan;

(11) To require that all employers give written notice to each covered employee prior to institution of any changes in benefits to employees, and to include appropriate penalty for any employer not providing the required information to any employee; and

(12) (A) To provide coverage for emergency services under offered plans.

(B) Plans shall provide coverage for emergency services, including any pre-hospital services, to the extent necessary to screen and stabilize the covered person. The plans shall reimburse, less any applicable copayments, deductibles, or coinsurance for

emergency services rendered and related to the condition for which the covered person presented. Prior authorization of coverage shall not be required for the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior authorization of coverage shall not be required for stabilization if an emergency medical condition exists. In the event that prior authorization was obtained, the authorization may not be retracted after the services have been provided except when the authorization was based on a material misrepresentation about the medical condition by the provider of the services or the insured person. The provider of the emergency services and the plan representative shall make a good faith effort to communicate with each other in a timely fashion to expedite post-evaluation or post-stabilization services. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(C) For purposes of this subdivision:

"Emergency services" means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including pre-hospital care;

"Prudent layperson" means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;

"Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part;

"Stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability that no medical

deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: *Provided*, That this provision may not be construed to prohibit, limit, or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

"Medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

"Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child, serious impairment to bodily functions, or serious dysfunction of any bodily part or organ.

§5-16-9. Authorization to execute contracts.

(a) The director is given exclusive authorization to execute such contract or contracts as are necessary to carry out the provisions of this article.

(b) The provisions of §5A-3-1 *et seq.* of this code, relating to the Division of Purchasing of the Department of Finance and Administration, shall not apply to any contracts for any insurance coverage or professional services authorized to be executed under the provisions of this article. Before entering into any contract for any insurance coverage, as authorized in this article, the director shall invite competent bids from all qualified and licensed insurance companies or carriers that may wish to offer plans for the insurance coverage desired. The director shall negotiate and contract directly with health care providers and other entities, organizations, and vendors in order to secure competitive premiums, prices, and other financial advantages. The director shall deal directly with insurers or health care providers and other entities, organizations, and vendors in presenting specifications

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

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

(d) Each employee who is covered under any contract or contracts shall receive a statement of benefits to which the employee, his or her spouse, and his or her dependents are entitled under the contract, setting forth the information as to whom the benefits are payable, to whom claims shall be submitted, and a summary of the provisions of the contract or contracts as they affect the employee, his or her spouse, and his or her dependents.

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

(f) The director shall include language in all contracts for pharmacy benefits management, as defined by §33-51-3 of this code, requiring the pharmacy benefit manager to report quarterly to the agency the following:

(1) The overall total amount charged to the agency for all claims processed by the pharmacy benefit manager during the quarter;

(2) The overall total amount of reimbursements paid to pharmacy providers during the quarter;

(3) The overall total number of claims in which the pharmacy benefits manager reimbursed a pharmacy provider for less than the amount charged to the agency for all claims processed by the pharmacy benefit manager during the quarter; and

(4) For all pharmacy claims, the total amount paid to the pharmacy provider per claim, including, but not limited to, the following:

(A) The cost of drug reimbursement;

(B) Dispensing fees;

(C) Copayments; and

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

In the event there is a difference between the amount for any pharmacy claim paid to the pharmacy provider and the amount reimbursed to the agency, the pharmacy benefit manager shall report an itemization of all administrative fees, rebates, or processing charges associated with the claim. All data and information provided by the pharmacy benefit manager shall be

kept secure, and notwithstanding any other provision of this code to the contrary, the agency shall maintain the confidentiality of the proprietary information and not share or disclose the proprietary information contained in the report or data collected with persons outside the agency. All data and information provided by the pharmacy benefit manager shall be considered proprietary and confidential and exempt from disclosure under the West Virginia Freedom of Information Act pursuant to §29B-1-4(a)(1) of this code. Only those agency employees involved in collecting, securing, and analyzing the data for the purpose of preparing the report provided for herein shall have access to the proprietary data. The director shall provide a quarterly report to the Joint Committee on Health detailing the information required by this section, including any difference or spread between the overall amount paid by pharmacy benefit managers to the pharmacy providers and the overall amount charged to the agency for each claim by the pharmacy benefit manager. To the extent necessary, the director shall use aggregated, nonproprietary data only: *Provided*, That the director must provide a clear and concise summary of the total amounts charged to the agency and reimbursed to pharmacy providers on a quarterly basis.

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

(h) The Public Employees Insurance Agency shall contract with networks to provide care to its members out of state.

§5-16-10. Contract provisions for group hospital and surgical, group major medical, group prescription drug and group life, and accidental death insurance for retired employees, their spouses, and dependents.

A plan may provide benefits for retired employees and their spouses and dependents as defined by rules and regulations of the Public Employees Insurance Agency, and on such terms as the director may deem appropriate.

In the event the Public Employees Insurance Agency provides the above benefits for retired employees, their spouses, and dependents, the Public Employees Insurance Agency shall adopt rules and regulations prescribing the conditions under which retired employees may elect to participate in or withdraw from the plan or plans. Any plan provided for shall be secondary to any insurance plan administered by the United States Department of Health and Human Services to which the retired employee, spouse, or dependent may be eligible under any law or regulation of the United States. If an employee eligible to participate in the Public Employees Insurance Agency plans is also eligible to participate in the state Medicaid program, and chooses to do so, then the Public Employees Insurance Agency may transfer to the Medicaid program funds to pay the required state share of such employee's participation in Medicaid except that the amount transferred may not exceed the amount that would be allocated by the agency to subsidize the cost of coverage for the retired employee if he or she were enrolled in the Public Employees Insurance Agency's plans.

§5-16-11. To whom benefits paid.

Any benefits payable under a plan may be paid either directly to the medical provider, hospital, medical group, or other person, firm, association, or corporation furnishing the service upon which the claim is based, or to the insured upon presentation of valid bills for such service, subject to such provisions designed to facilitate payments as may be made by the director.

§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage; involuntary employee termination coverage; conversion of annual leave and sick leave authorized for health or retirement benefits; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased employees; requirement of new health plan; limiting employer contribution.

(a) *Cost-sharing.* — The director shall provide plans that shall be paid by the employer and employee.

(b) *Spouse and dependent coverage.* —(1) An employee is entitled to have his or her spouse and dependents included in any plan to which the employee is entitled to participate.

(2) The spouse and dependent coverage is limited to excess or secondary coverage for each spouse and dependent who has primary coverage from any other source. If an employee's spouse has health insurance available through an employer not defined in §5-16-2 of this code, then the employer may not cover any portion of premiums for the employee's spouse coverage, unless the employee adds his or her spouse to his or her coverage by paying the cost of the actuarial value of the plan: *Provided*, That this does not apply to spouses of retired employees or employers subject to §5-16-22 of this code. For purposes of this subsection, "actuarial value" means the value as recommended by healthcare actuaries under §5-16-5 of this code.

The director may require proof regarding spouse and dependent primary coverage and shall adopt rules governing the nature, discontinuance, and resumption of any employee's coverage for his or her spouse and dependents.

(c) *Continuation after termination.* — If an employee participating in the plan is terminated from employment involuntarily or in reduction of work force, the employee's insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee and the employer shall continue to contribute the employer's share of plan premiums for the coverage. An employee discharged for misconduct shall not be eligible for extended benefits under this section. Coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued. If the discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within 12 months of his or her prior termination, he or she shall not be considered a new enrollee and may not be required to again contribute his or her share of the premium cost if he or she had already fully contributed such share during the prior period of employment.

(d) *Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan before July, 1988.* — Except as otherwise provided in subsection (g) of this section, when an employee participating in the plan, who elected to participate in the plan before July 1, 1988, is compelled or required by law to retire before reaching the age of 65, or when a participating employee voluntarily retires as provided by law, that employee's accrued annual leave and sick leave, if any, shall be credited toward an extension of the insurance coverage provided by this article, according to the following formulae: The insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. For a retired employee, his or her spouse and dependents, the insurance coverage shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement.

(e) *Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan after June, 1988.* — Notwithstanding subsection (d) of this section, and except as otherwise provided in subsections (g) and (l) of this section, when an employee participating in the plan who elected to participate in the plan on and after July 1, 1988, is compelled or required by law to retire before reaching the age of 65, or when the participating employee voluntarily retires as provided by law, that employee's annual leave or sick leave, if any, shall be credited toward one half of the premium cost of the insurance provided by this article, for periods and scope of coverage determined according to the following formulae: (1) One additional month of single retiree coverage for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement; or (2) one additional month of coverage for a retiree, his or her spouse, and dependents for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. The remaining premium cost shall be borne by the retired employee if he or she elects the coverage. For purposes of this subsection, an employee who has

been a participant under spouse or dependent coverage and who reenters the plan within 12 months after termination of his or her prior coverage shall be considered to have elected to participate in the plan as of the date of commencement of the prior coverage. For purposes of this subsection, an employee shall not be considered a new employee after returning from extended authorized leave on or after July 1, 1988.

(f) In the alternative to the extension of insurance coverage through premium payment provided in subsections (d) and (e) of this section, the accrued annual leave and sick leave of an employee participating in the plan may be applied, on the basis of two days' retirement service credit for each one day of accrued annual and sick leave, toward an increase in the employee's retirement benefits with those days constituting additional credited service in computation of the benefits under any state retirement system: *Provided*, That for a person who first becomes a member of the Teachers Retirement System as provided in §18-7A-1 *et seq.* of this code on or after July 1, 2015, accrued annual and sick leave of an employee participating in the plan may not be applied for retirement service credit: *Provided, however*, That the additional credited service shall not be used in meeting initial eligibility for retirement criteria, but only as additional service credited in excess thereof.

(g) *Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for certain higher education employees.* Except as otherwise provided in subsection (k) of this section, when an employee, who is a higher education full-time faculty member employed on an annual contract basis other than for 12 months, is compelled or required by law to retire before reaching the age of 65, or when such a participating employee voluntarily retires as provided by law, that employee's insurance coverage, as provided by this article, shall be extended according to the following formulae: The insurance coverage for a retired higher education full-time faculty member, formerly employed on an annual contract basis other than for 12 months, shall continue beyond the effective date of his or her retirement one additional year for each three and one-third years of teaching service, as determined by uniform guidelines established by the University of

West Virginia Board of Trustees and the Board of Directors of the State College System, for individual coverage, or one additional year for each five years of teaching service for family coverage.

(h) *Retiree participation.* — All retired employees are eligible to obtain health insurance coverage. The retired employee's premium contribution for the coverage shall be established by the finance board.

(i) *Surviving spouse and dependent participation.* — A surviving spouse and dependents of a deceased employee, who was either an active or retired employee participating in the plan just prior to his or her death, are entitled to be included in any comprehensive group health insurance coverage provided under this article to which the deceased employee was entitled, and the spouse and dependents shall bear the premium cost of the insurance coverage. The finance board shall establish the premium cost of the coverage.

(j) *Elected officials.* — In construing the provisions of this section or any other provisions of this code, the Legislature declares that it is not now, nor has it ever been the Legislature's intent that elected public officials be provided any sick leave, annual leave, or personal leave, and the enactment of this section is based upon the fact and assumption that no statutory or inherent authority exists extending sick leave, annual leave, or personal leave to elected public officials, and the very nature of those positions preclude the arising or accumulation of any leave so as to be thereafter usable as premium paying credits for which the officials may claim extended insurance benefits.

(k) *Participation of certain former employees.* — An employee, eligible for coverage under the provisions of this article who has 20 years of service with any agency or entity participating in the public employees insurance program or who has been covered by the public employees insurance program for 20 years may, upon leaving employment with a participating agency or entity, continue to be covered by the program if the employee pays 105 percent of the cost of retiree coverage: *Provided,* That the employee shall elect to continue coverage under this subsection

within two years of the date the employment with a participating agency or entity is terminated.

(l) *Prohibition on conversion of accrued annual and sick leave for extended coverage upon retirement for new employees who elect to participate in the plan after June, 2001.* — Any employee hired on or after July 1, 2001, who elects to participate in the plan may not apply accrued annual or sick leave toward the cost of premiums for extended insurance coverage upon his or her retirement. This prohibition does not apply to the conversion of accrued annual or sick leave for increased retirement benefits, as authorized by this section: *Provided,* That any person who has participated in the plan prior to July 1, 2001, is not a new employee for purposes of this subsection if he or she becomes reemployed with an employer participating in the plan within two years following his or her separation from employment and he or she elects to participate in the plan upon his or her reemployment.

(m) *Prohibition on conversion of accrued years of teaching service for extended coverage upon retirement for new employees who elect to participate in the plan July, 2009.* — Any employee hired on or after July 1, 2009, who elects to participate in the plan may not apply accrued years of teaching service toward the cost of premiums for extended insurance coverage upon his or her retirement.

§5-16-14. Program qualifying for favorable federal income tax treatment.

The director shall develop deductible and employee premium programs which qualify for favorable federal income tax treatment under section 125 of the Internal Revenue Code.

§5-16-15. Optional dental, optical, disability, and prepaid retirement plan, and audiology and hearing-aid service plan.

(a) The director shall make available to participants in the public employees insurance system:

- (1) A dental insurance plan;

- (2) An optical insurance plan;
- (3) A disability insurance plan;
- (4) A prepaid retirement insurance plan; and
- (5) An audiology and hearing-aid services insurance plan.

(b) Public employees insurance participants may elect to participate in any one of these plans separately or in combination. All actuarial and administrative costs of each plan shall be totally borne by the premium payments of the participants or local governing bodies electing to participate in that plan. The director is authorized to employ such administrative practices and procedures with respect to these optional plans as are authorized for the administration of other plans under this article. The director shall establish separate funds for each of the above listed plans. The funds shall not be supplemented by nor be used to supplement any other funds.

§5-16-16. Preferred provider plan.

The director shall establish a preferred provider system for the delivery of health care to plan participants by all health care providers, which may include, but not be limited to, medical doctors, chiropractors, physicians, osteopathic physicians, surgeons, hospitals, clinics, nursing homes, pharmacies, and pharmaceutical companies.

The director shall establish the terms of the preferred provider system and the incentives therefor. The terms and incentives may include multiyear renewal options as are not prohibited by the Constitution of this state and capitated primary care arrangements which are not subject to the provisions of §33-25A-1 *et seq.* of this code.

§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of Treasurer with respect thereto.

(a) All employers operating from state general revenue or special revenue funds, or federal funds, or any combination of those funds, shall budget the cost of insurance coverage provided by the Public Employees Insurance Agency to current and retired employees of the employer as a separate line item titled PEIA in its respective annual budget and are responsible for the transfer of funds to the director for the cost of insurance for employees covered by the plan. Each spending unit shall pay to the director its proportionate share from each source of funds. Any agency wishing to charge General Revenue Funds for insurance benefits for retirees under §5-16-13 of this code shall provide documentation to the director that the benefits cannot be paid for by any special revenue account or that the retiring employee has been paid solely with General Revenue Funds for 12 months prior to retirement.

(b) If the general revenue appropriation for any employer, excluding county boards of education, is insufficient to cover the cost of insurance coverage for the employer's participating employees, retired employees, and surviving dependents, the employer shall pay the remainder of the cost from its "personal services" or "unclassified" line items. The amount of the payments for county boards of education shall be determined by the method set forth in §18-9A-24 of this code: *Provided*, That local excess levy funds shall be used only for the purposes for which they were raised: *Provided, however*, That after approval of its annual financial plan, but in no event later than December 31 of each year, the finance board shall notify the Legislature and county boards of education of the maximum amount of employer premiums that the county boards of education shall pay for covered employees during the following fiscal year.

(c) All other employers not operating from the state General Revenue Fund shall pay to the director their share of premium costs from their respective budgets. The finance board shall establish the employers' share of premium costs to reflect and pay the actual costs of the coverage including incurred but not reported claims.

(d) The contribution of the other employers that are counties, cities, or towns in the state; any separate corporation or

instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or comprehensive mental health facility established, operated, or licensed by the Secretary of the Department of Health and Human Resources pursuant to §27-2A-1 *et seq.* of this code, and which is supported in part by state, county, or municipal funds; and a combined city-county health department created pursuant to §16-2-1 *et seq.* of this code for their employees shall be the percentage of the cost of the employees' insurance package as the employers determine reasonable and proper under their own particular circumstances.

(e) The employee's proportionate share of the premium or cost shall be withheld or deducted by the employer from the employee's salary or wages as and when paid and the sums shall be forwarded to the director with any supporting data as the director may require.

(f) All moneys received by the Public Employees Insurance Agency shall be deposited in a special fund or funds as are necessary in the State Treasury and the Treasurer is custodian of the fund or funds and shall administer the fund or funds in accordance with the provisions of this article or as the director may from time to time direct. The Treasurer shall pay all warrants issued by the State Auditor against the fund or funds as the director may direct in accordance with the provisions of this article. All funds received by the agency, shall be deposited, as determined by the director, in any of the investment pools with the West Virginia Investment Management Board, with the interest income or other earnings a proper credit to all such funds for the benefit of the Public Employees Insurance Agency.

(g) The Public Employees Insurance Agency may recover an additional interest amount from any employer that fails to pay in a timely manner any premium or minimum annual employer payment, as defined in §5-16D-1 *et seq.* of this code, which is due and payable to the Public Employees Insurance Agency or the

Retiree Health Benefit Trust. The agency may recover the amount due plus an additional amount equal to 2.5 percent per annum of the amount due. Accrual of interest owed by the delinquent employer commences upon the 31st day following the due date for the amount owed and shall continue until receipt by the Public Employees Insurance Agency of the delinquent payment. Interest shall compound every 30 days.

§5-16-23. Members of Legislature may be covered if cost of the entire coverage is paid by such members.

Notwithstanding any other provision of this article to the contrary, members of the Legislature may participate in and be covered by any insurance plan or plans authorized hereunder for state officers and employees, except that all members of the Legislature who elect to participate in or to be covered by any such plan or plans shall pay their proportionate individual share of the full cost for all group coverage on themselves, their spouses, and dependents, so that there will be no cost to the state for the coverage of any such members, spouses, and dependents.

§5-16-25. Reserve fund.

The finance board shall establish and maintain a reserve fund for the purposes of offsetting unanticipated claim losses in any fiscal year. The finance board shall maintain the actuarially recommended reserve in an amount no less than 10 percent of the projected total plan costs for that fiscal year in the reserve fund, which is to be certified by the actuary and included in the final, approved financial plan submitted to the Governor and Legislature.

§5-16-26. Quarterly report.

On or before the 30th day of January, April, July, and October the director shall prepare for the approval of the finance board, and thereafter present to the Joint Committee on Government and Finance a quarterly report setting forth:

(a) A summary of the cost to the plan of health care claims incurred in the preceding calendar quarter;

(b) A summary of the funds accrued to the plan by legislative appropriation, employer and employee premiums, or otherwise, in the preceding calendar quarter for payment of health care claims;

(c) An explanation of all cost containment measures, increased premium rates, and any other plan changes adopted by the director in the preceding calendar quarter and estimated cost savings and enhanced revenues resulting therefrom, and a certification that the director made a good faith effort to develop and implement all reasonable health care cost containment alternatives;

(d) Expected claim costs for the next calendar year;

(e) Such other information as the director deems appropriate; and

(f) Any other financial or other information as may be requested by the Joint Committee on Government and Finance.

§5-16-28. Incorporation of the coverage for 12-month refill for contraceptive drugs.

[Repealed.]

§5-16-30. PEIA solvency.

The Public Employees Insurance Agency shall return to, and provide that, the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, shall be at a level of 80 percent for the employer and 20 percent for employees during fiscal year 2024 and thereafter.

§5-16-31. PEIA actuarial study.

PEIA shall conduct an independent actuarial study of the financial solvency of the plan, including, but not limited to, a consideration of alternatives to bring long-term financial stability to the plan, options regarding continued nonstate employee participation in the plan, collapsing salary levels, and any other cost-saving measures. PEIA shall seek input from public

employees, retirees, providers, and other interested parties on solutions to evaluate in the study. The actuarial study shall begin on or before July 1, 2023. A report on the study shall be presented to the Joint Committee on Government and Finance on or before July 1, 2024.

§5-16-32. Effective date of amendments.

The amendments made to this article during the regular session of the Legislature, 2023, shall be incorporated into the plan beginning with plan year 2024.

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CHAPTER 242

**(Com. Sub. for S. B. 423 - By Senators Blair (Mr. President)
and Woelfel)**

[By Request of the Executive]

[Passed March 6, 2023; to take effect July 1, 2023]
[Approved by the Governor on March 17, 2023.]

AN ACT to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18A-4-2 and §18A-4-8a of said code, all relating to increasing annual salaries of certain employees of the state; increasing the salaries of members of the West Virginia State Police and certain personnel thereof; increasing annual salaries of public school teachers; increasing annual salaries of school service personnel; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system state; salaries; exclusion from wage and hour laws, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

(a) The superintendent shall establish within the West Virginia State Police a system to provide for: (1) The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant, and first lieutenant; (2) the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class, or corporal; and

(3) the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII. The promotion of individuals in the forensic laboratory shall include the classifications of Evidence Custodians I-IV, Forensic Technicians I-III, Forensic Scientists I-VI, and Forensic Scientist Supervisors I-IV, based on the Forensic Lab Career Progression System.

(b) The superintendent may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code for the purpose of ensuring consistency, predictability, and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list. A written manual shall also be provided to individuals within the forensic laboratory governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation of promotion or reclassification of those individuals.

(d) Effective July 1, 2023, members shall receive annual salaries payable at least twice per month as follows:

ANNUAL SALARY SCHEDULE (BASE PAY)

SUPERVISORY AND NONSUPERVISORY RANKS

Cadet During Training	\$50,824
Cadet Trooper After Training	58,084
Trooper Second Year	59,096
Trooper Third Year	59,479
Senior Trooper	59,878

Trooper First Class	60,484
Corporal	61,090
Sergeant	65,391
First Sergeant	67,542
Second Lieutenant	69,692
First Lieutenant	71,843
Captain	73,994
Major	76,144
Lieutenant Colonel	78,295

ANNUAL SALARY SCHEDULE (BASE PAY)

ADMINISTRATION SUPPORT SPECIALIST
CLASSIFICATION

I	\$59,096
II	59,878
III	60,484
IV	61,090
V	65,391
VI	67,542
VII	69,692
VIII	71,843

Effective July 1, 2023, designated individuals within the forensic laboratory shall receive annual base salaries payable at least twice per month as follows:

ANNUAL SALARY SCHEDULE (BASE PAY)

EVIDENCE CUSTODIAN

I	\$47,950
II	50,278
III	53,939
IV	56,966

FORENSIC TECHNICIAN

I	\$ 50,150
II	51,844
III	55,726

FORENSIC SCIENTIST

I	\$57,350
II	59,534
III	61,638
IV	64,037
V	67,563
VI	71,363

FORENSIC SCIENTIST SUPERVISOR

I	\$74,062
II	77,626
III	81,404
IV	85,408

Each member of the West Virginia State Police whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in §15-2-5(e) of this code and supplemental pay as provided in §15-2-5(g) of this code.

(e) Each member of the West Virginia State Police whose salary is fixed and specified pursuant to this section shall receive, and is entitled to, an increase in salary over that set forth in §15-2-5(d) of this code for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia State Police as follows: Beginning on January 1, 2015, and continuing thereafter, at the end of two years of service with the West Virginia State Police, the member shall receive a salary increase of \$500 to be effective during his or her next year of service and a like increase at yearly intervals thereafter, with the increases to be cumulative. The forensic laboratory employees whose salaries are fixed and specified pursuant to this section, shall receive, and are entitled to, an increase in salary over that set forth in §15-2-5(d) of this code, in accordance with §15-2-7(h) of this code.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia State Police in service at the time the schedules become effective shall be given credit for prior service and shall be paid the salaries the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia State Police, it is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the West Virginia State Police are excluded from the provisions of state wage and hour laws. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour laws prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour laws, and in addition to their salaries and increases for length of service, members who have completed basic

training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The authority of the superintendent to propose a legislative rule or amendment thereto for promulgation in accordance with §29A-3-1 *et seq.* of this code to establish the number of hours per month which constitute the standard pay period for the members of the West Virginia State Police is hereby continued. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard pay period. The superintendent shall certify at least twice per month to the West Virginia State Police payroll officer the names of those members who have worked in excess of the standard pay period and the amount of their entitlement to supplemental payment. The supplemental payment may not exceed \$200 per pay period. The superintendent and civilian employees of the West Virginia State Police are not eligible for any supplemental payments.

(h) Each member of the West Virginia State Police, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of \$5,000 payable to the State of West Virginia, conditioned upon the faithful performance of his or her duties, and the bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor.

(i) In consideration for compensation paid by the West Virginia State Police to its members during those members' participation in the West Virginia State Police Cadet Training Program pursuant to §30-29-8 of this code, the West Virginia State Police may require of its members by written agreement entered into with each of them in advance of such participation in the program that, if a member should voluntarily discontinue employment any time within one year immediately following completion of the training program, he or she shall be obligated to pay to the West Virginia State Police a pro rata portion of such compensation equal to that part of such year which the member has chosen not to remain in the employ of the West Virginia State Police.

(j) Any member of the West Virginia State Police who is called to perform active duty training or inactive duty training in the National Guard or any reserve component of the armed forces of the United States annually shall be granted, upon request, leave time not to exceed 30 calendar days for the purpose of performing the active duty training or inactive duty training and the time granted may not be deducted from any leave accumulated as a member of the West Virginia State Police.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

(a) For school year 2023-2024, and continuing thereafter, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to §18A-4-5a of this code during the contract year.

STATE MINIMUM SALARY SCHEDULE

Years Exp.	4th Class	3rd Class	2nd Class	A.B. A.B.	A.B. 15	M.A. M.A.	M.A. 15	M.A. 30	M.A. 45	Doc- torate
0	36,597	37,286	37,552	38,995	39,756	41,523	42,284	43,045	43,806	44,841
1	36,925	37,614	37,880	39,513	40,274	42,042	42,803	43,563	44,324	45,359
2	37,254	37,942	38,208	40,032	40,793	42,560	43,321	44,082	44,843	45,878
3	37,582	38,270	38,536	40,551	41,311	43,079	43,840	44,600	45,361	46,396
4	38,154	38,842	39,108	41,313	42,074	43,842	44,603	45,363	46,124	47,159
5	38,482	39,170	39,436	41,832	42,593	44,360	45,121	45,882	46,643	47,678
6	38,810	39,498	39,764	42,350	43,111	44,879	45,640	46,400	47,161	48,196
7	39,138	39,827	40,092	42,869	43,630	45,397	46,158	46,919	47,680	48,715
8	39,466	40,155	40,421	43,387	44,148	45,916	46,677	47,437	48,198	49,233
9	39,794	40,483	40,749	43,906	44,667	46,434	47,195	47,956	48,717	49,752
10	40,123	40,811	41,077	44,426	45,186	46,954	47,715	48,476	49,236	50,271

11	40,451	41,139	41,405	44,944	45,705	47,473	48,233	48,994	49,755	50,790
12	40,779	41,467	41,733	45,463	46,223	47,991	48,752	49,513	50,273	51,308
13	41,107	41,795	42,061	45,981	46,742	48,510	49,270	50,031	50,792	51,827
14	41,435	42,123	42,389	46,500	47,260	49,028	49,789	50,550	51,310	52,345
15	41,763	42,451	42,717	47,018	47,779	49,547	50,307	51,068	51,829	52,864
16	42,091	42,779	43,045	47,537	48,297	50,065	50,826	51,587	52,347	53,382
17	42,419	43,108	43,373	48,055	48,816	50,584	51,345	52,105	52,866	53,901
18	42,747	43,436	43,702	48,574	49,335	51,102	51,863	52,624	53,385	54,420
19	43,075	43,764	44,030	49,092	49,853	51,621	52,382	53,142	53,903	54,938
20	43,403	44,092	44,358	49,611	50,372	52,139	52,900	53,661	54,422	55,457
21	43,732	44,420	44,686	50,129	50,890	52,658	53,419	54,179	54,940	55,975
22	44,060	44,748	45,014	50,648	51,409	53,176	53,937	54,698	55,459	56,494
23	44,388	45,076	45,342	51,167	51,927	53,695	54,456	55,216	55,977	57,012
24	44,716	45,404	45,670	51,685	52,446	54,214	54,974	55,735	56,496	57,531
25	45,044	45,732	45,998	52,204	52,964	54,732	55,493	56,254	57,014	58,049
26	45,372	46,060	46,326	52,722	53,483	55,251	56,011	56,772	57,533	58,568
27	45,700	46,388	46,654	53,241	54,001	55,769	56,530	57,291	58,051	59,086
28	46,028	46,717	46,982	53,759	54,520	56,288	57,048	57,809	58,570	59,605
29	46,356	47,045	47,311	54,278	55,038	56,806	57,567	58,328	59,088	60,123
30	46,684	47,373	47,639	54,796	55,557	57,325	58,085	58,846	59,607	60,642
31	47,013	47,701	47,967	55,315	56,076	57,843	58,604	59,365	60,125	61,160
32	47,341	48,029	48,295	55,833	56,594	58,362	59,123	59,883	60,644	61,679
33	47,669	48,357	48,623	56,352	57,113	58,880	59,641	60,402	61,163	62,198
34	47,997	48,685	48,951	56,870	57,631	59,399	60,160	60,920	61,681	62,716
35	48,325	49,013	49,279	57,389	58,150	59,917	60,678	61,439	62,200	63,235

(b) Six hundred dollars shall be paid annually to each classroom teacher who has at least 20 years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule; (ii) shall be paid

in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

(c) Effective July 1, 2019, each classroom teacher providing math instruction in the teacher's certified area of study for at least 60 percent of the time the teacher is providing instruction to students shall be considered to have three additional years of experience only for the purposes of the salary schedule set forth in subsection (a) of this section: *Provided*, That for any classroom teacher who satisfies these requirements and whose years of experience plus the three additional years due to them exceeds the years of experience provided for on the salary schedule shall be paid the additional amount equivalent to three additional years of experience notwithstanding the maximum experience provided on the salary schedule.

(d) Effective July 1, 2019, each classroom teacher certified in special education and employed as a full-time special education teacher, as defined by the State Superintendent, shall be considered to have three additional years of experience only for the purposes of the salary schedule set forth in subsection (a) of this section: *Provided*, That for any classroom teacher who satisfies these requirements and whose years of experience plus the three additional years due to them exceeds the years of experience provided for on the salary schedule shall be paid the additional amount equivalent to three additional years of experience notwithstanding the maximum experience provided on the salary schedule.

(e) In accordance with §18A-4-5 of this code, each teacher shall be paid the supplement amount as applicable for his or her classification of certification or classification of training and years of experience as follows, subject to the provisions of that section:

(1) For "4th Class" at zero years of experience, \$1,781. An additional \$38 shall be paid for each year of experience up to and including 35 years of experience;

(2) For "3rd Class" at zero years of experience, \$1,796. An additional \$67 shall be paid for each year of experience up to and including 35 years of experience;

(3) For "2nd Class" at zero years of experience, \$1,877. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(4) For "A.B." at zero years of experience, \$2,360. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(5) For "A.B. + 15" at zero years of experience, \$2,452. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(6) For "M.A." at zero years of experience, \$2,644. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(7) For "M.A. + 15" at zero years of experience, \$2,740. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(8) For "M.A. + 30" at zero years of experience, \$2,836. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(9) For "M.A. + 45" at zero years of experience, \$2,836. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience; and

(10) For "Doctorate" at zero years of experience, \$2,927. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience.

These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to §18A-4-5a of this code; (ii) shall be paid in equal monthly installments;

and (iii) shall be considered a part of the state minimum salaries for teachers.

§18A-4-8a. Service personnel minimum monthly salaries.

(a) Effective July 1, 2023, the minimum monthly pay for each service employee shall be as follows:

(1) For school year 2023-2024 and continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade Schedule set forth in this subdivision and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade Schedule set forth in this subdivision.

STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE

Years Exp.	PAY GRADE							
	A	B	C	D	E	F	G	H
0	2,237	2,258	2,300	2,353	2,406	2,469	2,501	2,574
1	2,269	2,291	2,332	2,385	2,439	2,502	2,533	2,607
2	2,302	2,323	2,365	2,418	2,471	2,534	2,566	2,639
3	2,334	2,356	2,398	2,451	2,504	2,567	2,599	2,672
4	2,367	2,389	2,430	2,483	2,536	2,600	2,631	2,706
5	2,400	2,421	2,463	2,516	2,569	2,632	2,664	2,738
6	2,432	2,454	2,497	2,549	2,602	2,665	2,697	2,771
7	2,466	2,486	2,529	2,581	2,634	2,698	2,729	2,804
8	2,499	2,519	2,562	2,614	2,667	2,730	2,762	2,836
9	2,531	2,552	2,595	2,648	2,700	2,763	2,794	2,869
10	2,564	2,585	2,627	2,680	2,732	2,797	2,828	2,902
11	2,597	2,618	2,660	2,713	2,765	2,829	2,861	2,934
12	2,629	2,651	2,692	2,746	2,799	2,862	2,893	2,967

13	2,662	2,683	2,725	2,778	2,831	2,894	2,926	3,000
14	2,695	2,716	2,758	2,811	2,864	2,927	2,959	3,032
15	2,727	2,749	2,790	2,843	2,896	2,960	2,991	3,065
16	2,760	2,781	2,823	2,876	2,929	2,992	3,024	3,098
17	2,792	2,814	2,857	2,909	2,962	3,025	3,057	3,131
18	2,825	2,847	2,889	2,941	2,994	3,058	3,089	3,164
19	2,859	2,879	2,922	2,974	3,027	3,090	3,122	3,196
20	2,891	2,912	2,955	3,008	3,060	3,123	3,155	3,230
21	2,924	2,944	2,987	3,040	3,092	3,156	3,187	3,264
22	2,957	2,978	3,020	3,073	3,125	3,189	3,221	3,296
23	2,989	3,011	3,053	3,106	3,159	3,223	3,255	3,330
24	3,022	3,043	3,085	3,138	3,191	3,257	3,288	3,364
25	3,055	3,076	3,118	3,171	3,225	3,289	3,322	3,396
26	3,087	3,109	3,150	3,205	3,259	3,323	3,354	3,430
27	3,120	3,141	3,183	3,237	3,291	3,355	3,388	3,463
28	3,153	3,174	3,217	3,271	3,325	3,389	3,422	3,497
29	3,185	3,208	3,250	3,303	3,358	3,423	3,454	3,531
30	3,219	3,240	3,284	3,337	3,391	3,455	3,488	3,564
31	3,252	3,274	3,318	3,371	3,425	3,489	3,522	3,597
32	3,286	3,307	3,350	3,404	3,457	3,523	3,554	3,631
33	3,320	3,340	3,384	3,438	3,491	3,555	3,588	3,664
34	3,352	3,374	3,418	3,472	3,525	3,589	3,622	3,697
35	3,386	3,408	3,450	3,504	3,557	3,623	3,655	3,731
36	3,420	3,441	3,484	3,538	3,592	3,656	3,689	3,763
37	3,452	3,475	3,518	3,572	3,626	3,690	3,722	3,797
38	3,486	3,507	3,550	3,604	3,658	3,723	3,755	3,831
39	3,520	3,541	3,584	3,638	3,692	3,756	3,789	3,863
40	3,552	3,575	3,617	3,671	3,726	3,790	3,822	3,897

(2) Each service employee shall receive the amount prescribed in the State Minimum Pay Scale Pay Grade in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

CLASS TITLE.....	PAY GRADE
Accountant I	D
Accountant II	E
Accountant III	F
Accounts Payable Supervisor	G
Aide I	A
Aide II	B
Aide III	C
Aide IV	D
Aide V – Temporary Authorization	E
Aide V	F
Aide VI – Temporary Authorization	E
Aide VI	F
Audiovisual Technician	C
Auditor	G
Autism Mentor	F
Braille Specialist	E
Bus Operator	D
Buyer	F
Cabinetmaker	G

Cafeteria Manager	D
Carpenter I	E
Carpenter II	F
Chief Mechanic	G
Clerk I	B
Clerk II	C
Computer Operator	E
Cook I	A
Cook II	B
Cook III	C
Crew Leader	F
Custodian I	A
Custodian II	B
Custodian III	C
Custodian IV	D
Director or Coordinator of Services	H
Draftsman	D
Early Childhood Classroom Assistant Teacher I	E
Early Childhood Classroom Assistant Teacher II	E
Early Childhood Classroom Assistant Teacher III	F
Educational Sign Language Interpreter I	F
Educational Sign Language Interpreter II	G

Electrician I	F
Electrician II	G
Electronic Technician I	F
Electronic Technician II	G
Executive Secretary	G
Food Services Supervisor	G
Foreman	G
General Maintenance	C
Glazier	D
Graphic Artist	D
Groundsman	B
Handyman	B
Heating and Air Conditioning Mechanic I	E
Heating and Air Conditioning Mechanic II	G
Heavy Equipment Operator	E
Inventory Supervisor	D
Key Punch Operator	B
Licensed Practical Nurse	F
Locksmith	G
Lubrication Man	C
Machinist	F
Mail Clerk	D

Maintenance Clerk	C
Mason	G
Mechanic	F
Mechanic Assistant	E
Office Equipment Repairman I	F
Office Equipment Repairman II	G
Painter	E
Paraprofessional	F
Payroll Supervisor	G
Plumber I	E
Plumber II	G
Printing Operator	B
Printing Supervisor	D
Programmer	H
Roofing/Sheet Metal Mechanic	F
Sanitation Plant Operator	G
School Bus Supervisor	E
Secretary I	D
Secretary II	E
Secretary III	F
Sign Support Specialist	E
Supervisor of Maintenance	H

Supervisor of TransportationH

Switchboard Operator-ReceptionistD

Truck DriverD

Warehouse ClerkC

WatchmanB

Welder F

WVEIS Data Entry and Administrative ClerkB

(b) An additional \$12 per month is added to the minimum monthly pay of each service person who holds a high school diploma or its equivalent.

(c) An additional \$11 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds 12 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(2) A service person who holds 24 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(3) A service person who holds 36 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(4) A service person who holds 48 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(5) A service employee who holds 60 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service person who holds 72 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service person who holds 84 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service person who holds 96 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service person who holds 108 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service person who holds 120 college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(d) An additional \$40 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds an associate's degree;

(2) A service person who holds a bachelor's degree;

(3) A service person who holds a master's degree;

(4) A service person who holds a doctorate degree.

(e) An additional \$11 per month is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds a bachelor's degree plus 15 college hours;

(2) A service person who holds a master's degree plus 15 college hours;

(3) A service person who holds a master's degree plus 30 college hours;

(4) A service person who holds a master's degree plus 45 college hours; and

(5) A service person who holds a master's degree plus 60 college hours.

(f) Each service person is paid a supplement, as set forth in §18A-4-5 of this code, of \$164 per month, subject to the provisions of that section. These payments: (i) Are in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to §18A-4-5b of this code; (ii) are paid in equal monthly installments; and (iii) are considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service person's daily shift of work is performed between the hours of 6:00 p. m. and 5:00 a. m. the following day, the employee is paid no less than an additional \$10 per month and one half of the pay is paid with local funds.

(h) Any service person required to work on any legal school holiday is paid at a rate one and one-half times the person's usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid is paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(j) A service person may not have his or her daily work schedule changed during the school year without the employee's written consent and the person's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in §18A-4-8b of this code is no less than one seventh of the person's daily total salary for each hour the person is involved

in performing the assignment and paid entirely from local funds: *Provided*, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time persons within that classification category of employment within that county: *Provided, however*, That the vote is by secret ballot if requested by a service person within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment is prorated accordingly. When performing extra duty assignments, persons who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the person were employed on a full-day salary basis.

(1) The minimum pay for any service personnel engaged in the removal of asbestos material or related duties required for asbestos removal is their regular total daily rate of pay and no less than an additional \$3 per hour or no less than \$5 per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos-related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos, decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos-related duties outside of the employee's regular employment county, the daily rate of pay is no less than the minimum amount as established in the employee's regular employment county for asbestos removal and an additional \$30 per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel may be used in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act-approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(m) For the purpose of qualifying for additional pay as provided in §18A-5-8 of this code, an aide is considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort, or render service to a child or children when not under the direct supervision of a certified professional person within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds, or wherever supervision is required. For purposes of this section, "under the direct supervision of a certified professional person" means that certified professional person is present, with and accompanying the aide.

●

CHAPTER 243

(S. B. 449 - By Senators Nelson, Deeds, Oliverio, and Hunt)

[Passed March 7, 2023; in effect 90 days from passage (June 5, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §5-10C-3, §5-10C-4, and §5-10C-5 of the Code of West Virginia, 1931, as amended; all relating to government employees' retirement plans; updating definitions; clarifying pick-up contributions for nonteachers; and inserting new retirement plan in savings clause.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-3. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

(1) "Accumulated contributions" means the sum of all amounts credited to a member's individual account in the member's deposit fund and includes both contributions deducted from the compensation of a member and contributions of a member picked up and paid by the member's participating public employer, plus applicable interest thereon.

(2) "Board of trustees" means, as appropriate: The Consolidated Public Retirement Board created in article ten-d of this chapter; the Higher Education Policy Commission; the West Virginia Council for Community and Technical College Education; the institutional governing boards responsible for the

higher education retirement plan and supplemental retirement plan; or the boards of trustees of the firemen's and policemen's pension and relief funds created in §8-22-1 *et seq.* of this code.

(3) "Employee" means any person, whether appointed, elected or under contract, providing services for a public employer for which compensation is paid and who is a member of the applicable retirement system.

(4) "Member" means any person who has accumulated contributions standing to his or her credit in a retirement system.

(5) "Member contributions" means, as appropriate: The contributions required by §5-10-29 of this code from employees who are members of the West Virginia Public Employees Retirement System; the contributions required by section §15-2-26 of this code from employees who are members of the West Virginia State Police Death, Disability and Retirement Fund; the contributions required by §7-14D-7 of this code from employees who are members of the Deputy Sheriff Retirement System; the contributions required by §18-7A-14 of this code from employees who are members of the State Teachers Retirement System; the contributions authorized or required by §18-7A-14a of said chapter or by §18-23-4a of said chapter from employees who are members of the West Virginia higher education retirement plan and supplemental retirement plan; the contributions required by §51-9-4 of this code from employees who are members of the Judges' Retirement System; the contributions required by §8-22-19 of this code from employees who are members of municipal firemen's and policemen's pension and relief funds; the contributions required by §8-22A-8 of this code from employees who are members of the Municipal Police Officers and Firefighters Retirement System; the contributions required by §18-7B-9 of this code from employees who are members of the Teachers' Defined Contribution Retirement System; the contributions required by §15-2A-5 of this code from the employees who are members of the West Virginia State Police Retirement System; the contributions required by §16-5V-8 of this code from employees who are members of the West Virginia Emergency Medical Services Retirement System; or the contributions required by §20-18-8 of this code from employees

who are members of the West Virginia Natural Resources Police Officers Retirement System.

(6) "Participating public employer" means the State of West Virginia, any board, commission, department, institution or spending unit and includes any agency with full-time employees, created by rule of the Supreme Court of Appeals, which for the purpose of this article shall be considered a department of state government and county boards of education with respect to teachers and nonteachers employed by them; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Public Employees Retirement System; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the Deputy Sheriff Retirement System; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Emergency Medical Services Retirement System; any political subdivision in this state which is subject to the provisions of articles twenty-two and twenty-two-a, chapter eight of this code; and any public charter school established pursuant to §18-5G-1 *et seq.* of this code which has elected to participate in, and cover its employees under, either the State Teachers Retirement System or the Teachers' Defined Contribution Retirement System.

(7) "Political subdivision" means the State of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns, any agency or organization established by or approved by the Department of Health and Human Resources for the provision of community health or mental retardation services and which is supported in part by state, county or municipal funds.

(8) "Retirement system" means, as appropriate: The West Virginia Public Employees Retirement System created in §5-10-1

et seq. of this code; the West Virginia State Police Death, Disability and Retirement Fund created in §15-2-26 through §15-2-39a of this code, inclusive; the West Virginia Deputy Sheriff Retirement System created in §7-14D-1 *et seq.* of this code; the state Teachers Retirement System created in §18-7A-1 *et seq.* of this code; the West Virginia higher education retirement plan and supplemental retirement plan created in §18-7A-14a of this code and §18-23-4a of this code; the Judges' Retirement System created in §51-9-1 *et seq.* of this code; the firemen's or policemen's pension and relief funds created in §8-22-16 of this code; the Municipal Police Officers and Firefighters Retirement System created in §8-22A-4 of this code; the Teachers' Defined Contribution Retirement System created in article seven-b, chapter eighteen of this code; the West Virginia State Police Retirement System created in article two-a, chapter fifteen of this code; the West Virginia Emergency Medical Services Retirement System created in §16-5V-1 *et seq.* of this code; or the West Virginia Natural Resources Police Officers Retirement System created in article eighteen, chapter twenty of this code.

(9) "Teacher" and "nonteacher" have the meanings ascribed to the terms "teacher member" and "nonteaching member" in §18-7A-3 of this code.

§5-10C-4. Pick-up of members' contributions by participating public employers.

(a) The State of West Virginia for its public employees and county boards of education for its teachers and nonteachers shall pick-up and pay the contributions which the employees are required by law to make to the retirement system in which they are a member for all compensation earned by its member employees after June 30, 1986. Any political subdivision that is a participating public employer in the West Virginia Public Employees Retirement System shall pick-up and pay the contributions which the employees are required by law to make to the retirement system in which they are members for all compensation earned by its member employees after January 1, 1995. Public employers participating in the Municipal Police Officers and Firefighters Retirement System shall pick-up and pay the contributions which

the employees are required by law to make to the system in which they are members for all compensation earned by its member employees beginning January 1, 2010. Counties shall pick-up and pay the contributions which the employees are required by law to make to the Deputy Sheriff Retirement System in which they are members for all compensation earned by its member employees after June 30, 1998. Any election made by a political subdivision to pick-up and pay employee contributions prior to January 1, 1995, remains in effect and is not altered or amended by the amendments made to this section during the regular legislative session, 1995. Unless a different commencement date for pick-up is specifically stated in this section, all participating public employers under this article, with respect to retirement systems subject to this article, shall pick-up and pay the contributions which their employees are required by law to make to the retirement system in which they are a member from and after the commencement of the required employee contributions.

(b) When the participating public employer picks up and pays the contributions of its member employees, the contributions, although designated by statute as employee contributions, shall be treated as employer contributions in determining the tax treatment thereof under article twenty-one, chapter eleven of this code and the federal Internal Revenue Code of 1986, as amended, and the contributions shall not be included in the gross income of the employee in determining his or her tax treatment under those provisions until they are distributed or made available to the employee or his or her beneficiary. The participating public employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee, by effecting an equal cash reduction in the gross salary of the employee, or by an off-set against future salary increases, or by a combination of reduction in gross salary and off-set against future salary increases. In no event shall any employee of a participating public employer have the right to opt out of pick-up or to elect to receive the picked-up and contributed amounts directly instead of having them paid by the participating public employer into the retirement system pursuant to this article.

(c) When employee contributions are picked up and paid by the participating public employer, they shall be treated by the board of trustees in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions are picked up by the participating public employer.

(d) The amount of employee contributions picked up by the participating public employer shall be paid to the retirement system in the manner and form and in the frequency required by the board of trustees and shall be accompanied by supporting data that the board of trustees may prescribe. When paid to the retirement system, each of these amounts shall be credited to the deposit fund account of the member for whom the contribution was picked up and paid by the participating public employer.

§5-10C-5. Savings clause.

In enacting this article, it is the intent of the Legislature that the retirement plan created pursuant to this article and those created pursuant to §5-10-1 *et seq.*; §7-14D-1 *et seq.*; §8-22A-1 *et seq.*; §15-2-1 *et seq.*; §18-7A-1 *et seq.*; §51-9-1 *et seq.*; §18-23-4a; §8-22-16; §18-7B-1 *et seq.*; §15-2A-1 *et seq.*; §16-5V-1 *et seq.*; and §20-18-1 *et seq.* of this code qualify under Section 401 of the Internal Revenue Code of 1986, as amended, and that the member contributions picked up by the participating public employer qualify under Subsection (h), Section 414 of the Internal Revenue Code of 1986, as amended. If the United States Internal Revenue Service does not approve of certain sections or phraseology of certain sections of this article as being in compliance with the statutes or regulations governing the Internal Revenue Service, the respective boards of trustees, in the adoption of the deferred compensation plan, shall adopt the terminology with respect to those sections that comply with the statutes or regulations governing the Internal Revenue Service.

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CHAPTER 244

(Com. Sub. for S. B. 450 - By Senators Nelson and Hunt)

[Passed March 7, 2023; in effect 90 days from passage (June 5, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §5-10-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-2, §7-14D-14, and §7-14D-15; to amend and reenact §8-22A-2; to amend and reenact §15-2A-2 and §15-2A-9; to amend and reenact §16-5V-2; to amend and reenact §18-7A-3 and §18-7A-25; and to amend and reenact §20-18-2, §20-18-21, and §20-18-22, all relating to disability retirement medical examinations of the West Virginia Public Employees Retirement System, the Deputy Sheriffs' Retirement System, the Municipal Police and Firefighters Retirement System, the State Police Retirement System, the Emergency Medical Services Retirement System, the Teachers Retirement System, and the Natural Resources Police Officers Retirement System; defining "medical examination"; and providing that board approval of disability awards and benefits be based on a medical examination.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES
RETIREMENT ACT.**

§5-10-2. Definitions.

Unless a different meaning is clearly indicated by the context, the following words and phrases as used in this article have the following meanings:

(1) "Accumulated contributions" means the sum of all amounts deducted from the compensations of a member and credited to his or her individual account in the members' deposit fund, together with regular interest on the contributions;

(2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member;

(3) "Actuarial equivalent" means a benefit of equal value computed upon the basis of a mortality table and regular interest adopted by the board of trustees from time to time: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, actuarial equivalent shall be computed using the mortality tables and interest rates required to comply with those requirements;

(4) "Annuity" means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, rounding to the upper cent for any fraction of a cent;

(5) "Annuity reserve" means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other tables of experience, and regular interest, adopted by the board of trustees from time to time;

(6) "Beneficiary" means any person which shall include an irrevocable special needs trust, as that term is defined in this section, for the benefit of one individual beneficiary and which trust terminates upon the death of such individual with no further annuity benefits being payable, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(7) "Board of Trustees" or "board" means the Board of Trustees of the West Virginia Consolidated Public Retirement Board;

(8) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by the member to the participating public employer. In the event a member's remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of the remuneration which is not paid in money: *Provided*, That members hired in a position for the first time on or after July 1, 2014, who receive nonmonetary remuneration shall not have nonmonetary remuneration included in compensation for retirement purposes and nonmonetary remuneration may not be used in calculating a member's final average salary. Any lump sum or other payments paid to members that do not constitute regular salary or wage payments are not considered compensation for the purpose of withholding contributions for the system or for the purpose of calculating a member's final average salary. These payments include, but are not limited to, attendance or performance bonuses, one-time flat fee or lump sum payments, payments paid as a result of excess budget, or employee recognition payments. The board shall have final power to decide whether the payments shall be considered compensation for purposes of this article;

(9) "Contributing service" means service rendered by a member within this state and for which the member made contributions to a public retirement system account of this state, to the extent credited him or her as provided by this article;

(10) "Credited service" means the sum of a member's prior service credit, military service credit, workers' compensation service credit, and contributing service credit standing to his or her credit as provided in this article;

(11) "Employee" means any person who serves regularly as an officer or employee, full-time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on

completion of assignment, including technicians and other personnel employed by the West Virginia National Guard whose compensation, in whole or in part, is paid by the federal government: *Provided*, That an employee of the Legislature whose term of employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is employed during regular sessions or during the interim between regular sessions in seven or more consecutive calendar years, as certified by the clerk of the house in which the employee served, is an employee, any provision to the contrary in this article notwithstanding, and is entitled to credited service in accordance with provisions of §5-10-14 of this code: *Provided, however*, That members of the legislative body of any political subdivision and commissioners of the West Virginia Claims Commission are employees receiving one year of service credit for each one-year term served and prorated service credit for any partial term served, anything contained in this article to the contrary notwithstanding: *Provided further*, That only a compensated board member of a participating public employer appointed to a board of a nonlegislative body for the first time on or after July 1, 2014, who normally is required to work 12 months per year and 1,040 hours of service per year is an employee. In any case of doubt as to who is an employee within the meaning of this article, the board of trustees shall decide the question;

(12) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required;

(13) "Final average salary" means either of the following: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401 (a) (17) of the Internal

Revenue Code: *Provided, however,* That the provisions of §5-10-22h of this code are not applicable to the amendments made to this subdivision during the 2011 regular session of the Legislature;

(A) The average of the highest annual compensation received by a member, including a member of the Legislature who participates in the retirement system in the year 1971 or thereafter, during any period of three consecutive years of credited service contained within the member's 15 years of credited service immediately preceding the date his or her employment with a participating public employer last terminated: *Provided,* That for persons who were first hired on or after July 1, 2015, any period of five consecutive years of contributing service contained within the member's 15 years of credited service immediately preceding the date his or her employment with a participating public employer last terminated; or

(B) If the member has less than five years of credited service, the average of the annual rate of compensation received by the member during his or her total years of credited service; and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a member of the Legislature who participates in the retirement system as a member of the Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation (the total of all compensation paid under §4-2A-2, §4-2A-3, §4-2A-4, and §4-2A-5 of this code), in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any year from any other participating public employer including the State of West Virginia, without any multiple in excess of one times his or her actual legislative compensation and other compensation, shall be used: *Provided,* That final average salary for any former member of the Legislature or for any member of the Legislature in the year 1971 who, in either event, was a member of the Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on November 30 in any one or more of those three years and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (i) Either, notwithstanding the provisions of this subdivision preceding this proviso, \$1,500

multiplied by eight, plus the highest other compensation the former member or member received in any one of the three years from any other participating public employer including the State of West Virginia; or (ii) final average salary determined in accordance with paragraph (A) or (B) of this subdivision, whichever computation produces the higher final average salary, and in determining the annual compensation under subparagraph (ii) of this paragraph, the legislative compensation of the former member shall be computed on the basis of \$1,500 multiplied by eight, and the legislative compensation of the member shall be computed on the basis set forth in the provisions of this subdivision immediately preceding this paragraph or on the basis of \$1,500 multiplied by eight, whichever computation as to the member produces the higher annual compensation;

(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, codified at Title 26 of the United States Code;

(15) "Limited credited service" means service by employees of the West Virginia Educational Broadcasting Authority, in the employment of West Virginia University, during a period when the employee made contributions to another retirement system, as required by West Virginia University, and did not make contributions to the Public Employees Retirement System: *Provided*, That while limited credited service can be used for the formula set forth in §5-10-21(e) of this code, it may not be used to increase benefits calculated under §5-10-22 of this code;

(16) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(17) "Member" means any person who has accumulated contributions standing to his or her credit in the members' deposit fund;

(18) "Participating public employer" means the State of West Virginia, any board, commission, department, institution, or spending unit, and includes any agency created by rule of the Supreme Court of Appeals having full-time employees, which for the purposes of this article is considered a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Public Employees Retirement System;

(19) "Plan year" means the same as referenced in §5-10-42 of this code;

(20) "Political subdivision" means the State of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency participating in the Public Employees Retirement System before July 1, 1997, is considered a political subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the retirement system at their option after July 1, 1997: *Provided, however*, That the Regional Community Policing Institute which participated in the Public Employees Retirement System before July 1, 2000, is considered a political subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the Public Employees Retirement System after July 1, 2000;

(21) "Prior service" means service rendered prior to July 1, 1961, to the extent credited a member as provided in this article;

(22) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board of trustees adopts from time to time;

(23) "Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which a member ceases providing service covered under this retirement system to a participating employer;

(24) "Retirant" means any member who commences an annuity payable by the retirement system;

(25) "Retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the retirement system;

(26) "Retirement system" or "system" means the West Virginia Public Employees Retirement System created and established by this article;

(27) "Retroactive service" means: (1) Service between July 1, 1961, and the date an employer decides to become a participating member of the Public Employees Retirement System; (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost in accordance with 162 CSR 5.12; and (3) service of any member of a legislative body or employees of the State Legislature whose term of employment is otherwise classified as temporary for which the employee is eligible, but for which the employee did not elect to participate at that time;

(28) "Service" means personal service rendered to a participating public employer by an employee of a participating public employer;

(29) "Special needs trust" means a trust established pursuant to §44D-8B-13 of this code for an individual beneficiary with a disability and such special needs trust is or will become irrevocable by the time the retirant names the special needs trust as the beneficiary of retirant's annuity benefits in place of the individual beneficiary and terminates upon the death of the individual beneficiary with no further annuity benefits being payable; and

(30) "State" means the State of West Virginia.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.
ARTICLE 14. DEPUTY SHERIFF RETIREMENT SYSTEM
ACT.

§7-14D-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the member's final average salary multiplied by the member's years of credited service: *Provided*, That members who are retired on or retire after July 1, 2018, shall have an accrued benefit of two and one-half percent of the member's final average salary multiplied by the member's years of credited service. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §7-14D-9a of this code.

(b) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member, or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code, either pursuant to §7-14D-7 of this code or §5-10-29 of this code as a result of covered employment together with regular interest on the deducted amounts.

(c) "Active member" means a member who is active and contributing to the plan.

(d) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(e) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as

set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(f) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash, or noncash fringe benefits or both, deferred compensation, and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

(g) "Annual leave service" means accrued annual leave.

(h) "Annuity starting date" means the first day of the first calendar month following receipt of the retirement application by the board or the required beginning date, if earlier: *Provided*, That the member has ceased covered employment and reached early or normal retirement age.

(i) "Base salary" means a member's cash compensation exclusive of overtime from covered employment during the last 12 months of employment. Until a member has worked 12 months, annualized base salary is used as base salary.

(j) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(k) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(l) "County commission" has the meaning ascribed to it in §7-1-1 of this code.

(m) "Covered employment" means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; (2) the period of time which active duties are not performed but disability benefits are received under §7-14D-14 or §7-14D-15 of this code; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where the secondary employment requires the deputy sheriff to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the deputy sheriff contributes to the fund created in §7-14D-6 of this code the amount specified as the deputy sheriff's contribution in §7-14D-7 of this code.

(n) "Credited service" means the sum of a member's years of service, active military duty, disability service, unused annual leave service, and unused sick leave service.

(o) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by §7-14-2 of this code.

(p) "Dependent child" means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in subparagraph (A), (B), or (C), paragraph (1) of this subdivision.

(q) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(r) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under §7-14D-14 or §7-14D-15 of this code.

(s) "Early retirement age" means age 40 or over and completion of 20 years of service.

(t) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(u) "Effective date" means July 1, 1998.

(v) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period, the member received disability benefits under §7-14D-14 or §7-14D-15 of this code, then "final average salary" means the

average of the full monthly salary determined paid to the member during that period multiplied by 12.

(w) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to §7-14D-6 of this code.

(x) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof, and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §7-14D-14 or §7-14D-15 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission, irrespective of mitigation of damages. The same hours of service shall not be credited both under this paragraph and paragraph (1) or (2) of this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains rather than the plan year in which the award, agreement, or payment is made.

(y) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(z) "Member" means a person first hired as a deputy sheriff after the effective date of this article, as defined in subdivision (u) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to §7-14D-5 or §7-14D-17 of this code. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited or until cessation of membership pursuant to §7-14D-5 of this code.

(aa) "Monthly salary" means the portion of a member's annual compensation which is paid to him or her per month.

(bb) "Normal form" means a monthly annuity which is one-twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(cc) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of service; (2) while still in covered employment, attainment of at least age 50 years, and when the sum of current age plus years of service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years, and completion of five years of service; or (4) attainment of age 62 years and completion of five or more years of service.

(dd) "Partially disabled" means a member's inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state, but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan

during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(ee) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by §5-10-1 *et seq.* of this code.

(ff) "Plan" means the West Virginia Deputy Sheriff Death, Disability, and Retirement Plan established by this article.

(gg) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(hh) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services, or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(ii) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(jj) "Required beginning date" means April 1 of the calendar year following the later of: (i) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (ii) the calendar year in which he or she retires or otherwise separates from covered employment.

(kk) "Retire" or "retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.

(ll) "Retirement income payments" means the annual retirement income payments payable under the plan.

(mm) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(nn) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(oo) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a deputy sheriff but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological, or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. A member's receipt of Social Security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

(pp) *Year of service.* — A member shall, except in his or her first and last years of covered employment, be credited with year of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0

500 to 999	1/3
1,000 to 1,499	2/3
1,500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one-twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §7-14D-14 or §7-14D-15 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date. Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §7-14D-13 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to §7-14D-13 of this code or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

§7-14D-14. Awards and benefits for disability – duty related.

(a) Any member who after the effective date of this article and during covered employment:

(1) Has been or becomes either totally or partially disabled by injury, illness, or disease; and

(2) The disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or

(3) The disability was incurred while performing law-enforcement functions during either scheduled work hours or at any other time; and

(4) In the opinion of the board based on a medical examination, the member is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to

receive and shall be paid from the fund in monthly installments the compensation under either subsection (b) or (c) of this section.

(b) If the member is totally disabled, the member shall receive 90 percent of his or her average full monthly compensation for the 12-month contributory period preceding the member's disability award, or the shorter period if the member has not worked 12 months. Any member retired under this subsection, or under §7-14D-17 of this code, on or before July 1, 2020, shall have his or her monthly benefit payment increased by \$400.

(c) If the member is partially disabled, the member shall receive 45 percent of his or her average full monthly compensation for the 12-month contributory period preceding the member's disability award, or the shorter period if the member has not worked 12 months.

(d) If the member remains partially disabled until attaining 60 years of age, the member shall then receive the retirement benefit provided in §7-14D-11 and §7-14D-12 of this code.

(e) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

§7-14D-15. Same – Due to other causes.

(a) Any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally or partially disabled from any cause other than those set forth in §7-14D-14 of this code and not due to vicious habits, intemperance or willful misconduct on his or her part; and (2) in the opinion of the board based on a medical examination, he or she is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to receive and shall be paid from the fund in monthly installments the compensation set forth in either subsection (b) or (c) of this section.

(b) If the member is totally disabled, he or she shall receive 66 and two-thirds percent of his or her average full monthly

compensation for the 12-month contributory period preceding the disability award, or the shorter period, if the member has not worked 12 months.

(c) If the member is partially disabled, he or she shall receive 33 and one-third percent of his or her average full monthly compensation for the 12-month contributory period preceding the disability award, or the shorter period, if the member has not worked 12 months.

(d) If the member remains disabled until attaining 60 years of age, then the member shall receive the retirement benefit provided in §7-14D-11 and §7-14D-12 of this code.

(e) The board shall propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code concerning member disability payments so as to ensure that the payments do not exceed 100 percent of the average current salary in any given county for the position last held by the member.

(f) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member 2.75 percent per year of the member's final average salary for the first 20 years of credited service. Additionally, 2 percent per year for 21 through 25 years and 1.5 percent per year for each year over 25 years will be credited with a maximum benefit of 90 percent of a

member's final average salary. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §8-22A-10 of this code.

(b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

(c) "Active military duty" means full-time duty in the active military service of the United States Army, Navy, Air Force, Coast Guard or Marine Corps. The term does not include regularly required training or other duty performed by a member of a reserve component or National Guard unless the member can substantiate that he or she was called into the full-time active military service of the United States and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed on the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits, or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation

allowed as adjusted for cost-of-living in accordance with §5-10D-7 of this code and Section 401(a) (17) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a retirement application or the required beginning date, if earlier. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's normal retirement age and after completing proper written application for retirement on an application supplied by the board.

(h) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(i) "Board" means the Consolidated Public Retirement Board.

(j) "Covered employment" means either: (1) Employment as a full-time municipal police officer or firefighter and the active performance of the duties required of that employment; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan where the secondary employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the police officer or firefighter contributes to the fund created in this article the amount specified as the member's contribution in §8-22A-8 of this code.

(k) "Credited service" means the sum of a member's years of service, active military duty, and disability service.

(l) "Dependent child" means either: (1) An unmarried person under age 18 who is: (A) A natural child of the member; (B) a

legally adopted child of the member; (C) a child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or (D) a stepchild of the member residing in the member's household at the time of the member's death; or (2) Any unmarried child under age 23: (A) Who is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and (C) whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(m) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(n) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof, or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(o) "Effective date" means January 1, 2010.

(p) "Employer error" means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(q) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly compensation

which the member was receiving in the plan year prior to the initial disability. "Final average salary" does not include any lump sum payment for unused, accrued leave of any kind or character.

(r) "Full-time employment" means permanent employment of an employee by a participating municipality in a position which normally requires 12 months per year service and requires at least 1,040 hours per year service in that position.

(s) "Fund" means the West Virginia Municipal Police Officers and Firefighters Retirement Fund created by this article.

(t) "Hour of service" means: (1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and (2) each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member may not be credited with any hours of service for any period of time he or she is receiving benefits under §8-22A-17 and §8-22A-18 of this code; and (3) each hour for which back pay is either awarded or agreed to be paid by the employing municipality, irrespective of mitigation of damages. The same hours of service may not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(u) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the

member's physical or mental health, or both, by a physician selected or approved by the board.

(v) "Member" means, except as provided in §8-22A-32 and §8-22A-33 of this code, a person hired as a municipal police officer or municipal firefighter, as defined in this section, by a participating municipal employer on or after January 1, 2010. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(w) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(x) "Municipality" has the meaning ascribed to it in this code.

(y) (1) "Municipal police officer" means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal policemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal policemen's pension and relief fund as provided in §8-22-16 of this code: *Provided*, That municipal police officer also means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid police department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(2) "Municipal firefighter" means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal firemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal firemen's pension and relief fund as provided in §8-22-16 of this code: *Provided*, That municipal firefighter also means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33

of this code. Paid fire department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(z) "Municipal subdivision" means any separate corporation or instrumentality established by one or more municipalities, as permitted by law; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more municipalities.

(aa) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(bb) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service; (2) while still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or (4) attainment of age 62 years and completion of five or more years of regular contributory service.

(cc) "Plan" means the West Virginia Municipal Police Officers and Firefighters Retirement System established by this article.

(dd) "Plan year" means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(ee) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, firefighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision,

or such other meaning given to the term by Section 72(t) (10) (B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b) (2) (v) as they may be amended from time to time.

(ff) "Regular contributory service" means a member's credited service excluding active military duty, disability service and accrued annual and sick leave service.

(gg) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(hh) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

(ii) "Retirement income payments" means the monthly retirement income payments payable.

(jj) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(kk) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(ll) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subsection: (1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member

would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration; and (2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(mm) "Vested" means eligible for retirement income payments after completion of five or more years of regular contributory service.

(nn) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based on the hours of service performed as covered employment and credited to the member during the plan year based on the following schedule:

Hours of Service	Year of Service Credited
Less than 500	0
500 to 999	1/3
1,000 to 1,499	2/3
1,500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one-twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §8-22A-17 and §8-22A-18 of this code.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2A. WEST VIRGINIA STATE POLICE SYSTEM.

§15-2A-2. Definitions.

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

(1) "Accumulated contributions" means the sum of all amounts deducted from base salary, together with four percent interest compounded annually.

(2) "Active military duty" means full-time active duty with the armed forces of the United States, namely, the United States Air Force, Army, Coast Guard, Marines or Navy; and service with the National Guard or reserve military forces of any of the armed forces when the employee has been called to active full-time duty.

(3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(4) "Agency" means the West Virginia State Police.

(5) "Base salary" means compensation paid to an employee without regard to any overtime pay.

(6) "Beneficiary" means a surviving spouse or other surviving beneficiary who is entitled to, or will be entitled to, an annuity or other benefit payable by the fund.

(7) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D- 1 *et seq.* of this code.

(8) "Dependent child" means any unmarried child or children born to or adopted by a member or retirant of the fund who:

(A) Is under the age of 18;

(B) After reaching 18 years of age, continues as a full-time student in an accredited high school, college, university or business or trade school until the child or children reaches the age of 23 years; or

(C) Is financially dependent on the member or retirant by virtue of a permanent mental or physical disability upon evidence satisfactory to the board.

(9) "Dependent parent" means the member's or retirant's parent or step-parent claimed as a dependent by the member or retirant for federal income tax purposes at the time of the member's or retirant's death.

(10) "Employee" means any person regularly employed in the service of the agency as a law-enforcement officer after March 12, 1994, and who is eligible to participate in the fund.

(11) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(12) "Final average salary" means the average of the highest annual compensation received for employment with the agency, including compensation paid for overtime service, received by the employee during any five calendar years within the employee's last 10 years of service: *Provided*, That annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

(13) "Fund", "plan", "system" or "retirement system" means the West Virginia State Police Retirement Fund created and established by this article.

(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(15) "Law-enforcement officer" means an individual employed or otherwise engaged in either a public or private position which involves the rendition of services relating to enforcement of federal, state or local laws for the protection of public or private safety, including, but not limited to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any other law-enforcement position which requires certification, but excluding positions held by elected sheriffs or appointed chiefs of police whose duties are purely administrative in nature.

(16) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(17) "Member" means any person who has contributions standing to his or her credit in the fund and who has not yet entered into retirement status.

(18) "Month of service" means each month for which an employee is paid or entitled to payment for at least one hour of service for which contributions were remitted to the fund. These months shall be credited to the member for the calendar year in which the duties are performed.

(19) "Partially disabled" means an employee's inability, on a probable permanent basis, to perform the essential duties of a law-enforcement officer by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months, but which impairment does not preclude the employee from engaging in other types of nonlaw-enforcement employment.

(20) "Physical or mental impairment" means an impairment that results from an anatomical, physiological or psychological

abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

(21) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(22) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(23) "Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which he or she retires or otherwise separates from service with the agency.

(24) "Retirant" or "retiree" means any member who commences an annuity payable by the retirement system.

(25) "Salary" means the compensation of an employee, excluding any overtime payments.

(26) "Surviving spouse" means the person to whom the member or retirant was legally married at the time of the member's or retirant's death and who survived the member or retirant.

(27) "Totally disabled" means an employee's probable permanent inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision, an employee is totally disabled only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as an employee of the agency, but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless

of whether: (A) The work exists in the immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee would be hired if he or she applied for work.

(28) "Years of service" means the months of service acquired by a member while in active employment with the agency divided by 12. Years of service shall be calculated in years and fraction of a year from the date of active employment of the member with the agency through the date of termination of employment or retirement from the agency. If a member returns to active employment with the agency following a previous termination of employment with the agency and the member has not received a refund of contributions plus interest for the previous employment under §15-2A-8 of this code, service shall be calculated separately for each period of continuous employment and years of service shall be the total service for all periods of employment. Years of service shall exclude any periods of employment with the agency for which a refund of contributions plus interest has been paid to the member unless the employee repays the previous withdrawal, as provided in §15-2A-8 of this code, to reinstate the years of service.

§15-2A-9. Awards and benefits for disability – Incurred in performance of duty.

(a) Any employee of the agency who has not yet entered retirement status on the basis of age and service and who becomes partially disabled by injury, illness, or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of employees of the agency or incurred pursuant to or while the employee was engaged in the performance of his or her duties as an employee of the agency shall, if, in the opinion of the board based on a medical examination, he or she is, by reason of that cause, unable to perform adequately the duties required of him or her as an employee of the agency, but is able to engage in other gainful employment in a field other than law enforcement, be retired from active service by the board. The retirant thereafter is entitled to receive annually from the fund in equal monthly

installments during his or her lifetime, or until the retirant attains the age of 55 or until the disability eligibility sooner terminates, one or the other of two amounts, whichever is greater:

(1) An amount equal to six tenths of the base salary received in the preceding 12-month employment period: *Provided*, That if the member had not been employed with the agency for 12 months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of \$6,000. The first day of the month following the date in which the retirant attains age 55, the retirant shall receive the benefit provided in section six of this article as it would apply to his or her final average salary based on earnings from the agency through the day immediately preceding his or her disability. The recalculation of benefit upon a retirant attaining age 55 shall be considered to be a retirement under the provisions of section six of this article for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article: *Provided*, That a retirant who is partially disabled under this article may not, while in receipt of benefits for partial disability, be employed as a law-enforcement officer: *Provided, however*, That a retirant on a partial disability under this article may serve as an elected sheriff or appointed chief of police in the state without a loss of disability retirement benefits as long as the elected or appointed position is shown, to the satisfaction of the board, to require the performance of administrative duties and functions only, as opposed to the full range of duties of a law-enforcement officer.

(b) If, in the opinion of the board based on a medical examination, any member who has not yet entered retirement status on the basis of age and service, and who becomes physically or mentally disabled by injury, illness, or disease on a probable permanent basis resulting from any occupational risk or hazard inherent in or peculiar to the services required of employees of the agency or incurred pursuant to or while the employee was or is engaged in the performance of his or her duties as an employee of

the agency to the extent that the employee is incapacitated ever to engage in any gainful employment, the employee is entitled to receive annually, and there shall be paid from the fund in equal monthly installments during his or her lifetime or until the disability sooner terminates, an amount equal to the base salary received by the employee in the preceding full 12-month employment period. Until a member has worked 12 months, the amount of monthly base salary shall be annualized for the purpose of determining the benefit.

(c) Disability benefit payments made pursuant to subsection (a) or (b) of this section will begin the first day of the month following board approval and termination of employment or as ordered by a court of competent jurisdiction.

(d) The superintendent of the agency may expend moneys from funds appropriated for the agency in payment of medical, surgical, laboratory, x-ray, hospital, ambulance and dental expenses and fees and reasonable costs and expenses incurred in the purchase of artificial limbs and other approved appliances which may be reasonably necessary for any retirant who is temporarily, permanently or totally disabled by injury, illness, or disease resulting from any occupational risk or hazard inherent in or peculiar to the service required of employees of the agency or incurred pursuant to or while the employee was or shall be engaged in the performance of duties as an employee of the agency. Whenever the superintendent determines that any disabled retirant is ineligible to receive any of the benefits in this section at public expense, the superintendent shall, at the request of the disabled retirant, refer the matter to the board for hearing and final decision. In no case will the compensation rendered to health care providers for medical and hospital services exceed the then current rate schedule approved by the West Virginia Insurance Commission. Upon termination of employment and receipt of properly executed forms from the agency and the member, the board shall process the member's disability retirement benefit and commence annuity payments as soon as administratively feasible.

CHAPTER 16. PUBLIC HEALTH.**ARTICLE 5V. EMERGENCY MEDICAL SERVICES
RETIREMENT SYSTEM ACT.*****§16-5V-2. Definitions.**

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year of the member's final average salary for the first 20 years of credited service. Additionally, two percent per year for 21 through 25 years and one and one-half percent per year for each year over 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

(1) The board may, upon the recommendation of the board's actuary, increase the employees' contribution rate to 10 and five-tenths percent should the funding of the plan not reach 70 percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and one-half percent once the plan funding reaches the 70 percent support objective as of any later actuarial valuation date.

(2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date, the board shall increase the two and six-tenths percent to two and three-quarter percent for the first 20 years of credited service. The maximum benefit will also be increased from 67 percent to 90 percent.

(b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

*NOTE: This section was also amended by S. B. 452 (Chapter 246), which passed subsequent to this act.

(c) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash, or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a retirement application. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's normal retirement age and after completing proper written application for retirement on an application supplied by the board.

(h) "Board" means the Consolidated Public Retirement Board.

(i) "Contributing service" or "contributory service" means service rendered by a member while employed by a participating public employer for which the member made contributions to the plan.

(j) "County commission or political subdivision" has the meaning ascribed to it in this code.

(k) "Covered employment" means either: (1) Employment as a full-time emergency medical technician, emergency medical technician/paramedic, or emergency medical services/registered nurse and the active performance of the duties required of emergency medical services officers; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by an emergency medical services officer in a job or jobs in addition to his or her employment as an emergency medical services officer where the secondary employment requires the emergency medical services officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the emergency medical services officer contributes to the fund created in this article the amount specified as the member's contribution in §16-5V-8 of this code.

(l) "Credited service" means the sum of a member's years of service, active military duty, disability service and accrued annual and sick leave service.

(m) "Dependent child" means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(n) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(o) "Disability service" means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(p) "Early retirement age" means age 45 or over and completion of 20 years of contributory service.

(q) "Effective date" means January 1, 2008.

(r) "Emergency medical services officer" means an individual employed by the state, county or other political subdivision as a medical professional who is qualified to respond to medical emergencies, aids the sick and injured and arranges or transports to medical facilities, as defined by the West Virginia Office of Emergency Medical Services. This definition is construed to include employed ambulance providers and other services such as law enforcement, rescue or fire department personnel who primarily perform these functions and are not provided any other credited service benefits or retirement plans. These persons may hold the rank of emergency medical technician/basic, emergency medical technician/paramedic, emergency medical services/registered nurse, or others as defined by the West Virginia

Office of Emergency Medical Services and the Consolidated Public Retirement Board.

(s) "Employer error" means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(t) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly salary determined paid to the member during that period as determined under §16-5V-19 of this code multiplied by 12. Final average salary does not include any lump sum payment for unused, accrued leave of any kind or character.

(u) "Full-time employment" means permanent employment of an employee by a participating public employer in a position which normally requires 12 months per year service and requires at least 1,040 hours per year service in that position.

(v) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created by this article.

(w) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §16-5V-19 or §16-5V-20 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission or political subdivision, irrespective of mitigation of damages. The same hours of service shall not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(x) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(y) "Member" means a person first hired as an emergency medical services officer by an employer which is a participating public employer of the Public Employees Retirement System or the Emergency Medical Services Retirement System after the effective date of this article, as defined in subsection (q) of this section, or an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(z) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(aa) "Normal form" means a monthly annuity which is one-twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(bb) "Normal retirement age" means the first to occur of the following:

(1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service, excluding active military duty, disability service and accrued annual and sick leave service;

(2) While still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory years of service equals or exceeds 70 years;

(3) While still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or

(4) Attainment of age 62 years and completion of five or more years of regular contributory service.

(cc) "Participating public employer" means any county commission or political subdivision in the state which has elected to cover its emergency medical services officers, as defined in this article, under the West Virginia Emergency Medical Services Retirement System.

(dd) "Plan" means the West Virginia Emergency Medical Services Retirement System established by this article.

(ee) "Plan year" means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(ff) "Political subdivision" means a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any public corporation established under §7-15-4 of this code is considered a political subdivision solely for the purposes of this article.

(gg) "Public Employees Retirement System" means the West Virginia Public Employee's Retirement System created by West Virginia Code.

(hh) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(ii) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

(jj) "Retirant" means any member who commences an annuity payable by the plan.

(kk) "Retire" or "retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.

(ll) "Retirement income payments" means the monthly retirement income payments payable under the plan.

(mm) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(nn) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(oo) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

For purposes of this subsection:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as an emergency medical services officer but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(pp) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Years of Service Credited
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Less than 500	0
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500 to 999	1/3
1,000 to 1499	2/3
1,500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date.

Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §16-5V-18 of this code or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section §16-5V-18 of this code or has prior to the effective date made the repayment pursuant to §5-10-18 of this code.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

***§18-7A-3. Definitions.**

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

"Accumulated contributions" means all deposits and all deductions from the gross salary of a contributor plus regular interest.

*NOTE: This section was also amended by S. B. 451 (Chapter 245), which passed subsequent to this act.

"Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member.

"Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

"Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

"Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last 15 fiscal years of total service credit, including military service as provided in this article, or if total service is less than 15 years, the average annual salary for the period on which contributions were made: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

"Beneficiary" means the recipient of annuity payments made under the retirement system.

"Contributor" means a member of the retirement system who has an account in the Teachers Accumulation Fund.

"Deposit" means a voluntary payment to his or her account by a member.

"Employer" means the agency of and within the state which has employed or employs a member.

"Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, or of the West Virginia Code of State Regulations,

or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

"Employment term" means employment for at least 10 months, a month being defined as 20 employment days.

"Gross salary" means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the work was done. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member's rights to employment or wages, with all retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

"Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

"Member" means any person who has accumulated contributions standing to his or her credit in the State Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or

forfeited, or until cessation of membership pursuant to §18-7A-13 of this code.

"Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

"Members of the extension staff of the public schools" means every agricultural agent, boys and girls club agent, and every member of the agricultural extension staff whose work is not primarily stenographic, clerical, or secretarial.

"New entrant" means a teacher who is not a present teacher.

"Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education or educational services cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; (E) a governing board, as defined in §18B-1-2 of this code; or (F) a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article and §18-7B-1 *et seq.* of this code, subject to §18-7B-7a: *Provided*, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

"Plan year" means the 12-month period commencing on July 1 and ending the following June 30 of any designated year.

"Present member" means a present teacher or nonteacher who is a member of the retirement system.

"Present teacher" means any person who was a teacher within the 35 years beginning July 1, 1934, and whose membership in the retirement system is currently active.

"Prior service" means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

"Public schools" means all publicly supported schools, including colleges and universities in this state.

"Refund beneficiary" means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

"Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

"Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

"Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which the member retires or ceases covered employment under the retirement system.

"Retirant" means any member who commences an annuity payable by the retirement system.

"Retirement board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

"Retirement system" means the State Teachers Retirement System established by this article.

"Teacher member" means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B)

principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education, or the State Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and Rehabilitation, the Division of Health, or the Division of Human Services; (K) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; (L) employees of an educational services cooperative who are performing services of an educational nature; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the State Teachers Retirement System provided in this article; and (N) any person employed by a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article and §18-7B-1 *et seq.* of this code.

"Total service" means all service as a teacher or nonteacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

Age in excess of 70 years shall be considered to be 70 years.

§18-7A-25. Eligibility for retirement allowance.

(a) Except for a person who first becomes a member of the retirement system on or after July 1, 2015, any actively

contributing member who has attained the age of 60 years or any member who has 35 years of total service as a teacher or nonteaching member in West Virginia, regardless of age, is eligible for an annuity. No new entrant nor present member is eligible for an annuity, however, if either has less than five years of service to his or her credit: *Provided*, That on and after July 1, 2013, any person who becomes a new member of this retirement system shall, in qualifying for retirement under this section, have five or more years of contributory service, all of which shall be actual, contributory ones.

(b) Except for a person who first becomes a member of the retirement system on or after July 1, 2015, any member who has attained the age of 55 years and who has served 30 years as a teacher or nonteaching member in West Virginia is eligible for an annuity.

(c) Except for a person who first becomes a member of the retirement system on or after July 1, 2015, any member who has served at least 30 but less than 35 years as a teacher or nonteaching member in West Virginia and is less than 55 years of age is eligible for an annuity, but the annuity shall be the reduced actuarial equivalent of the annuity the member would have received if the member were age 55 at the time the annuity was applied for.

(d) The request for any annuity shall be made by the member in writing to the retirement board, but in case of retirement for disability, the written request may be made by either the member or the employer.

(e) A member is eligible for annuity for disability if he or she satisfies the conditions in either subdivision (1) or (2) of this subsection and meets the conditions of subdivision (3) of this subsection as follows:

(1) His or her service as a teacher or nonteaching member in West Virginia must total at least 10 years and service as a teacher or nonteaching member must have been terminated because of disability, which disability must have caused absence from service

for at least six months before his or her application for disability annuity is approved.

(2) His or her service as a teacher or nonteaching member in West Virginia must total at least five years and service as a teacher or nonteaching member must have been terminated because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved and the disability is a direct and total result of an act of student violence directed toward the member.

(3) A medical examination by a physician or physicians selected by the retirement board must show that the member is at the time mentally or physically incapacitated for service as a teacher or nonteaching member, that for that service the disability is total and likely to be permanent and that he or she should be retired in consequence of the disability.

(f) Continuance of the disability of the retirant shall be established by medical examination, as prescribed in subdivision (3), subsection (e) of this section, annually for five years after retirement, and thereafter at such times required by the retirement board. Effective July 1, 1998, a member who has retired because of a disability may select an option of payment under the provisions of §18-7A-28: *Provided*, That any option selected under the provisions of §18-7A-28 shall be in all respects the actuarial equivalent of the straight life annuity benefit the disability retirant receives or would receive if the options under said section were not available and that no beneficiary or beneficiaries of the disability retirant may receive a greater benefit, nor receive any benefit for a greater length of time, than the beneficiary or beneficiaries would have received had the disability retirant not made any election of the options available under said section. In determining the actuarial equivalence, the retirement board shall take into account the life expectancies of the member and the beneficiary: *Provided, however*, That the life expectancies may at the discretion of the retirement board be established by an underwriting medical director of a competent insurance company offering annuities. Payment of the disability annuity provided in this article shall cease immediately if the retirement board finds that the disability of the

retirant no longer exists, or if the retirant refuses to submit to medical examination as required by this section.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 18. WEST VIRGINIA DIVISION OF NATURAL RESOURCES POLICE OFFICER RETIREMENT SYSTEM.

§20-18-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the member's final average salary multiplied by the member's years of credited service: *Provided*, That members who retire after July 1, 2025, shall have an accrued benefit of two and one-half percent of the member's final average salary multiplied by the member's years of credited service. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §20-18-13 of this code.

(b) "Accumulated contributions" means the sum of all amounts deducted from the annual compensation of a member or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code, either pursuant to §20-18-8(a) or §5-10-29 of this code as a result of covered employment together with regular interest on the deducted amounts.

(c) "Active member" means a member who is active and contributing to the plan.

(d) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(e) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(f) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation, and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

(g) "Annual leave service" means accrued annual leave.

(h) "Annuity starting date" means the first day of the first calendar month following receipt of the retirement application by the board or the required beginning date, if earlier: *Provided*, That the member has ceased covered employment and reached normal retirement age.

(i) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(j) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(k) "Covered employment" means either: (1) Employment as a Natural Resources Police Officer and the active performance of the duties required of a Natural Resources Police Officer; (2) the

period of time which active duties are not performed but disability benefits are received under §20-18-21 or §20-18-22 of this code; or (3) concurrent employment by a Natural Resources Police Officer in a job or jobs in addition to his or her employment as a Natural Resources Police Officer where the secondary employment requires the Natural Resources Police Officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the Natural Resources Police Officer contributes to the fund created in §20-18-7 of this code the amount specified as the Natural Resource Police Officer's contribution in §20-18-8 of this code.

(l) "Credited service" means the sum of a member's years of service, active military duty, disability service, eligible annual and sick leave service.

(m) "Dependent child" means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in subparagraph (A), (B), or (C), paragraph (1) of this subdivision.

(n) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for Federal Income Tax purposes at the time of the member's death.

(o) "Director" means Director of the Division of Natural Resources.

(p) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under §20-18-21 or §20-18-22 of this code.

(q) "Division of Natural Resources" or "division" means the West Virginia Division of Natural Resources.

(r) "Effective date" means January 2, 2021.

(s) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(t) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under §20-18-21 or §20-18-22 of this code then "final average salary" means the average of the monthly salary determined paid to the member during that period determined as if the disability first commenced after the effective date of this article with monthly compensation equal to that average monthly compensation which the member was receiving in the plan year prior to the initial disability multiplied by 12.

(u) "Fund" means the West Virginia Natural Resources Police Officer Retirement Fund created pursuant to §20-18-7 of this code.

(v) "Hour of service" means:

(1) Each hour for which a member is paid;

(2) Each hour for which a member is paid but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof, and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §20-18-21 or §20-18-22 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the Division of Natural Resources, irrespective of mitigation of damages. The same hours of service may not be credited both under this subdivision and subdivision (1) or (2) of this subsection. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains rather than the plan year in which the award, agreement, or payment is made.

(w) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(x) "Member" means a person first hired as a Natural Resources Police Officer, as defined in subsection (z) of this section, on or after January 2, 2021, or a Natural Resources Police Officer first hired prior to the effective date and who elects to become a member pursuant to §20-18-6 of this code. A member shall remain a member until the benefits to which he or she is entitled under this

article are paid or forfeited or until cessation of membership pursuant to §20-18-6 of this code.

(y) "Monthly salary" means the portion of a member's gross annual compensation which is paid to him or her per month.

(z) "Natural Resources Police Officer" means any person regularly employed in the service of the division as a law-enforcement officer on or after the effective date of this article, and who is eligible to participate in the fund. The term shall not include Emergency Natural Resources Police Officers as defined in §20-7-1(c) of this code, Special Natural Resources Police Officers as defined in §20-7-1(d) of this code, Forestry Special Natural Resources Police Officers as defined in §20-7-1(e) of this code, or Federal Law Enforcement Officer as defined in §20-7-1b of this code.

(aa) "Normal form" means a monthly annuity which is one-twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary or beneficiaries shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(bb) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 55 years and the completion of 15 or more years of service; (2) while still in covered employment, attainment of at least age 55 years, and when the sum of current age plus years of service equals or exceeds 70 years; or (3) attainment of at least age 62 years, and completion of 10 years of service: *Provided*, That any member shall in qualifying for retirement pursuant to this article have 10 or more years of service, all of which years shall be actual, contributory ones.

(cc) "Partially disabled" means a member's inability to engage in the duties of a Natural Resources Police Officer by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to

last for a continuous period of not less than 12 months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(dd) "Plan" means the West Virginia Natural Resources Police Officers Retirement System established by this article.

(ee) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(ff) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by §5-10-1 *et seq.* of this code.

(gg) "Qualified public safety employee" means any employee of the division who provides police protection, fire-fighting services, or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(hh) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(ii) "Required beginning date" means April 1 of the calendar year following the later of: (i) The calendar year in which the member attains age 72; or (ii) the calendar year in which the member retires or otherwise separates from covered employment.

(jj) "Retirant" means any member who commences an annuity payable by the retirement system.

(kk) "Retire" or "retirement" means a member's termination from the employ of a participating public employer and the commencement of an annuity by the plan.

(ll) "Retirement income payments" means the annual retirement income payments payable under the plan.

(mm) "Substantial gainful employment" or "gainful employment" means employment in which an individual may earn up to an amount that is determined by the United States Social Security Administration as substantial gainful activity and still receive total disability benefits.

(nn) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(oo) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a Natural Resources Police Officer but also cannot, considering his or her age, education, and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological, or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. A member's receipt of Social Security disability benefits creates a rebuttable presumption that

the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

(pp) *Year of service.* — A member shall, except in his or her first and last years of covered employment, or within the plan year of the effective date, be credited with year of service credit, based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0
500 to 999	1/3
1,000 to 1,499	2/3
1,500 or more	1

During a member's first and last years of covered employment or within the plan year of the effective date, the member shall be credited with one-twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §20-18-21 or §20-18-22 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date. Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §20-18-20 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to §20-18-20 of this code or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

§20-18-21. Award and benefits for disability – Duty related.

(a) Any member who after the effective date of this article and during covered employment: (1) Has been or becomes either totally

or partially disabled by injury, illness, or disease; and (2) the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (3) the disability was incurred while performing law-enforcement functions during either scheduled work hours or at any other time; and (4) in the opinion of two physicians based on a medical examination, one of whom shall be named by the board and one by the member, the member is by reason of the disability unable to perform adequately the duties required of a Natural Resources Police Officer, is entitled to receive and shall be paid from the fund in monthly installments the compensation under either subsection (b) or (c) of this section.

(b) If the member is totally disabled, the member shall receive 90 percent of his or her average full monthly compensation for the 12-month contributory period preceding the member's disability award, or the shorter period if the member has not worked 12 months.

(c) If the member is partially disabled, the member shall receive 45 percent of his or her average full monthly compensation for the 12-month contributory period preceding the member's disability award, or the shorter period if the member has not worked 12 months.

(d) If the member remains partially disabled until attaining 60 years of age, the member shall then receive the retirement benefit provided in §20-18-18 and §20-18-19 of this code with the accrued benefit being computed with the multiplier in effect as of his or her effective date of retirement.

(e) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

§20-18-22. Award and benefits for disability – Due to other causes.

(a) Any member with 10 or more years of contributing service and who after the effective date of this article and during covered

employment: (1) Has been or becomes totally or partially disabled from any cause other than those set forth in §20-18-21 of this code and not due to vicious habits, intemperance, or willful misconduct on his or her part; and (2) in the opinion of two physicians based on a medical examination, one of whom shall be named by the board and one by the member, he or she is by reason of the disability unable to perform adequately the duties required of a Natural Resources Police Officer, is entitled to receive and shall be paid from the fund in monthly installments the compensation set forth in either subsection (b) or (c) of this section.

(b) If the member is totally disabled, he or she shall receive 66 and two-thirds percent of his or her average full monthly compensation for the 12-month contributory period preceding the disability award, or the shorter period, if the member has not worked 12 months.

(c) If the member is partially disabled, he or she shall receive 33 and one-third percent of his or her average full monthly compensation for the 12-month contributory period preceding the disability award, or the shorter period, if the member has not worked 12 months.

(d) If the member remains disabled until attaining 60 years of age, then the member shall receive the retirement benefit provided in §20-18-18 and §20-18-19 of this code with the accrued benefit being computed with the multiplier in effect as of his or her effective date of retirement.

(e) The board shall propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code concerning member disability payments so as to ensure that the payments do not exceed 100 percent of the average current salary for the position last held by the member.

(f) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

●

CHAPTER 245

(Com. Sub. for S. B. 451 - By Senators Nelson and Hunt)

[Passed March 9, 2023; in effect 90 days from passage (June 7, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §18-7A-3, §18-7A-13a, §18-7A-15, and §18-7A-17 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-7B-2 and §18-7B-17 of said code, all relating to retirement systems for teachers and certain other educational employees; defining terms; requiring certain notifications; providing for public charter schools as employer in systems; and limiting eligibility for certain transfers of service from the Public Employees Retirement System to the Teachers Retirement System.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

***§18-7A-3. Definitions.**

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

"Accumulated contributions" means all deposits and all deductions from the gross salary of a contributor plus regular interest.

"Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member.

***NOTE:** This section was also amended by S. B. 450 (Chapter 244), which passed prior to this act.

"Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

"Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

"Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last 15 fiscal years of total service credit, including military service as provided in this article, or if total service is less than 15 years, the average annual salary for the period on which contributions were made: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

"Beneficiary" means the recipient of annuity payments made under the retirement system.

"Contributor" means a member of the retirement system who has an account in the Teachers Accumulation Fund.

"Deposit" means a voluntary payment to his or her account by a member.

"Electing charter school" means a public charter school established pursuant to §18-5G-1 *et seq.* of this code which has elected to participate in this retirement system as permitted in the definitions of "Nonteaching member" and "Teacher member" in this section.

"Employer" means the agency of and within the state which has employed or employs a member, a county board of education which has employed or employs a member, or an electing charter

school which has employed or employs a member. "Participating public employer" or "participating employer" means "employer" unless the context clearly requires otherwise.

"Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, or the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

"Employment term" means employment for at least 10 months, a month being defined as 20 employment days.

"Gross salary" means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the work was done. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member's rights to employment or wages, with all retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

"Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the

member's physical or mental health, or both, by a physician selected or approved by the board.

"Member" means any person who has accumulated contributions standing to his or her credit in the State Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to §18-7A-13 of this code.

"Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

"Members of the extension staff of the public schools" means every agricultural agent, boys and girls club agent, and every member of the agricultural extension staff whose work is not primarily stenographic, clerical, or secretarial.

"New entrant" means a teacher who is not a present teacher.

"Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education or educational services cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; (E) a governing board, as defined in §18B-1-2 of this code; or (F) a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article and §18-7B-1 *et seq.* of this code, subject to §18-7B-7a of this code: *Provided*, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

"Plan year" means the 12-month period commencing on July 1 and ending the following June 30 of any designated year.

"Present member" means a present teacher or nonteacher who is a member of the retirement system.

"Present teacher" means any person who was a teacher within the 35 years beginning July 1, 1934, and whose membership in the retirement system is currently active.

"Prior service" means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

"Public schools" means all publicly supported schools, including colleges and universities in this state. Unless the context clearly requires otherwise, "public school" may not include a public charter school which is not an "electing charter school" as defined herein.

"Refund beneficiary" means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

"Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

"Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

"Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which the member retires, or ceases covered employment under the retirement system.

"Retirant" means any member who commences an annuity payable by the retirement system.

"Retirement board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

"Retirement system" means the State Teachers Retirement System established by this article.

"Teacher member" means the following persons, if regularly employed for full-time service: (A) Any person employed by a public school for instructional service in the public schools of West Virginia; (B) principals employed by a public school; (C) librarians employed by a public school; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education, or the State Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and Rehabilitation, the Division of Health, or the Division of Human Services; (K) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; (L) employees of an educational services cooperative who are performing services of an educational nature; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the State Teachers Retirement System provided in this article; and (N) any person employed for instructional service or as a principal or librarian by a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to

participate in the retirement systems under this article and §18-7B-1 *et seq.* of this code.

"Total service" means all service as a teacher or nonteacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

Age more than 70 years shall be considered to be 70 years.

§18-7A-13a. Resumption of service by retired teachers.

(a) For the purpose of this section, reemployment of a former or retired teacher as a teacher may in no way impair the teacher's eligibility for a prior service pension or any other benefit provided by this article.

(b) Retired teachers who qualified for an annuity because of age or service may not receive prior service allowance from the retirement board when employed as a teacher and when regularly employed by the State of West Virginia. The payment of the allowance shall be discontinued on the first day of the month within which the employment begins and shall be resumed on the first day of the month succeeding the month within which the employment ceases. The annuity paid the teacher on first retirement resulting from the Teachers' Accumulation Fund and the Employers' Accumulation Fund shall continue throughout the governmental service and thereafter according to the option selected by the teacher upon first retirement.

(c) Retired teachers who qualified for an annuity because of disability may receive no further retirement payments if the retirement board finds that the disability of the teacher no longer exists; payment shall be discontinued on the first day of the month within which the finding is made. If the retired teacher returns to service as a teacher, he or she shall contribute to the Teachers' Accumulation Fund as a member of the system. His or her prior service eligibility, if any, shall not be impaired because of his or her disability retirement. His or her accumulated contributions which were transferred to the benefit fund upon his or her retirement shall be returned to his or her individual account in the

Teachers' Accumulation Fund, minus retirement payments received which were not supported by such contributions and interest. Upon subsequent retirement, he or she shall receive credit for all contributory experience, anything to the contrary in this article notwithstanding.

(d) Notwithstanding any provision of this code to the contrary, a person who retires under the system provided by this article may subsequently become employed on either a full-time basis, part-time basis, or contract basis by any institution of higher education without any loss of retirement annuity or retirement benefits if the person's retirement commences between the effective date of the enactment of this section in 2002 and December 31, 2002: *Provided*, That the person may not be eligible to participate in any other state retirement system provided by this code.

(e) The retirement board may require of the retired teachers and their employers such reports as it deems necessary to effectuate the provisions of this section.

(f) Prior to any retirant subsequently becoming employed with an employer on a permanent (regularly employed for full-time service), substitute, or temporary basis, the employer shall notify the retirement board and the retirant, in writing, when the retirant's potential permanent, substitute, or temporary employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of either permanent, substitute, or temporary employment, the employer shall notify the retirement board, in writing, of the retirant's subsequent employment.

§18-7A-15. Collection of membership contributions.

Each employer shall each month deduct six percent from the salary of each employee who is a member of the retirement system, in an amount not to exceed the amount named in §18-7A-14 of this code, and shall at the end of each month remit to the retirement board the amounts so deducted, and shall transmit therewith a list of all new members employed and the name and number of members transferring from another county. At such times as the retirement board may deem advisable each employer shall report

to the retirement board the total amount so deducted from the salary of each employee. The monthly payments which members would receive from employers as compensation for service in the absence of this article shall be decreased by the amount of the contribution due hereunder.

Each employer shall be held accountable for the sum composing the contributions made by its member employees. Whenever any county board of education or electing charter school fails to make timely remittance of the member contributions deducted as provided in this section, the retirement board may take such steps as are necessary and authorized pursuant to § 5-10D-13 of this code.

§18-7A-17. Statement and computation of teachers' service.

(a) Under rules adopted by the retirement board, each teacher and nonteaching member shall file a detailed statement of his or her length of service as a teacher or nonteacher for which he or she claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing the service, however, it shall credit no period of more than a month's duration during which a member was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

(b) For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of that state or territory, the retirement board shall grant credit to the member: *Provided*, That the member shall pay to the system 12 percent of that member's gross salary earned during the first full year of current employment whether a member of the Teachers Retirement System or the Teachers' Defined Contribution Retirement System, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service credit granted at the time of retirement may not exceed the lesser of 10 years or 50 percent of the member's total service as a teacher in West Virginia. Any purchase of out-of-state service, as provided in this article, may not be used to establish eligibility for a retirement allowance and the

retirement board shall grant credit for the purchased service as additional service only: *Provided, however,* That a purchase of out-of-state service is prohibited if the service is used to obtain a retirement benefit from another retirement system: *Provided further,* That salaries paid to members for service prior to entrance into the retirement system may not be used to compute the average final salary of the member under the retirement system.

(c) No members may be considered absent from service while serving as a member or employee of the Legislature of the State of West Virginia during any duly constituted session of that body or while serving as an elected member of a county commission during any duly constituted session of that body.

(d) No member may be considered absent from service as a teacher or nonteacher while serving as an officer with a statewide professional teaching association, or who has served in that capacity, and no retirant, who served in that capacity while a member, may be considered to have been absent from service as a teacher by reason of that service: *Provided,* That the period of service credit granted for that service may not exceed 10 years: *Provided, however,* That a member or retirant who is serving or has served as an officer of a statewide professional teaching association shall make deposits to the Teachers Retirement System, for the time of any absence, in an amount double the amount which he or she would have contributed in his or her regular assignment for a like period of time.

(e) The Teachers Retirement System shall grant service credit to any former or present member of the West Virginia Public Employees Retirement System who has been a contributing member of the Teachers Retirement System for more than three years, for service previously credited by the Public Employees Retirement System upon his or her written request and: (1) Shall require the transfer of the member's Public Employees Retirement System accumulated contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn from the Public Employees Retirement System, plus interest at a rate to be determined by the retirement board, compounded annually from the date of withdrawal to the date of payment, any

time prior to the member's effective retirement date: *Provided*, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the Public Employees Retirement System, plus interest at a rate determined by the retirement board, compounded annually from the date the additional contribution would have been made had the member been under the Teachers Retirement System to the date of payment: *Provided, however*, That members of the Public Employees Retirement System who first became a member of the Public Employees Retirement System on or after July 1, 2023, may only transfer service credit to the Teachers Retirement System if they first became a member of the Teachers Retirement System on or after July 1, 2015. All interest paid or transferred shall be deposited in the reserve fund.

(f) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia Department of Education, the retirement board shall grant credit to the member: *Provided*, That the member shall pay to the system 12 percent of that member's gross salary earned during the first full year of current employment whether a member of the Teachers Retirement System or the Teachers' Defined Contribution Retirement System, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service granted at the time of retirement may not exceed the lesser of 10 years or 50 percent of the member's total service as a teacher in the West Virginia public school system. Any purchase of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and retirement board shall grant credit for the purchase as additional service only: *Provided, however*, That a purchase of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.

(g) Active members who previously worked in Comprehensive Employment and Training Act (CETA) may receive service credit for time served in that capacity: *Provided*, That in order to receive service credit under the provisions of this subsection the following conditions shall be met: (1) The member shall have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within 120 days following the termination of the member's CETA employment; (2) the retirement board shall receive evidence that establishes to a reasonable degree of certainty as determined by the retirement board that the member previously worked in CETA; and (3) the member shall pay to the retirement board an amount equal to the employer and employee contribution plus interest at the amount set by the retirement board for the amount of service credit sought pursuant to this subsection: *Provided, however*, That the maximum service credit that may be obtained under the provisions of this subsection is two years: *Provided further*, That a member shall apply and pay for the service credit allowed under this subsection and provide all necessary documentation by March 31, 2003: *And provided further*, That the retirement board shall exercise due diligence to notify affected employees of the provisions of this subsection.

(h) If a member is not eligible for prior service credit or pension as provided in this article, then his or her prior service may not be considered a part of his or her total service.

(i) A member who withdrew from membership may regain his or her former membership rights as specified in §18-7A-13 of this code only in case he or she has served two years since his or her last withdrawal.

(j) Subject to the provisions of subsections (a) through (k), inclusive, of this section, the retirement board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed 40 years.

(k) Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: *Provided*, That the retirement board may not require any additional contributions from that member in order for the retirement board to credit him or her with the contributing service credit earned while discharging official legislative duties: *Provided, however*, That nothing in this section may be construed to relieve the employer from making the employer contribution at the member's regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of June 1, 2000: *Provided further*, That any member to which the provisions of this subsection apply may elect to pay to the retirement board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or her final average salary as well as for determining years of service: *And provided further*, That a member using the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make.

(l) The Teachers Retirement System shall grant service credit to any former member of the State Police Death, Disability and Retirement System who has been a contributing member for more than three years for service previously credited by the State Police Death, Disability and Retirement System; and: (1) Shall require the transfer of the member's contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn any time prior to the member's retirement: *Provided*, That the member shall add to the amounts transferred or repaid under this paragraph an amount which is sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her

membership in the State Police Death, Disability and Retirement System plus interest at a rate to be determined by the retirement board compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

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

"Annual addition" means, for purposes of the limitations under Section 415(c) of the Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A) Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cash-outs or contributions as described in Section 415(k)(3) of the Internal Revenue Code, rollover contributions and picked-up employee contributions to a defined benefit plan may not be treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1.

"Annuity account" or "annuity" means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends, or other accumulations credited on behalf of the member.

"Compensation" means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions: *Provided*, That annual compensation for determining contributions during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of applying the limitations of Section 415 of the Internal Revenue Code to any

annual addition, "compensation" has the meaning given it in §18-7B-13(d) of this code.

"Consolidated board" or "board" means the Consolidated Public Retirement Board created and established pursuant to §5-10D-1 *et seq.* of this code.

"Defined contribution system" or "system" means the Teachers' Defined Contribution Retirement System created and established by this article.

"Electing charter school" means a public charter school established pursuant to § 18-5G-1 *et seq.* of this code which has elected to participate in this retirement system as permitted in the definition of "Member" or "employee" in this section.

"Employer" means the agency of and within the State of West Virginia which has employed or employs a member, a county board of education which has employed or employs a member, or an electing charter school which has employed or employs a member. "Participating public employer" or "participating employer" means "employer" unless the context clearly requires otherwise.

"Employer contribution" means an amount deposited into the member's individual annuity account on a periodic basis coinciding with the employee's regular pay period by an employer from its own funds.

"Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

"Employment term" means employment for at least 10 months in any plan year with a month being defined as 20 employment days.

"Existing employer" means any employer who employed or employs a member of the system.

"Existing retirement system" means the State Teachers Retirement System established in §18-7A-1 *et seq.* of this code.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

"Member" or "employee" means the following persons, if regularly employed for full-time service: (A) Any person employed by a public school for instructional service in the public schools of West Virginia; (B) principals employed by a public school; (C) librarians employed by a public school; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, an electing charter school, or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education, electing charter school, educational services cooperative, or the State Board of Education; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers' Defined Contribution Retirement System established by this article; and (N) any person employed by a public charter school established pursuant to §18-5G-1 *et seq.* of

this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article, subject to §18-7B-7a and §18-7A-1 *et seq.* of this code.

"Member contribution" means an amount reduced from the employee's regular pay periods and deposited into the member's individual annuity account within the Teachers' Defined Contribution Retirement System.

"Permanent, total disability" means a mental or physical incapacity requiring absence from employment service for at least six months: *Provided*, That the incapacity is shown by an examination by a physician or physicians selected by the board: *Provided, however*, That for employees hired on or after July 1, 2005, "permanent, total disability" means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness.

"Plan year" means the 12-month period commencing on July 1 of any designated year and ending on the following June 30.

"Public schools" means all publicly supported schools, including normal schools, colleges, and universities in this state. Unless the context clearly requires otherwise, "public school" shall not include a public charter school which is not an "electing charter school" as defined herein.

"Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

"Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after

June 30, 1949); or (B) the calendar year in which the member retires or otherwise ceases employment with a participating employer.

"Retirement" means a member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement.

"Year of employment service" means employment for at least 10 months, with a month being defined as 20 employment days: *Provided*, That no more than one year of service may be accumulated in any 12-month period.

§18-7B-17. Deposits to the members' annuity accounts.

Beginning on July 1, 1991 and thereafter, each county board of education or electing charter school shall deposit in the member's annuity account created pursuant to §18-7B-9 of this code an amount equal to seven and one-half percent of all compensation paid to members of the defined contribution system in excess of that authorized for minimum salaries in §18A-4-2 and §§18A-4-8a of this code to the extent that the excess exceeds the amount distributed for salary equity to the county.

CHAPTER 246

(S. B. 452 - By Senators Nelson and Hunt)

[Passed March 8, 2023; in effect 90 days from passage (June 6, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §16-5V-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-5V-36, all relating to the Emergency Medical Services Retirement System; defining and amending terms related to county firefighters, medical examination, and 911 personnel; and adding a severability section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

***§16-5V-2. Definitions.**

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year of the member's final average salary for the first 20 years of credited service. Additionally, two percent per year for 21 through 25 years and one and one-half percent per year for each year over 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

***NOTE:** This section was also amended by S. B. 450 (Chapter 244), which passed prior to this act.

(1) The board may, upon the recommendation of the board's actuary, increase the employees' contribution rate to 10 and five-tenths percent should the funding of the plan not reach 70 percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and one-half percent once the plan funding reaches the 70 percent support objective as of any later actuarial valuation date.

(2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date, the board shall increase the two and six-tenths percent to two and three-quarter percent for the first 20 years of credited service. The maximum benefit will also be increased from 67 percent to 90 percent.

(b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

(c) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare

benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a retirement application. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's normal retirement age and after completing proper written application for retirement on an application supplied by the board.

(h) "Board" means the Consolidated Public Retirement Board.

(i) "Contributing service" or "contributory service" means service rendered by a member while employed by a participating public employer for which the member made contributions to the plan.

(j) "County commission or political subdivision" has the meaning ascribed to it in this code.

(k) "County firefighter" means an individual employed in full-time employment as a firefighter with a county commission.

(l) "Covered employment" means either: (1) Employment as a full-time emergency medical technician, emergency medical technician/paramedic or emergency medical services/registered nurse and the active performance of the duties required of emergency medical services officers; or (2) employment as a full-time employee of a county 911 public safety answering point; or (3) employment as a full-time county firefighter; or (4) the period of time during which active duties are not performed but disability benefits are received under this article; or (5) concurrent employment by an emergency medical services officer, 911 personnel or county firefighter in a job or jobs in addition to his or

her employment as an emergency medical services officer, 911 personnel or county firefighter where the secondary employment requires the emergency medical services officer, 911 personnel or county firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the emergency medical services officer, 911 personnel or county firefighter contributes to the fund created in this article the amount specified as the member's contribution in §16-5V-8 of this code.

(m) "Credited service" means the sum of a member's years of service, active military duty, disability service and accrued annual and sick leave service.

(n) "Dependent child" means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in paragraph (A), (B), or (C), subdivision (1) of this subsection.

(o) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(p) "Disability service" means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(q) "Early retirement age" means age 45 or over and completion of 20 years of contributory service.

(r) "Effective date" means January 1, 2008.

(s) "Emergency medical services officer" means an individual employed by the state, county or other political subdivision as a medical professional who is qualified to respond to medical emergencies, aids the sick and injured and arranges or transports to medical facilities, as defined by the West Virginia Office of Emergency Medical Services. This definition is construed to include employed ambulance providers and other services such as law enforcement, rescue or fire department personnel who primarily perform these functions and are not provided any other credited service benefits or retirement plans. These persons may hold the rank of emergency medical technician/basic, emergency medical technician/paramedic, emergency medical services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical Services and the Consolidated Public Retirement Board.

(t) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(u) "Final average salary" means the average of the highest annual compensation received for covered employment by the

member during any five consecutive plan years within the member's last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly salary determined paid to the member during that period as determined under §16-5V-19 of this code multiplied by 12. Final average salary does not include any lump sum payment for unused, accrued leave of any kind or character.

(v) "Full-time employment" means permanent employment of an employee by a participating public employer in a position which normally requires 12 months per year service and requires at least 1,040 hours per year service in that position.

(w) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created by this article.

(x) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §16-5V-19 or §16-5V-20 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission or political

subdivision, irrespective of mitigation of damages. The same hours of service shall not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(y) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(z) "Member" means either: (1) A person first hired as an emergency medical services officer by an employer which is a participating public employer of the Emergency Medical Services Retirement System after the effective date of this article, as defined in subsection (r) of this section; or (2) an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article; or (3) or a person first hired by a county 911 public safety answering center after the participating public employer elects to participate in the Emergency Medical Services Retirement System; or (4) a county firefighter hired on or after June 10, 2022; or (5) a county firefighter of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to June 10, 2022, and who elects to become a member pursuant to §16-5V-6a of this code. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(aa) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(bb) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated

contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(cc) "Normal retirement age" means the first to occur of the following:

(1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service, excluding active military duty, disability service and accrued annual and sick leave service;

(2) While still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory years of service equals or exceeds 70 years;

(3) While still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or

(4) Attainment of age 62 years and completion of five or more years of regular contributory service.

(dd) "Participating public employer" means: (1) Any county commission, political subdivision, or county 911 public safety answering point in the state which has elected to cover its emergency medical services officers or 911 personnel, as defined in this article, under the West Virginia Emergency Medical Services Retirement System; or (2) any county commission who employs county firefighters.

(ee) "Plan" means the West Virginia Emergency Medical Services Retirement System established by this article.

(ff) "Plan year" means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(gg) "Political subdivision" means a county, city or town in the state; any separate corporation or instrumentality established by

one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any public corporation established under §7-15-4 of this code is considered a political subdivision solely for the purposes of this article.

(hh) "Public Employees Retirement System" means the West Virginia Public Employee's Retirement System created by West Virginia Code.

(ii) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(jj) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

(kk) "Retirant" means any member who commences an annuity payable by the plan.

(ll) "Retire" or "retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.

(mm) "Retirement income payments" means the monthly retirement income payments payable under the plan.

(nn) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(oo) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(pp) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

For purposes of this subsection:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as an emergency medical services officer, 911 personnel or county firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(qq) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0
500 to 999	1/3
1,000 to 1499	2/3
1,500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date.

Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §16-5V-18 of this code or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section §16-5V-18 of this code or has prior to the effective date made the repayment pursuant to §5-10-18 of this code.

(rr) "911 personnel" means an individual employed in full-time employment with a county 911 public safety answering point.

§16-5V-36. Severability.

If any part of this article is declared unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this article in its entirety.



CHAPTER 247

(Com. Sub. for S. B. 461 - By Senator Clements and Rucker)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §6C-2-1, §6C-2-2, §6C-2-3, §6C-2-4, and §6C-2-6 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Public Employees Grievance Procedure; defining terms; clarifying actions or any matter relating to protected classes are not subject to grievances; providing that Division of Personnel may not be a party in certain circumstances; providing for multiple grievant parties; providing a grievance must be filed within the time limits specified or it may be dismissed; extending certain time limits; providing for grievance dismissal for untimeliness, lack of jurisdiction, or failure to state a claim and appeals of such dismissal; updating default process to include employer; providing the grievance evaluator and the administrative law judge may not hold a motion to dismiss in abeyance while other proceedings take place; clarifying that grievances may be consolidated as long as the initial grievance has not been dismissed; providing that proceedings may be rescheduled for good cause shown; requiring grievant representatives provide the names and work location of employees being represented; requiring that employees provide the name and contact information of his or her representative; directing Grievance Board to make available certain forms; providing that employee annual leave will be charged for work hours used in preparing for and attending the grievance hearing in excess of certain limits; providing for the chief administrator's resolution of certain disputes and further providing for discretionary recording of conference; limiting annual number of grievances an employee may serve as a representative; providing for

conference recordings; requiring grievance to be held in abeyance under certain circumstances; clarifying employee representation is limited by work requirements; requiring grievant to provide copies of grievance in certain cases; updating appellate procedure from level three decision; and providing for award of costs and attorney fees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES' GRIEVANCE PROCEDURE.

§6C-2-1. Purpose.

(a) The purpose of this article is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia, except as otherwise excluded in this article.

(b) Resolving grievances in a fair, efficient, cost-effective, and consistent manner will maintain good employee morale, enhance employee job performance, and better serve the citizens of the State of West Virginia.

(c) Nothing in this article prohibits the informal disposition of grievances by stipulation or settlement agreed to in writing by the parties, nor the exercise of any hearing right provided in chapter 18 or 18A of this code. Parties to grievances shall always act in good faith and make every possible effort to resolve disputes at the lowest level of the grievance procedure.

§6C-2-2. Definitions.

For the purpose of this article and article three of this chapter:

(a) "Board" means the West Virginia Public Employees Grievance Board created in article three of this chapter.

(b) "Chief administrator" means, in the appropriate context, the commissioner, chancellor, director, president, secretary or head of any state department, board, commission, agency, state institution

of higher education, commission or council, the state superintendent, the county superintendent, the executive director of a regional educational service agency or the director of a multicounty vocational center who is vested with the authority to resolve a grievance. A "chief administrator" includes a designee, with the authority delegated by the chief administrator, appointed to handle any aspect of the grievance procedure as established by this article.

(c) "Days" means working days exclusive of Saturday, Sunday, official holidays, and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other causes provided for by statute, rule, policy or practice.

(d) "Discrimination" means any differences in the treatment of similarly situated employees unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.

(e)(1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

(2) A substitute education employee is considered an "employee" only on matters related to days worked or when there is a violation, misapplication, or misinterpretation of a statute, policy, rule, or written agreement relating to the substitute.

(3) "Employee" does not mean a member of the West Virginia State Police employed pursuant to §15-2-1 *et seq.* of this code but does include civilian employees hired by the superintendent of the State Police. "Employee" does not mean an employee of a Constitutional officer unless he or she is covered under the civil service system, an employee of the Legislature, or a patient or inmate employed by a state institution.

(f) "Employee organization" means an employee advocacy organization with employee members that has filed with the board

the name, address, chief officer, and membership criteria of the organization.

(g) "Employer" means a state agency, department, board, commission, college, university, institution, State Board of Education, Department of Education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, using the services of an employee as defined in this section.

(h) "Favoritism" means unfair treatment of an employee as demonstrated by preferential, exceptional, or advantageous treatment of a similarly situated employee unless the treatment is related to the actual job responsibilities of the employee or is agreed to in writing by the employee.

(i)(1) "Grievance" means a claim by an employee alleging a violation, a misapplication, or a misinterpretation of the statutes, policies, rules, or written agreements applicable to the employee including:

(i) Any violation, misapplication, or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status, or discrimination;

(ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices of his or her employer;

(iii) Any specifically identified incident of harassment;

(iv) Any specifically identified incident of favoritism; or

(v) Any action, policy, or practice constituting a substantial detriment to or interference with the effective job performance of the employee or the health and safety of the employee.

(2) "Grievance" does not mean:

(A) Any pension matter or other issue relating to public employees' insurance, in accordance with §5-16-1 *et seq.* of this

code, retirement, or any other matter in which the authority to act is not vested with the employer;

(B) Any matter relating to the protected classes set forth in §5-11-1 *et seq.* of this code.

(j) "Grievance proceeding", "proceeding" or the plural means a conference, level one hearing, mediation, private mediation, private arbitration or level three hearing, or any combination, unless the context clearly indicates otherwise.

(k) "Grievant" means an employee or group of similarly situated employees filing a grievance.

(l) "Harassment" means repeated or continual disturbance, irritation, or annoyance of an employee that is contrary to the behavior expected by law, policy, and profession.

(m) "Party" or the plural, means the grievant, intervenor, employer, and the Director of the Division of Personnel or his or her designee, for most state government employee grievances. The Division of Personnel shall not be a party to grievances involving higher education or Department of Transportation employees.

(n) "Representative" means any employee organization, fellow employee, attorney, or other person designated by the grievant or intervenor as his or her representative, and may not include a supervisor who evaluates the grievant.

(o) "Reprisal" means the retaliation of an employer toward a grievant, witness, representative, or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.

§6C-2-3. Grievance procedure generally.

(a) *Filing.* —

(1) Each grievant shall file a grievance form, signed by the grievant, within the time limits specified in this article. If more than one grievant is a party to the grievance, they may submit one signed

form initiating the grievance. Grievant representatives who file on behalf of one or more grievants shall provide, as part of the grievance form, the name of each grievant being represented and his or her work location. Failure to properly sign the form will result in immediate dismissal of a grievance, without prejudice. If the initial grievance was timely filed and then dismissed without prejudice, the grievant has five days from receipt of the order of dismissal to refile the grievance. The refiled grievance must meet the requirements of this article and applicable rules of procedure.

(2) The specified time limits may be extended to a date certain by mutual written agreement or the grievance evaluator, mediator, or administrative law judge at the request of any party. The specified time limits shall be extended for cause whenever an agency representative, intervenor, or a grievant is not working because of accident, sickness, death in the immediate family, or other cause for which the agency representative or grievant has approved leave from employment.

(b) *Default.* —

(1) The grievant or the employer prevails by default if a required response is not made by the grievant or the employer representative within the time limits established in this article, unless the employer representative or grievant is prevented from doing so directly as a result of injury, illness, or a justified delay not caused by negligence or intent to delay the grievance process.

(2) Within 10 days of the default, the grievant or employer may file with the chief administrator a written notice of intent to proceed directly to the next level or to enforce the default. If the chief administrator objects to the default, then the chief administrator may, within five days of the filing of the notice of intent, request a hearing before an administrative law judge for the purpose of stating a defense to the default, as permitted by subdivision (1) of this subsection, or showing that the remedy requested by the prevailing grievant is contrary to law or contrary to proper and available remedies. The administrative law judge shall determine whether the remedy is proper, available, and not contrary to law.

(3) If the administrative law judge finds that the grievant or the employer has a defense to the default, as permitted by subdivision (1) of this subsection, or that the remedy is contrary to law or not proper or available at law, the administrative law judge may deny the default or modify the remedy to be granted to comply with the law or otherwise make the grievant or employer whole.

(c) *Defenses and limitations.* —

(1) *Timeliness.* — A grievance must be filed within the time frames established in §6C-2-4 of this code. If the level one evaluator determines that the grievance was not timely filed, an order dismissing the grievance shall be issued. In no event shall a motion to dismiss be held in abeyance while other proceedings take place. This decision may be appealed to level three, and an administrative law judge shall review the order. If the dismissal is upheld an order shall be issued and the grievance shall be removed from the grievance board's docket. If the dismissal is overturned an order shall be entered stating with particularity the facts and the law found to be in error in the order below. The grievance will be returned to level one for disposition. An administrative law judge will decide an appeal of a dismissal for untimeliness within 30 days. If the grievant proceeds directly to level three, the administrative law judge shall make a determination on timeliness prior to scheduling the level three hearing.

(2) *Motion to dismiss.* — Any party may, at any time, file a motion to dismiss asserting that the board lacks jurisdiction under §6C-2-2(i) of this code, that the grievant has otherwise failed to state a claim under this article upon which relief may be granted, or that the grievance was not timely filed. Upon filing of such a motion, the chief administrator or administrative law judge shall immediately hold in abeyance all other proceedings, and within 10 days of receipt of filing, issue a ruling on the motion or schedule the motion for a hearing.

(3) *Back pay.* — When it is a proper remedy, back pay may only be granted for one year prior to the filing of a grievance, unless the grievant shows, by a preponderance of the evidence, that the employer acted in bad faith in concealing the facts giving rise to

the claim for back pay, in which case an 18-month limitation on back pay applies.

(4) *Statutory defense.* — If a party intends to assert the application of any statute, policy, rule, or written agreement as a defense at any level, then a copy of the materials shall be forwarded to all parties.

(d) *Withdrawal and reinstatement of grievance.* — An employee may withdraw a grievance at any time by filing a written notice of withdrawal with the chief administrator or the administrative law judge. The grievance may not be reinstated by the grievant unless reinstatement is granted by the chief administrator or the administrative law judge. If more than one employee is named as a grievant, the withdrawal of one employee does not prejudice the rights of any other employee named in the grievance.

(e) *Consolidation and groups of similarly situated employees.* —

(1) Grievances may be consolidated at any level by agreement of all parties or at the discretion of the chief administrator or administrative law judge: *Provided*, That a grievance that has been dismissed under the provisions of subdivisions (1) or (2) of this subsection may not be revived or consolidated with another grievance.

(2) Class actions are not permitted. However, a grievance may be filed by one or more employees on behalf of a group of similarly situated employees. Any similarly situated employee shall complete a grievance form stating his or her intent to join the group of similarly situated employees. Only one employee filing a grievance on behalf of similarly situated employees shall be required to participate in the conference or level one hearing.

(f) *Intervention.* — Upon a timely request, any employee may intervene and become a party to a grievance at any level when the employee demonstrates that the disposition of the action may substantially and adversely affect his or her rights or property and

that his or her interest is not adequately represented by the existing parties.

(g) *Representation and disciplinary action.* —

(1) An employee may designate and shall provide the name and contact information for the individual or organization of the representative who may be present at any step of the procedure, as well as at any meeting that is held with the employee for the purpose of discussing or considering disciplinary action.

(2) An employee may not be compelled to testify against himself or herself in a disciplinary grievance hearing.

(h) *Reprisal.* — No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in a grievance proceeding by reason of his or her participation. Reprisal or retaliation constitutes a grievance and any person held responsible is subject to disciplinary action for insubordination.

(i) *Improper classification.* — A supervisor or administrator responsible for a willful act of bad faith toward an employee or who intentionally works an employee out of classification may be subject to disciplinary action, including demotion or discharge.

(j) *Forms.* — The board shall create the forms for filing grievances, giving notice, taking appeals, making reports and recommendations, and all other necessary documents and provide them on the Grievance Board's website to be downloaded for completion and submission and for chief administrators to make available to any employee upon request.

(k) *Discovery.* — The parties are entitled to copies of all material submitted to the chief administrator or the administrative law judge by any party.

(l) *Notice.* — Reasonable notice of a proceeding shall be sent at least five days prior to the proceeding to all parties and their representatives and shall include the date, time, and place of the proceeding. If an employer causes a proceeding to be postponed without adequate notice to employees who are scheduled to appear

during their normal workday, the employees may not suffer any loss in pay for work time lost.

(m) *Record.* — Conferences may be recorded at the discretion of the chief administrator for the sole use of aiding in issuing a decision or report. The recording shall not be transcribed, nor will the recording be shared with the parties, or made part of the record. The recording shall be destroyed promptly after the decision has been issued. All documents admitted, and the decision, agreement, or report become part of the record. All the testimony at a level one and level three hearing shall be recorded by mechanical means and a copy of the recording or transcript will be provided to any party upon request. The board is responsible for paying for and promptly providing a certified transcript of a level three hearing to the court for a mandamus or appellate proceeding.

(n) *Grievance decisions and reports.* —

(1) Any party may propose findings of fact and conclusions of law within 20 days of an arbitration or a level three hearing.

(2) A decision, agreement, or report shall be dated, in writing, setting forth the reasons for the decision or outcome, and transmitted to the parties and, in a private arbitration, to the board, within the time limits prescribed. If the grievance is not resolved, the written decision or report shall include the address and procedure to appeal to the next level.

(o) *Scheduling.* — All proceedings shall be scheduled during regular work hours in a convenient location accessible to all parties in accommodation to the parties' normal operations and work schedules. By agreement of the parties, a proceeding may be scheduled at any time or any place. Disagreements shall be decided by the chief administrator or administrative law judge presiding in the case.

(p) *Attendance and preparation.* —

(1) The grievant, witnesses, and an employee representative shall be granted reasonable and necessary time off during working hours to attend grievance proceedings without loss of pay and

without charge to annual or compensatory leave credits. A grievant or an intervenor may not be on any type of leave time or worker compensation at the time of the conference, mediation, hearing, or other proceeding. The proceedings shall be held in abeyance until the grievant returns to work: *Provided*, That, where the grievant has been determined to be unable to return to work, and the grievant's inability to return to work does not render the grievance moot, the grievance proceedings shall be resumed and the grievance resolved upon its merits.

(2) In addition to actual time spent attending grievance proceedings, the grievant and an employee representative shall be granted time off during working hours, not to exceed four hours per grievance, for the preparation of the grievance without loss of pay and without charge to annual or compensatory leave credits. However, the first responsibility of any employee is the work assigned to the employee. An employee may not allow grievance preparation and representation activities to seriously affect the overall productivity of the employee as determined by the employer. An employee may be the representative in no more than five grievances per year. Time spent in preparing for and attending grievance proceeding will be accounted for on leave request forms by stating the amount of time expended in such activities. Each employee representative shall request annual leave for any time in excess of four hours per grievance spent in grievance preparation.

(3) The grievant and an employee representative shall have access to the employer's equipment for purposes of preparing grievance documents subject to the reasonable rules of the employer governing the use of the equipment for nonwork purposes.

(4) Disagreements regarding preparation time shall be decided by the chief administrator or administrative law judge presiding in the case.

(q) *Grievance files.* —

(1) All grievance forms decisions, agreements, and reports shall be kept in a file separate from the personnel file of the

employee and may not become a part of the personnel file, but shall remain confidential except by mutual written agreement of the parties.

(2) The grievant may file a written request to have his or her identity removed from any files kept by the employer one year following the conclusion of the grievance.

(r) *Number of grievances.* — The number of grievances filed against an employer by an employee is not, per se, an indication of the employer's or the employee's job performance.

(s) *Procedures and rules.* — The board shall prescribe rules and procedures in compliance with this article, article three of this chapter and the state Administrative Procedures Act under chapter 29A of this code for all proceedings relating to the level three grievance procedure. Chief administrators may adopt procedural rules to govern level one proceedings. Chief administrators and administrative law judges are governed by the West Virginia Ethics Commission's legislative Code of Conduct for Administrative Law Judges, rule 158 CSR 13.

§6C-2-4. Grievance procedural levels.

(a) *Level one: Chief administrator.* —

(1) Within 15 days following the occurrence of the event upon which the grievance is based, within 15 days of the date upon which the event became known to the employee, or within 15 days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing. The employee shall also file a copy of the grievance with the board. State government employees using the services of the Division of Personnel shall further file a copy of the grievance with the Director of the Division of Personnel. Employees of the Department of Transportation shall file a copy of the grievance with the chief administrator or designated grievance evaluator.

(2) *Conference.* — The chief administrator shall hold a conference within 20 days of receiving the grievance. A conference is a private, informal meeting between the grievant and the chief administrator to discuss the issues raised by the grievance, exchange information, and attempt to resolve the grievance. The chief administrator may permit other employees and witnesses to attend and participate in a conference to reach a resolution. The chief administrator shall issue a written decision within 20 days of the conference.

(3) *Level one hearing.* — The chief administrator shall hold a level one hearing within 20 days of receiving the grievance. A level one hearing is a recorded proceeding conducted in private in which the grievant is entitled to be heard and to present evidence; the formal rules of evidence and procedure do not apply, but the parties are bound by the rules of privilege recognized by law. The parties may present and cross-examine witnesses and produce documents, but the number of witnesses, motions and other procedural matters may be limited by the chief administrator. The chief administrator shall issue a written decision within 20 days of the level one hearing.

(4) An employee may proceed directly to level three upon the agreement of the parties or when the grievant has been discharged, suspended without pay, demoted or reclassified resulting in a loss of compensation or benefits. Level one and level two proceedings are waived in these matters.

(b) *Level two: Alternative dispute resolution.* —

(1) Within 15 days of receiving an adverse written decision at level one, the grievant shall file a written request for mediation, private mediation, or private arbitration.

(2) *Mediation.* — The board shall schedule the mediation between the parties within 20 days of the request. Mediation shall be conducted by an administrative law judge pursuant to standard mediation practices and board procedures at no cost to the parties. Parties may be represented, and the representative shall have the authority to resolve the dispute. The report of the mediation shall

be documented in writing within 20 days. Agreements are binding and enforceable in this state by a writ of mandamus.

(3) *Private mediation.* — The parties may agree in writing to retain their choice of a private mediator and share the cost. The mediator shall schedule the mediation within 20 days of the written request and shall follow standard mediation practices and any applicable board procedures. Parties may be represented and shall have the authority to resolve the dispute. The report of the mediation shall be documented in writing within 20 days. Agreements are binding and enforceable in this state by a writ of mandamus.

(4) *Private arbitration.* — The parties may agree, in writing, to retain their choice of a private arbitrator and share the cost. The arbitrator shall schedule the arbitration within 20 days of the written request and shall follow standard arbitration practices and any applicable board procedures. The arbitrator shall render a decision in writing to all parties, setting forth findings of fact and conclusions of law on the issues submitted within 30 days following the arbitration. An arbitration decision is binding and enforceable in this state by a writ of mandamus. The arbitrator shall inform the board, in writing, of the decision within 15 days.

(c) *Level three hearing.* —

(1) Within 10 days of receiving a written report stating that level two was unsuccessful, the grievant may file a written appeal with the employer and the board requesting a level three hearing on the grievance. State government employees who use the services of the Division of Personnel shall further file a copy of the grievance with the Director of the Division of Personnel. Employees of the Department of Transportation shall file a copy of the grievance with the chief administrator or designated grievance evaluator.

(2) The administrative law judge shall conduct all proceedings in an impartial manner and shall ensure that all parties are accorded procedural and substantive due process.

(3) The administrative law judge shall schedule the level three hearing and any other proceedings or deadlines within 30 days of receipt of the appeal from a lower-level decision in consultation with the parties. The location of the hearing and whether the hearing is to be made public are at the discretion of the administrative law judge. Hearings may be rescheduled at the request of either party for good cause shown or by the administrative law judge.

(4) The administrative law judge may issue subpoenas for witnesses, limit witnesses, administer oaths, and exercise other powers granted by rule or law.

(5) Within 30 days following the hearing or the receipt of the proposed findings of fact and conclusions of law, the administrative law judge shall render a decision in writing to all parties setting forth findings of fact and conclusions of law on the issues submitted.

(6) The administrative law judge may make a determination of bad faith and, in extreme instances, allocate the cost of the hearing to the party found to be acting in bad faith. The allocation of costs shall be based on the relative ability of the party to pay the costs.

§6C-2-6. Allocation of expenses and attorney's fees.

(a) Any expenses incurred relative to the grievance procedure at levels one, two, or three shall be borne by the party incurring the expenses.

(b) In the event a grievant or employer appeals an adverse level three decision to the Intermediate Court of Appeals, or an adverse Intermediate Court of Appeals decision to the Supreme Court of Appeals of West Virginia, and the appellant substantially prevails upon the appeal, the appellant may recover court costs and reasonable attorney's fees for the appeal to be set by the court: *Provided*, That the provisions of this subsection shall only allow the discretionary recovery of court costs and reasonable attorney's fees from a grievant if he or she has not substantially prevailed at any level of the grievance process or in any appeal to the Intermediate Court of Appeals or the Supreme Court of Appeals of West Virginia.

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CHAPTER 248

(Com. Sub. for H. B. 2917 - By Delegates Summers, Tully and Rohrbach)

[Passed March 9, 2023; in effect from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §5-10-48 of the code of West Virginia, 1931, as amended, relating to post-retirement employment by certain retirants; allowing certain retired state employees to render certain post-retirement employment with the Department of Health and Human Resources under certain circumstances; and increasing the amount that may be earned by certain retirants in certain post-retirement employment without requiring suspension of retirement annuity.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

(a) The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual's ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted, within certain limitations, to render post-retirement employment in positions of public service, either in elected or appointed capacities. The Legislature further

finds and declares that it has the need for qualified employees and that in many cases an employee of the Legislature will retire and be available to return to work for the Legislature as a per diem employee. The Legislature further finds and declares that in many instances these employees have particularly valuable expertise which the Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying these persons on a limited per diem basis after they have retired is not only in the best interests of this state but has no adverse effect whatsoever upon the actuarial soundness of this particular retirement system.

(b) For the purposes of this section: (1) "Regularly employed on a full-time basis" means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires 12 months per year service and at least 1,040 hours of service per year in that position; (2) "temporary full-time employment" or "temporary part-time employment" means employment of an individual on a temporary or provisional basis by a participating public employer, other than as an elected or appointed public official, in a position which does not otherwise render the individual as regularly employed; (3) "former employee of the Legislature" means any person who has retired from employment with the Legislature and who has at least 10 years' contributing service with the Legislature; and (4) "reemployed by the Legislature" means a former employee of the Legislature who has been reemployed on a per diem basis not to exceed 175 days per calendar year.

(c) If a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to the additional employment, the annuity to be computed according to §5-10-22 of this code. If his or her reemployment is for a period less than one year, he or she may request in writing that the employee and employer retirement contributions submitted during reemployment be

credited to the participating public employer pursuant to §5-10-44 of this code, and his or her previous annuity shall be reinstated effective the first day of the month following termination of reemployment and the board's receipt of written notice thereof. A retirant may accept legislative per diem, temporary full-time, or temporary part-time employment from a participating employer without suspending his or her retirement annuity so long as he or she does not receive annual compensation in excess of \$25,000.

(d) Senior judges, justices, and magistrates. –

(1) Notwithstanding the provisions of subsection (c) of this section, a retired judge or justice who is recalled and assigned to temporary service as a senior judge or justice by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §51-9-10 of this code while continuing to receive his or her annuity.

(2) Notwithstanding the provisions of subsection (c) of this section, a retired magistrate who is recalled and assigned to temporary service as a senior magistrate by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §50-1-6a of this code while continuing to receive his or her annuity.

(e) If a member retires and is then subsequently elected to a public office or is subsequently appointed to hold an elected public office, or is a former employee of the Legislature who has been reemployed by the Legislature, he or she has the option, notwithstanding subsection (c) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding public office or during any reemployment of a former employee of the Legislature on a per diem basis, in addition to the salary he or she may be entitled to as an office holder or as a per diem reemployed former employee of the Legislature; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of

this subsection, a member who is participating in the system as an elected public official may not retire from his or her elected position and commence to receive an annuity from the system and then be elected or reappointed to the same position unless and until a continuous 12-month period has passed since his or her retirement from the position: *Provided*, That a former employee of the Legislature may not be reemployed by the Legislature on a per diem basis until at least 60 days after the employee has retired: *Provided, however*, That the limitation on compensation provided by subsection (c) of this section does not apply to the reemployed former employee: *Provided further*, That in no event may reemployment by the Legislature of a per diem employee exceed 175 days per calendar year.

(f) A member who is participating in the system simultaneously as both a regular, full-time employee of a participating public employer and as an elected or appointed member of the legislative body of the state or any political subdivision may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: *Provided*, That the retired member shall not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall not continue to accrue any additional service credit or benefits in the system related to the continued service.

(g) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected member of the legislative body of any political subdivision or of the State Legislature, the Clerk of the House of Delegates, and the Clerk of the Senate may elect to commence receiving in-service retirement distributions from this system upon attaining the age of 70 and one-half years: *Provided*, That the member is eligible to retire under the provisions of §5-10-20 or §5-10-21 of this code: *Provided, however*, That the member elects to

stop actively contributing to the system while receiving the in-service distributions.

(h) The provisions of §5-10-22h of this code are not applicable to the amendments made to this section during the 2006 regular session.

(i) The Legislature hereby finds and declares that a severe shortage of child protective services workers and adult protective services workers exists throughout the state and therefore a compelling state interest exists in expanding the use of retired employees to serve this critical need. Notwithstanding any provision of subsection (c) of this section to the contrary, a person receiving retirement benefits or eligible to receive retirement benefits pursuant to the provisions of this chapter may accept employment as a child protective services worker or an adult protective services worker on a full-time or part-time basis without having payment of his or her retirement annuity suspended and without reentering the retirement system as a contributing member. This subsection is only applicable if the retired employee meets the minimum qualifications of the position, has been retired for at least 60 days, and is hired to fill an existing child protective services or adult protective services vacancy. The retired employee may continue to work under this subsection only as long as that position remains vacant. The vacant position shall be posted until it is filled by a regularly employed person meeting the minimum qualifications to serve as a child protective service worker or an adult protective service worker. The provisions of this subsection shall expire July 1, 2025.

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CHAPTER 249

**(Com. Sub. for H. B. 3114 - By Delegates Street, Gearheart,
Kirby, Butler, Burkhammer, Chiarelli, Mazzocchi,
Hillenbrand, Petitto, Willis and Brooks)**

[Passed March 7, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §5F-2-8 of the Code of West Virginia, 1931, as amended; relating to requiring the denial of severance pay to probationary employees of Department of Transportation who are terminated for failing or refusing to submit to drug or alcohol screens.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-8. Special merit-based personnel system for Department of Transportation employees.

(a) In order to attract and retain employees in the Department of Transportation, the Secretary of Transportation shall establish a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation, and welfare of its employees, and other incidents of state employment. All appointments and promotions to positions shall be made solely on the basis of merit and fitness for the position.

(b) The Department of Transportation personnel system shall be founded on effective performance management principles that set clear goals, provide efficient and effective services for our citizens, and appraise and reward employees for being responsible and performing as required.

(c) Beginning on January 1, 2022, notwithstanding any provision of this code or any rule to the contrary, employees and positions within the various agencies, boards, commissions, and divisions within the Department of Transportation currently governed by the provisions of §29-6-1 *et seq.* of this code shall be subject to the personnel system created pursuant to this section: *Provided*, That such employees and positions shall be deemed to retain their classified or classified-exempt status and all rights and privileges thereof. The employees of the Department of Transportation shall be afforded due process protections through §6C-2-1 *et seq.* of this code or other procedures established by the department that assure all of the protections required by law.

(d) The Department of Transportation personnel system is not exempt from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the employment process.

(e) The Department of Transportation personnel system may not be applied in any manner that would disqualify the department or its agencies, boards, commissions, or divisions for eligibility for any federal funding or assistance.

(f) The Division of Personnel shall, upon request of the Secretary of Transportation, take any action necessary to assist the Department of Transportation in completing the transition to the department's personnel system in an orderly and efficient manner.

(g) The Secretary of Transportation may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to implement the provisions of this section.

(h) Notwithstanding any provision of this code to the contrary, the Department of Transportation personnel system shall require that any probationary employee of the Department of Transportation who is terminated for failing a drug or alcohol screen or refusing a drug or alcohol screen shall not be entitled to severance pay.

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CHAPTER 250

**(H. B. 3299 - By Delegates Storch, C. Pritt, Anderson, Kump,
Marple, E. Pritt and Hornbuckle)**

[Passed March 8, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §20-18-5, and §20-18-6 of the Code of West Virginia, 1931, as amended; all relating to Natural Resource Police Officer Retirement System; authorizing the acceptance of gifts and additional contributions; and authorizing transfer of service credit under certain circumstances.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 18. WEST VIRGINIA DIVISION OF NATURAL
RESOURCES POLICE OFFICER RETIREMENT
SYSTEM.**

**§20-18-5. Article to be liberally construed; supplements federal
social security; federal qualification requirements.**

(a) The provisions of this article shall be liberally construed to provide a general retirement system for Natural Resources Police Officers eligible to retire under the provisions of this plan. Nothing in this article may be construed to permit the state to substitute this plan for federal social security now in force in West Virginia.

(b) The board shall administer the plan in accordance with its terms and may construe the terms and determine all questions arising in connection with the administration, interpretation and application of the plan. The board may sue and be sued, contract and be contracted with and conduct all the business of the system in the name of the plan. The board may employ those persons it considers necessary or desirable to administer the plan. All start-up

costs to modify the existing line of business computer system and all personnel salary, including benefits, shall be paid by the board from funds received by the board through gifts and bequests to the fund and any accretions and accumulations which may properly be paid into and become a part of the fund. The board may receive gifts and bequests for purposes of paying start-up costs as set forth in this subsection. The board may also receive gifts and additional contributions for the purpose of supplementing the plan. The board shall administer the plan for the exclusive benefit of the members and their beneficiaries subject to the specific provisions of the plan.

(c) The plan is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the plan to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to §5-10D-1 of this code to assure compliance with the requirements of this section.

§20-18-6. Members.

(a) Any Natural Resources Police Officer first employed in covered employment after the effective date of this article shall be a member of this retirement system and does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: *Provided*, That any Natural Resources Police Officer who has concurrent employment in an additional job or jobs which would require the Natural Resources Police Officer to be a member of the West Virginia Deputy Sheriff Retirement System, West Virginia Municipal Police Officers and Firefighters Retirement System or the West Virginia Emergency Medical Services Retirement System shall participate in only one retirement system administered by the board, and the retirement system applicable to the concurrent employment for which the employee has the earliest

date of hire shall prevail. The membership of any person in the plan ceases: (1) Upon the withdrawal of accumulated contributions after the cessation of service; (2) upon retirement; or (3) at death.

(b) Any Natural Resources Police Officer employed in covered employment on July 1, 2020, shall notify in writing both the Division of Natural Resources and the board no later than September 30, 2020, of his or her desire to become a member of the plan beginning January 2, 2021: *Provided*, That any Natural Resources Police Officer hired after July 1, 2020, but before January 2, 2021, shall make this required notification to the division and the board no later than 30 days from receipt of the notice required by §20-18-11 of this code or September 30, 2020, whichever is later. Any Natural Resources Police Officer who elects to become a member of the plan ceases to be an active member in the Public Employees Retirement System and shall continue to be ineligible for future membership in any other retirement system administered by the board so long as the Natural Resources Police Officer remains employed in covered employment in this plan; any Natural Resources Police Officer who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is from time to time offered to other state employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any Natural Resources Police Officer employed in covered employment on the effective date of this article, who has timely elected to transfer into this plan as provided in subsection (b) of this section, shall be given credited service at the time of transfer for all credited service then standing to the Natural Resources Police Officer service credit in the Public Employees Retirement System regardless of whether the credited service (as that term is defined in §5-10-2 of this code) was earned as a Natural Resources Police Officer. All the credited service standing to the transferring Natural Resources Police Officer's credit in the Public Employees Retirement Fund System at the time of transfer into this plan shall be transferred into the plan created by this article, and the transferring Natural Resources Police Officer shall be given the

same credit for the purposes of this article for all service transferred from the Public Employees Retirement System, as that transferring Natural Resources Police Officer would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring Natural Resources Police Officer receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in §20-18-10 of this code: *Provided*, That a member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of this section may not, after having transferred into and become an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods of non-Natural Resources Police Officer service which were withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(d) Any Natural Resources Police Officer who was employed as a Natural Resources Police Officer between the effective date of this article and June 30, 2026, who has not commenced retirement under the Public Employees Retirement System, shall become a member upon rehire as a Natural Resources Police Officer. For purposes of this subsection, the member's years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless the Natural Resources Police Officer has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The member may request in writing within two years of first becoming a member of the plan to have his or her accumulated contributions and employer contributions from all credited service, as that term is defined in §5-10-2 of this code, in the Public Employees Retirement System transferred to the plan regardless of whether the credited service was earned as a Natural Resources Police Officer. If the conditions of the subsection are met, all years of the Natural Resources Police Officer's credited service shall be counted as years of service for the purposes of this article.

(e) Any certified law enforcement officer who has law enforcement service with a participating public employer in the Public Employees Retirement System who is first employed in covered employment between the effective date of this article and June 30, 2026, and who has not commenced retirement under the Public Employees Retirement System, shall be a member of this retirement system. For purposes of this subsection, the member's years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless the Natural Resources Police Officer has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The member may request in writing within two years of first becoming a member of the plan to have up to a maximum of three years of his or her accumulated contributions and employer contributions from credited service, as that term is defined in §5-10-2 of this code, earned while performing service as a certified law enforcement officer in the Public Employees Retirement System transferred to the plan. If the member has more than three years of credited service as a certified law enforcement officer in the Public Employees Retirement System, the accumulated contributions and employer contributions of the first thirty-six months of credited service with full salary as a certified law enforcement officer shall be transferred. If the conditions of the subsection are met, the maximum three years of credited service in the Public Employees Retirement System as a certified law enforcement officer shall be counted as years of service for the purposes of this article.

(f) Any Natural Resources Police Officer who was employed as a Natural Resources Police Officer prior to the effective date of this article and who was rehired as a Natural Resource Police Officer on or after July 1, 2026, and who has not commenced retirement under the Public Employees Retirement System, shall become a member upon rehire as a Natural Resources Police Officer. For purposes of this subsection, the member's years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless the Natural Resources Police Officer has not received the return of his or her accumulated contributions in the Public Employees Retirement

System pursuant to §5-10-30 of this code. The member may request in writing within one year of first becoming a member of the plan to have his or her accumulated contributions and employer contributions from covered employment in the Public Employees Retirement System transferred to the plan. If the conditions of the subsection are met, all years of the Natural Resources Police Officer's covered employment shall be counted as years of service for the purposes of this article.

(g) Once made, the election provided in this section is irrevocable. All Natural Resources Police Officers first employed after the effective date and Natural Resources Police Officers electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by §20-18-8 of this code.

(h) Notwithstanding any other provisions of this article to the contrary, any individual who is a leased employee is not eligible to participate in the plan. For purposes of this plan, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question. Additionally, any individual who is an Emergency Natural Resources Police Officer as defined in §20-7-1(c) of this code, Special Natural Resources Police Officer as defined in §20-7-1(d) of this code, Forestry Special Natural Resources Police Officer as defined in §20-7-1(e) of this code, or Federal Law Enforcement Officer as defined in §20-7-1b of this code, is not eligible to participate in the plan.

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CHAPTER 251

(S. B. 241 - By Senators Azinger, Woelfel, and Plymale)

[Passed February 9, 2023; in effect from passage]
[Approved by the Governor on February 17, 2023.]

AN ACT to amend and reenact §16-62-2 of the Code of West Virginia, 1931, as amended, relating to patient brokering; requiring a state agency to regulate patient brokering; and requiring the development of a tool to facilitate complaints.

Be it enacted by the Legislature of West Virginia:

ARTICLE 62. THE PATIENT BROKERING ACT.

§16-62-2. Patient brokering prohibited.

(a) It is unlawful for any person, including any health care provider or health care facility, to:

(1) Offer or pay a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of a patient or patronage to or from a health care provider or health care facility;

(2) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring a patient or patronage to or from a health care provider or health care facility;

(3) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in

return for the acceptance or acknowledgment of treatment from a health care provider or health care facility;

(4) Aid, abet, advise, or otherwise participate in the conduct prohibited under this subsection; or

(5) Engage in any of the unlawful acts provided for in this subsection in regard to a recovery residence as defined in §16-59-1 of this code.

(b) *Penalties.* –

(1) Any person who violates the provisions of subsection (a) of this section is guilty of a felony and, upon conviction thereof, shall be fined not more than \$50,000, or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(2) Notwithstanding the provisions of subdivision (1) of this section, any person who violates subsection (a) of this section, where the prohibited conduct involves 10 or more patients, is guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000, or imprisoned in a state correctional facility not less than two years nor more than five years, or both fined and imprisoned.

(c) The Office of the Inspector General shall develop a tool that facilitates the submission of complaints. The Office of the Inspector General shall investigate complaints and enforce the provisions of this article.

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CHAPTER 252

**(Com. Sub. for S. B. 526 - By Senators Takubo, Tarr, Woelfel,
Deeds, Rucker, Grady, and Nelson)**

[Passed March 6, 2023; in effect 90 days from passage (June 4, 2023)]
[Approved by the Governor on March 22, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-1-8, relating to Alzheimer's disease; providing authority to the Commissioner for the Bureau for Public Health; requiring the Bureau for Public Health to partner with other entities; providing information concerning Alzheimer's disease; and providing information concerning other dementias.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-8. Inclusion of Alzheimer's disease in existing public health programs.

(a) The Commissioner of the Bureau for Public Health, in partnership with the Bureau for Medical Services and the Alzheimer's Association, shall, in its existing public health programs and services, educate health care professionals on the importance of early detection and timely diagnosis of cognitive impairment and dementia, use of validated cognitive assessment tools in the delivery of the Medicare Annual Wellness Visit, provision of effective care planning and care management at all stages of dementia, and delivery of counseling and referral.

(b) The Bureau for Public Health, in partnership with the Bureau of Senior Services, shall, in its existing, relevant public health outreach programs, incorporate information to increase

understanding and awareness of Alzheimer's disease and other dementias, including information about the early signs of Alzheimer's disease and other dementias that should be discussed with health care professionals and the value of early detection and diagnosis, particularly among persons in diverse communities who are at greater risk of developing dementia.

(c) Any public awareness and/or educational outreach programs shall provide uniform, consistent guidance in nonclinical terms, with an emphasis on cultural relevancy and health literacy.

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CHAPTER 253

(Com. Sub. for S. B. 552 - By Senators Rucker, Taylor, Karnes, Phillips, Grady, Smith, Maynard, Martin, Azinger, Woodrum, Roberts, Deeds, Oliverio, Swope, Stuart, Tarr, Barrett, Hunt, Chapman, Queen, and Stover)

[Passed March 11, 2023; in effect from passage]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §16-2R-9 of the Code of West Virginia, 1931, as amended; relating to abortion; and revising severability clauses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2R. UNBORN CHILD PROTECTION ACT.

§16-2R-9. Severability.

Severability as provided in §2-2-10(b)(7) of this code is applicable to this article: *Provided*, That if this entire article is judicially determined to be unconstitutional, then the provisions of §16-2F-1 *et seq.*, §16-2I-1 *et seq.*, 16-2M-1 *et seq.*, §16-2O-1, §16-2P-1, §16-2Q-1, and §33-42-8 of this code shall become immediately effective: *Provided*, however, That if a provision or provisions of §16-2R-1 *et seq.* of this code are judicially determined to be unconstitutional, then the provisions of §16-2F-9, §16-2I-9, §16-2M-7, §16-2O-1(e), §16-2P-1(d), §16-2Q-1(m), and §33-42-8(d) of this code are not effective.

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CHAPTER 254

(S. B. 605 - By Senators Maroney and Takubo)

[Passed March 7, 2023; in effect from passage]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §61-12-3 of the Code of West Virginia, 1931, as amended; relating to requiring the state medical examiner to enter into contracts and agreements with a procurement organization when necessary to facilitate the efficient and economical recovery of anatomical gifts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-3. Office of Chief Medical Examiner established; appointment, duties, etc., of Chief Medical Examiner; assistants and employees; promulgation of rules.

(a) The Office of Chief Medical Examiner is continued within the department. The office shall be directed by a Chief Medical Examiner, who may employ pathologists, toxicologists, other forensic specialists, laboratory technicians, and other staff members as needed to fulfill the responsibilities set forth in this article.

(b) All persons employed by the Chief Medical Examiner shall be responsible to him or her and may be discharged for any reasonable cause. The Chief Medical Examiner shall specify the qualifications required for each position in the Office of Chief Medical Examiner.

(c) The Chief Medical Examiner shall be a physician licensed to practice medicine or osteopathic medicine in the State of West

Virginia, who is a diplomat of the American Board of Pathology in forensic pathology, or equivalent, and who has experience in forensic medicine. The Chief Medical Examiner shall be appointed by the Commissioner for the Bureau of Public Health to serve a five-year term unless sooner removed, but only for cause, by the Governor or by the commissioner.

(d) The Chief Medical Examiner shall be responsible to the secretary in all matters except that the Chief Medical Examiner shall operate with independent authority for the purposes of:

(1) The performance of death investigations conducted pursuant to §61-12-8 of this article;

(2) The establishment of cause and manner of death; and

(3) The formulation of conclusions, opinions, or testimony in judicial proceedings.

(e) The Chief Medical Examiner, or his or her designee, shall be available at all times for consultation as necessary for carrying out the functions of the Office of the Chief Medical Examiner.

(f) The Chief Medical Examiner shall cooperate with procurement organizations as defined in §16-19-3 of this code to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education. To facilitate the efficient and economical recovery of anatomical gifts, the Chief Medical Examiner, shall authorize the presence of persons approved or assigned by the procurement organization to perform duties at the office of the Chief Medical Examiner necessary to the timely recovery of anatomical gifts including access to records or information necessary to identify a potential donor, evaluate donor eligibility, and obtain authorization for recovery, but not including records or information that directly conflict with investigations conducted pursuant to §61-12-8 of this code. The procurement organization is liable for all costs related to the placement of persons authorized by this subsection and the Chief Medical Examiner's liability for payment of services is zero.

(g) The secretary shall propose legislative rules in accordance with the provisions of §29A-3-1 *et seq.* of this code concerning:

(1) The proper conduct of medical examinations into the cause of death;

(2) The proper methods and procedures for postmortem inquiries conducted by county medical examiners and coroners;

(3) The examination of substances taken from human remains in order to determine the cause and manner of death;

(4) The training and certification of county medical examiners and coroners; and

(5) The procedures necessary to maximize the recovery of anatomical gifts for the purpose of transplantation, therapy, research, or education.

(h) The Chief Medical Examiner may prescribe specific forms for record books and official papers which are necessary to the functions and responsibilities of the office of the Chief Medical Examiner.

(i) The Chief Medical Examiner, or his or her designee, may order and conduct an autopsy in accordance with the provisions of this code. The Chief Medical Examiner, or his or her designee, shall perform an autopsy upon the lawful request of any person authorized by the provisions of this code to request the performance of the autopsy.

(j) The salary of the Chief Medical Examiner and the salaries of all assistants and employees of the office of the Chief Medical Examiner shall be fixed by the Legislature from funds appropriated for that purpose. The Chief Medical Examiner shall take an oath as required by law. The Chief Medical Examiner and his or her assistants may lecture or instruct in the field of legal medicine and other related subjects to the West Virginia University or Marshall University School of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia State Police, other law-enforcement agencies and other interested groups.

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CHAPTER 255

(Com. Sub. for S. B. 613 - By Senator Maroney)

[Passed March 10, 2023; in effect from passage]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §16-2D-2, §16-2D-8, §16-2D-10, and §16-2D-11 of the Code of West Virginia 1931, as amended, all relating to certificate of need; defining terms; removing reviewable services; providing a physician office practice that meets specified criteria may acquire imaging technology; providing for data verification; providing that hospitals performing hospital services are exempt from certificate of need requirements; providing that birthing centers are exempt from certificate of need review; deeming certain hospitals as trauma centers; and removing exemptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

As used in this article:

(1) "Affected person" means:

(A) The applicant;

(B) An agency or organization representing consumers;

(C) An individual residing within the geographic area but within this state served or to be served by the applicant;

(D) An individual who regularly uses the health care facilities within that geographic area;

(E) A health care facility located within this state which provide services similar to the services of the facility under review and which will be significantly affected by the proposed project;

(F) A health care facility located within this state which, before receipt by the authority of the proposal being reviewed, has formally indicated an intention to provide similar services within this state in the future;

(G) Third-party payors who reimburse health care facilities within this state; or

(H) An organization representing health care providers;

(2) "Ambulatory health care facility" means a facility that provides health services to noninstitutionalized and nonhomebound persons on an outpatient basis;

(3) "Ambulatory surgical facility" means a facility not physically attached to a health care facility that provides surgical treatment to patients not requiring hospitalization;

(4) "Applicant" means a person applying for a certificate of need, exemption or determination of review;

(5) "Authority" means the West Virginia Health Care Authority as provided in §16-29B-1 *et seq.* of this code;

(6) "Bed capacity" means the number of beds licensed to a health care facility or the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards in an unlicensed facility;

(7) "Behavioral health services" means services provided for the care and treatment of persons with mental illness or developmental disabilities;

(8) "Birthing center" means a short-stay ambulatory health care facility designed for low-risk births following normal uncomplicated pregnancy;

(9) "Campus" means the physical area immediately adjacent to the hospital's main buildings, other areas, and structures that are not strictly contiguous to the main buildings, but are located within 250 yards of the main buildings;

(10) "Capital expenditure" means:

(A) (i) An expenditure made by or on behalf of a health care facility, which:

(I) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance; or

(II) Is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and

(ii) (I) Exceeds the expenditure minimum;

(II) Is a substantial change to the bed capacity of the facility with respect to which the expenditure is made; or

(III) Is a substantial change to the services of such facility;

(B) The transfer of equipment or facilities for less than fair market value if the transfer of the equipment or facilities at fair market value would be subject to review; or

(C) A series of expenditures, if the sum total exceeds the expenditure minimum and if determined by the authority to be a single capital expenditure subject to review. In making this determination, the authority shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; or whether the expenditures are to be made within a two-year period within a single department such that they will constitute a significant modernization of the department.

(11) "Charges" means the economic value established for accounting purposes of the goods and services a hospital provides for all classes of purchasers;

(12) "Community mental health and intellectual disability facility" means a facility which provides comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient or consultation and education for individuals with mental illness, intellectual disability;

(13) "Diagnostic imaging" means the use of radiology, ultrasound, and mammography;

(14) "Drug and Alcohol Rehabilitation Services" means a medically or psychotherapeutically supervised process for assisting individuals through the processes of withdrawal from dependency on psychoactive substances;

(15) "Expenditure minimum" means the cost of acquisition, improvement, expansion of any facility, equipment, or services including the cost of any studies, surveys, designs, plans, working drawings, specifications and other activities, including staff effort and consulting at and above \$ \$100 million;

(16) "Health care facility" means a publicly or privately owned facility, agency or entity that offers or provides health services, whether a for-profit or nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part;

(17) "Health care provider" means a person authorized by law to provide professional health services in this state to an individual;

(18) "Health services" means clinically related preventive, diagnostic, treatment or rehabilitative services;

(19) "Home health agency" means an organization primarily engaged in providing professional nursing services either directly or through contract arrangements and at least one of the following services:

(A) Home health aide services;

(B) Physical therapy;

(C) Speech therapy;

(D) Occupational therapy;

(E) Nutritional services; or

(F) Medical social services to persons in their place of residence on a part-time or intermittent basis.

(20) "Hospice" means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of a licensed hospice program which provides palliative and supportive medical and other health services to terminally ill individuals and their families.

(21) "Hospital" means a facility licensed pursuant to the provisions of §16-5B-1 *et seq.* of this code and any acute care facility operated by the state government, that primarily provides inpatient diagnostic, treatment or rehabilitative services to injured, disabled, or sick persons under the supervision of physicians.

(22) "Hospital services" means services provided primarily to an inpatient to include, but not be limited to, preventative, diagnostic, treatment, or rehabilitative services provided in various departments on a hospital's campus;

(23) "Intermediate care facility" means an institution that provides health-related services to individuals with conditions that require services above the level of room and board, but do not require the degree of services provided in a hospital or skilled-nursing facility.

(24) "Inpatient" means a patient whose medical condition, safety, or health would be significantly threatened if his or her care was provided in a less intense setting than a hospital. This patient stays in the hospital overnight.

(25) "Like equipment" means medical equipment in which functional and technological capabilities are similar to the equipment being replaced; and the replacement equipment is to be used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and it does not constitute a substantial change in health service or a proposed health service.

(26) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used for the provision of medical and other health services and costs in excess of the expenditure minimum. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. § 1395x. In determining whether medical equipment is major medical equipment, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

(27) "Medically underserved population" means the population of an area designated by the authority as having a shortage of a specific health service.

(28) "Nonhealth-related project" means a capital expenditure for the benefit of patients, visitors, staff or employees of a health care facility and not directly related to health services offered by the health care facility.

(29) "Offer" means the health care facility holds itself out as capable of providing, or as having the means to provide, specified health services.

(30) "Opioid treatment program" means as that term is defined in §16-5Y-1 *et seq.* of this code.

(31) "Person" means an individual, trust, estate, partnership, limited liability corporation, committee, corporation, governing body, association and other organizations such as joint-stock companies and insurance companies, a state or a political subdivision or instrumentality thereof or any legal entity recognized by the state.

(32) "Personal care agency" means an entity that provides personal care services approved by the Bureau of Medical Services.

(33) "Personal care services" means personal hygiene; dressing; feeding; nutrition; environmental support and health-related tasks provided by a personal care agency.

(34) "Physician" means an individual who is licensed to practice allopathic medicine by the Board of Medicine or licensed to practice osteopathic medicine by the Board of Osteopathic Medicine.

(35) "Proposed health service" means any service as described in §16-2D-8 of this code.

(36) "Purchaser" means an individual who is directly or indirectly responsible for payment of patient care services rendered by a health care provider, but does not include third-party payers.

(37) "Rates" means charges imposed by a health care facility for health services.

(38) "Records" means accounts, books and other data related to health service costs at health care facilities subject to the provisions of this article which do not include privileged medical information, individual personal data, confidential information, the disclosure of which is prohibited by other provisions of this code and the laws enacted by the federal government, and information, the disclosure of which would be an invasion of privacy.

(39) "Rehabilitation facility" means an inpatient facility licensed in West Virginia operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services.

(40) "Related organization" means an organization, whether publicly owned, nonprofit, tax-exempt or for profit, related to a health care facility through common membership, governing bodies, trustees, officers, stock ownership, family members, partners or limited partners, including, but not limited to, subsidiaries, foundations, related corporations and joint ventures.

For the purposes of this subdivision "family members" means parents, children, brothers and sisters whether by the whole or half blood, spouse, ancestors, and lineal descendants.

(41) "Secretary" means the Secretary of the West Virginia Department of Health and Human Resources;

(42) "Skilled nursing facility" means an institution, or a distinct part of an institution, that primarily provides inpatient skilled nursing care and related services, or rehabilitation services, to injured, disabled or sick persons.

(43) "Standard" means a health service guideline developed by the authority and instituted under §16-2D-6 of this code.

(44) "State health plan" means a document prepared by the authority that sets forth a strategy for future health service needs in this state.

(45) "Substantial change to the bed capacity" of a health care facility means any change, associated with a capital expenditure, that increases or decreases the bed capacity or relocates beds from one physical facility or site to another, but does not include a change by which a health care facility reassigns existing beds.

(46) "Substantial change to the health services" means:

(A) The addition of a health service offered by or on behalf of the health care facility which was not offered by or on behalf of the facility within the 12-month period before the month in which the service was first offered; or

(B) The termination of a health service offered by or on behalf of the facility but does not include the termination of ambulance service, wellness centers or programs, adult day care or respite care by acute care facilities.

(47) "Telehealth" means the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, public health and health administration.

(48) "Third-party payor" means an individual, person, corporation or government entity responsible for payment for patient care services rendered by health care providers.

(49) "To develop" means to undertake those activities which upon their completion will result in the offer of a proposed health service or the incurring of a financial obligation in relation to the offering of such a service.

§16-2D-8. Proposed health services that require a certificate of need.

(a) Except as provided in §16-2D-9, §16-2D-10, and §16-2D-11 of this code, the following proposed health services may not be acquired, offered, or developed within this state except upon approval of and receipt of a certificate of need as provided by this article:

(1) The construction, development, acquisition, or other establishment of a health care facility;

(2) The partial or total closure of a health care facility with which a capital expenditure is associated;

(3) (A) An obligation for a capital expenditure incurred by or on behalf of a health care facility in excess of the expenditure minimum; or

(B) An obligation for a capital expenditure incurred by a person to acquire a health care facility.

(4) An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:

(A) When a valid contract is entered into by or on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset;

(B) When the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(C) In the case of donated property, on the date on which the gift is completed under state law.

(5) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;

(6) The addition of ventilator services by a hospital;

(7) The elimination of health services previously offered on a regular basis by or on behalf of a health care facility which is associated with a capital expenditure;

(8) (A) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure;

(B) If the change is associated with a previous capital expenditure for which a certificate of need was issued; and

(C) If the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken.

(9) The acquisition of major medical equipment;

(10) A substantial change in an approved health service for which a certificate of need is in effect;

(11) An expansion of the service area for hospice or home health agency regardless of the time period in which the expansion is contemplated or made; and

(12) The addition of health services offered by or on behalf of a health care facility which were not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered.

(b) The following health services are required to obtain a certificate of need regardless of the minimum expenditure:

(1) Providing radiation therapy;

- (2) Providing computed tomography;
- (3) Providing positron emission tomography;
- (4) Providing cardiac surgery;
- (5) Providing fixed magnetic resonance imaging;
- (6) Providing comprehensive medical rehabilitation;
- (7) Establishing an ambulatory care center;
- (8) Establishing an ambulatory surgical center;
- (9) Providing diagnostic imaging;
- (10) Providing cardiac catheterization services;
- (11) Constructing, developing, acquiring, or establishing kidney disease treatment centers, including freestanding hemodialysis units;
- (12) Providing megavoltage radiation therapy;
- (13) Providing surgical services;
- (14) Establishing operating rooms;
- (15) Adding acute care beds;
- (16) Providing intellectual developmental disabilities services;
- (17) Providing organ and tissue transplants;
- (18) Establishing an intermediate care facility for individuals with intellectual disabilities;
- (19) Providing inpatient services;
- (20) Providing hospice services;
- (21) Establishing a home health agency;
- (22) Providing personal care services; and

(23) (A) Establishing no more than six four-bed transitional intermediate care facilities: *Provided*, That none of the four-bed sites shall be within five miles of another or adjacent to another behavioral health facility. This subdivision terminates upon the approval of the sixth four-bed intermediate care facility.

(B) Only individuals living in more restrictive institutional settings, in similar settings covered by state-only dollars, or at risk of being institutionalized will be given the choice to move, and they will be placed on the Individuals with Intellectual and Developmental Disabilities (IDD) Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List who live in a hospital or are in an out-of-state placement will continue to progress toward home- and community-based waiver status and will also be considered for all other community-based options, including, but not limited to, specialized family care and personal care.

(C) The department shall work to find the most integrated placement based upon an individualized assessment. Individuals already on the IDD waiver will not be considered for placement in the 24 new intermediate care beds.

(D) A monitoring committee of not more than 10 members, including a designee of Mountain State Justice, a designee of Disability Rights of West Virginia, a designee of the Statewide Independent Living Council, two members or family of members of the IDD waiver, the Developmental Disabilities Council, the Commissioner of the Bureau of Health and Health Facilities, the Commissioner of the Bureau for Medical Services, and the Commissioner of the Bureau for Children and Families. The secretary of the department shall chair the first meeting of the committee at which time the members shall elect a chairperson. The monitoring committee shall provide guidance on the department's transitional plans for residents in the 24 intermediate care facility beds and monitor progress toward home- and community-based waiver status and/or utilizing other community-based options and securing the most integrated setting for each individual.

(E) Any savings resulting from individuals moving from more expensive institutional care or out-of-state placements shall be reinvested into home- and community-based services for individuals with intellectual developmental disabilities.

(c) A certificate of need previously approved under this article remains in effect unless revoked by the authority.

§16-2D-10. Exemptions from certificate of need.

Notwithstanding §16-2D-8 of this code, a person may provide the following health services without obtaining a certificate of need or applying to the authority for approval:

(1) The creation of a private office of one or more licensed health professionals to practice in this state pursuant to §30-1-1 *et seq.* of this code;

(2) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees that does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than 24 hours;

(3) A place that provides remedial care or treatment of residents or patients conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination;

(4) Telehealth;

(5) A private office practice owned or operated by one or more health professionals authorized or organized pursuant to §30-1-1 *et seq.* or ambulatory health care facility may offer laboratory services or diagnostic imaging to patients regardless of the cost associated with the proposal. A private office practice owned or operated by one or more health professionals authorized or organized pursuant to chapter 30 of this code which has at least seven office practice locations may acquire and utilize one fixed-site magnetic resonance imaging scanner regardless of the cost associated with the proposal. To qualify for this exemption, 75

percent of the magnetic resonance imaging scans are for the patients of the private office practice of the total magnetic resonance imaging scans performed. To qualify for this exemption 75 percent of the laboratory services are for the patients of the practice or ambulatory health care facility of the total laboratory services performed and 75 percent of diagnostic imaging services are for the patients of the practice or ambulatory health care facility of the total imaging services performed. The authority may, at any time, request from the entity information concerning the number of patients who have been provided laboratory services diagnostic imaging, or magnetic resonance imaging services;

(6) (A) Notwithstanding the provisions of §16-2D-17, any hospital that holds a valid certificate of need issued pursuant to this article, may transfer that certificate of need to a person purchasing that hospital, or all or substantially all of its assets, if the hospital is financially distressed. A hospital is financially distressed if, at the time of its purchase:

(i) It has filed a petition for voluntary bankruptcy;

(ii) It has been the subject of an involuntary petition for bankruptcy;

(iii) It is in receivership;

(iv) It is operating under a forbearance agreement with one or more of its major creditors;

(v) It is in default of its obligations to pay one or more of its major creditors and is in violation of the material, substantive terms of its debt instruments with one or more of its major creditors; or

(vi) It is insolvent: evidenced by balance sheet insolvency and/or the inability to pay its debts as they come due in the ordinary course of business.

(B) A financially distressed hospital which is being purchased pursuant to the provisions of this subsection shall give notice to the authority of the sale 30 days prior to the closing of the transaction and shall file simultaneous with that notice evidence of its financial

status. The financial status or distressed condition of a hospital shall be evidenced by the filing of any of the following:

- (i) A copy of a forbearance agreement;
 - (ii) A copy of a petition for voluntary or involuntary bankruptcy;
 - (iii) Written evidence of receivership, or
 - (iv) Documentation establishing the requirements of subparagraph (v) or (vi), paragraph (A) of this subdivision. The names of creditors may be redacted by the filing party.
- (C) Any substantial change to the capacity of services offered in that hospital made subsequent to that transaction would remain subject to the requirements for the issuance of a certificate of need as otherwise set forth in this article.
- (D) Any person purchasing a financially distressed hospital, or all or substantially all of its assets, that has applied for a certificate of need after January 1, 2017, shall qualify for an exemption from certificate of need;
- (7) The acquisition by a qualified hospital which is party to an approved cooperative agreement as provided in section §16-29B-28 of this code, of a hospital located within a distance of 20 highway miles of the main campus of the qualified hospital;
- (8) The acquisition by a hospital of a physician practice group which owns an ambulatory surgical center as defined in this article;
- (9) Hospital services performed at a hospital; and
- (10) Constructing, developing, acquiring, or establishing a birthing center :*Provided*, That a hospital shall be deemed a trauma center, subject to the provisions of §55-7B-9c of this code, for any and all claims arising out of any medical services provided by a hospital or physician to an individual as a result of birth complications at a birthing center.

§16-2D-11. Exemptions from certificate of need which require the submission of information to the authority.

(a) To obtain an exemption under this section a person shall:

(1) File an exemption application; and

(2) Provide a statement detailing which exemption applies and the circumstances justifying the exemption.

(b) Notwithstanding §16-2D-8 of this code and §16-2D-10 of this code and except as provided in §16-2D-9 of this code, the Legislature finds that a need exists and these health services are exempt from the certificate of need process:

(1) The acquisition and utilization of one computed tomography scanner with a purchase price up to \$750,000 that is installed in a private office practice where at minimum 75 percent of the scans are performed on the patients of the practice. The private office practice shall obtain and maintain accreditation from the American College of Radiology prior to, and at all times during, the offering of this service. The authority may at any time request from the private office practice information relating to the number of patients who have been provided scans and proof of active and continuous accreditation from the American College of Radiology. If a physician owns or operates a private office practice in more than one location, this exemption shall only apply to the physician's primary place of business and if a physician wants to expand the offering of this service to include more than one computed tomography scanner, he or she shall be required to obtain a certificate of need prior to expanding this service. All current certificates of need issued for computed tomography services, with a required percentage threshold of scans to be performed on patients of the practice in excess of 75 percent, shall be reduced to 75 percent: *Provided*, That these limitations on the exemption for a private office practice with more than one location shall not apply to a private office practice with more than 20 locations in the state on April 8, 2017.

(2) (A) A health care facility acquiring major medical equipment, adding health services or obligating a capital expenditure to be used solely for research;

(B) To qualify for this exemption, the health care facility shall show that the acquisition, offering, or obligation will not:

(i) Affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;

(ii) Result in a substantial change to the bed capacity of the facility; or

(iii) Result in a substantial change to the health services of the facility.

(C) For purposes of this subdivision, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program;

(3) The obligation of a capital expenditure to acquire, either by purchase, lease or comparable arrangement, the real property, equipment or operations of a skilled nursing facility: *Provided*, That a skilled nursing facility developed pursuant to subdivision (15) of this section and subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled nursing home beds of the acquired skilled nursing facility until the skilled nursing facility has been in operation for at least 10 years.

(4) Shared health services between two or more hospitals licensed in West Virginia providing health services made available through existing technology that can reasonably be mobile. This exemption does not include providing mobile cardiac catheterization;

(5) The acquisition, development, or establishment of a certified interoperable electronic health record or electronic medical record system;

(6) The addition of forensic beds in a health care facility;

(7) A behavioral health service selected by the Department of Health and Human Resources in response to its request for application for services intended to return children currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-state facilities is not subject to a certificate of need;

(8) The replacement of major medical equipment with like equipment, only if the replacement major medical equipment cost is more than the expenditure minimum;

(9) Renovations within a hospital, only if the renovation cost is more than the expenditure minimum. The renovations may not expand the health care facility's current square footage, incur a substantial change to the health services, or a substantial change to the bed capacity;

(10) Renovations to a skilled nursing facility;

(11) The donation of major medical equipment to replace like equipment for which a certificate of need has been issued and the replacement does not result in a substantial change to health services. This exemption does not include the donation of major medical equipment made to a health care facility by a related organization;

(12) A person providing specialized foster care personal care services to one individual and those services are delivered in the provider's home;

(13) A hospital converting the use of beds except a hospital may not convert a bed to a skilled nursing home bed and conversion of beds may not result in a substantial change to health services provided by the hospital;

(14) The construction, renovation, maintenance, or operation of a state-owned veterans skilled nursing facilities established pursuant to the provisions of §16-1B-1 *et seq.* of this code;

(15) To develop and operate a skilled nursing facility with no more than 36 beds in a county that currently is without a skilled nursing facility;

(16) A critical access hospital, designated by the state as a critical access hospital, after meeting all federal eligibility criteria, previously licensed as a hospital and subsequently closed, if it reopens within 10 years of its closure;

(17) The establishing of a health care facility or offering of health services for children under one year of age suffering from Neonatal Abstinence Syndrome;

(18) The construction, development, acquisition, or other establishment of community mental health and intellectual disability facility;

(19) Providing behavioral health facilities and services;

(20) The construction, development, acquisition, or other establishment of kidney disease treatment centers, including freestanding hemodialysis units but only to a medically underserved population;

(21) The transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility providing intermediate care and skilled nursing services. The Department of Health and Human Resources may not create a policy which limits the transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital. The transferred beds shall retain the same certification status that existed at the nursing home or hospital skilled nursing unit from which they were acquired. If construction is required to place the transferred beds into the acquiring nursing home, the acquiring nursing home has one year from the date of purchase to commence construction;

(22) The construction, development, acquisition, or other establishment by a health care facility of a nonhealth related

project, only if the nonhealth related project cost is more than the expenditure minimum;

(23) The construction, development, acquisition, or other establishment of an alcohol or drug treatment facility and drug and alcohol treatment services unless the construction, development, acquisition, or other establishment is an opioid treatment facility or programs as set forth in subdivision (4) of §16-2D-9 of this code;

(24) Assisted living facilities and services;

(25) The creation, construction, acquisition, or expansion of a community-based nonprofit organization with a community board that provides or will provide primary care services to people without regard to ability to pay and receives approval from the Health Resources and Services Administration; and

(26) The acquisition and utilization of one computed tomography scanner and/or one magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital.



CHAPTER 256

(Com. Sub. for S. B. 617 - By Senator Barrett)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article designated, §16-5W-1, §16-5W-2, §16-5W-3, and §16-5W-4; and to repeal §27-8-2b and §27-8-3 of said code; all relating to behavioral health services; establishing a mental health ombudsman; providing authority to the ombudsman; providing an exemption of consumer information from the Freedom of Information Act; requiring reporting; requiring a workforce study; outlining program data required to be included in the study; requiring recommendations for hourly pay; creating an annual capitation review; repealing antiquated code; and repealing antiquated terminology.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5W. REGULATION OF BEHAVIORAL HEALTH.

§16-5W-1. Reporting.

(a) The Office of the Inspector General shall send to county prosecutors any findings that may be subject to criminal prosecution in cases of abuse and neglect with IDD. The Office of the Inspector General shall send to the P&A the findings of any cases involving instances of substantiated abuse or neglect involving a person with a developmental disability.

(b) An annual report shall be submitted to the Legislative Oversight Commission on Health and Human Resources Accountability including:

(1) All instances where abuse and neglect cases involving IDD at any location has been substantiated by the Office of the Inspector General.

(2) The county or region where the substantiated abuse or neglect occurred;

(2) The descriptive category of the abuse and neglect;

(3) The type of setting where the abuse and neglect occurred;

(4) Whether the abuse and neglect information was turned over to the county prosecutor and law enforcement;

(5) The name of the provider, if the provider is involved, who is charged with the care of the individual; and

(6) The age range and gender of the individual.

(c) In instances where abuse and/or neglect leads to the death of an individual, the department shall send a letter, within 30 days after the findings where substantiated, to the Senate President, the Speaker of the House, and the chairs of LOCHHRA outlining the information above about the case.

§16-5W-2. Independent Mental Health Ombudsman.

(a) (1) The Office of the Inspector General shall continue an independent mental health ombudsman;

(2) The duties of the mental health ombudsman shall include, but are not limited to, the following:

(A) Advocating for the well-being, treatment, safety, and rights of consumers of mental health care facilities or psychiatric hospital;

(B) Participating in any procedure to investigate, and resolve complaints filed on behalf of a consumer of a mental health care facility or psychiatric hospital, relating to action, inaction, or decisions of providers of mental and behavioral health, of public agencies, or social service agencies, which may adversely affect the health, safety, welfare, and rights of a consumer of a mental health care facility or psychiatric hospital; and

(C) Monitoring the development and implementation of federal, state, and local legislation, regulations, and policies with respect to mental and behavioral health care and services;

(3) The mental health ombudsman shall participate in ongoing training programs related to his or her duties or responsibilities;

(4)(A) Information relating to any investigation of a complaint that contains the identity of the complainant or consumer shall remain confidential except:

(i) Where imminent risk of serious harm is communicated directly to the mental health ombudsman or his or her staff; or

(ii) Where disclosure is necessary to the Office of Health Facility Licensure and Certification in order for such office to determine the appropriateness of initiating an investigation to determine facility compliance with applicable rules of licensure, certification, or both;

(B) The mental health ombudsman shall maintain confidentiality with respect to all matters including the identities of complainants, witnesses, or others from whom information is acquired, except insofar as disclosures may be necessary to enable the mental health care ombudsman to carry out duties of the office or to support recommendations;

(C) All information, records, and reports received by or developed by the mental health ombudsman program which relate to a consumer of a mental health care facility or psychiatric hospital, including written material identifying a consumer are confidential, and are not subject to the provisions of §29-1-1, *et seq.* of this code, and may not be disclosed or released by the

mental health ombudsman program, except under the circumstances enumerated in this section;

(D) Nothing in this section prohibits the preparation and submission by the mental health ombudsman of statistical data and reports, as required to implement the provisions of this section or any applicable federal law, exclusive of any material that identifies any consumer or complainant; and

(E) The Inspector General shall have access to the records and files of the mental health ombudsman program to verify its effectiveness and quality.

§16-5W-3. Intellectual and Developmental Disabilities Waiver Program workforce study.

(a) By July 1, 2023, the Legislative Oversight Commission on Health and Human Resources Accountability shall conduct a workforce study pertaining to the Intellectual and Developmental Disabilities Waiver Program (IDDW Program). The study shall use data and statistics generally relied upon by reasonably prudent individuals, and shall determine/address the following:

(1) The categories of personnel offering services as part of the IDDW Program;

(2) The mean hourly pay rate for each such category of personnel, broken down by West Virginia County where service is provided to patients;

(3) The mean hourly pay rate for each such category of personnel offering services as part of programs equivalent to the IDDW Program in surrounding states.

(4) A comparison of the hourly pay rates identified in subdivisions 2 and 3 of this section, broken down by category of personnel; and

(5) Any other factor the commission reasonably deems relevant to the issues.

(b) Within the report the commission shall make recommendations as to the appropriateness of the current mean hourly pay rate for each category of IDDW Program personnel, as well as any potential pay rate increases necessary to ensure that the IDDW Programs can successfully recruit and retain qualified personnel.

(c) The commission shall issue the report by January 1, 2024.

§16-5W-4. Annual capitation rate review.

(a) The Bureau of Medicaid Services shall conduct an annual study reviewing the adequacy and appropriateness of the reimbursement rates to providers in the IDDW Program. The bureau shall also include a recommendation for any adjustment deemed appropriate, including, but not limited to, annual inflationary costs, costs arising from amendments to existing contracts, costs relating to recruiting and retaining personnel, and any other costs necessitating additional payments to IDDW providers. The bureau may require, and contracted providers shall provide financial data to the bureau to assist in the study. Without limiting the generality of the foregoing in conducting this study, the bureau shall review and compare equivalent programs both in and out of state in order to determine appropriate rates.

(b) Upon completion of the study, BMS shall provide the report to the Joint Committee of Finance beginning July 1, 2024, and annually thereafter, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 8.

§27-8-2b. Local mental health programs — Separate account for receiving and expending gifts, bequests, donations, fees and miscellaneous income.

[Repealed.]

§27-8-3. Care of patients in boarding homes.

[Repealed.]

ARTICLE 16.

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CHAPTER 257

(S. B. 674 - By Senators Trump, Tarr, and Weld)

[Passed March 10, 2023; in effect from passage]
[Approved by the Governor on March 22, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-30-1, §5-30-2, §5-30-3, §5-30-4, and §5-30-5, all relating to recognizing the creation of the West Virginia First Foundation pursuant to the terms of the West Virginia First Memorandum of Understanding; setting forth legislative findings; defining terms; specifying governing board membership; providing for appointment of an executive director of the governing board and setting forth qualifications; providing for audit and review of the foundation; and requiring local governments, regions, and the foundation to prepare annual reports.

Be it enacted by the Legislature of West Virginia:

†ARTICLE 30. THE WEST VIRGINIA FIRST FOUNDATION.

†§5-30-1. Legislative findings.

(a) The citizens of West Virginia, its local governments, and its communities have entered into a memorandum of understanding. The memorandum of understanding known as the West Virginia First Memorandum of Understanding was filed in the Circuit Court of Kanawha County, calling for, inter alia, the creation of the West Virginia First Foundation.

(b) The citizens of West Virginia, its local governments, its communities, and the Legislature are committed to ensure that all

†NOTE: S. B. 244 (Chapter 229), which passed prior to this act, also created a new Article 30. Therefore, this has been redesignated as Article 31 for the code.

opioid funds received in settlement of litigation in the cases which are the subject of the memorandum of understanding are used in a manner consistent with evidence-based strategies, programming, and services used to expand the availability of treatment for individuals affected by substance use disorders and addiction; to develop, promote, and provide evidence-based substance use prevention strategies; to provide substance use avoidance and awareness education; to engage in enforcement to curtail the sale, distribution, and promotion or use of opioids and other drugs; to decrease the oversupply of illicit opioids; and to support recovery from addiction performed by qualified providers.

(c) The creation of a private foundation will advance the goal of abating the opioid epidemic by providing a long-term steady stream of money to fund the efforts by both private and governmental entities.

(d) All 55 counties and virtually all participating municipalities, representing 99.6 percent of the population of West Virginia, have executed the memorandum of understanding.

(e) The circuit court of Kanawha County in Civil Action No. 19-C-9000, has adopted and approved the memorandum of understanding and the abatement structure created in the memorandum of understanding, including, but not limited to, the creation of a private foundation for the purposes set forth in the memorandum of understanding.

†§5-30-2. Definitions.

"Approved purposes" means those purposes set forth in Appendix A of the memorandum of understanding for which expenditures are authorized.

"Expert panel" means the group of individuals, appointed by the governing board, having substantive expertise in the fields of substance abuse, mental health, law enforcement, finance, health care policy, and management to assist the foundation.

†NOTE: S. B. 244 (Chapter 229), which passed prior to this act, also created a new Article 30. Therefore, this has been redesignated as Article 31 for the code.

"Foundation" means the West Virginia First Foundation created under the memorandum of understanding.

"Governing board" means the board of directors for the non-profit foundation recognized in §5-30-3 of this code.

"Local governments" means the counties and municipalities that are parties to the memorandum of understanding.

"Memorandum of understanding" means the West Virginia First Memorandum of Understanding approved by order and entered by the circuit court of Kanawha County as referenced in §5-30-1 *et seq.* of this code.

"Opioid funds" means funds that are obligated to be transferred or are transferred to the foundation from any source, including, but not limited to, those settlements subject to the terms of the memorandum of understanding.

"Order" means the order of the circuit court of Kanawha County referenced in §5-30-1 *et seq.* of this code adopting and approving the memorandum of understanding and the abatement structure created in the memorandum of understanding, including, but not limited to, the creation of a private foundation for the purposes set forth in the memorandum of understanding.

"Region" means any of the six geographic regions established pursuant to the order and Exhibit B of the memorandum of understanding.

†§5-30-3. West Virginia First Foundation.

A private foundation in keeping with the order, known as the West Virginia First Foundation, that qualifies under Internal Revenue Code Section 501(c)(3), and created by the parties to the memorandum of understanding is recognized. The foundation shall have a governing board, an expert panel, and other additional and regional entities necessary for the purpose of receiving and

†NOTE: S. B. 244 (Chapter 229), which passed prior to this act, also created a new Article 30. Therefore, this has been redesignated as Article 31 for the code.

disbursing opioid funds and other purposes set forth in the order and the memorandum of understanding. The operation of the West Virginia First Foundation shall be governed by its articles of incorporation and any by-laws adopted consistent with the provisions of the memorandum of understanding and the order.

†§5-30-4. West Virginia First Foundation Board composition; executive director.

(a) The governing board shall consist of 11 members representing:

(1) The interests of the State of West Virginia. The Governor shall appoint five members to the governing board with the advice and consent of the Senate. The Governor may not appoint more than one member from a region, unless authorized by a vote of four of the six governing board members selected by the regions; and

(2) The interests of local government. The local governments in each of the six regions shall make the selection of the governing board member to represent their region.

(b) The terms for governing board members shall be staggered three-year terms. Governing board members may be reappointed.

(c) Governing board members shall serve as fiduciaries of the West Virginia First Foundation separate and apart from any representational capacity of the entity approving the governing board member. Members of any regional governing structure shall also serve as fiduciaries of their region separate and distinct from any representational capacity of the entity appointing the member.

(d) Governing board members should have expertise in a variety of disciplines, such as substance abuse treatment, mental health, law enforcement, pharmacology, finance, and health care policy and management. Drawing governing board members from these disciplines will help to ensure that the governing board makes appropriate and prudent investments in order to meet short-term

†NOTE: S. B. 244 (Chapter 229), which passed prior to this act, also created a new Article 30. Therefore, this has been redesignated as Article 31 for the code.

and long-term goals and ensure that expenditures by the governing board are consistent with the mission and purpose of the foundation.

(e) The Attorney General shall appoint an executive director after consultation with the board. The governing board may reject the Attorney General's selection of the executive director only on the affirmative vote of eight members of the governing board. The executive director shall have at least six years of experience in health care, finance, and management and is responsible for the management, organization, and preservation of the public/private partnership's records. The executive director may be removed by the governing board upon the concurrence of the votes of three fourths of the members of the governing board.

†§5-30-5. Audits and annual reports.

(a) The operations of the foundation and the entities it supervises are subject to audit and review by the Attorney General.

(b) Each local government shall submit an annual financial report to the foundation no later than April 30 of each year specifying the amounts spent on approved purposes within the region during the previous fiscal year. A report for each region shall be prepared no later than 30 days thereafter. Each region's report shall incorporate the information disclosed in each local government's annual report. Each region's report shall specify: (1) The amount of opioid funds received; (2) the amount of opioid funds disbursed or applied during the previous fiscal year, broken down by categories of approved uses; and (3) impact information measuring or describing the progress of the approved use strategies. The foundation shall publish a consolidated report detailing annual financial expenditures within 15 days of the last day of the state fiscal year covered by the report.

†NOTE: S. B. 244 (Chapter 229), which passed prior to this act, also created a new Article 30. Therefore, this has been redesignated as Article 31 for the code.

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CHAPTER 258

(S. B. 679 - By Senators Tarr, Woelfel, Plymale, and Roberts)

[Passed March 6, 2023; in effect from passage]
[Approved by the Governor on March 9, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §27-9-2, relating to forensic group homes; requiring the office to propose legislative rules; setting forth requirements on where a forensic group home may be located; requiring emergency rules; and providing for variance for existing providers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. LICENSING OF HOSPITALS.

§27-9-2. Forensic group homes.

The Office of the Inspector General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to amend the Behavioral Health Centers Licensure Rule, W.Va. C.S.R. §64-11-1 *et seq.* (hereinafter the "rule"), to implement the requirements of this section after consultation with appropriate stakeholders.

(1) The Office of the Inspector General shall amend the rule to include that the forensic group home shall not be located within one mile of a residential area, a public or private licensed day care center, or a public or private k-12 school learning pods and micro-schools.

(2) The Office of the Inspector General may grant a variance to an existing forensic group home referenced in subdivision (1) of this section only if the facility demonstrates that it has adequate patient population controls and that it otherwise meets the requirements set forth in the amended rule.

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CHAPTER 259

(Com. Sub. for S. B. 730 - By Senator Maroney)

[Passed March 8, 2023; in effect from passage]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §16-29E-3, §16-29E-4, §16-29E-5 and §16-29E-7 of the Code of West Virginia, as amended, all relating to the Legislative Oversight Commission on Health and Human Resources Accountability; defining terms; applying authority of commission to successor agencies of the Department of Health and Human Resources; continuing commission; removing limitation on commission review; expanding authority of commission; permitting commission to require reports; and setting forth instructions for reporting.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29E. LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY.

§16-29E-3. Definitions.

As used in this article:

(a) "Agency" means those various agencies, authorities, boards, committees, commissions, or departments of the Department of Health and Human Resources with authority to promulgate legislative rules pursuant to this chapter that regulate health care providers, practitioners, or consumers; or those offering social services programs;

(b) "Commission" means the Legislative Oversight Commission on Health and Human Resources Accountability; and

(c) "Department" means the Department of Health and Human Resources, and any successor agencies.

§16-29E-4. Creation of a Legislative Oversight commission on health and human resources accountability.

(a) There is continued a joint commission of the Legislature known as the Legislative Oversight Commission on Health and Human Resources Accountability. The commission shall be composed of six members of the Senate appointed by the President of the Senate and six members of the House of Delegates appointed by the Speaker of the House of Delegates. No more than five of the six members appointed by the President of the Senate and the Speaker of the House of Delegates, respectively, may be members of the same political party. In addition, the President of the Senate and Speaker of the House of Delegates shall be ex officio nonvoting members of the commission and shall designate the cochairpersons. At least one of the Senate appointees and one of the House of Delegates appointees shall be the chairperson of the Committee on Health and Human Resources of the Senate and House of Delegates, respectively, and at least one of the Senate appointees and at least one of the House of Delegates appointees shall be a member of the Committee on Finance of the Senate and House of Delegates, respectively. The members shall serve until their successors shall have been appointed as heretofore provided.

(b) Members of the commission shall receive such compensation and expenses as provided in §4-2A-1 *et seq.* of this code. Such expenses and all other expenses including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory, and other personnel shall be paid from an appropriation to be made expressly for the Legislative Oversight Commission on Health and Human Resources Accountability: *Provided*, That if no such appropriation be made, such expenses shall be paid from the appropriation under "Fund No. 0175 for Joint Expenses" created pursuant to the provisions of said chapter: *Provided, however*, That no expense of any kind payable under the account for joint expenses shall be incurred unless first approved by the Joint Committee on Government and Finance.

(c) The commission shall meet at any time both during sessions of the Legislature and in the interim or as often as may be necessary.

§16-29E-5. Powers and duties of commission.

(a) The powers, duties, and responsibilities of the commission shall include the following:

(1) Make a continuing investigation, study and review of the practices, policies and procedures of the health care and social services agencies in this state;

(2) Make a continuing investigation, study and review of all matters related to health and social policy in the state;

(3) Review program development by the various agencies of the Department of Health and Human Resources;

(4) Conduct studies on health and human services;

(5) Review and study the state Medicaid program in order to determine if the state Medicaid agency, as the payor of last resort, is expending maximum effort to identify alternate private insurance resources for Medicaid beneficiaries;

(6) Review and study the feasibility and financial impact upon the state by ensuring increased access for Medicaid beneficiaries to primary health care in the nonhospital setting by requiring enrollment in a primary care clinic program, if available;

(7) Review and study the feasibility and financial impact upon the state of the establishment of different and lesser schedules of payment for primary health services delivered by a hospital emergency room as compared to the schedule of payments for emergency room services of a true medical emergency nature;

(8) Evaluation of the adequacy and availability of care delivery networks throughout the health care continuum from primary care to postmortem settings; and

(9) Make a continuing investigation, study, and review of all matters related to any area of concern that exists within the Department of Health and Human Resources, and any successor agencies, including, but not limited to, financial, administrative, programmatic, and systemic issues.

(b) The commission shall make annual reports to the Legislature regarding the results of all investigations, studies and reviews pursuant to §16-29E-7 of this code.

§16-29E-7. Legislative reports.

(a) The commission shall submit annual reports to the Legislature, as required by §16-29E-5 of this code, which such reports shall describe and evaluate in a concise manner:

(1) The major activities of the several health and human resources agencies for the fiscal year immediately past, including important policy decisions reached on initiatives undertaken during that year, especially as such activities, decisions and initiatives relate to:

(A) The implementation of health care or social services programs;

(B) Improving the accessibility of appropriate health care in all areas of this state;

(C) Improving the health status of the citizens of this state; and

(D) Coordinating social services programs to reflect a cohesive delivery of transitional services.

(2) Other information considered by the commission to be important, including recommendations for statutory, fiscal or policy reforms and reasons for such recommendations.

(b) The reports may specify in what manner any practice, policy or procedure may or should be modified to satisfy the goal of efficient and effective delivery of health and social services

programs and to improve the quality of health and social services available in this state.

(c) The commission may require the Department of Health and Human Resources to submit reports on a routine or as needed basis. These reports shall be submitted to the commission. The submission instructions and format for the reports may be designated by the commission or the Joint Committee on Government and Finance.

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CHAPTER 260

**(S. B. 737 - By Senators Tarr, Phillips, Barret, Boley,
Clements, Jeffries, Maroney, Nelson, Oliverio, Plymale,
Queen, Roberts, Smith, and Woodrum)**

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-4C-25, relating to emergency medical services funding; creating a special revenue account; providing for administration of the fund by the Office of Emergency Medical Services; providing for rulemaking; and requiring an annual report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-25. Emergency Medical Services Salary Enhancement Fund.

(a) There is hereby created in the State Treasury a special revenue fund designated and known as the Emergency Medical Services Salary Enhancement Fund which is an interest- and earnings-accumulating account. The fund is established to support supplementing the salaries of, and providing crisis response for, county emergency medical service personnel as that term is defined in §16-4C-3(g) of this code or a county designated or contracted emergency medical service provider and all moneys must be spent to support increasing salaries of emergency medical service workers and providing crisis response to encourage retention. The fund consists of moneys appropriated by the Legislature, grants, gifts, devises, and donations from any public or private source. All interest and other returns derived from the deposit and investment

of moneys in the Emergency Medical Services Salary Enhancement Fund shall be credited to the fund. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided in this section. The Director of the West Virginia Office of Emergency Medical Services shall administer the fund.

(b) The Director of the Office of Emergency Medical Services shall propose legislative rules for promulgation and promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code. These rules shall include a means of distributing any available funds to counties to accomplish the purpose of this section with an emphasis on the following factors:

(1) Counties who may demonstrate the most need;

(2) Counties that have a special levy for emergency medical services;

(3) Counties that have reached the maximum allowable rate on regular levies; and/or

(4) Counties that have a challenge recruiting and retaining emergency medical services personnel due to interstate competition.

(c) The Office of Emergency Medical Services shall prepare an annual report to the Legislative Oversight Commission on Health and Human Resources Accountability. The report shall provide:

(1) A county-by-county accounting of how the funds were distributed;

(2) An accounting by county of the number of emergency medical service workers receiving a salary enhancement; and

(3) Recommendations for continued funding.

The first report is due by July 1, 2024, and annually thereafter.

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CHAPTER 261

**(Com. Sub. for H. B. 2436 - By Delegates Tully, Summers,
Forsht, Hardy, Worrell, Jennings, Mallow, Honaker, Miller,
Foggin and Heckert)**

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5B-20; by adding thereto a new section, designated §33-15-23; by adding thereto a new section, designated §33-16-19; by adding thereto a new section, designated §33-24-7x; by adding thereto a new section, designated §33-25-8u; and by adding thereto a new section, designated §33-25A-8x, all relating to healthcare; defining terms; providing for legislative findings; providing certain information is not subject to discovery; establishing a process to develop a plan; providing for training; and prohibiting an insurer from imposing a copayment, for services rendered by a licensed occupational therapist, licensed occupational therapist assistant, licensed speech-language pathologist, licensed speech-language pathologist assistant, licensed physical therapist or a licensed physical therapist assistant, that is more than a copayment imposed for the services of a primary care physician or an osteopathic physician.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-20. Patient safety and transparency.

(a) As used in this section:

"Acuity-based patient classification system" means a set of criteria based on scientific data that acts as a measurement instrument which predicts registered nursing care requirements for individual patients based on severity of patient illness, need for specialized equipment and technology, intensity of nursing interventions required, and the complexity of clinical nursing judgment needed to design, implement and evaluate the patient's nursing care plan consistent with professional standards of care. The acuity system criteria shall take into consideration the patient care services provided by registered nurses, licensed practical nurses and other health care personnel.

"Competency" means those observable and measurable knowledge, skills, abilities and personal attributes, as determined by the facility, that demonstrate a nurse's ability to safely perform expected nursing duties of a unit.

"Direct-care registered nurse" means a registered nurse, who is a member of the facility's staff, has no management role or responsibility, and accepts direct responsibility and accountability to carry out medical regimens, nursing or other bedside care for patients.

"Facility" means a hospital, licensed pursuant to the provisions of this article, a licensed private or state-owned and operated general acute-care hospital, an acute psychiatric hospital, or any acute-care unit within a state operated facility.

"Nursing care" means care which falls within the scope of practice, as provided §30-7-1 *et seq.* of this code.

"Orientation" means the process that the facility develops to provide initial training and information to clinical staff relative to job responsibilities and the organization's mission and goals.

"Unit" means those areas of the hospital organization not considered departments which provide specialized patient care.

"Unit Nurse Staffing Committee" means a committee made up of facility employees which includes a minimum of 51 percent of direct-care registered nurses who regularly provide direct nursing

care to patients on the unit of the facility for which the nurse staffing plan is developed.

(b) The Legislature finds that to better improve the quality and efficiency of health care and to better facilitate planning for future states of emergency in West Virginia, a comprehensive system for nurses should be established to create staffing plans to ensure facilities are adequately staffed to handle the daily workload that may accompany a state of emergency. Further, the Legislature finds that nurses in West Virginia fall under the definition of "critical infrastructure," and by establishing a comprehensive staffing plan, West Virginia will be better equipped to deal with employment and staffing issues associated with higher acuity treatment in facilities. Additionally, the Legislature finds that based upon the nature of the acuity-based patient classification system it relies upon confidential patient information to generate a staffing plan model and therefore both the classification system and the staffing plan are considered confidential records as defined in §30-3C-3 of this code and are therefore not subject to discovery in any civil action or administrative proceeding.

(c) A facility shall:

(1) Develop, by July 1, 2024, an acuity-based patient classification system to be used to establish the staffing plan to be used for each unit;

(2) Direct each unit nurse staffing committee to annually review the facility's current acuity-based patient classification system and submit recommendations to the facility for changes based on current standards of practice; and

(3) Provide orientation, competency validation, education, and training programs in accordance with a nationally recognized accrediting body recognized by the Centers for Medicare and Medicaid Services or in accordance with the Office of Health Facility Licensure and Certification. The orientation shall include providing for orientation of registered nursing staff to assigned clinical practice areas.

CHAPTER 33. INSURANCE.**ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.****§33-15-23. Copayments for certain services.**

(a) A policy, provision, contract, plan, or agreement subject to this article may not impose a copayment, coinsurance, or office visit deductible amount charged to the insured for services rendered for each date of service by a licensed occupational therapist, licensed occupational therapist assistant, licensed speech-language pathologist, licensed speech-language pathologist assistant, licensed physical therapist, or a licensed physical therapist assistant that is greater than the copayment, coinsurance, or office visit deductible amount charged to the insured for the services of a primary care physician or an osteopathic physician.

(b) The policy, provision, contract, plan, or agreement shall clearly state the availability of occupational therapy, speech-language therapy, and physical therapy coverage and all related limitations, conditions, and exclusions.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**§33-16-19. Copayments for certain services.**

(a) A group health plan, health benefit plan or network plan subject to this article may not impose a copayment, coinsurance, or office visit deductible amount charged to the insured for services rendered for each date of service by a licensed occupational therapist, licensed occupational therapist assistant, licensed speech-language pathologist, licensed speech-language pathologist assistant, licensed physical therapist, or a licensed physical therapist assistant that is greater than the copayment, coinsurance, or office visit deductible amount charged to the insured for the services of a primary care physician or an osteopathic physician.

(b) The group health plan, health benefit plan or network plan shall clearly state the availability of occupational therapy, speech-

language therapy, and physical therapy coverage and all related limitations, conditions, and exclusions.

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

§33-24-7x. Copayments for certain services.

(a) A policy, provision, contract, plan, or agreement subject to this article may not impose a copayment, coinsurance, or office visit deductible amount charged to a subscriber for services rendered for each date of service by a licensed occupational therapist, licensed occupational therapist assistant, licensed speech-language pathologist, licensed speech-language pathologist assistant, licensed physical therapist, or a licensed physical therapist assistant that is greater than the copayment, coinsurance, or office visit deductible amount charged to the subscriber for the services of a primary care physician or an osteopathic physician.

(b) The policy, provision, contract, plan, or agreement shall clearly state the availability of occupational therapy, speech-language therapy, and physical therapy coverage and all related limitations, conditions, and exclusions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8u. Copayments for certain services.

(a) A policy, provision, contract, plan, or agreement subject to this article may not impose a copayment, coinsurance, or office visit deductible amount charged to a subscriber or member for services rendered for each date of service by a licensed occupational therapist, licensed occupational therapist assistant, licensed speech-language pathologist, licensed speech-language pathologist assistant, licensed physical therapist, or a licensed physical therapist assistant that is greater than the copayment, coinsurance, or office visit deductible amount charged to the subscriber or member for the services of a primary care physician or an osteopathic physician.

(b) The policy, provision, contract, plan, or agreement shall clearly state the availability of occupational therapy, speech-language therapy, and physical therapy coverage and all related limitations, conditions, and exclusions.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8x. Copayments for certain services.

(a) A health maintenance organization issuing coverage in this state pursuant to the provisions of this article may not impose a copayment, coinsurance, or office visit deductible amount charged to a subscriber or member for services rendered for each date of service by a licensed occupational therapist, licensed occupational therapist assistant, licensed speech-language pathologist, licensed speech-pathologist assistant, licensed physical therapist, or a licensed physical therapist assistant that is greater than the copayment, coinsurance, or office visit deductible amount charged to the subscriber or member for the services of a primary care physician or an osteopathic physician.

(b) The policy, provision, contract, plan, or agreement subject to this article shall clearly state the availability of occupational therapy, speech-language therapy, and physical therapy coverage and all related limitations, conditions, and exclusions.

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CHAPTER 262

**(Com. Sub. for H. B. 2848 - By Delegates Riley, Linville,
Cannon, Barnhart, Westfall, Clark, Fehrenbacher, W. Hall,
Maynor, Adkins and Hite)**

[Passed March 7, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-1-9g, related to modifying the requirements for out of state wastewater operators to obtain a license in the state; setting forth application requirements; and providing a waiver.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-9g. Reciprocity in licensing for public water systems operators and wastewater operators.

(a) The commissioner shall grant certification to a public water systems operator or wastewater operator certified by another jurisdiction, if the applicant:

(1) Is actively seeking, has been offered or has accepted employment which requires a certified operator in West Virginia;

(2) Submits a completed application in a manner approved by the commissioner;

(3) Meets the educational and work experience requirements prescribed by the commissioner through his rulemaking authority; and

(4) Demonstrates he or she has successfully passed an examination, which is substantially equivalent to the certification level sought in West Virginia, as determined by the commissioner.

(b) If the commissioner determines that the other jurisdiction's examination is not equivalent, the water system operator or wastewater operator is required to successfully complete the West Virginia certification examination applicable to the certification level sought.

(c) Upon application to and approval by the commissioner, a certified public water system may apply for a limited waiver. If approved, a limited waiver shall permit a certified public water systems operator or wastewater operator to perform the tasks of an operator certified one grade higher as a supplement to the certified public water system's staffing and availability of the primary operator. A limited waiver shall only be granted to a certified public water system, if it has at least one certified public water system operator or wastewater operator in the required class for its operation.



CHAPTER 263

(H. B. 2955 - By Delegates Riley and Keaton)

[Passed March 9, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §16-13D-1, §16-13D-2, §16-13D-3, §16-13D-4, §16-13D-5, §16-13D-6, §16-13D-8, §16-13D-9, §16-13D-10, §16-13D-11, §16-13D-12, §16-13D-13, §16-13D-14, §16-13D-15, §16-13D-17, and §16-13D-21 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-13D-22, all relating to the establishment of water authorities; enabling public agencies to cooperate to manage stormwater; authorizing public agencies to create a regional stormwater authority; authorizing public agencies to create a regional authority providing any combination of services; providing that public agencies may manage stormwater and creating regional authorities to manage stormwater, regional water, and wastewater; specifying the required contents of the regional authority's organizational document; requiring the filing of the organizational document; providing that public agencies may enter into contracts; requiring the Public Service Commission to confirm that all required contract-related documentation has been filed; stating requirements for the governing body of a regional authority; granting powers to the governing body of a regional authority; stating procedures by which a regional authority may seek a rate increase from the Public Service Commission; authorizing the governing body of any regional authority to issue revenue bonds; providing for the creation of and payments into a sinking fund; regulating management of the sinking fund; creating a statutory mortgage lien upon the stormwater system of any regional authority; granting the governing body authority to make provisions for the payment of stormwater-system-related bonds; requiring the regional

authority to maintain a certain working capital reserve; requiring the Public Service Commission to review rate filings by regional authorities; granting authorities the right of eminent domain.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 13D. REGIONAL WATER AND WASTEWATER
AND STORMWATER AUTHORITY ACT.**

§16-13D-1. Statement of purpose.

It is the purpose of this article, to permit a public agency, or more than one public agency to make the most efficient use of its or their powers relating to public water supplies, the transportation and treatment of wastewater, and the management of stormwater by enabling a public agency, or more than one public agency to cooperate with other public agencies on a basis of mutual advantage and thereby to provide services and facilities to participating public agencies and to provide for the establishment for the purpose of a quasi-governmental public corporation which shall be known as a regional water authority, a regional wastewater authority, a regional stormwater authority, or any combination thereof. The function of the regional water authority shall be to secure a source of water on a scale larger than is feasible for an individual public agency or agencies acting alone, and to sell water to public service districts, municipalities, publicly and privately owned water utilities, and others. The function of the regional wastewater authority shall be to enable a public agency or agencies to provide the most economical method of transportation and treatment of wastewater and to provide transportation and treatment services to public service districts, municipalities, publicly and privately owned wastewater utilities, and others. The function of the regional stormwater authority shall be to enable a public agency or agencies to provide storm, flood and surface water drainage management services to public service districts, municipalities, publicly and privately owned stormwater utilities, and others. The function of a regional authority that provides any combination of water, wastewater, or stormwater service shall be to enable a public agency or agencies to carry out the joint

functions of a water, wastewater, or stormwater regional water authority.

In addition to the purposes for which it may have originally been created, any authority created pursuant to this article may enter into agreements with public agencies, privately owned utilities, and other authorities, for the provision of related services including, but not limited to the following: administration, operation and maintenance, billing, and collection.

§16-13D-2. Definitions.

For the purposes of this article:

(a) The term "authority" means any regional water authority, regional wastewater authority, regional stormwater authority, or any combination thereof organized pursuant to the provisions of this article;

(b) The term "public agency" means any municipality, county, public service district, or other political subdivision of this state; and

(c) The term "stormwater," "stormwater system," or "stormwater works" means a stormwater system in its entirety or any integral part thereof used to collect and dispose of stormwater and an associated stormwater management program. It includes all facilities, structures, and natural water courses used for collecting and conducting stormwater to, through, and from drainage areas to the points of final outlet, including, but not limited to, any and all of the following: inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, syphons, retention or detention basins, dams, floodwalls, levies, pipes, flood control systems and pumping stations, and associated stormwater management program. The term "stormwater system" and "stormwater works" shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

§16-13D-3. Individual or joint exercise of powers by certain public agencies; agreements among agencies, contents; submission to Public Service Commission; filing of agreement; prohibition against competition; retirement of bonds.

(a) Any powers, privileges, or authority of a public agency of this state relating to public water supplies, or the transportation or treatment of wastewater, or the operation of a stormwater system may be exercised individually or jointly with any other public agency of this state, or with any agency of the United States to the extent that the laws of the United States permit. Any agency of the state government when acting individually or jointly with any public or private agency may exercise all of the powers, privileges, and authority conferred by this act upon a public agency.

(b) Any public agency may individually organize a regional water authority, regional wastewater authority, regional stormwater authority, or any combination thereof. Any public agency may enter into agreements with one or more other public agencies for the purpose of organizing a regional water authority, regional wastewater authority, regional stormwater authority, or any combination thereof. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agency or agencies required by the provisions of Chapter 8 and Chapter 16 of this code shall be necessary before any agreement may enter into force.

(c) For an agency acting individually, the organizational document for the authority shall specify the following:

(1) The precise organization, composition, and nature of the authority created thereby together with the powers delegated thereto;

(2) Its purpose or purposes;

(3) The manner of financing for the authority and of establishing and maintaining a budget therefor;

(4) The manner of acquiring, holding, and disposing of real and personal property of the authority; and

(5) Any other necessary and proper matters.

(d) Any agreement between two or more public agencies to organize an authority shall specify the following:

(1) Its duration;

(2) The precise organization, composition and nature of the authority created thereby together with the powers delegated thereto;

(3) Its purpose or purposes;

(4) The manner of financing for the authority and of establishing and maintaining a budget therefor;

(5) The permissible methods for partial or complete termination of the agreement and for disposing of property upon partial or complete termination;

(6) The manner of acquiring, holding, and disposing of real and personal property of the authority;

(7) Any other necessary and proper matters.

(e) Any agreement between two or more public agencies to organize an authority may be amended to include additional public agencies by consent of two-thirds of the signatories to the agreement, if no terms of agreement are changed, otherwise a new agreement with the new public agency shall be drawn. Where fewer than three public agencies come together to form an authority, both parties shall consent to the amendment of the agreement to include additional public agencies.

(f) Any agency acting individually to organize an authority and every agreement made hereunder shall be submitted to the Public Service Commission for its approval. The Public Service Commission shall, within 30 days of the filing date, notify the agency whether the agency has filed all required documentation

regarding the organization or agreement that is required by the Commission. If the Commission determines that additional information is needed it will inform the agency of the information needed. Failure by the Public Service Commission to approve or disapprove an agency's decision to individually organize an authority or an agreement submitted hereunder within 90 days of the date that the Commission has before it all of the necessary information from the agency shall constitute approval thereof: *Provided*, That the 90-day Commission review period may be extended upon request of the agency.

(g) Prior to taking effect, the organizational document of the agency acting individually or the agreement between two or more agencies made hereunder shall be filed with the clerk of the county commission of each county in which the agency acting individually, or in the case of an authority organized by agreement of two or more agencies, in the county where each member of the authority is located and the agreement then also shall be filed with the Secretary of State, accompanied by a certificate from the clerk of the county commission of the county, or counties, where filed, stating that the agreement has been filed in that county.

(h) A public agency which enters into an agreement made hereunder may not offer or provide water, wastewater, or stormwater services in competition with another public agency entering into the agreement.

(i) A public agency which enters into an agreement made hereunder may not withdraw from the agreement until such time as the outstanding bonded indebtedness of the authority is retired or the bond holders are otherwise protected.

§16-13D-4. Furnishing of funds, personnel or services by certain public agencies, agreements for purchase, sale, distribution, transmission, transportation, collection, disposal, and treatment of water, wastewater, or stormwater; terms and conditions.

Any public agency acting individually to organize an authority or entering into an agreement pursuant to this article may

appropriate funds and may sell, lease, give, or otherwise supply to the authority created the personnel or services for the operation of the authority as may be within its legal power to furnish.

Subject to the prior approval of the Public Service Commission pursuant to §24-2-12 of this code, any public agency, whether or not a party to an agreement pursuant to this article, and any publicly or privately owned water distribution company may enter into contracts with any regional authority created pursuant to this article for the purchase of water from the authority or the sale of water to the authority, the treatment of water by either party, and the distribution or transmission of water by either party and any such authority may enter into the contracts. The Public Service Commission shall, within 30 days of the filing date, notify the parties to the contract whether they have filed all required documentation regarding the contract. If the Commission determines that additional information is needed it will inform the agency of the information needed. The Public Service Commission shall act on a filing submitted hereunder within 90 days of the date that the Commission has before it all necessary information from the parties to the contract. Failure of the Commission to act on the filing within the 90-day period shall constitute approval thereof: *Provided*, That the 90-day Commission review period may be extended upon request of the parties to the contract.

Any public agency, whether or not a party to an agreement pursuant to this act, and any publicly or privately owned wastewater transportation or treatment system may enter into contracts with any regional authority created pursuant to this article for the transportation and treatment of wastewater by either party and any authority may enter into the contracts, subject to the prior approval of the Public Service Commission pursuant to §24-2-12 of this code. The Public Service Commission shall, within 30 days of the filing date, notify the parties to the agreement whether they have filed all required documentation regarding the contract. If the Commission determines that additional information is needed it will inform the agency of the information needed. The Public Service Commission shall act on a filing submitted hereunder within 90 days of the date that the Commission has before it all necessary information from the parties to the contract. Failure by

the Commission to act within the 90-day period shall constitute approval thereof: *Provided*, That the 90-day Commission review period may be extended on upon request of the parties to the contract.

Any public agency, whether or not a party to an agreement pursuant to this article, and any publicly or privately owned stormwater system may enter into contracts with any regional authority created pursuant to this article for the collection and disposition of stormwater by either party and any authority may enter into contracts.

Any contract may include an agreement for the purchase of water not actually received or the treatment of wastewater not actually treated, or the collection and disposition of stormwater not actually collected and disposed. No contract may be made for a period in excess of 40 years, but renewal options may be included therein. The obligations of any public agency under any contract shall be payable solely from the revenues produced from the public agency's water, stormwater and wastewater system, and the Public Service Commission, in the case of a public agency whose rates are subject to its jurisdiction, shall permit the public agency to recover through its rates revenues sufficient to meet its obligations under the agreement.

§16-13D-5. Declaration of authority organization, when quasi-governmental public corporation.

Upon the approval of the Public Service Commission and filing with the Secretary of State, the Secretary of State shall declare the authority organized and give it the corporate name of regional water authority number _____, regional wastewater authority number _____, regional stormwater authority number _____, or any combination thereof, whichever is appropriate. Thereupon the authority shall be a quasi-governmental public corporation.

§16-13D-6. Governing body; appointments; terms of members, voting rights.

The governing body of the authority shall consist of not less than three persons selected by the governing body of the public agency. When the authority is organized by more than one public

agency, each participating public agency shall appoint at least one member.

The governing body of the authority shall consist of at least one member of the following categories: (1) A professional engineer licensed by the State of West Virginia, (2) a certified public accountant licensed by the State of West Virginia, or (3) an attorney licensed and in good standing with the West Virginia State Bar. Each member of the board must be a rate-paying residential customer of the authority.

For purposes of this section, "rate-paying residential customer" means a person who: (1) In the case of water or wastewater service, is physically connected to and actively receiving residential utility services from the authority; or (2) in the case of stormwater service, has stormwater conveyed away from the residential property by facilities owned by the authority. Each member's full term shall be not less than one year nor more than four years and initial terms shall be staggered in accordance with procedures set forth in the organization document or agreement provided for in §16-13D-3 of this code, and amendments thereto. In the case of an authority which is made up by the agreement of two public agencies, each public agency shall appoint at least two representatives to the governing body.

When the authority is organized by more than one public agency the manner of selection of the governing body and terms of office shall be set forth in the agreement provided for in §16-13D-3 of this code, and amendments thereto. The governing body of the authority shall elect one of its members as president, one as treasurer and one as secretary.

Each member shall have one vote in any matter that comes before the authority for decision. However, when the authority is organized by more than one public agency, the member agencies shall, in the original agreement establishing the authority, set forth any special weighing of the votes based upon population served, volumes of water purchased, volumes of wastewater treated, volumes of stormwater collected and disposed numbers of

customers, or some other criterion, so as to maintain fairness in the decisions and operations of the authority.

§16-13D-8. Powers of governing body.

For the purpose of operating as an authority as provided in this article, powers, authorities, and privileges of the authority shall include, but are not limited to, the following:

(1) To accept by gift or grant from any person, firm, corporation, trust, or foundation, or from this state or any other state or any political subdivision or municipality thereof, or from the United States, any funds or property or any interest therein for the uses and purposes of the authority and to hold title thereto in trust or otherwise and to bind the authority to apply the same according to the terms of the gift or grant;

(2) To sue and be sued;

(3) To enter into franchises, contracts and agreements with this or any other state or the United States or any municipality, political subdivision or authority thereof, or any of their agencies or instrumentalities, or any public or private person, partnership, association, or corporation of this state or of any other state or the United States, and this state and any municipality, political subdivision, authority, or any of their agencies or instrumentalities, and any public or private person, partnership, association, or corporation may enter into contracts and agreements with the authority for any term not exceeding 40 years for the planning, development, construction, acquisition, maintenance, or operation of any facility or for any service rendered to, for, or by the authority;

(4) To borrow money and evidence the same by warrants, notes, or bonds as hereinafter provided in this article, and to refund the same by the issuance of refunding obligations;

(5) To acquire land and interests in land by gift, purchase, exchange, or eminent domain, the power of eminent domain to be exercised within or without the boundaries of the authority in accordance with §54-2-1 *et seq.* of this code;

(6) To acquire by purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, distribution, and utilization of water, transportation facilities, pump stations, lift stations, treatment facilities, and other facilities for the transportation and treatment of wastewater, and inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, syphons, retention or detention basins, dams, floodwalls, levies, pipes, flood control systems, pumping stations, and treatment facilities and to own and hold the real and personal property as may be necessary to carry out the purposes of its organization subject to the advance approval of the Public Service Commission pursuant to Chapter 24 of this code for any proposed acquisition, construction, installation or operation. The Public Service Commission shall, within 30 days of a request for approval submitted hereunder, notify the authority whether its filing is complete. If the Commission determines that additional information is needed it will inform the agency of the information needed. Notwithstanding the timeframes for Commission approval of public utility projects set forth in Chapter 24, the Commission shall act on authority proposals within the following timeframes.

The Public Service Commission shall act on all proposals submitted hereunder by an authority that provides only water service or only wastewater service, or by an authority that does not seek a rate increase within 120 days of the date that the authority files with the Commission a complete application. Failure of the Public Service Commission to act within the 120-day period shall be deemed an approval of such proposal: *Provided*, That the Commission's 120-day review period may be extended upon request of the authority.

The Public Service Commission shall act on all proposals submitted hereunder for which the authority seeks a rate increase and the authority provides water and wastewater services, water and stormwater services, wastewater and stormwater services, or water and wastewater and stormwater services, within 180 days of the date the authority files with the Commission the necessary

information showing the basis of any project related rates, fees, and charges or other information as the Commission considers necessary: *Provided*, That the information shall include an explanation of the amount and basis for assigning and allocating total costs between the water operations, the wastewater operations, and if applicable the stormwater operations. Failure by the Commission to act within the 180-day period shall constitute approval thereof. *Provided, however*, That the 180-day Commission review period may be extended upon request of the authority.

(7) To have the general management, control, and supervision of all the business, affairs, property, and facilities of the authority, and of the construction, installation, operation, and maintenance of authority improvements, and to establish regulations relating thereto;

(8) To hire and retain agents, employees, engineers, and attorneys and to determine their compensation. The governing body shall select and appoint a general manager of the authority who shall serve at the pleasure of said governing body. The general manager shall have training and experience in the supervision and administration of the system or systems operated by the authority and shall manage and control the system under the general supervision of the governing body. All employees, servants and agents of the authority shall be under the immediate control and management of said general manager. The general manager shall perform all other duties as may be prescribed by the governing body and shall give the governing body a good and sufficient surety company bond in a sum to be set and approved by the governing body conditioned upon the satisfactory performance of the general manager's duties. The governing body may also require that any other employees be bonded in such amount as it shall determine. The cost of the bonds shall be paid out of the funds of the authority;

(9) To adopt and amend rules and regulations not in conflict with the Constitution and laws of this state, necessary for the carrying on of the business, objects, and affairs of the governing body and of the authority;

(10) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein. The specific powers may not be considered as a limitation upon any power necessary or appropriate to carry out the purposes of this article.

§16-13D-9. Revenue bonds.

For constructing or acquiring any water supply, wastewater transportation, or treatment system, or stormwater system for the authorized purposes of the authority, or necessary or incidental thereto, and for constructing improvements and extensions thereto, and also for reimbursing or paying the costs and expenses of creating the authority, the governing body of any authority may borrow money from time to time and in evidence thereof issue the revenue bonds of the authority. The revenue bonds are hereby made a lien on the revenues produced from the operation of the authority's system, but may not be general obligations of the public agency individually organizing the authority or public agencies participating in the agreement. All revenue bonds issued under this article shall be signed by the president of the governing body of the authority and attested by the secretary of the governing body of the authority and shall contain recitals stating the authority under which the bonds are issued and that they are to be paid by the authority from the net revenue derived from the operation of the authority's system and not from any other fund or source and that the bonds are negotiable and payable solely from the revenues derived from the operation of the system under control of the authority: *Provided*, That in the case of a regional authority providing combined service, the statutory lien created hereby shall only be a lien on the revenues of that service funded by the proceeds of the sale of the bonds, it being understood that the combined authority shall maintain separate books and records for its operations. The bonds may be issued in one or more series, may bear the date or dates, may mature at the time or times not exceeding 40 years from their respective dates, may bear interest at a rate not exceeding two percent above the interest rate on treasury notes, bills or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported

by the Treasury of the United States, may be payable at the times, may be in the form, may carry the registration privileges, may be executed in the manner, may be payable at the place or places, may be subject to the terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with the conditions, and may contain the terms and covenants as may be provided by resolution or resolutions of the governing body of the authority. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond is nonnegotiable, all the bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in the manner and at the time or times as is found by the governing body to be most advantageous, and all such bonds may be sold at the price that the interest cost of the proceeds therefrom does not exceed three percent above the interest rate on treasury notes, bills or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the Treasury of the United States, based on the average maturity of the bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of the bonds may contain covenants and restrictions upon the issuance of additional bonds thereafter as may be considered necessary or advisable for the assurance of the payment of the bonds thereby authorized.

§16-13D-10. Items included in cost of properties.

The cost of any water supply, wastewater transportation, treatment system, or stormwater system acquired or constructed under this article shall be considered to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises considered necessary or convenient therefor and for the improvements and extensions thereto; interest

upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof.

§16-13D-11. Bonds may be secured by trust indenture.

In the discretion and at the option of the governing body of the authority, the bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the State of West Virginia, but no trust indenture may convey, mortgage, or create any lien upon the water supply, wastewater transportation or treatment system, or stormwater system, or any part thereof of the authority or its member public agencies. The resolution authorizing the bonds and fixing the details thereof may provide that the trust indenture may contain provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the authority and the members of its governing body and officers in relation to the construction or acquisition of the water supply, wastewater transportation or treatment system, or stormwater system, and the improvement, extension, operation, repair, maintenance, and insurance thereof, and the custody, safeguarding, and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the governing body and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or

revenues of the water supply, the wastewater transportation or treatment system, or stormwater system, or other money pertaining thereto be satisfactory to the purchasers, their successors, assignees or nominees. The indenture may set forth the rights and remedies of the bondholders and the trustee.

§16-13D-12. Sinking fund for revenue bonds.

At or before the time of the issuance of any bonds under this article the governing body of the authority shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into the fund from the revenues of the water supply, wastewater transportation or treatment system, or stormwater system operated by the authority such sums in excess of the cost of maintenance and operation of the properties as will be sufficient to pay the accruing interest and retire the bonds at or before the time each will respectively become due and to establish and maintain reserves therefor. All sums which are or should be, in accordance with the provisions, paid into the sinking fund shall be used solely for payment of interest and for the retirement of bonds at or prior to maturity as may be provided or required by such resolutions.

§16-13D-13. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.

The governing body of any such authority may insert enforceable provisions in any resolution authorizing the issuance of bonds relating to the collection, custody, and application of revenues of the authority from the operation of the water supply, wastewater transportation or treatment system, or stormwater system under its control and to the enforcement of the covenants and undertakings of the authority. If there is a default in the sinking fund provisions or in the payment of the principal or interest on any of the bonds or, if the authority or its governing body or any of its officers, agents, or employees, shall fail or refuse to comply with this article, or shall default in any covenant or agreement made with respect to the issuance of the bonds or offered as security therefor,

then any holder or holders of the bonds and any such trustee under the trust indenture, if there is one, may by suit, action, mandamus, or other proceeding instituted in the circuit court for the county or any of the counties wherein the authority extends, or in any other court of competent jurisdiction, enforce and compel performance of all duties required by this article or undertaken by the authority in connection with the issuance of the bonds, and upon application of any such holder or holders, or the trustee, the court shall, upon proof of the defaults, appoint a receiver for the affairs of the authority and its properties, which receiver so appointed shall forthwith directly, or by his or her agents and attorneys, enter into and upon and take possession of the affairs of the authority and each and every part thereof, and hold, use, operate, manage, and control the authority, and in the name of the authority exercise all of the rights and powers of the authority as is considered expedient, and the receiver may collect and receive all revenues and apply them in the manner as the court shall direct. Whenever the default causing the appointment of the receiver has been cleared and fully discharged and all other defaults have been cured, the court may and after the notice and hearing as it considers reasonable and proper direct the receiver to surrender possession of the affairs of the authority to its governing body. The receiver so appointed may not sell, assign, mortgage, or otherwise dispose of any assets of the authority except as hereinbefore provided.

§16-13D-14. Statutory mortgage lien created; foreclosure thereof.

There is hereby created a statutory mortgage lien upon the water supply, wastewater transportation or treatment system, or stormwater system of the authority, which shall exist in favor of the holders of bonds hereby authorized to be issued, and each of them, and the system shall remain subject to the statutory mortgage lien until payment in full of all principal of and interest on the bonds.

§16-13D-15. Rates and charges.

The governing body shall by appropriate resolution make provisions for the payment of the bonds by fixing rates, fees, and

charges, for the use of all services rendered by the authority, which rates, fees, and charges shall be sufficient to pay the costs of operation, improvement, and maintenance of the authority's water supply, wastewater transportation and/or treatment system, or stormwater system, to provide an adequate depreciation fund, provide an adequate sinking fund to retire the bonds and pay interest thereon when due, and to create reasonable reserves for those purposes. The fees, rates or charges shall be sufficient to allow for miscellaneous and emergency or unforeseen expenses. The authority shall maintain a working capital reserve in an amount of no less than one-eighth of all expenses incurred by the authority on an annual basis: *Provided*, That this working capital reserve shall be separate and distinct from, and in addition to: (1) any repair and replacement fund that may be required by bond covenants, and (2) any other funds held by the authority. The resolution of the governing body authorizing the issuance of revenue bonds may include agreements, covenants, or restrictions considered necessary or advisable by the governing body to effect the efficient operation of the system and to safeguard the interests of the holders of the revenue bonds and to secure the payment of the bonds and the interest thereon. The rates, fees, and charges for water, wastewater, or both, established by the authority shall be subject to review and approval by the Public Service Commission pursuant to Chapter 24 of this code.

The Public Service Commission shall, within 30 days of a rate filing, notify the authority whether its rate filing is complete. If the Commission determines that additional information is needed it will inform the authority of the information needed. Notwithstanding the timeframes for Commission review of rate applications set forth in Chapter 24, the Commission shall act on authority rate applications within the following timeframes:

(1) The Public Service Commission shall act on a rate filing by an authority that provides only water service or only wastewater service within 120 days of the date that the authority files with the Commission the necessary information showing the basis of the rates, fees, and charges or other information as the commission considers necessary. Failure of the Commission to act within the

120-day time period shall constitute approval thereof: *Provided*, That the 120-day period may be extended upon request of the authority.

(2) The Public Service Commission shall act on a rate filing by an authority that provides water and wastewater services, water and stormwater services, wastewater and stormwater services, or water and wastewater and stormwater services, within 180 days of the date that the authority files with the Commission the necessary information showing the basis of the rates, fees, and charges or other information as the Commission considers necessary: *Provided*, That the information shall include an explanation of the amount and basis for assigning and allocating total costs between the water operations, the wastewater operations, and if applicable the stormwater operations. Failure by the Commission to act within the 180-day period shall constitute approval thereof: *Provided, however*, That the 180-day Commission review period may be extended upon request of the authority.

Notwithstanding the provisions of any other law or charter to the contrary, any regional stormwater authority may provide storm, flood, and surface water drainage management services to areas located outside its jurisdiction from which stormwater affects or drains into the area served by the regional stormwater authority, and any regional stormwater authority may assess fees for providing storm, flood, and surface water draining management services to be paid by the owner of each and every lot, parcel of real estate or building that in any way uses or is served by the stormwater system. The Public Service Commission has no jurisdiction to regulate the rates charged for storm, flood, and surface water drainage management services.

§16-13D-17. Exemption of bonds from taxation.

The bonds and the interest thereon, together with all properties and facilities of the authority owned or used in connection with the water, wastewater system, or stormwater system, and all the moneys, revenues, and other income of the authority derived from the water, wastewater system, or stormwater system shall be

exempt from all taxation by the state of West Virginia or any county, municipality, political subdivision, or agency thereof.

§16-13D-21. Citation of article.

This article may be known and cited as the "Regional Water and Wastewater, and Stormwater Authority Act".

§16-13D-22. Acquisition by condemnation.

For the purpose of acquiring any lands, rights, or easements considered necessary or incidental for the purposes of the authority, each authority has the right of eminent domain within or without the boundaries of the authority to the same extent and to be exercised in the same manner as now or hereafter provided by law for the right of eminent domain by cities, incorporated towns, and other municipal corporations: *Provided*, That the power of eminent domain provided in this section does not extend to highways, road and drainage easements, or stormwater facilities constructed, owned, or operated by the West Virginia Division of Highways without the express agreement of the Commissioner of Highways.

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CHAPTER 264

(Com. Sub. for H. B. 2993 - By Delegates Summers and Tully)

[Passed March 2, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §16-5B-14 of the Code of West Virginia, 1931, as amended, relating to rural emergency hospital licensure; defining terms; setting forth licensure standards; permitting a rural emergency hospital to perform certain functions; and providing rulemaking authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-14. Rural Emergency Hospital Act.

(a) Definitions – As used in this section:

(1) "Critical Access Hospital" means a hospital that has been deemed eligible and received designation as a critical access hospital by the Centers for Medicare and Medicaid Services (CMS).

(2) "Rural Emergency Hospital" means a facility that:

(A) Was a critical access hospital;

(B) Does not provide acute care inpatient services; and

(C) Provides, at a minimum, rural emergency hospital services.

(3) "Rural Emergency Hospital Services" means emergency department services and

observation care furnished by a rural emergency hospital that does not exceed an annual per patient average of 24 hours in such rural emergency hospital.

(4) "Staffed Emergency Department" means an emergency department of a rural emergency hospital that meets the following requirements:

(A) The emergency department is staffed 24 hours a day, 7 days a week; and

(B) A licensed physician, advanced practice registered nurse, clinical nurse specialist, or physician assistant is available to furnish rural emergency hospital services in the facility 24 hours a day.

(b) A hospital located in an urban area (Metropolitan Statistical Areas (MSA) county), can be considered rural for the purposes of a designation as a critical access hospital pursuant to U.S.C. §1395i-4(c)(2) if it meets the following criteria:

(1) Is enrolled as both a Medicaid and Medicare provider and accepts assignment for all Medicaid and Medicare patients;

(2) Provides emergency health care services to indigent patients;

(3) Maintains 24-hour emergency services; and

(4) Is located in a county that has a rural population of 50 percent or greater as determined by the most recent United States decennial census.

(c) A critical access hospital may apply to be licensed as a rural emergency hospital if:

(1) It has been designated as a critical access hospital for at least one year; and

(2) It is designated as a critical access hospital at the time of application for licensure as a rural emergency hospital.

(d) In addition to the requirements of subsection (c) of this section, rural emergency hospital shall, at a minimum:

(1) Provide rural emergency hospital services through a staffed emergency department;

(2) Treat all patients regardless of insurance status; and

(3) Have in effect a transfer agreement with a Level I or Level II trauma center.

(e) A rural emergency hospital may:

(1) With respect to services furnished on an outpatient basis, provide other medical and health services as specified by the secretary through rulemaking; and

(2) Include a unit of a facility that is a distinct part licensed as a skilled nursing facility to furnish post-hospital extended care services.

(f) The department shall propose a rule for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this section.

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CHAPTER 265

(Com. Sub. for H. B. 3092 - By Delegates Foster, Longanacre and Young)

[Passed March 9, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-2-18, relating to in-state food service permit reciprocity; providing no additional fees; clarifying application procedure and conditions; and providing a requirement to review and modernize legislative rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-18. In-state food service permit reciprocity.

(a) A local or county health department shall issue a mobile food establishment reciprocity permit to a mobile food service establishment that is operating within the State of West Virginia and holds a valid mobile food establishment permit from the vendor's county of residence. The mobile food establishment reciprocity permit shall be valid for the length of time for which the first permit is issued and regardless of the number of days for which the vendor requires the mobile food establishment reciprocity permit.

(b) No health department within the state may charge an additional fee to any in-state vendor that has received a mobile food establishment permit but may place conditions upon an issued permit to assure compliance with that health department's rules and standards for the type of permit being issued. Each vendor must provide notice to the local health department with jurisdiction at

least 14 days prior to operating within the jurisdiction. The permit must be visibly posted while the mobile food establishment is operational.

(c) The secretary shall review and modernize legislative rules regarding local boards of health fees located in 64 CSR 30 in the next filing period.

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CHAPTER 266

(Com. Sub. for H. B. 3164 - By Delegates Summers, Tully and Walker)

[Passed February 20, 2023; in effect from passage.]

[Approved by the Governor on March 1, 2023.]

AN ACT to amend and reenact §16-5CC-3 of the Code of West Virginia of 1931, as amended, relating to modifying the West Virginia Advisory Council on Rare Diseases; changing the entities to which said Council reports; changing the termination date of said Council.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5CC. WEST VIRGINIA ADVISORY COUNCIL ON RARE DISEASES.

§16-5CC-3. Duties of the advisory council.

The advisory council shall exercise the following duties to the degree that resources are available, including, but not limited to:

(1) Coordinate statewide efforts for the study of the incidence of rare disease within the state;

(2) Act as the advisory board to the secretary and the West Virginia Legislature on research, treatment, and education relating to rare diseases;

(3) Research and identify priorities relating to the quality of, and access to, treatment and services provided to persons with rare diseases in the state;

(4) Develop, in conjunction and cooperation with the state's medical schools, policy recommendations relating to the quality of,

and access to, treatment and services provided to persons with rare diseases in the state;

(5) Advise, consult, and cooperate with other offices of the department, other agencies of state government, and patient-based organizations in the development of information and programs of benefit to the public and the health care community relating to the diagnosis, treatment, and awareness of rare diseases;

(6) Identify best practices for rare disease care as implemented in other states and at the national level that will improve rare disease care in the state;

(7) Develop recommendations for effective strategies to raise public awareness of rare diseases in the state;

(8) Develop recommendations for best practices for ensuring that health care providers are sufficiently informed of the most effective strategies for recognizing and treating rare disease; and

(9) Report to the secretary and the Joint Committee on Health not later than January 1, 2021, and annually thereafter on the activities of the advisory council and its findings and recommendations regarding rare disease research and care in West Virginia, including any recommendations for statutory changes and amendments to the structure, organization, and powers and duties of the advisory council. The advisory council shall terminate on June 30, 2025.

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CHAPTER 267

(H. B. 3166 - By Delegates Summers, Tully and Heckert)

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §27-5-2a of the Code of West Virginia, 1931, as amended, relating to clarifying that an authorized hospital staff physician may order the involuntary hospitalization of an emergency room patient or in-hospital patient for up to 72 hours if judicial officers are unavailable.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-2a. Process for involuntary hospitalization.

(a) As used in this section:

(1) "Addiction" has the same meaning as the term is defined in §27-1-11 of this code.

(2) "Authorized staff physician" means a physician, authorized pursuant to the provisions of §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code, who is a bona fide member of the hospital's medical staff.

(3) "Hospital" means a facility licensed pursuant to the provisions of §16-5b-1 *et seq.* of this code, and any acute care facility operated by the state government that primarily provides inpatient diagnostic, treatment, or rehabilitative services to injured, disabled, or sick individuals under the supervision of physicians.

(4) "Psychiatric emergency" means an incident during which an individual loses control and behaves in a manner that poses

substantial likelihood of physical harm to himself, herself, or others.

(b)(1) If a mental hygiene commissioner, magistrate, and circuit judge are unavailable or unable to be immediately contacted, an authorized staff physician may order the involuntary hospitalization of a patient or an individual who is present at, or presented at, a hospital emergency department in need of treatment, if the authorized staff physician believes, following an examination of the individual, that the individual is addicted or is mentally ill and, because of his or her addiction or mental illness, is likely to cause serious harm to himself, herself or to others if allowed to remain at liberty. The authorized staff physician shall sign a statement attesting to his or her decision that the patient presents a harm to himself, herself or others and needs to be held involuntarily for up to 72 hours. The West Virginia Supreme Court of Appeals is requested to generate a form for the statement to be signed by the authorized staff physician or other person authorized by the hospital and provided to the individual.

(2) Immediately upon admission, or as soon as practicable thereafter, but in no event later than 24 hours after an involuntary hospitalization pursuant to this section, the authorized staff physician or designated employee shall file a mental hygiene petition in which the authorized staff physician certifies that the individual for whom the involuntary hospitalization is sought is addicted or is mentally ill and, because of his or her addiction or mental illness, is likely to cause serious harm to himself, herself, or to other individuals if allowed to remain at liberty. The authorized staff physician shall also certify the same in the individual's health records. Upon receipt of this filing, the mental hygiene commissioner, a magistrate, or circuit judge shall conduct a hearing pursuant to §27-5-2 of this code.

(3) An individual who is involuntarily hospitalized pursuant to this section shall be released from the hospital within 72 hours, unless further detained under the applicable provisions of this article.

(c) During a period of involuntary hospitalization authorized by this section, upon consent of the individual, or in the event of a medical or psychiatric emergency, the individual may receive treatment. The hospital or authorized staff physician shall exercise due diligence in determining the individual's existing medical needs and provide treatment the individual requires, including previously prescribed medications.

(d) Each hospital or authorized staff physician which provides services under this section shall be paid for the services at the same rate the hospital or authorized staff physician negotiates with the patient's insurer. If the patient is uninsured, the hospital or authorized staff physician may file a claim for payment with the West Virginia Legislative Claims Commission in accordance with §14-2-1 *et seq.* of this code.

(e) Authorized staff physicians and hospitals and their employees carrying out duties or rendering professional opinions as provided in this section shall be free from liability for their actions, if the actions are performed in good faith and within the scope of their professional duties and in a manner consistent with the standard of care.

(f) The West Virginia Supreme Court of Appeals is requested to provide each hospital with a list of names and contact information of the mental hygiene commissioners, magistrates, and circuit judges to address mental hygiene petitions in the county where the hospital is located. The West Virginia Supreme Court of Appeals is requested to update this list regularly and the list shall reflect on-call information. 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 West Virginia Supreme Court of Appeals.

(g) An action taken against an individual pursuant to this section may not be construed to be an adjudication of the individual, nor shall any action taken pursuant to this section be construed to satisfy the requirements of §61-7-7(a)(4) of this code.

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CHAPTER 268

**(Com. Sub. for H. B. 3191 - By Delegates Summers, Tully and
Pushkin)**

[Passed March 11, 2023; in effect from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §16-5B-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §27-1-6 of said code; all relating to requiring licensure for certain health facilities operated by the state and defining terms.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-1. Health facilities and certain other facilities operated in connection therewith to obtain license; exemptions; meaning of hospital, etc.

No person, partnership, association, corporation, or any state or local governmental unit or any division, department, board or agency thereof shall establish, conduct, or maintain in the State of West Virginia any ambulatory health care facility, ambulatory surgical facility, freestanding or operated in connection with a hospital, hospital or extended care facility operated in connection with a hospital, without first obtaining a license therefor in the manner hereinafter provided: *Provided*, That only one license shall be required for any person, partnership, association, corporation or any state or local governmental unit or any division, department, board or agency thereof who operates any combination of an ambulatory health care facility, ambulatory surgical facility, hospital, extended care facility operated in connection with a hospital, or more than one thereof, at the same location.

Ambulatory health care facilities, ambulatory surgical facilities, hospitals, or extended care facilities operated in connection with a hospital operated by the federal government shall be exempt from the provisions of this article.

A "hospital" or "extended care facility operated in connection with a hospital", within the meaning of this article, shall mean any institution, place, building or agency in which an accommodation of five or more beds is maintained, furnished or offered for the hospitalization of the sick or injured: *Provided*, That nothing contained in this article shall apply to nursing homes, rest homes, personal care facilities, homes for the aged, extended care facilities not operated in connection with a hospital, boarding homes, homes for the infirm or chronically ill, convalescent homes, hotels or other similar places that furnish to their guests only board and room, or either of them: *Provided, however*, That the hospitalization, care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, shall not be deemed to constitute the premises a hospital or extended care facility operated in connection with a hospital, within the meaning of this article. "Hospital" shall include state hospitals as defined by §27-1-6 of this code.

An "ambulatory health care facility" shall include any facility which provides health care or mental health care to noninstitutionalized persons on an outpatient basis. This definition does not include the legally authorized practice of medicine by any one or more persons in the private office of any health care provider.

"Ambulatory surgical facility" means a facility which provides surgical treatment to patients not requiring hospitalization. This definition does not include the legally authorized practice of surgery by any one or more persons in the private office of any health care provider.

Nothing in this article or the rules and regulations adopted pursuant to the provisions of this article shall be construed to authorize the licensure, supervision, regulation or control in any

manner of (1) private offices of physicians, dentists or other practitioners of the healing arts; (2) dispensaries and first aid stations located within business or industrial establishments maintained solely for the use of employees: *Provided*, That such facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than 24 hours.

Nothing in this article shall authorize any person, partnership, association, corporation, or any state or local governmental unit or any division, department, board or agency thereof to engage in any manner in the practice of medicine, as defined by law. This article shall not be construed to restrict or modify any statute pertaining to the placement or adoption of children.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-6. State hospital.

"State hospital" means any hospital, center or institution, or part of any hospital, center or institution, established, maintained and operated by the state, or by the state in conjunction with a political subdivision of the state, to provide inpatient or outpatient care and treatment for the mentally ill, intellectually disabled or addicted. The terms "hospital" and "state hospital" exclude correctional and regional jail facilities.

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CHAPTER 269

(H. B. 3199 - By Delegates Summers and Ellington)

[Passed March 11, 2023; in effect from passage.]

AN ACT to amend and reenact §16-5-22 of the Code of West Virginia, 1931, as amended, relating to removing the requirement that an ectopic pregnancy be reported.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. VITAL STATISTICS.

§16-5-22. Reports of abortions.

(a) Each abortion, as defined in §16-2R-2 of this code, which occurs in this state, shall be reported to the section of vital registration no later than the 10th day of the month following the month the procedure was performed by the person in charge of the hospital in which the abortion was performed. The State Registrar shall prepare a form or provide a suitable electronic process for the transmission of the reports from the institution or physician to the section of vital registration. Information to be collected shall include:

- (1) The gestational age of the fetus;
- (2) The state and county of residence of the patient;
- (3) The age of the patient;
- (4) The type of medical or surgical procedure performed;
- (5) The method of payment for the procedure;

(6) Whether birth defects were known, and if so, what birth defects;

(7) The date the abortion was performed;

(8) The exception contained in §16-2R-3 of this code under which the abortion was performed; and

(9) Related information as required by the commissioner, other applicable sections of this code, or by the legislative rule: *Provided, That:*

(A) No personal identifiers, including, but not limited to, name, street address, city, zip code, or social security number, will be collected; and

(B) Individual records may only be released for research purposes as approved by the state Registrar and may be released in a format designed to further protect the confidentiality of the woman as the state Registrar deems necessary.

(b) An analysis of the compiled information relating to induced terminations of pregnancy shall be included in the annual report of vital statistics.

(c) An electronic report of the compiled information under this section shall be provided to the licensing boards of the licensed medical professionals, as defined in §16-2R-2 of this code, and the Legislative Oversight Commission on Health and Human Resources Accountability on a quarterly basis.

(d) The provisions of this section do not apply to an termination of an ectopic pregnancy.



CHAPTER 270

(Com. Sub. for H. B. 3306 - By Delegates Summers, Tully and Heckert)

[Passed March 11, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §16-1-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5T-2 and §16-5T-4 of said code; and to amend said code by adding thereto a new section, designated §16-5T-7 of said code; all relating to the department; creating a special revenue account; providing for the appointing of the director of the Office of Drug Control Policy; requiring the creation of a task force; setting forth composition of the taskforce; setting forth areas to be examined by taskforce; requiring reporting; establishing deadlines for reports; continuing data dashboard; adding variables to items that must be collected; amending information technology platform; setting forth items that must be displayed on dashboard; providing for enforcement; providing for imposition of civil monetary penalties for violation of reporting requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-13. Hospital services revenue account.

(a) Subject to the provisions set forth in §12-2-2 of this code, there is continued in the State Treasury a separate account which shall be designated the “hospital services revenue account.” The secretary shall deposit promptly into the account any fees received by a facility owned and operated by the department from whatever

source including the federal government, state government, or other third-party payer or personal payment.

(b) The secretary may spend the moneys deposited in the hospital services revenue account in accordance with federal laws and regulations and with the laws of this state. The secretary may spend the moneys deposited in the hospital services revenue account in the amounts the secretary determines necessary for the purpose of improving the delivery of health and mental health services or for the purpose of maintaining or obtaining certification at a state health or mental health facility: *Provided*, That all disproportionate share hospital funds received into the account shall be transferred by intergovernmental transfer to the medical services trust fund created in §9-4A-2a of this code, except for funds appropriated by the Legislature for other purposes within the annual budget bill: *Provided, however*, That during any fiscal year in which the secretary anticipates spending any money from the account, he or she shall submit to the executive department during the budget preparation period prior to the Legislature convening, before that fiscal year for inclusion in the executive budget document and budget bill, his or her recommended capital investments, recommended priorities and estimated costs, as well as requests of appropriations for the purpose of improving the delivery of health and mental health services or for the purpose of maintaining or obtaining certification at a state health facility in the amounts the secretary determines to be necessary.

(c) The secretary shall make an annual report to the Legislature on the status of the health services revenue account, including the previous year's expenditures and projected expenditures for the next year.

ARTICLE 5T. OFFICE OF DRUG CONTROL POLICY.

§16-5T-2. Office of Drug Control Policy.

(a) The Office of Drug Control Policy is continued within the department. The Director of the Office of Drug Control Policy shall be appointed by the Governor, by and with the advice and consent of the Senate. The director of the office is administratively housed

in the Department of Human Services and directly reports to the Office of the Governor, and works in cooperation with the State Health Officer, the Bureau of Public Health, and the Bureau for Behavioral Health.

(b) The Office of Drug Control Policy shall create a state drug control policy in coordination with the bureaus of the department and other state agencies. This policy shall include all programs which are related to the prevention, treatment, and reduction of substance abuse use disorder.

(c) The Office of Drug Control Policy shall:

(1) Develop a strategic plan to reduce the prevalence of drug and alcohol abuse and smoking by at least 10 percent;

(2) Monitor, coordinate, and oversee the collection of data and issues related to drug, alcohol, and tobacco access, substance use disorder policies, and smoking cessation and prevention, and their impact on state and local programs;

(3) Make policy recommendations to executive branch agencies that work with alcohol and substance use disorder issues, and smoking cessation and prevention, to ensure the greatest efficiency and consistency in practices will be applied to all efforts undertaken by the administration;

(4) Identify existing resources and prevention activities in each community that advocate or implement emerging best practice and evidence-based programs for the full substance use disorder continuum of drug and alcohol abuse education and prevention, including smoking cessation or prevention, early intervention, treatment, and recovery;

(5) Encourage coordination among public and private, state and local agencies, organizations, and service providers, and monitor related programs;

(6) Act as the referral source of information, using existing information clearinghouse resources within the Department of Health and Human Resources, relating to emerging best practice

and evidence-based substance use disorder prevention, cessation, treatment and recovery programs, and youth tobacco access, smoking cessation and prevention. The Office of Drug Control Policy will identify gaps in information referral sources;

(7) Apply for grant opportunities for existing programs;

(8) Observe programs in other states;

(9) Make recommendations and provide training, technical assistance, and consultation to local service providers;

(10) Review existing research on programs related to substance use disorder prevention and treatment and smoking cessation and prevention, and provide for an examination of the prescribing and treatment history, including court-ordered treatment, or treatment within the criminal justice system, of persons in the state who suffered fatal or nonfatal opiate overdoses;

(11) Establish a mechanism to coordinate the distribution of funds to support any local prevention, treatment, and education program based on the strategic plan that could encourage smoking cessation and prevention through efficient, effective, and research-based strategies;

(12) Establish a mechanism to coordinate the distribution of funds to support a local program based on the strategic plan that could encourage substance use prevention, early intervention, treatment, and recovery through efficient, effective and research-based strategies;

(13) Oversee a school-based initiative that links schools with community-based agencies and health departments to implement school-based anti-drug and anti-tobacco programs;

(14) Coordinate media campaigns designed to demonstrate the negative impact of substance use disorder, smoking and the increased risk of tobacco addiction and the development of other diseases;

(15) Review Drug Enforcement Agency and the West Virginia scheduling of controlled substances and recommend changes that should be made based on data analysis;

(16) Develop recommendations to improve communication between health care providers and their patients about the risks and benefits of opioid therapy for acute pain, improve the safety and effectiveness of pain treatment, and reduce the risks associated with long-term opioid therapy, including opioid use disorder and overdose;

(17) Develop and implement a program, in accordance with the provisions of §16-5T-3 of this code, to collect data on fatal and nonfatal drug overdoses caused by abuse and misuse of prescription and illicit drugs, from law enforcement agencies, emergency medical services, health care facilities and the Office of the Chief Medical Examiner;

(18) Develop and implement a program that requires the collection of data on the dispensing and use of an opioid antagonist from law enforcement agencies, emergency medical services, health care facilities, the Office of the Chief Medical Examiner and other entities as required by the office;

(19) Develop a program that provides assessment of persons who have been administered an opioid antagonist;

(20) Create a Sober Living Home/Recovery Residence Taskforce comprised of the following stakeholders:

(A) The Executive Director of the West Virginia Prosecuting Attorney Institute, or designee;

(B) The Secretary of Department of Homeland Security, or designee;

(C) The West Virginia Attorney General, or designee;

(D) The Director of the West Virginia Alliance of Recovery Residences, or designee;

(E) The State Health Officer, or designee;

(F) The Commissioner for the Bureau for Behavioral Health, or designee; and

(G) The West Virginia Inspector General, or designee.

(i) The purpose of the taskforce is to review existing West Virginia law, the laws of other states, and any developed case law regarding sober living homes/recovery residences and make recommendations to the Legislature regarding any revisions needed to West Virginia law regarding sober living homes/recovery residences. At a minimum the following areas shall be examined: insurance fraud, human trafficking, success of programs, and any other relevant issues.

(ii) These recommendations shall be presented to the Legislative Oversight Commission on Health and Human Resources Accountability no later than December 15, 2023. A representative of the Taskforce shall provide the Commission with an update regarding the status of the taskforce, including any preliminary findings by October 1, 2023.

(21) Report semi-annually to the Joint Committee on Health on the status of the Office of Drug Control Policy.

(d) Notwithstanding any other provision of this code to the contrary, and to facilitate the collection of data and issues, the Office of Drug Control Policy may exchange necessary data and information with the bureaus within the department, the Department of Military Affairs and Public Safety, the Department of Administration, the Administrator of Courts, the Poison Control Center, Office of National Drug Control Policy and the Board of Pharmacy. The data and information may include, but is not limited to: data from the Controlled Substance Monitoring Program; the criminal offender record information database; and the court activity record information;

**§16-5T-4. Entities required to report; required information;
Continuation of data dashboard.**

(a) To fulfill the purposes of this article, the following information shall be reported, within 24 hours after the provider responds to the incident and via an appropriate information technology platform, to the Office of Drug Control Policy:

- (1) The date and time of the overdose;
- (2) The approximate address of where the person was picked up or where the overdose took place;
- (3) Whether an opioid antagonist was administered;
- (4) Whether the overdose was fatal or nonfatal;
- (5) The gender and approximate age of the person receiving attention or treatment;
- (6) The suspected controlled substance involved in the overdose;
- (7) Whether the individual has a history of a prior overdose, if known; and
- (8) The type of drug used in the overdose.

(b) The following entities shall be required to report information contained in §16-5T-4(a) of this code:

- (1) Health care providers;
- (2) Medical examiners;
- (3) Law-enforcement agencies, including, state, county, and local police departments;
- (4) Emergency response providers; and
- (5) Hospital emergency rooms.

(c) The data collected by the office pursuant to this subsection shall be made available to law enforcement, local health departments, and emergency medical service agencies in each county.

(d) Entities who are required to report information to or from the office pursuant to this section in good faith are not subject to civil or criminal liability for making the report.

(e) For the purposes of this section:

“Information technology platform” means a dashboard constructed for or by the state to allow input, collection, data analysis, and display of the required data within 24 hours. The dashboard shall be scalable for additional future requirements with minimum engineering and development time. There is a preference that the dashboard be compatible with artificial intelligence to maintain monitoring.

“Overdose” means an acute condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death believed to be caused by abuse and misuse of prescription or illicit drugs or by substances that a layperson would reasonably believe to be a drug.

“Opioid antagonist” means a federal Food and Drug Administration-approved drug for the treatment of an opiate-related overdose, such as naloxone hydrochloride or other substance that, when administered, negates or neutralizes, in whole or in part, the pharmacological effects of an opioid in the body.

(f) Office of Drug Control Policy shall continue to compile the data that is reported, or that it otherwise has access to, in a public facing data dashboard. This dashboard shall also include the following:

(1) Every project that receives state funding, federal funding, opioid settlement funds, and other relevant funding sources for substance use disorder beginning in fiscal year 2024;

(2) Data on the outcomes of funded community-based outreach programs, harm reduction programs, criminal justice substance use disorder programs, harm prevention programs, and other funded program, to evaluate program effectiveness and inform program improvement;

(3) A comparison of program effectiveness by county, region, rural or urban, and demographics to identify best practices and areas for improvement and share these findings with stakeholders to support evidence-based decision making;

(4) Alerts to a rise in fatal and non-fatal overdoses in a given area or region to enable resources to be deployed to the area;

(5) Track and interact with medication assisted treatment providers, including the number of patients in and out of treatment, to support the coordination of care and effective care for individuals with substance use disorder;

(6) Public facing information, including maps, charts, and other visualizations, to increase transparency and engagement with stakeholders

(7) The location of every substance use disorder provider on a statewide basis to provide individuals linkage to care;

(8) Non-fatal overdoses within 24 hours of the incident, with data collected from multiple sources, including hospitals, first responders, and law enforcement agencies;

(9) Fatal overdoses with data collected from multiple sources including hospitals, first responders, and law enforcement agencies;

(10) Identification of trends from the data that has been collected, including but not limited to fatal and non-fatal overdoses, use of opioid antagonist, trends in illicit drugs causing overdoses, and other relevant data that can be used to inform the allocation of resources in an area;

(11) Emergency department visits and first responder calls for fatal and non-fatal overdoses, and use this data to identify trends and hotspots and inform resource allocation;

(12) Data regarding program effectiveness in both the short-term and long-term with both immediate and long-term outcomes for individuals receiving services and support for ongoing program improvement and refinement; and

(13) The dashboard shall be updated daily to reflect current data, changes in provider location, and any other updates as needed.

§16-5T-7. Enforcement.

(a) The Office of Drug Control Policy may assess a civil penalty for violation of the reporting requirements set forth in §16-5T-4 of this code. If the Office of Drug Control Policy determines that an entity is in violation of the reporting requirements, then a civil penalty of not less than \$500 no more than \$1000 per occurrence may be assessed.

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CHAPTER 271

**(Com. Sub. for H. B. 3337 - By Delegates Heckert,
Fehrenbacher, Cooper, Foggin, Hott, Criss, Hanshaw (Mr.
Speaker), Rohrbach, Petitto, A. Hall and Anderson)**

[Passed March 8, 2023; in effect from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §16-2D-9 of the Code of West Virginia, 1931, as amended, relating to prohibiting a certificate of need; prohibiting additional drug and alcohol treatment facilities and services in certain counties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-9. Health services that cannot be developed.

Notwithstanding §16-2D-8 and §16-2D-11 of this code, these health services require a certificate of need but the authority may not issue a certificate of need to:

- (1) A health care facility adding intermediate care or skilled nursing beds to its current licensed bed complement, except as provided in §16-2D-11 of this code;
- (2) A person developing, constructing, or replacing a skilled nursing facility except in the case of facilities designed to replace existing beds in existing facilities that may soon be deemed unsafe or facilities utilizing existing licensed beds from existing facilities which are designed to meet the changing health care delivery system;
- (3) Add beds in an intermediate care facility for individuals with an intellectual disability, except that prohibition does not

apply to an intermediate care facility for individuals with intellectual disabilities beds approved under the Kanawha County circuit court order of August 3, 1989, civil action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232 (1981) including the 24 beds provided in §16-2D-8 of this code;

(4) An opioid treatment program; and

(5) Add licensed substance abuse treatment beds in any county which already has greater than 250 licensed substance abuse treatment beds.

CHAPTER 272

(Com. Sub. for S. B. 430 - By Senator Tarr)

[Passed March 3, 2023; in effect 90 days from passage (June 1, 2023)]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §12-1-1a; and to amend and reenact §12-2-2 of said code, all relating generally to the State Treasurer's authority to contract with financial institutions for banking goods and services; defining terms in chapter; and clarifying Department of Revenue shall utilize State Treasurer's contracts and agreements with financial institutions when collecting moneys owed to the state unless an exemption is granted.

Be it enacted by the Legislature of West Virginia:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-1a. Definitions.

For the purposes of this chapter:

"Banking goods or services" refers to the goods and services required by a spending unit and provided by a financial institution to facilitate a spending unit's collection or acceptance of state funds, either directly by the spending unit or through a third-party vendor or other entity.

"Financial institution" means a bank, national banking association, non-bank financial institution, a bank and trust company, a trust company, a savings and loan association, a

building and loan association, a mutual savings bank, or a savings bank. The term also includes any entity when that entity is processing financial transactions for a spending unit or offering financial goods or services to a spending unit that are traditionally performed by a financial institution, including, but not limited to, check disbursement services, depository services, payment card processing services, or electronic funds transfers.

"Spending unit" means a department, agency, board, commission, or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

"State funds" refers to moneys accepted or collected on behalf of the state or those moneys designated by the Legislature or the State Treasurer as state funds, according to §12-1-2(e) of this code.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

(a) All officials and employees of the state authorized by statute to accept moneys on behalf of the State of West Virginia shall keep a daily itemized record of moneys received for deposit in the State Treasury and shall deposit within one business day with the State Treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever. The State Treasurer may grant an exception to the one business day rule when circumstances make compliance difficult or expensive. The State Treasurer may review the procedures and methods used by officials and employees authorized to accept moneys due the state and change the procedures and methods if he or she determines it is in the best interest of the state: *Provided*, That the State Treasurer may not review or amend the procedures by which the Department of Revenue accepts moneys due the state: *Provided, however*, That absent an exemption granted by the State Treasurer, the

Department of Revenue must utilize the State Treasurer's contracts or agreements entered into pursuant to §12-1-2 or §12-3A-6 of this code for any banking goods and services required for said procedures. The State Treasurer shall propose rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code governing the procedure for deposits. The official or employee making deposits with the State Treasurer shall prepare deposit lists in the manner and upon report forms prescribed by the State Treasurer in the state accounting system. The State Treasurer shall review the deposits in the state accounting system and forward the information to the State Auditor and to the Secretary of Revenue.

(b) All moneys received by the state from appropriations made by the Congress of the United States shall be recorded in special fund accounts, in the State Treasury apart from the general revenues of the state, and shall be expended only upon appropriation of the Legislature in accordance with the provisions of §4-11-1 *et seq.* of this code. All moneys, other than federal funds, defined in §4-11-2 of this code, shall be credited to the state fund and treated by the State Auditor and State Treasurer as part of the general revenue of the state except the following funds which shall be recorded in separate accounts:

(1) All funds excluded by the provisions of §4-11-6 of this code;

(2) All funds derived from the sale of farm and dairy products from farms operated by any spending unit of the state;

(3) All endowment funds, bequests, donations, executive emergency funds and death and disability funds;

(4) All fees and funds collected at state educational institutions for student activities;

(5) All funds derived from collections from dormitories, boardinghouses, cafeterias, and road camps;

(6) All moneys received from counties by institutions for the deaf and blind on account of clothing for indigent pupils;

(7) All insurance collected on account of losses by fire and refunds;

(8) All funds derived from bookstores and sales of blank paper and stationery, and collections by the chief inspector of public offices;

(9) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking fund, general school fund, school fund, state fund (moneys belonging to counties, districts, and municipalities), state interest and sinking funds, state compensation funds, the fund maintained by the Public Service Commission for the investigation and supervision of applications and all fees, money, interest or funds arising from the sales of all permits and licenses to hunt, trap, fish, or otherwise hold or capture fish and wildlife resources and money reimbursed and granted by the federal government for fish and wildlife conservation; and

(10) All moneys collected or received under any act of the Legislature providing that funds collected or received under the act shall be used for specific purposes.

(c) All moneys, except as provided in subdivisions (1) through (9), inclusive, subsection (b) of this section, shall be paid into the State Treasury in the same manner as collections not excepted and recorded in separate accounts for receipt and expenditure for the purposes for which the moneys are authorized to be collected by law: *Provided*, That amounts collected pursuant to subdivisions (1) through (10), subsection (b) of this section, which are found, from time to time, to exceed funds needed for the purposes set forth in general law may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The gross amount collected in all cases shall be paid into the State Treasury. Commissions, costs and expenses, including, without limitation, amounts charged for use of bank, charge, credit or debit cards, incurred in the collection process shall be paid from the gross amount collected in the same manner as other payments are made from the State Treasury.

(d) The State Treasurer may establish an imprest fund or funds in the office of any state spending unit upon receipt of a proper application. To implement this authority, the State Treasurer shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code. The State Treasurer or his or her designee shall annually audit all imprest funds and prepare a list of the funds showing the location and amount as of fiscal year end, retaining the list as a permanent record of the State Treasurer until the Legislative Auditor has completed an audit of the imprest funds of all agencies and institutions involved.

(e) The State Treasurer may develop and implement a centralized receipts processing center. The State Treasurer may request the transfer of equipment and personnel from appropriate state agencies to the centralized receipts processing center in order to implement the provisions of this section: *Provided*, That the Governor or appropriate constitutional officer has authority to authorize the transfer of equipment or personnel to the centralized receipts processing center from the respective agency.

CHAPTER 273

(S. B. 444 - By Senator Tarr)

[Passed March 10, 2023; to take effect July 1, 2023]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §11-13A-5b of the Code of West Virginia, 1931, as amended, relating to the West Virginia Future Fund; providing specific dates; and transferring any moneys in the fund to General Revenue.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-5b. Creation and cessation of West Virginia Future Fund; legislative intent; calculation of deposits from excess severance tax revenues; permissible uses of investment income and limitations on expenditures; definitions.

(a) There is hereby created in the State Treasury a special revenue account, designated the West Virginia Future Fund, which is an interest-bearing account and may be invested by the West Virginia Investment Management Board in the manner permitted by the provisions of §12-6-1 *et seq.* of this code, with the investment income to be credited to the fund and deposited in the special revenue account.

(b) The Legislature declares its intention to use the fund as a means of conserving a portion of the state's revenue derived from the increased revenue proceeds received by the state as a result of any mineral production as well as other funding sources as the Legislature may designate in order to meet future needs. The principal of the fund shall remain inviolate and no portion of the

principal may be appropriated, expended or encumbered by the Legislature or any official of the state. Only the investment income of this fund may be appropriated and expended: *Provided*, That no more than the average net investment return for the immediately preceding five fiscal years may be appropriated or expended in any one fiscal year.

(c) Notwithstanding any provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each year thereafter, the secretary of revenue shall cause to be deposited in this fund three percent of the annual severance tax revenue which would otherwise be deposited into the General Revenue Fund which is attributable to the severance of coal, limestone, sandstone, natural gas and oil and collected and received pursuant to the provisions of sections §11-13A-3 and §11-13A-3a of this code: *Provided*, That these deposits shall only be made during fiscal years within which the balance of the Revenue Shortfall Reserve Fund equals or exceeds 13 percent of the state's General Revenue Fund budget for the fiscal year just ended as determined within 60 days of the end of that prior fiscal year as provided by subsection (b), §11B-2-20 of this code: *Provided, however*, That these deposits shall not be made in any fiscal year in which the Governor's General Revenue Fund estimate relies on transfers from the Revenue Shortfall Reserve Fund: *Provided further*, That these deposits shall not be made in any fiscal year for which mid-year spending reductions, hiring freezes, mid-year decreases in appropriations or transfers from the Revenue Shortfall Reserve Fund are necessitated due to revenue shortfalls or would be necessitated if the deposits were to be made: *And provided further*, That amounts that may be deposited into the fund in error or found later to be subject to these limitations shall be redeposited into the General Revenue Fund. The Legislature may, by general appropriation or by designation of other funding sources, deposit into the fund additional moneys as it considers appropriate.

(d) In order to maximize the value of the fund, no money from the fund may be expended or appropriated until fiscal year 2020 and thereafter the Legislature may appropriate, subject to the limitations provided in this section, from the fund solely for

enhancing education and workforce development; economic development and diversification; infrastructure improvements; and tax relief measures for the benefit of the citizens and businesses of the State of West Virginia.

(e) *Cessation of the West Virginia Future Fund.* —

(1) On July 1, 2023, the West Virginia Future Fund and any duties regarding its creation, continuation, and expenditure shall be eliminated.

(2) Any funds held in the West Virginia Future Fund on July 1, 2023, shall be transferred into the General Revenue Fund of this state.

(f) For purposes of this section:

(1) "Economic development and diversification" means fostering economic growth and development in the state, including commercial, industrial, community, cultural or historical improvements; or preservation or other proper purposes.

(2) "Infrastructure improvements" means fostering infrastructure improvements including, but not limited to, post-mining land use, water or wastewater facilities or a part thereof, storm water systems, steam, gas, telephone and telecommunications, broadband development, electric lines and installations, roads, bridges, railroad spurs, drainage and flood control facilities, industrial park development or buildings that promote job creation and retention.

(3) "Tax relief" means reducing the tax responsibility of citizens and businesses located in the State of West Virginia, including, but not limited to, increasing the Homestead Exemption and reducing or eliminating the ad valorem property tax on inventory and equipment held for commercial or industrial use.

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CHAPTER 274

**(Com. Sub. for H. B. 2862 - By Delegates Jeffries,
Householder, Hardy, Worrell, Phillips, W. Hall, Kimble,
Gearheart and Keaton)**

[Passed March 10, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §12-6-11a; and to amend and reenact §12-6C-13 of said code, all relating generally to requirements for shareholder voting by the West Virginia Investment Management Board and the Board of Treasury Investments; defining terms; setting forth applicability of new requirements; establishing the standard of care for shareholder voting; prohibiting the boards from relying on proxy advisory services unless the service provider agrees to make recommendations according to the standard of care; prohibiting the boards from entrusting direct holdings to any manager unless the manager agrees to cast proxy votes according to the standard of care; requiring a contractual agreement between the boards and their fiduciaries that the boards be provided advance notice and the opportunity to advise fiduciaries with respect to certain shareholder votes; prohibiting the boards' fiduciaries from casting the shareholder votes for the purpose of furthering non-pecuniary interests; requiring the boards to exercise any proxy voting choice options for indirect holdings according to the standard of care; creating certain waivers of the requirements after reasonable efforts; establishing reporting requirements related to shareholder voting; and creating effective dates.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6. WEST VIRGINIA INVESTMENT
MANAGEMENT BOARD.**

**§12-6-11a. Standard of care for shareholder voting;
restrictions and requirements.**

(a) *Definitions.* – For the purposes of this section:

(1) "Beneficiaries" refers to the entities or individuals entitled to benefit from an investment or pool of investments held, administered, or managed by the board pursuant to this code.

(2) "Direct holdings" means all publicly traded securities of a company that are held directly by the board in an actively managed account or fund, when the board owns all shares or interests in said actively managed account or fund.

(3) "Fiduciary" refers to a fund manager or other entity that the board authorizes or otherwise entrusts to cast shareholder votes, by proxy or otherwise, on behalf of the board or the beneficiaries.

(4) "Indirect holdings" means all securities of a company that are held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the board, when the board owns shares or interests together with other investors or that are held in an account or fund.

(5) "Pecuniary factor" means a factor that has a direct and material effect on the financial risk or financial return to beneficiaries based on appropriate investment horizons consistent with an investment pool's objectives and funding policy. Environmental, social, corporate governance, or other similarly oriented considerations are not pecuniary factors, unless a prudent investor would determine that such a consideration directly and materially affects the financial risk or financial return to beneficiaries based on appropriate investment horizons consistent with an investment pool's objectives and funding policy. Any factor that does not meet the definition of "pecuniary factor" according to this subdivision is a "non-pecuniary factor".

(6) "Pecuniary interests" means the interests of minimizing financial risk and maximizing financial return to beneficiaries. Any interest that does not meet the definition of "pecuniary interests" is a "non-pecuniary interest".

(7) "Proxy vote" means a shareholder vote cast by a fiduciary on behalf of the shareholder.

(8) "Proxy voting choice options" refers to options offered by fiduciaries, which allow shareholders with indirect holdings to:

(A) Directly vote and transmit proxy votes;

(B) Select a third-party proxy voting policy and direct the fiduciary to cast proxy votes according to said policy;

(C) Direct proxy votes on individual resolutions or companies;
or

(D) Otherwise exercise control over how proxy votes are cast.

(9) "Shareholder votes" refers to all shareholder votes that the board is authorized to cast or to entrust a fiduciary to cast, by proxy or otherwise, on behalf of the board with respect to shares in securities held directly or indirectly by the board.

(b) *Applicability.* – The requirements of this section apply to all investments and pools of investments that the board is authorized to hold, administer, or manage pursuant to this code.

(c) *Standard of Care.* – Consistent with the requirements of §12-6-11 and §44-6C-1 *et seq.* of this code, all shareholder votes must be cast solely in the pecuniary interests of the beneficiaries, based on a consideration of only pecuniary factors. The board may not cast, nor authorize a fiduciary to cast, any shareholder vote for the purpose of furthering non-pecuniary interests.

(d) *Direct holdings.* – The following restrictions and requirements apply to the board's direct holdings:

(1) The board may not adopt a practice or policy of casting shareholder votes or authorizing a fiduciary to cast shareholder

votes according to the recommendations of a proxy advisory firm or other similar service provider unless such firm or service provider commits, in writing, to make all shareholder voting recommendations to the board or the board's fiduciary according to the standard of care established in subsection (c) of this section.

(2) The board may not entrust fund assets to a fiduciary, unless the fiduciary commits, in writing, to cast all shareholder votes according to the standard of care established in subsection (c) of this section.

(3) As a term of any contract with a fiduciary, the board shall require the fiduciary to provide advance notice to the board of any shareholder vote concerning non-pecuniary interests and to provide the board with a reasonable opportunity to instruct the fiduciary, in writing, how the vote must be cast.

(4) A fiduciary is prohibited from casting any shareholder vote for the purpose of furthering non-pecuniary interests.

(e) *Indirect holdings.* – The board shall deliver a letter to the fiduciary managing each investment fund in which the board has indirect holdings, inquiring whether the fiduciary offers proxy voting choice options that are available to the board. If the fiduciary offers proxy voting choice options, the board shall exercise those options according to the standard of care established in subsection (c) of this section. Nothing in this section requires the board to divest from any private market funds or from indirect holdings in actively or passively managed investment funds.

(f) *Reporting.* –

(1) The board shall produce an annual report tabulating and describing all shareholder votes cast by the board or the board's fiduciaries.

(2) For each shareholder vote cast during a calendar year, the report required by this subsection shall contain a vote caption, the board's or the fiduciary's vote, the recommendation of company management, and, if applicable, the proxy advisor or other service provider's recommendation.

(3) The board shall publish the report required by this subsection on the board's website no later than March 1 of the calendar year following the calendar year addressed in the report.

(g) *Waiver after reasonable efforts.* –

(1) If the board is unable to comply with the provisions of subsection (d) of this section without significantly increasing costs or limiting the quality of investment options or services available to the board, the board may waive the requirements of said subsection with regard to a particular fiduciary, upon a finding that:

(A) The board has made reasonable and good faith efforts to obtain fiduciary services meeting the requirements of subsection (d) of this section and has included said requirements in the board's minimum selection criteria for said services;

(B) Based on objective information available to the board, the cost of fiduciary services appears significantly higher than the fiduciary services available to similarly situated boards or funds not subject to similar requirements, or the quality of fiduciary services or investment options appears significantly lower than the quality of fiduciary services available to similarly situated boards or funds not subject to similar requirements; and

(C) The board determines that waiving subsection (d) of this section is clearly in the best pecuniary interests of the relevant fund's or funds' beneficiaries.

(2) A waiver authorized by this section must be adopted by a majority vote of board members serving at the time the vote is taken.

(h) *Effective date.* – The requirements of this section are effective July 1, 2024.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-13. Standard of care.

(a) The Uniform Prudent Investor Act, codified in §44-6C-1 *et seq.* of this code, is the standard for any investments made under this article. Investments are further subject to the following:

(1) The directors shall diversify fund investment so as to minimize the risk of large losses unless, under the circumstances, it is clearly prudent not to do so;

(2) The directors shall defray reasonable expenses of investing and managing the Consolidated Fund by charging fees as provided in this article; and

(3) The directors shall discharge their duties in accordance with the documents and instruments consistent with the provisions of this article.

(b) The duties of the directors apply only with respect to those assets deposited with or otherwise held by the board.

(c) For any shareholder voting rights held by the board, the standard of care provided in in §12-6-11a of this code shall apply to the board, its directors, and its fiduciaries. The board shall exercise all shareholder voting rights according to the requirements, restrictions, and procedures set forth in that section. The requirements of this subsection are effective July 1, 2024.

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CHAPTER 275

**(Com. Sub. for S. B. 89 - By Senators Woelfel, Grady,
Woodrum, Hamilton, Rucker, and Plymale)**

[Passed February 21, 2023; in effect 90 days from passage (May 22, 2023)]
[Approved by the Governor on March 1, 2023.]

AN ACT to amend and reenact §15-9B-1a and §15-9B-4 of the Code of West Virginia, 1931, as amended, all relating to sexual assault forensic examinations; defining terms; requiring legislative rules; and requiring hospitals to have health care providers available to conduct sexual assault forensic examinations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9B. SEXUAL ASSAULT EXAMINATION NETWORK.

§15-9B-1a. Definitions.

As used in this article:

“Biological evidence” includes a sexual assault forensic examination kit, semen, blood, saliva, hair, skin tissue, or other identified biological material.

“DNA” means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual’s personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

"Hospital" means a facility licensed pursuant to the provisions of §16-5B-1 *et seq.* of this code that primarily provides inpatient diagnostic, treatment, or rehabilitative services to the injured,

disabled, or sick persons under the supervision of physicians with a 24-hour emergency department.

"Nonreported kit" means a kit collected from an alleged victim who has consented to the collection of the kit, but has not consented to participation in the criminal justice process.

"Sexual assault forensic examination kit" or "kit" means a set of materials, including, but not limited to, swabs and tools for collecting blood samples, clothing, or other materials used to gather forensic evidence from a victim of a reported sexual offense and the evidence obtained with the materials.

"Sexual offense" means any offense or attempted offense in the jurisdiction of the state in which a sexual assault forensic examination kit is collected, including, but not limited to, the following sections:

- (A) §61-8-12 of this code;
- (B) §61-8A-2 of this code;
- (C) §61-8A-4 of this code;
- (D) §61-8A-5 of this code;
- (E) Any offenses listed in §61-8B-1 *et seq.* of this code;
- (F) Any offenses listed in §61-8C-1 *et seq.* of this code;
- (G) Any offenses listed in §61-8D-1 *et seq.* of this code.

"Unfounded" means evidence developed after reasonable investigation and supported by proper documentation proving no crime occurred or where the alleged victim has recanted.

§15-9B-4. Submission, testing, and retention of sexual assault forensic examination kits.

(a) The Sexual Assault Forensic Examination Commission created by §15-9B-1 of this code shall establish a subgroup of persons with subject matter expertise to establish best-practice

protocols for the submission, testing, retention, and disposition of sexual assault forensic examination kits collected by health care providers. The commission shall propose rules for legislative approval, in accordance with §29A-3-1 *et seq.* of this code, detailing best-practice protocols. Upon approval of the legislative rules, local sexual assault forensic examination boards shall follow the rules.

(b) Rules promulgated pursuant to subsection (a) of this section shall include:

(1) Time frames for submission of sexual assault forensic examination kits in the possession of law enforcement;

(2) Protocols for storage of DNA samples and sexual assault forensic examination kits; and

(3) Requiring a hospital to have trained health care provider available or transfer agreement as provided in a county plan, to complete a sexual assault forensic examination. "Available" includes, but not limited, having access to a trained sexual assault forensic examination expert via telehealth.

(c) The commission may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code in order to implement this section: *Provided*, That no emergency rule may permit the destruction of any DNA evidence.

(d) Upon collection, a sexual assault forensic examination kit shall be submitted for testing by the health care provider to the West Virginia State Police Forensic Laboratory within 30 days of collection or as soon thereafter as practicable. All packaging kits for transmittal and transmittal protocols shall be designed to meet applicable standards for maintaining the efficacy of the sample and chain of custody.

(e) No sexual assault forensic examination kit need be tested where the alleged victim has not consented to the testing, requests that the kit not be tested, where he or she recants as to the allegation of a sexual offense, or the allegation that a sexual offense occurred is determined to be unfounded. If the alleged victim does not

consent to law enforcement involvement, the kit shall be designated a nonreported kit and transmitted to the Marshall University Forensic Science Center.

(f) The commission shall, in cooperation with the West Virginia State Police, develop protocols for storage of previously tested materials to be made available for secondary testing upon a court order to do so.

(g) Biological evidence obtained through tests of a sexual assault forensic examination kit shall not be destroyed:

(1) During the time period of incarceration of a person whose DNA was identified by the use of the biological evidence, or while the person remains under continued supervision, whichever is later in time; or

(2) For as long as the offense from which the biological evidence is obtained remains unresolved.

(h) Notwithstanding any provision of this code, or any rule or policy promulgated thereunder, upon completion of the processing and testing set forth in subsection (d) of this section, the sexual assault forensic examination kit shall be transmitted to the appropriate investigating local or state law-enforcement agency which shall retain all identified biological material that is secured in connection with any sexual offense or attempted sexual offense for the periods set forth in subsection (g) of this section.

(i) After processing and testing of a sexual assault forensic examination kit, the West Virginia State Police Laboratory shall transmit the sexual assault forensic examination kit to the appropriate investigating state or local law-enforcement agency through any reasonable means sufficient to establish the proper chain of custody, including, but not limited to, use of the United States Postal Service or hand delivery by appropriate personnel or a law-enforcement officer. The appropriate investigating state or local law-enforcement agency shall preserve the sexual assault forensic examination kit for the period of time prescribed in subsection (g) of this section in a condition where any biological

evidence is suitable for DNA testing. The lack of timely submission, or the inadvertent loss or destruction of a sexual assault forensic examination kit, standing alone, shall not constitute a bar to the prosecution of a sexual offense.

(j) Sexual assault forensic examination kits retained pursuant to this section shall be made available for DNA testing pursuant to §15-2B-7 of this code or pursuant to an appropriate order of a circuit court of competent jurisdiction for secondary testing.

(k) The appropriate investigating state or local law-enforcement agency responsible for retaining the sexual assault forensic examination kit shall obtain approval from the circuit court of competent jurisdiction for the county in which the crime occurred before disposal of any biological evidence. Before the disposal of any sexual assault forensic examination kit, reasonable efforts shall be made to provide written notice to the victim by the prosecuting attorney of the county in which the crime occurred.

(l) Nothing in this section shall be construed as limiting a state or local law-enforcement agency's discretion concerning the conditions under which biological evidence is retained, preserved, or transferred among different entities if the evidence is retained in a condition that is suitable for DNA testing.



CHAPTER 276

(S. B. 128 - By Senators Smith, Tarr, Azinger, Roberts, Deeds, Boley, Rucker, Taylor, Karnes, and Woodrum)

[Passed February 23, 2023; in effect from passage]

AN ACT to amend and reenact §15-5-2 and §15-5-6 of the Code of West Virginia, 1931, as amended, all relating to states of emergency and preparedness; defining terms; clarifying the authority of the Governor and the Legislature to proclaim or declare states of emergency and preparedness; creating two classes of states of preparedness and establishing the criteria therefor; establishing the initial duration of gubernatorially proclaimed states of emergency and preparedness and the requirements for extending same; expanding and clarifying the powers of the Governor as to what he or she may order under proclamations of states of emergency and preparedness; expressly limiting the Governor's authority to order certain actions in an executive order issued pursuant to a proclamation or declaration of a state of emergency or preparedness; clarifying that the declaration of a state of preparedness has the same effect as a declaration of a state of emergency for the purposes of the Emergency Management Assistance Compact and the Statewide Mutual Aid System; and stating that the powers granted as to orders issued under states of emergency do not include the authority to limit the lawful possession and use of firearms and ammunitions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

***§15-5-2. Definitions.**

As used in this article:

(1) "Board" means the West Virginia Disaster Recovery Board created by this article;

(2) "Code" means the Code of West Virginia, 1931, as amended;

(3) "Community facilities" means a specific work, or improvement within this state or a specific item of equipment or tangible personal property owned or operated by any political subdivision or nonprofit corporation and used within this state to provide any essential service to the general public;

(4) "Critical infrastructure" includes any systems and assets, whether physical or virtual, so vital to the state that the incapacity or destruction of such systems and assets would have a debilitating impact on security, state economic security, state public health or safety, or any combination of those matters;

(5) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or terrorist or man-made cause, including weapons of mass destruction, fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation or other public calamity requiring emergency action;

(6) "Disaster recovery activities" means activities undertaken prior to, during or following a disaster to provide, or to participate in the provision of, critical infrastructure, emergency services, temporary housing, residential housing, essential business activities, and community facilities;

(7) "Emergency services" means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to protect, respond,

*NOTE: This section was also amended by S. B. 677 (Chapter 281), which passed subsequent to this act.

and recover, to prevent, detect, deter, and mitigate, to minimize and repair injury and damage resulting from disasters or other event caused by flooding, terrorism, enemy attack, sabotage, or other natural or other man-made causes. These functions include, without limitation, critical infrastructure services, firefighting services, police services, medical and health services, communications, emergency telecommunications, radiological, chemical, and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to the health, safety, and welfare of the citizens of this state, together with all other activities necessary or incidental to the preparation for and carrying out of these functions. Disaster includes the imminent threat of disaster as well as its occurrence and any power or authority exercisable on account of a disaster that may be exercised during the period when there is an imminent threat;

(8) "Essential business activities" means a specific work or improvement within this state or a specific item of equipment or tangible personal property used within this state by any person to provide any essential goods or critical infrastructure services determined by the authority to be necessary for continued operations during a disaster, state of emergency, or state of preparedness, and for recovery from a disaster;

(9) "Local organization for emergency services" means an organization created in accordance with the provisions of this article by state or local authority to perform local emergency services function functions;

(10) "Mobile support unit" means an organization for emergency services created in accordance with the provisions of this article by state or local authority to be dispatched by the Governor to supplement local organizations for emergency services in a stricken area;

(11) "Person" means any individual, corporation, voluntary organization or entity, partnership, firm, or other association,

organization, or entity organized or existing under the laws of this or any other state or country;

(12) "Political subdivision" means any county or municipal corporation in this state;

(13) "Recovery fund" means the West Virginia Disaster Recovery Trust Fund created by this article;

(14) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for residential housing, including, but not limited to, facilities for temporary housing and emergency housing, and any other nonhousing facilities that are incidental or appurtenant thereto;

(15) "Secretary" means the Secretary of the West Virginia Department of Military Affairs and Homeland Security; and

(16) "State of emergency" means the duly proclaimed existence of conditions of disaster or other serious threat to the health or safety of persons and property within West Virginia, or a specific geographic area thereof, including, but not limited to, an attack upon the state or the United States, a natural or man-made disaster of major proportions, a pandemic, or other large-scale threat beyond the capacity of local control;

(17) "State of preparedness" means the duly proclaimed authorization for:

(A) Specialized planning and preparation activities intended to minimize the anticipated effect of conditions constituting a state of emergency, as defined in this section, which, in the judgment of the Governor, are expected to commence within the next 30 days, or within a period of longer than 30 days if necessary to obtain funding or maintain compliance with federal or interjurisdictional requirements: *Provided*, That a state of preparedness which is duly proclaimed under such circumstances shall be referred to as a "Class I state of preparedness"; or

(B) Specialized planning and preparation activities intended to minimize, by use of any available and appropriate federal or state governmental resources, the anticipated impact of or anticipated threats caused by a planned or anticipated event of such large size or scope that it is beyond the capacity of local control, and which is scheduled to commence within the next 30 days, or within a period of time longer than 30 days if necessary to obtain funding or maintain compliance with federal or interjurisdictional requirements: *Provided*, That a state of preparedness which is duly proclaimed under such circumstances shall be referred to as a "Class II state of preparedness"; and

(18) "Temporary housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or housing for victims of a disaster and such other nonhousing facilities that are incidental or appurtenant thereto.

§15-5-6. Proclamation of a state of emergency or state of preparedness by the Governor or the Legislature; additional powers of the Governor during a state of emergency or state of preparedness.

(a) The provisions of this section, and any executive order issued pursuant to the provisions of this section, are operative only during the existence of a state of emergency or state of preparedness: *Provided*, That nothing in this section or in any executive order issued hereunder may be construed to suspend or supersede any provision of the United States Constitution or West Virginia Constitution.

(b) The existence of a state of emergency may be proclaimed by the Governor by executive order or by concurrent resolution of the Legislature if the Governor in the proclamation, or the Legislature in the concurrent resolution, finds that conditions warranting the proclamation of a state of emergency, as defined in this article, exist, and that the health, safety, and welfare of the inhabitants of this state require an invocation of the provisions of

this section: *Provided*, That a gubernatorially proclaimed state of emergency expires 60 days after issuance of the executive order unless, prior to the 60th day, the Legislature adopts a concurrent resolution extending the state of emergency beyond 60 days. A concurrent resolution adopted by the Legislature to extend a state of emergency proclaimed by the governor shall set forth within its terms the length of time for which the state of emergency shall be extended. A state of emergency, whether proclaimed by the Governor or by the Legislature, terminates upon the issuance of a proclamation of termination by the Governor, or the passage by the Legislature of a concurrent resolution terminating the state of emergency.

(c) The existence of a state of preparedness may be proclaimed by the Governor by executive order or by concurrent resolution of the Legislature, if the Governor in the proclamation or the Legislature in the resolution, finds that conditions warranting the proclamation of a state of preparedness, as defined in this article, exist, and that the health, safety, and welfare of the inhabitants of this state require the invocation of the provisions of this section: *Provided*, That the Governor or the Legislature shall proclaim a state of preparedness as a "Class I state of preparedness" or a "Class II state of preparedness", as defined in this article, by law: *Provided however*, That a gubernatorially proclaimed Class I state of preparedness expires 30 days after issuance of the executive order unless, prior to the 30th day, the Legislature adopts a concurrent resolution extending the state of preparedness beyond 30 days. A concurrent resolution adopted by the Legislature to extend a Class I state of preparedness proclaimed by the governor shall set forth within its terms the length of time for which the state of preparedness shall be extended. A Class II state of preparedness, whether proclaimed by the Governor or by the Legislature, terminates upon the issuance of a proclamation of termination by the Governor, or the passage by the Legislature of a concurrent resolution terminating the Class II state of preparedness.

(d) When a state of emergency follows a state of preparedness involving the same or substantially similar circumstances, the total time allotted for the duration of the two combined shall be no more

than 90 days, unless the Governor follows the requirements for extending the state of emergency under subsection (b) of this section.

(e) Any proclamation or concurrent resolution issued under this section shall include, in general terms:

(1) A description of the facts and circumstances warranting the proclamation or concurrent resolution; and

(2) A designation of the geographic area threatened.

(f) Any proclamation or resolution shall be disseminated as soon as practicable to the news media and any other means which are calculated to bring its contents to the attention of the general public: *Provided*, That for a gubernatorial proclamation of a state of emergency or state of preparedness, the Governor shall provide a copy of the executive order to the President of the Senate, the Speaker of the House of Delegates, and the Joint Committee on Government and Finance.

(g) Under a duly proclaimed state of emergency or state of preparedness, the Governor has the following additional powers which are intended to be construed to authorize actions which are consistent with constitutional or statutory law, or with final orders of those courts of competent jurisdiction to which the Governor is subject:

(1) To enforce all laws and rules relating to the provision of emergency services and to assume direct operational control of any or all emergency service entities and personnel in the state;

(2) To sell, lend, lease, give, or transfer property, to make purchases, deliver materials or perform functions relating to emergency services on terms and conditions he or she prescribes without regard to the limitations of any existing law or being required to account to the State Treasurer for any funds received for the property;

(3) To procure materials and facilities for emergency services by purchase, condemnation under the provisions of §54-1-1 *et seq.*

of this code, or seizure pending institution of condemnation proceedings within 30 days from the seizing thereof and to construct, lease, transport, store, maintain, renovate, or distribute the materials and facilities. Compensation for the procured property shall be made in the manner provided in §54-1-1 *et seq.* of this code;

(4) To obtain the services of necessary personnel required during the emergency or in preparation for the emergency, and to compensate such personnel for their services from the Governor's Contingent Fund or other funds available to him or her;

(5) To provide and compel the evacuation of all or part of the population from any stricken or threatened area within the state and to take steps that are necessary for the receipt and care of the evacuees;

(6) To control ingress and egress into or out of a disaster area or other area subject to a state of emergency or state of preparedness, as well as the movement of persons and occupancy of premises within the area;

(7) To suspend the provisions of any statute prescribing the procedures for the conduct of state business or the orders, or rules of any state agency, if strict compliance therewith would in any way prevent, hinder, or delay necessary action in coping with the emergency: *Provided*, That nothing in this subdivision may be construed as granting the Governor the power to suspend any provision of this section;

(8) To use available resources of the state and of its political subdivisions that are reasonably necessary to cope with the emergency or to prepare for the emergency;

(9) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles: *Provided*, That explosives and combustibles do not include firearms, ammunition, components of ammunition, or ammunition-reloading equipment and supplies;

(10) To make provision for the availability and use of temporary emergency housing; and

(11) To perform and exercise other functions, powers and duties that are necessary to promote and secure the safety and protection of the civilian population.

(h) The declaration of a state of preparedness has the same effect as a declaration of a state of emergency for the purposes of the Emergency Management Assistance Compact established in §15-5-22 of this code, and the Statewide Mutual Aid System set forth in §15-5-28 of this code.

(i) The powers granted under this section do not authorize any action that would violate the prohibitions of §15-5-19a of this code.

(j) During any state of preparedness or state of emergency proclaimed at any time, an executive order of the Governor may not:

(1) Close churches or other houses of worship or prevent their operation in any manner that is more restrictive than the least restrictive provisions in place for the operation of the most essential facilities of government or private enterprise.

(2) Suspend or limit the lawful sale, lawful transfer, or lawful transportation of firearms, ammunition, components of ammunition, or ammunition-reloading equipment and supplies; or

(3) Except as authorized by the provisions of this article, interfere with, or impair the operation of the news media.

(k) Unless expressly authorized by an executive order of the Governor, a municipal, county, or state health officer, under color of a duly proclaimed state of emergency or state of preparedness, shall not take any enforcement action which is not authorized by statute.

(l) Any suit filed challenging an executive order issued relating to a state of preparedness or emergency pursuant to the authority granted in this section shall be limited to a petition for a writ of

prohibition or mandamus pursuant to Rule 16 of the Rules of the West Virginia Supreme Court of Appeals. The provisions of §55-17-3 of this code are not applicable to any suit filed challenging an executive order issued pursuant to this section.

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CHAPTER 277

(Com. Sub. for S. B. 271 - By Senator Trump)

[Passed March 10, 2023; in effect 90 days from passage (June 8, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §29-32-2 of the Code of West Virginia, 1931, as amended, relating to modifying the approval process requirements for the First Responders Honor Board to allow for submission of nominations for consideration by the Legislature during other sessions of the Legislature, not just before first day of next regular legislative session.

Be it enacted by the Legislature of West Virginia:

ARTICLE 32. MEDAL OF VALOR.

§29-32-2. First Responders Honor Board.

(a) The First Responders Honor Board is hereby established within the Department of Homeland Security as an advisory board to the Legislature. The purpose of the board is to recommend to the Legislature firefighters, law-enforcement officers, and emergency medical services personnel in West Virginia who have distinguished themselves conspicuously by gallantry and intrepidity at the risk of their lives above and beyond the call of duty in the performance of their duties to be awarded a Medal of Valor.

(b) *Board membership.* —

(1) The board shall consist of two members from each of the state's senatorial districts. Each state senator shall appoint one member representing his or her district.

(2) The board shall be composed of firefighters; fire chiefs; law enforcement officials such as sheriffs, correctional officers, and police chiefs; emergency medical services personnel; medical officials; doctors; and other professionals who are qualified to evaluate and determine whether the actions of firefighters, law-enforcement officers, and emergency medical services personnel rise to the level of being above and beyond the call of duty.

(3) Members shall serve a three-year term and shall serve without compensation.

(4) The board shall annually select a member to serve as the chair. The board shall hold at least one annual meeting. The date, time, and place of the meetings shall be established upon its own resolution or at the call of the chair of the board. Notice of each meeting shall be given to each member by the chair and in compliance with the open meetings laws of the state. A majority of the members of the board serving at any one time constitutes a quorum for the transaction of business.

(c) The board may consider candidates for the Medal of Valor who are identified by members of the board or by other citizens, and may design a system for the receipt of those recommendations.

(d) The board shall review identified individuals to determine if those firefighters, law-enforcement officers, and emergency medical services personnel have gone above and beyond the call of duty in their professional capacities. Upon determination that a firefighter, law-enforcement officer, or emergency medical services personnel is worthy of this honor, the board shall submit the nomination to the Speaker of the House of Delegates and the President of the Senate for consideration by the Legislature no later than the first day of the next legislative session, whether a regular session or extraordinary session.

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CHAPTER 278

(S. B. 276 - By Senators Trump, Deeds, and Phillips)

[Passed March 2, 2023; in effect from passage]
[Approved by the Governor on March 11, 2023.]

AN ACT to amend and reenact §15A-10-25 of the Code of West Virginia, 1931, as amended, relating to awarding the service weapon of a retiring State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed by the State Fire Marshal to the retiree without charge when the retiring member honorably retires with at least 10 years of service or with less than 10 years of service based upon determination that the retiring employee is totally physically disabled as a result of service with the State Fire Marshal; prohibiting the award of a service weapon to a retiring employee whom the State Fire Marshal knows is prohibited from possessing a firearm, is mentally incapacitated, or a danger to any person or the community; authorizing the sale of service weapons that are taken out of service due to routine wear to any active or retired State Fire Marshal; providing that proceeds from the sales be used to offset the cost of new service weapons; and exempting the sale from the requirements of the Purchasing Division.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FIRE MARSHAL.

§15A-10-25. Awarding service weapon upon retirement of fire marshal or service weapon.

(a) Upon the retirement of a State Fire Marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal employed by the State Fire Marshal pursuant to this article shall

award to the retiring member his or her service weapon, without charge, upon determining:

(1) That the retiring employee is retiring honorably with at least 10 years of service; or

(2) The retiring employee is retiring with less than 10 years of service based upon a determination that the employee is totally physically disabled as a result of his or her service with the State Fire Marshal.

(b) Notwithstanding the provisions of subsection (a) of this section, the State Fire Marshal shall not award a service weapon to any employee whom the State Fire Marshal: (1) Knows is prohibited from possessing a firearm by state or federal law; (2) has reason to believe such retiring employee to be mentally incapacitated; or (3) has reason to believe the retiring employee constitutes a danger to any person or the community.

(c) If a service weapon is taken out of service due to routine wear, the State Fire Marshal may offer the service weapon for sale to any active or retired State Fire Marshal, assistant state fire marshal, or deputy state fire marshal, at fair market value, with the proceeds from any sales used to offset the cost of new service weapons. The disposal of service weapons pursuant to this subsection does not fall within the jurisdiction of the Purchasing Division of the Department of Administration.

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CHAPTER 279

(Com. Sub. for S. B. 298 - By Senators Trump, Woodrum, Plymale, and Deeds)

[Passed March 10, 2023; in effect from passage]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §15-5-9 of the Code of West Virginia, 1931, as amended, relating to clarifying that mutual aid agreements can be entered into by local emergency services or organizations for reciprocal aid in bordering counties of other states for day-to-day support for fire and emergency medical service calls.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-9. Mutual aid agreements.

(a) The director of each local organization for emergency services may, in collaborating with other public and private agencies within this state, develop or cause to be developed mutual aid agreements for reciprocal aid and assistance in case of disaster too great to be dealt with unassisted. The agreements shall be made in conformity with the state plan and program for emergency services and, in time of emergency, each local organization shall render assistance in accordance with the state plan or the agreements.

(b) The director of each local organization may, subject to the approval of the Governor, enter into mutual aid agreements with emergency service and civil defense agencies or organizations in

other states for reciprocal aid and assistance in case of disaster too great to be dealt with unassisted.

(c) Notwithstanding the provisions of subsection (b) of this section, the director of each local organization may, regardless of the existence of a federally declared emergency or a state emergency declared by the Governor, or the Legislature, enter into mutual aid agreements with emergency services, civil defense agencies, and organizations of bordering counties in contiguous states for day-to-day mutual aid support for fire and emergency medical services.

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CHAPTER 280

(Com. Sub. for S. B. 302 - By Senators Stuart and Hamilton)

[Passed March 10, 2023; in effect 90 days from passage (June 8, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-15-1, relating to the creation of the Law Enforcement Safety Act; and requiring West Virginia law-enforcement agencies to index felony warrants with the National Crime Information Center (NCIC).

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. LAW ENFORCEMENT SAFETY ACT.

§15-15-1. Mandatory indexing of felony warrants.

Law-enforcement agencies in West Virginia shall index all felony warrants with the National Crime Information Center (NCIC).



CHAPTER 281

(Com. Sub. for S. B. 677 - By Senators Swope and Rucker)

[Passed March 11, 2023; in effect from passage]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §15-5-2 of the Code of West Virginia, 1931, as amended; to repeal §15-5-4b, §15-5-4c, §15-5-24, §15-5-25, and §15-5-26 of said code; to amend and reenact §29-31-1, §29-31-2 and §29-31-3 of said code; to amend said code by adding thereto 10 new sections, designated §29-31-2a, §29-31-6, §29-31-7, §29-31-8, §29-31-9, §29-31-10, §29-31-11, §29-31-12, §29-31-13 and §29-31-14, all relating generally to the Resiliency and Flood Protection Planning Act; modifying definitions; repealing, continuing, and moving provisions governing the West Virginia Disaster Recovery Trust Fund into the act; revising provisions governing the State Resiliency Office, the State Resiliency Officer, and the State Resiliency Board within the act; expanding upon the qualifications, powers, and duties of the State Resiliency Officer and the Deputy State Resiliency Officer, including, but not limited to, requiring a vulnerability assessment of critical infrastructure at the state and municipal levels including hospitals, schools, fire stations, and comparable facilities; requiring leadership in state planning efforts "in the event of" states of emergency; requiring development of new state Flood Resiliency Plan; providing for receipt and disbursement of funds from the West Virginia Disaster Recovery Trust Fund and the duties of the State Resiliency Officer in administering the same; creating the West Virginia Flood Resiliency Trust Fund; providing for receipt and disbursement of funds from the West Virginia Flood Resiliency Trust Fund and the duties of the State Resiliency Officer in administering the same; and providing tax exemption.

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.**

As used in this article:

"Code" means the Code of West Virginia, 1931, as amended;

"Community facilities" means a specific work, or improvement within this state, or a specific item of equipment or tangible personal property owned or operated by any political subdivision or nonprofit corporation and used within this state to provide any essential service to the general public;

"Critical infrastructure" includes any systems and assets, whether physical or virtual, so vital to the state that the incapacity or destruction of such systems and assets would have a debilitating impact on security, state economic security, state public health or safety, or any combination of those matters.

"Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural, or terrorist, or man-made cause, including weapons of mass destruction, fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation, or other public calamity requiring emergency action;

"Disaster response activities" means activities undertaken prior to, during or immediately following a disaster to provide, or to participate in the provision of, critical infrastructure, emergency services, temporary housing, residential housing, essential business activities, and community facilities;

*NOTE: This section was also amended by S. B. 128 (Chapter 276), which passed prior to this act.

"Emergency services" means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to protect, respond, and to prevent, detect, deter, and mitigate, to minimize and repair injury and damage resulting from disasters or other events caused by flooding, terrorism, enemy attack, sabotage, or other natural or other man-made causes. These functions include, without limitation, critical infrastructure services, firefighting services, police services, medical and health services, communications, emergency telecommunications, radiological, chemical, and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to the health, safety, and welfare of the citizens of this state, together with all other activities necessary or incidental to the preparation for and carrying out of these functions. Disaster includes the imminent threat of disaster as well as its occurrence and any power or authority exercisable on account of a disaster that may be exercised during the period when there is an imminent threat;

"Essential business activities" means a specific work or improvement within this state or a specific item of equipment or tangible personal property used within this state by any person to provide any essential goods or critical infrastructure services determined by the authority to be necessary for continued operations during a disaster, state of emergency, or state of preparedness, and for recovery from a disaster;

"Essential workers" means employees or contractors that fall under the definition of essential business activities during a disaster, state of emergency, or state of preparedness.

"Local organization for emergency services" means an organization created in accordance with the provisions of this article by state or local authority to perform local emergency services function;

"Mobile support unit" means an organization for emergency services created in accordance with the provisions of this article by state or local authority to be dispatched by the Governor to supplement local organizations for emergency services in a stricken area;

"Person" means any individual, corporation, voluntary organization or entity, partnership, firm, or other association, organization, or entity organized or existing under the laws of this or any other state or country;

"Political subdivision" means any county or municipal corporation in this state;

"Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for residential housing, including, but not limited to, facilities for temporary housing and emergency housing, and any other nonhousing facilities that are incidental or appurtenant thereto;

"Secretary" means the Secretary of the West Virginia Department of Homeland Security; and

"Temporary housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or housing for victims of a disaster, and such other nonhousing facilities that are incidental or appurtenant thereto.

§15-5-4b. West Virginia Disaster Recovery Trust Fund disbursement.

[Repealed.]

§15-5-4c. Powers and duties related to the West Virginia Disaster Recovery Trust Fund.

[Repealed.]

§15-5-24. Disaster Recovery Trust Fund; disbursement of funds.

[Repealed.]

§15-5-25. Prohibition on funds inuring to the benefit of or being distributable to members, officers or private persons.

[Repealed.]

§15-5-26. Tax exemption.

[Repealed.]

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 31. STATE RESILIENCY AND FLOOD PROTECTION PLANNING ACT.

§29-31-1. Short title; legislative findings; purpose.

(a) This article may be known and cited as the "Resiliency and Flood Protection Planning Act".

(b) The West Virginia Legislature finds that:

(1) Flooding has affected each of the 55 counties and 32 major watersheds within the state;

(2) Over the past 52 years, more than 282 West Virginians have died in floods;

(3) Between January 1996 and January 2017, there were 27 federal disaster declarations in West Virginia involving flooding;

(4) Between January 2010 and December 2021, West Virginia was impacted by more than 1,600 separate flood events;

(5) In June 2016, much of West Virginia suffered devastating flooding; and

(6) Despite the many state and federal flood protection programs and projects, flooding continues to be West Virginia's most common and widespread natural disaster.

(c) It is the purpose of this article to:

(1) Provide a comprehensive and coordinated statewide resiliency and flood protection planning program to save lives, and develop community and economic resiliency plans including, but not limited to, reducing or mitigating flood damage while supporting economic growth and protecting the environment; and

(2) Provide for funding mechanisms to implement such state and community plans developed through the program.

§29-31-2. State resiliency office, officer, deputy, and board.

(a) It is determined that a state authority is required to provide a coordinated effort and planning for disaster recovery and resiliency between government agencies, first responders, and all other entities to reduce the loss of life and property, lessen the impact of future disasters, , protect property and the environment, meet basic human needs, and provide economic growth and resilience prior to and in the aftermath of an incident. Therefore, the State Resiliency Office is hereby created. The office shall be organized within the Office of the Governor. The office will serve as the recipient of disaster recovery and resiliency funds, excluding federal Stafford Act funds, and the coordinating agency of recovery and resiliency efforts, including matching funds for other disaster recovery programs, excluding those funds and efforts under the direct control of the State Resiliency Officer pursuant to § 29-31-3, §29-31-6, §29-31-7 and §29-31-8 of this code.

(b)(1) The State Resiliency Office Board is also established and shall consist of the following members: The State Resiliency Officer; the Secretary of the Department of Commerce or his or her designee; the Director of the Division of Natural Resources or his or her designee; the Secretary of the Department of Environmental Protection or his or her designee; the Executive Director of the State Conservation Agency or his or her designee; the President of

the West Virginia Emergency Management Council or his or her designee; the Secretary of the Department of Health and Human Resources or his or her designee; the Secretary of the Department of Homeland Security or his or her designee; the Secretary of Transportation or his or her designee; the Adjutant General of the West Virginia National Guard or his or her designee; the Director of the Division of Emergency Management within the Department of Homeland Security or his or her designee; two nonvoting members of the West Virginia Senate, one from each party, to be appointed by the President of the Senate; and two nonvoting members of the West Virginia House of Delegates, one from each party, to be appointed by the Speaker of the House of Delegates.

(2) A member of the board holds office so long as he or she retains the office or position by virtue of which he or she is serving on the board. A majority of the voting members of the board is a quorum and the concurrence of a board in any matter within their duties is required for its determination. The members of the board may not receive compensation for their services on the committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the board.

(3) The board shall:

(A) Provide for the keeping of a full and accurate record of all proceedings and of all resolutions, rules, and orders issued or adopted, and of its other official actions;

(B) Shall adopt a seal, which shall be judicially noticed;

(C) Provide for an annual audit of the accounts of receipts and disbursements of the State Resiliency Office; and

(D) Perform those acts necessary for the execution of its functions under this article.

(1) The State Resiliency Officer shall be the chair of the State Resiliency Office Board and shall be appointed by the Governor with the advice and consent of the Senate. The State Resiliency Officer may cast a vote only in the event of a tie vote. The board

shall elect from its voting membership a vice chair. The vice chair shall preside over the meetings of the board in the absence of the chair. In the absence of both the chair and the vice chair any member designated by the members present may act as chair.

(2) The State Resiliency Officer shall be vested with the authority and duties prescribed to the office within this article.

(3) The State Resiliency Officer shall be a person who has:

(A) At least five years' managerial or strategic planning experience in matters relating to flood control, hazard mitigation, and disaster resiliency, or alternatively, in disaster recovery, emergency management, community and economic development, regional planning, economics, or related public policy field;

(B) At least a level IS-800 NIMS certification: *Provided*, That if the State Resiliency Officer does not have a level IS-800 NIMS certification when appointed, he or she shall become so certified within one year following appointment; and

(C) Be thoroughly knowledgeable in matters relating to flood control, hazard mitigation, and disaster resiliency, or alternatively, in matters relating to disaster recovery, emergency management, community and economic development, regional planning, economics, or related public policy field.

(4) The State Resiliency Officer shall employ a deputy who shall assist the State Resiliency Officer in carrying out the duties of the office. The State Resiliency Office Board shall meet and submit a list of no more than five nor less than two of the most qualified persons to the Governor within 90 days of the occurrence of a vacancy in this deputy position. This deputy shall be appointed by the Governor with the advice and consent of the Senate. Applicants for the deputy position shall at a minimum:

(A) Have at least three years' managerial or strategic planning experience in matters relating to flood control, hazard mitigation, and disaster resiliency, or alternatively, in disaster recovery, emergency management, community and economic development, regional planning, economics, or related public policy field;

(B) Have at least a level IS 800 NIMS certification: *Provided*, That if the deputy State Resiliency Officer does not have a level IS 800 NIMS certification when appointed, he or she shall become so certified within one year following appointment; and

(C) Be thoroughly knowledgeable in matters relating to flood control, hazard mitigation, and disaster resiliency, or alternatively, in matters relating to disaster recovery, emergency management, community and economic development, regional planning, economics, or related public policy field.

(5) The State Resiliency Officer shall employ additional staff as necessary to assist the State Resiliency Officer in carrying out the duties of the office.

(d) The board shall meet no less than once each calendar quarter at the time and place designated by the chair and the board shall work together with the State Resiliency Officer to fulfill the mission given to the State Resiliency Office to coordinate efforts for disaster planning, recovery, and resiliency between government agencies, first responders and others.

The board will assist and advise the State Resiliency Officer in developing policies to accomplish, at a minimum, the following specific tasks in order to achieve these goals, and will assist the State Resiliency Officer in devising plans and developing procedures which will ensure that agencies and political subdivisions of the state carry out these following specific tasks:

(1) Establish mechanisms to coordinate disaster recovery and resiliency-related programs and activities among state agencies and to encourage intergovernmental as well as cross-sector coordination and collaboration;

(2) Evaluate the state's role in construction permitting process and identify opportunities to expedite the permitting process post-disaster and for selected types of mitigation and adaptation actions;

(3) Conduct a review of laws and regulations to identify those that create or add to risk, or interfere with the ability to reduce risk or to improve disaster recovery and resiliency;

(4) Conduct an inventory of relevant critical planned activity by state agencies to determine their proposed impact upon disaster recovery and resiliency;

(5) Make recommendations regarding practical steps that can be taken to improve efficiencies, and to pool and leverage resources to improve disaster recovery and resiliency;

(6) Identify, prioritize, and evaluate issues affecting implementation of mitigation and adaptation actions, including, but not limited to, the effect of increasing flood risk in context of zoning and other land use regulations, possible conflicts between public hazard mitigation/adaptation planning and private property interests (e.g. buy-out programs, projects to increase flood storage), develop guidance for cities and towns, real estate professionals, property owners under existing law and regulations; and develop proposals for changes in laws, policies, and regulations, as needed;

(7) Ensure all counties and municipalities are covered by up-to-date Hazard Mitigation Plans and Local Comprehensive Disaster Plans that are consistent with, and coordinated to, the state's Hazard Mitigation Plans Comprehensive Disaster Plans, and the state's Flood Resiliency Plan; including, but not limited to, assisting them in developing planning guidance for cities and towns to complete and/or update Hazard Mitigation Plans; providing technical assistance to help counties and municipalities meet these standards; and provide notice to counties and municipalities of funding opportunities to implement projects outlined in their Hazard Mitigation Plans;

(8) Conduct risk assessments, including, but not limited to, examining state highway corridors and associated drainage systems for stormwater inundation, impacts of downed trees, effects on utilities, and comparable facilities; assessment of known stormwater impacts between state highways and municipal drainage systems, options to eliminate or mitigate such impact; a housing vulnerability assessment for structures in riparian zones; a vulnerability assessment of critical infrastructure at the state and municipal levels including hospitals, schools, fire stations, and

comparable facilities, and a vulnerability assessment of the state's historic and cultural resources;

(9) Establish working groups that will conduct assessments for varied sectors of the economy, such as small business, ports and river traffic, agriculture, manufacturing, and tourism; these assessments should address vulnerabilities and economic impacts, options to mitigate impacts, options to improve preparedness, response and recovery, and economic opportunities associated with design, engineering, technological and other skills and capabilities that can improve resilience;

(10) Establish emergency permitting procedures to expedite issuance of state permits following disasters, and develop guidance (model procedures) for political subdivisions to follow; and

(11) Lead long-term recovery planning efforts on behalf of the state in the event of the proclamation of the existence of a state of emergency due to a natural hazards event, or upon a Presidential declaration of a major disaster under Section 406 of the Stafford Act.

All decisions of the board shall be decided by a majority vote of the members.

(e) The State Resiliency Office shall provide adequate staff from that office to ensure the meetings of the board are facilitated, board meeting minutes are taken, records and correspondence kept, and that reports of the board are produced in a timely manner.

(f) Notwithstanding any other provisions of this code:

(1) The meetings of the board are not subject to the provisions of §6-9A-1 *et seq.* of this code.

(2) The following are exempt from public disclosure under the provisions of §29B-1-1 *et seq.* of this code:

(A) All deliberations of the board;

(B) The materials, in any medium, including hard copy and electronic, placed in the custody of the board as a result of any of its duties; and

(C) All records of the board, in the possession of the board, and generated by the board, due to their falling under several exceptions to public disclosure including, but not limited to, that for security or disaster recovery plans and risk assessments.

§29-31-2a. Definitions.

As used in this article:

"Board" means the West Virginia State Resiliency Office Board created by this article;

"Code" means the Code of West Virginia, 1931, as amended;

"Community facilities" means a specific work, or improvement within this state or a specific item of equipment or tangible personal property owned or operated by any political subdivision or nonprofit corporation and used within this state to provide any essential service to the general public;

"Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural, or terrorist, or man-made cause, including weapons of mass destruction, fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation or other public calamity requiring emergency action;

"Disaster recovery activities" means activities undertaken following a disaster to provide, or to participate in, the provision of long-term rehabilitation of infrastructure, housing, community facilities, and economic activity impacted by a disaster event;

"Flood Fund" means the West Virginia Flood Resiliency Trust Fund created by this article;

"Flood prevention or protection study" means the conduct of a hydraulic or hydrologic study of a flood plain with historic and predicted future floods, the assessment of current and projected future flood risk, and the development of strategies to prevent or mitigate damage from flash or riverine flooding;

"Flood resiliency" means efforts and activities intended to minimize damages during times of flooding resulting in reduced risk to people and infrastructure, and ensuring there is ample room for flooding and river adjustment to occur where the opportunity may exist;

"Low-income geographic area" means any locality, or community within a locality, that has a median household income that is not greater than 80 percent of the local median household income, or any area in the state designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service;

"Low-income household" means any household whose income does not exceed 80 percent of the local median household income;

"Nature-based solution" means sustainable planning, design, environmental management, and engineering practices that weave natural features or processes into the built environment to promote flood resiliency and preserve or enhance natural hydrologic function;

"Person" means any individual, corporation, voluntary organization or entity, partnership, firm, or other association, organization, or entity organized or existing under the laws of this or any other state or country;

"Political subdivision" means any county or municipal corporation in this state;

"Recovery Trust Fund" means the West Virginia Disaster Recovery Trust Fund created by this article; and,

"Stafford Act" means the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Chapter 68).

§29-31-3. Authority of State Resiliency Office and State Resiliency Officer.

The State Resiliency Office will coordinate the state's disaster recovery and resiliency missions and the State Resiliency Officer serves as the primary representative of the Governor in these matters. The State Resiliency Officer shall, upon the order and direction of the Governor, act on behalf of the Governor in the event of the proclamation of the existence of a state of emergency or state of preparedness due to a natural hazards event or upon a Presidential declaration of a major disaster under Section 406 of the Stafford Act. The State Resiliency Officer will assist and advise the Governor on all disaster recovery and resiliency issues and serve as a liaison between the Governor's office, and all other parties, whether state, federal, public, or private to further the purposes of this article. The State Resiliency Officer will:

(1) Serve as coordinator of all economic and community resiliency planning and implementation efforts, including, but not limited to, flood protection programs and activities in the state;

(2) Develop a new state Flood Resiliency Plan due to the Board no later than June 30, 2024;

(3) Coordinate an annual review of the state Flood Resiliency Plan and update the plan no less than biennially, with updates due to the board no later than June 30 in even-numbered years;

(4) Recommend legislation to reduce or mitigate flood damage;

(5) Report to the Joint Legislative Committee on Flooding at least quarterly;

(6) Catalog, maintain, and monitor a listing of current and proposed capital expenditures to reduce or mitigate flood damage and other hazards, and other useful and desirable resiliency efforts;

(7) Coordinate planning of flood projects with federal agencies;

- (8) Improve professional management of flood plains;
- (9) Provide education and outreach on flooding issues to the citizens of this state;
- (10) Establish a single website integrating all agency flood information;
- (11) Monitor federal funds and initiatives that become available for disaster recovery and economic and community resiliency or other flood or hazard mitigation, and to direct expenditures on behalf of the Governor;
- (12) Pursue additional funds and resources to assist not only with long-term recovery efforts but also long-term community and statewide resiliency efforts;
- (13) Coordinate, integrate, and expand planning efforts in the state for hazard mitigation, long-term disaster recovery, and economic diversification;
- (14) Coordinate long-term disaster recovery efforts in response to disasters as they occur;
- (15) Establish and facilitate regular communication between federal, state, local, and private sector agencies, and organizations to further economic and disaster resilience;
- (16) Receive resources, monetary or otherwise, from any other governmental entity and disburse those resources to effectuate the purposes of this article;
- (17) Execute cooperative agreements, where appropriate, between the State Resiliency Office and the federal and/or state governments;
- (18) Contract, where appropriate, on behalf of the State Resiliency Office, with the federal government, its instrumentalities and agencies, any state, territory or the District of Columbia, and its agencies and instrumentalities, municipalities,

foreign governments, public bodies, private corporations, partnerships, associations, and individuals;

(19) Use funds administered by the State Resiliency Office for the maintenance, construction, or reconstruction of capital repair and replacement items as necessary to effectuate the purposes of this article;

(20) Accept and use funds from the federal government, its instrumentalities and agencies, any state, territory or the District of Columbia, and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations, and individuals for the purposes of disaster recovery, hazard mitigation, flood mitigation, flood prevention, and disaster response programs;

(21) Hire necessary employees at an appropriate salary equivalent to a competitive wage rate;

(22) Enroll appropriate employees in PERS, PEIA, and workers' compensation and unemployment programs, or their equivalents: *Provided*, That the State Resiliency Office, through the receipt of federal and/or state funds, pays the required employer contributions;

(23) Develop a human resources division that will administer and manage its employees and receive state matching funds as necessary to ensure maximum federal funds are secured;

(24) Have the ability to secure all other bonding, insurance, or other liability protections necessary for its employees to fulfill their duties and responsibilities;

(25) Have the ability to draw upon other departments, divisions, agencies, and all other subdivisions of the state for research and input in fulfilling the requirements of this article, and its requests are to have priority over other such requests;

(26) Participate in the interdepartmental transfer of permanent state employees, as if he or she were a department secretary, under the provisions of §5F-2-7 of this code.

(27) Notwithstanding any other provision of this code to the contrary, acquire legal services that are necessary, including representation of the board, its employees, and officers before any court or administrative body from the office of the Attorney General, who shall provide such legal assistance and representation, and

(28) Take all other actions necessary and proper to effectuate the purposes of this article.

The office shall have any other additional authority, duties, and responsibilities as prescribed by the Governor to effectuate the purposes of this article. Due to the at-will employment relationship with the office, its employees may not avail themselves of the state grievance procedure as set forth in §6C-2-1 *et seq.* of this code.

§29-31-6. West Virginia Disaster Recovery Trust Fund.

(a) There is hereby created a special trust fund which shall be designated and known as the West Virginia Disaster Recovery Trust Fund to be administered by the State Resiliency Officer. The recovery fund shall consist of: (1) Any appropriations, grants, gifts, contributions, or revenues received by the recovery fund from any source, public or private; and (2) all income earned on moneys, properties, and assets held in the Recovery Fund. When any funds are received by the State Resiliency Officer from any source for the purpose of disaster recovery, they shall be paid into the Recovery Fund, and shall be disbursed and otherwise managed in the manner set forth in this article unless such a transfer is not allowable by law. The Recovery Fund shall be treated by the Auditor and Treasurer as a special revenue fund and not as part of the general revenues of the state.

(b) All moneys, properties, and assets acquired by the State of West Virginia in the Disaster Recovery Trust Fund shall be held by it in trust for the purposes of carrying out its powers and duties and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys, properties, and assets shall at no time be commingled with other public funds except as authorized for investment under §29-31-8 of this code.

Disbursements from the Recovery Fund shall be made only upon the written requisition of the State Resiliency Officer as set forth in §29-31-7 and §29-31-8 of this code. If no need exists for immediate use or disbursement, moneys, properties, and assets in the Recovery Fund shall be invested or reinvested by the State Resiliency Officer as provided in this article.

§29-31-7. West Virginia Disaster Recovery Trust Fund disbursement.

Upon the proclamation of the existence of a state of emergency due to a natural hazards event under the provisions of §15-5-6 of this code or upon a Presidential declaration of a major disaster under Section 406 of the Stafford Act, the State Resiliency Officer shall have the power to disburse funds from the Disaster Recovery Trust Fund created pursuant to §29-31-6 of this code to any person, political subdivision, or local organization for emergency services in such amounts and in such manner, and to take such other actions, as the State Resiliency Officer may determine is necessary or appropriate in order to provide assistance to any person, political subdivision, or local organization for recovering from the disaster, or otherwise involved in disaster recovery activities: *Provided*, That except as provided hereafter in this section, requisitions for payment shall not be made or authorized for payment by the Auditor without the express approval of the State Resiliency Officer: *Provided, however*, That all disbursements arising out of the events surrounding the aftermath of a disaster event giving rise to the relevant disbursements shall require the express approval of the State Resiliency Officer, which approval shall not be unduly withheld or delayed.

In the occurrence of a qualifying event granting the State Resiliency Officer the power to disburse funds from the Disaster Recovery Trust Fund, the following provisions and conditions shall be adhered to:

(1) Disbursements shall be prioritized to the benefit of low-income households and geographic areas, and not less than 50 percent of all funds disbursed through the Disaster Recovery Trust Fund following any particular disaster event shall be disbursed to

the benefit of low-income geographic areas, low-income households, or to local organizations conducting disaster recovery activities to the benefit of low-income geographic areas or low-income households;

(2) Disbursements to the benefit of a political subdivision may only be allowed upon the verification to the State Resiliency Officer that the recipient political subdivision has adopted, or will adopt within 24 months, the following programs or measures or risk forfeiture of future funding opportunities:

(A) Town road and bridge standards consistent with or exceeding those listed under the most current version of standards published by the West Virginia Department of Transportation;

(B) A flood hazard bylaw, or an adopted interim flood hazard bylaw as an intermediary step to secure enrollment and participation in the National Flood Insurance Program (NFIP), if applicable;

(C) A local Hazard Mitigation Plan that meets the provisions of 44 CFR § 201.6 that has been approved by the local community and is approved or in the process of securing final approval by FEMA. The local mitigation plan may be part of a larger multijurisdictional or regional mitigation plan;

(D) Adoption of a local Emergency Operations Plan (EOP) in accordance with State standards; and

(E) Attainment of an active rate classification (class #1 through #9) under FEMA's Community Rating System (CRS) that includes activities that prohibit new structures in mapped flood hazard zones; and

(3) Disbursements may be further prioritized or conditioned at the discretion of the State Resiliency Officer and upon approval of the State Resiliency Office Board.

§29-31-8. Powers and duties related to the West Virginia Disaster Recovery Trust Fund.

The State Resiliency Officer is hereby granted, has and may exercise all powers necessary or appropriate to carry out and

effectuate the purposes set forth in §29-31-7 of this code. The State Resiliency Officer has the power:

(1) To accept appropriations, gifts, grants, bequests, and devises from any source, public or private, for deposit into the Recovery Fund, and to use or dispose of the same to provide assistance to any person, political subdivision, or local organization for recovering from a disaster, or otherwise involved in disaster recovery activities;

(2) To make and execute contracts, leases, releases, and other instruments necessary or convenient for the exercise of its power;

(3) To make, and from time to time, amend, and repeal bylaws for the governance of its activities not inconsistent with the provisions of this article;

(4) To sue and be sued;

(5) To acquire, hold, and dispose of real and personal property;

(6) To enter into agreements or other transactions with any federal or state agency, political subdivision, or person;

(7) To provide for the deposit of any funds or assets of the West Virginia Disaster Recovery Trust Fund with the state Treasurer for investment pursuant to §12-6C-6 of this code;

(8) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(9) To provide financial assistance to state and local governmental entities for the nonfederal share for federal disaster assistance programs;

(10) To provide for financial assistance to homeowners and communities that are not eligible for Community Development Block Grant-Disaster Recovery and other federal funding assistance;

(11) To provide loans and grants to local governments in disaster areas that need immediate cash flow assistance;

(12) To provide grants to governmental entities and organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code to repair or replace infrastructure or equipment damaged as a result of a natural disaster;

(13) To provide financial assistance for verifiable losses of agricultural commodities due to a natural disaster; and

(14) Do all acts necessary and proper to carry out the powers granted to the State Resiliency Office within its disaster recovery mission.

§29-31-9. Capitalization of the West Virginia Disaster Recovery Trust Fund.

(a) The West Virginia Disaster Recovery Trust Fund may be granted an initial one-time allocation of \$10 million in state general funds for the purposes outlined in this article.

(b) The State Resiliency Officer shall, with the concurrence of the State Auditor, present an expenditure report to the State Resiliency Office Board by no later than December 1 annually.

(c) Upon review and verification by the State Resiliency Office Board that all expenditures within the West Virginia Disaster Recovery Trust Fund expenditure report are valid and justified uses of Recovery Fund resources, the State Resiliency Office Board shall submit to the Governor by no later than December 31 annually a budget and may request to replenish the Recovery Fund up to its initial \$10 million capitalization.

§29-31-10. West Virginia Flood Resiliency Trust Fund.

(a) There is hereby created a special trust fund which shall be designated and known as the West Virginia Flood Resiliency Trust Fund to be administered by the State Resiliency Officer. The Flood Fund shall consist of: (1) Any appropriations, grants, gifts,

contributions, or revenues received by the Flood Fund from any source, public or private; and (2) all income earned on moneys, properties, and assets held in the Flood Fund. When any funds are received by the State Resiliency Officer from any source for flood resiliency activities, they shall be paid into the Flood Fund, and shall be disbursed and otherwise managed in the manner set forth in this article. The Flood Fund shall be treated by the Auditor and Treasurer as a special revenue fund and not as part of the general revenues of the state.

(b) All moneys, properties, and assets acquired by the State of West Virginia in the Flood Fund shall be held by it in trust for the purposes of carrying out its powers and duties and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys, properties, and assets shall at no time be commingled with other public funds except as authorized for investment under §29-31-12 of this code. Disbursements from the Flood Fund shall be made only upon the written requisition of the State Resiliency Officer as set forth in §29-31-11 and §29-31-12 of this code. If no need exists for immediate use or disbursement, moneys, properties, and assets in the Flood Fund shall be invested or reinvested by the State Resiliency Officer as provided in this article.

§29-31-11. West Virginia Flood Resiliency Trust Fund disbursement.

Upon the development of a new state Flood Resiliency Plan, the State Resiliency Officer shall have the power to disburse funds from the Flood Fund for the purposes of implementing the Flood Resiliency Plan to any person, political subdivision, or local organization in such amounts and in such manner, and to take such other actions, as the State Resiliency Officer may determine is necessary or appropriate and is outlined within the Flood Resiliency Plan. All assistance to any person, political subdivision, or local organization shall be for the purposes of building flood resiliency in the face of current and projected future flood disaster events: *Provided*, That except as provided hereafter in this section, requisitions for payment shall not be made or authorized for payment by the Auditor without the express approval of the State

Resiliency Officer: *Provided, however,* That all disbursements shall require the express approval of the State Resiliency Officer, which approval shall be contingent on the proposed activity appearing as a valid proposed flood resiliency activity and prioritized for implementation within the most recent Flood Resiliency Plan as reviewed and approved by the State Resiliency Office Board.

Following the development and approval of a new state Flood Resiliency Plan, the State Resiliency Officer is granted the power to disburse funds from the Flood Resiliency Trust Fund. In accordance with these powers, the following provisions and conditions shall be adhered to:

(1) Disbursements from the Flood Fund shall be used solely for the purposes of enhancing flood prevention or protection as required by this article. The State Resiliency Office shall manage the Flood Fund and may disburse from the Flood Fund its reasonable costs and expenses incurred in the management of the Flood Fund;

(2) Disbursements shall be prioritized to the benefit of low-income geographic areas, and not less than 50 percent of all funds disbursed through the Flood Resiliency Trust Fund shall be disbursed to the benefit of low-income geographic areas and low-income households;

(3) Disbursements shall be prioritized toward the implementation of nature-based solutions, and not less than 50 percent of all funds disbursed through the Flood Resiliency Trust Fund shall be disbursed to implement nature-based solutions. Of disbursements made to implement nature-based solutions, not less than 25 percent of these disbursements shall be utilized for the acquisition of single-family primary residences and multifamily residences in areas currently or projected to be subjected to significant flood impacts, assistance to residents relocating outside of the floodplain, and floodplain restoration activities on properties acquired through the Flood Fund;

(4) Disbursements to the benefit of a political subdivision may only be allowed upon the verification to the State Resiliency Officer that the recipient political subdivision has adopted, or will adopt within 24 months, the following programs or measures:

(A) Town road and bridge standards consistent with or exceeding those listed under the most current version of standards published by the West Virginia Department of Transportation;

(B) A flood hazard bylaw, or an adopted interim flood hazard bylaw as an intermediary step to secure enrollment and participation in the National Flood Insurance Program (NFIP), if applicable;

(C) A local Hazard Mitigation Plan that meets the provisions of 44 CFR § 201.6 that has been approved by the local community, and is approved or in the process of securing final approval by FEMA. The local mitigation plan may be part of a larger multijurisdictional or regional mitigation plan;

(D) Adoption of a local Emergency Operations Plan (EOP) in accordance with state standards; and,

(E) Attainment of an active rate classification (class #1 through #9) under FEMA's Community Rating System (CRS) that includes activities that prohibit new structures in mapped flood hazard zones; and

(5) Prioritization and conditions for disbursements at the discretion of the State Resiliency Officer and upon approval of the State Resiliency Office Board.

§29-31-12. Powers and duties related to the West Virginia Flood Resiliency Trust Fund.

The State Resiliency Officer is hereby granted, has, and may exercise all powers necessary or appropriate to carry out and effectuate the purposes set forth in §29-31-11 of this code. The State Resiliency Officer has the power:

(1) To accept appropriations, gifts, grants, bequests, and devises from any source, public or private, for deposit into the Flood Fund, and to use or dispose of the same to provide assistance to any person, political subdivision, or local organization for flood resiliency, flood prevention, and flood protection activities;

(2) To make and execute contracts, leases, releases, and other instruments necessary or convenient for the exercise of its power;

(3) To make, and from time to time, amend, and repeal bylaws for the governance of its activities not inconsistent with the provisions of this article;

(4) To sue and be sued;

(5) To acquire, hold, and dispose of real and personal property;

(6) To enter into agreements or other transactions with any federal or state agency, political subdivision, or person;

(7) To provide for the deposit of any funds or assets of the West Virginia Flood Resiliency Trust Fund with the state Treasurer for investment pursuant to §12-6C-6 of this code;

(8) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(9) To procure services related to the development and updating of the state Flood Resiliency Plan;

(10) To provide loans or grants to political subdivisions and individual beneficiaries for the purpose of implementing activities proposed and outlined within the Flood Resiliency Plan;

(11) To provide loans or grants to governmental entities and organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code for the purpose of implementing activities proposed and outlined within the Flood Resiliency Plan;

(12) To provide loans or grants to political subdivisions for the purpose of conducting flood prevention and protection studies in areas that are subject to recurrent flooding as confirmed by a locality-certified floodplain manager; and

(13) Do all acts necessary and proper to carry out the powers granted to the State Resiliency Office for flood resiliency activities.

§29-31-13. Capitalization of the West Virginia Flood Resiliency Trust Fund.

(a) The West Virginia Flood Resiliency Trust Fund may be granted an initial one-time allocation of \$40 million in state general funds for the purposes outlined in this article.

(b) The State Resiliency Officer shall, with the concurrence of the State Auditor, present an expenditure report to the State Resiliency Office Board by no later than December 1 annually.

(c) Upon review and verification by the State Resiliency Office Board that all expenditures within the West Virginia Flood Resiliency Trust Fund expenditure report are valid and justified uses of Flood Fund resources, the State Resiliency Office Board shall submit to the Governor by no later than December 31 annually a budget and may request to replenish the Flood Fund up to its initial \$40 million capitalization.

(d) Upon state receipt of Community Development Block Grant-Disaster Recovery funds in relation to a flood disaster event, and in order to provide the state with the flexibility required to provide assistance to any person, political subdivision, or local organization recovering from the flood disaster event, a minimum of six percent of those funds shall be dedicated for the purposes of Flood Resiliency Plan development and implementation activities to the extent that those purposes are in compliance with applicable federal laws and regulations governing such funds and compatible with the state's long-term recovery goals.

§29-31-14. Tax exemption.

The State Resiliency Officer shall not be required to pay any taxes and assessments to the state or any political subdivision of

the state upon any of its moneys, properties, or assets or upon its obligations or other evidences of indebtedness pursuant to the provisions of this article, or upon any moneys, funds, revenues, or other income held or received into the West Virginia Disaster Recovery Trust Fund or the West Virginia Flood Resiliency Trust Fund.

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CHAPTER 282

**(Com. Sub. for H. B. 2008 - By Delegates Longanacre, Crouse,
Ferrell, Ridenour, Fast, Thorne, Keaton, Ross, McGeehan,
Mazzocchi and Martin)**

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto one new article containing nine new sections, designated §15-15-1, §15-15-2, §15-15-3, §15-15-4, §15-15-5, §15-15-6, §15-15-7, §15-15-8, and §15-15-9, all relating to prohibiting subdivisions and local entities from adopting policies that prohibit or materially restrict cooperation with federal entities enforcing immigration law; requiring state entities, local entities and law enforcement agencies to cooperate with the enforcement of immigration laws; providing for definitions; requiring that entities and agencies not prohibit the enforcement of immigration laws or cooperation with other governmental agencies to enforce immigration laws; providing for complaint procedures; providing for mandatory duties regarding immigration detainers; providing for actions to ensure compliance; providing that the failure to satisfy the duties imposed by this enactment constitutes neglect of duty and malfeasance in office and exposes elected officials to removal from office as provided by law; providing for mandatory agreements regarding the housing of persons subject to immigration detainers; providing for the Attorney General to defend good-faith compliance under certain circumstances; providing Whistle-Blower protections to individuals who report violations; and prohibiting discrimination on the basis of protected classes.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.**†ARTICLE 15. FEDERAL IMMIGRATION ENFORCEMENT.****†§15-15-1. Definitions**

(1) "Federal immigration agency" means the United States Department of Justice, the United States Department of Homeland Security, any division within either of those departments, specifically including but not limited to United States Immigration and Customs Enforcement, United States Customs and Border Protection, any successor agency or agencies to the aforesaid, and any other federal agency charged with the enforcement or administration of immigration or border control.

(2) "Immigration law" means the laws of this state or federal law relating to immigrants or immigration, including but not limited to the Federal Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*

(3) "Immigration detainer" means a facially sufficient written or electronic request issued by a federal immigration agency using that agency's official form to request that another law enforcement agency detain a person based on probable cause to believe that the person to be detained is a removable alien under federal immigration law, including detainers issued pursuant to 8 U.S.C. § 1226 *et seq.* and 8 U.S.C. § 1357 *et seq.*, along with a warrant described in paragraph (C) of this subsection. For purposes of this subsection, an immigration detainer is deemed facially sufficient if:

(A) The federal immigration agency's official form is complete and indicates on its face that the federal immigration official has probable cause to believe that the person to be detained is a removable alien under federal immigration law; or

(B) The federal immigration agency's official form is incomplete and fails to indicate on its face that the federal immigration official has probable cause to believe that the person

†NOTE: S. B. 302 (Chapter 280), which passed prior to this act, also created a new Article 15. Therefore, this has been redesignated as Article 16 for the code.

to be detained is a removable alien under federal immigration law, but is supported by an affidavit, order, or other official documentation that indicates that the federal immigration agency has probable cause to believe that the person to be detained is a removable alien under federal immigration law; and

(C) The federal immigration agency supplies with its detention request a Form I-200 Warrant for Arrest of Alien, or a Form I-205 Warrant of Removal/Deportation, or a successor warrant, or other warrant authorized by federal law.

(4) "Inmate" means a person in the custody of a law enforcement agency.

(5) "Law enforcement agency" for purposes of this article means an agency in this state charged with enforcement of federal, state, county, or municipal laws or with managing custody of persons in this state and includes, but is not limited to, municipal police departments, sheriff's offices, county and state police departments, state college and university police departments, county correctional agencies, and the Division of Corrections and Rehabilitation.

(6) "Local entity" means:

(A) The governing body, and any agents or officers with executive, decision-making, or policymaking authority thereof, of a municipality, county, or other political subdivision of this state, and any subsidiary governmental bodies of those entities;

(B) An officer or employee of or a division, department, or other body that is part of a municipality, county, political subdivision or other authority, including a sheriff, municipal police department, municipal attorney, or county attorney; or

(C) A prosecuting attorney or assistant prosecuting attorney.

(7) "State entity" means the State of West Virginia or any agency, office, board, bureau, commission, department, branch, division, or institution thereof, including institutions under the authority of the West Virginia Higher Education Policy

Commission, the Community and Technical System, and all other public postsecondary educational institutions in the state. The term includes any officer, employee or agent of any of the aforesaid.

†§15-15-2. Prohibited policies regarding immigration enforcement.

A state entity, local entity, or law enforcement agency shall not adopt or maintain a law, ordinance, resolution, rule, regulation, policy, directive, order, practice, or procedure, formal or informal, written or unwritten, which prohibits or materially restricts the state entity, local entity, or law enforcement agency from complying with or assisting in the enforcement of immigration laws, including, but not limited to, prohibiting or materially restricting the state entity, local entity, or law enforcement agency from prohibiting or otherwise materially restricting any state entity, local entity, or law enforcement agency from assisting in the enforcement of immigration law. This includes prohibitions or restrictions on:

- (a) Inquiries into the immigration status of any person;
- (b) Transmitting, requesting, or receiving information relating to immigration status, lawful or unlawful, of any person to or from any federal immigration enforcement agency;
- (c) Maintaining, archiving, or otherwise storing for subsequent use information relating to an individual's immigration status;
- (d) Exchanging information relating to immigration status with another local entity, state entity, or a federal immigration agency;
- (e) Complying with an immigration detainer, including, but not limited to, refusing to cooperate or comply with a lawfully issued detainer in the absence of a warrant or other order directing compliance with or enforcement of such a detainer;

†NOTE: S. B. 302 (Chapter 280), which passed prior to this act, also created a new Article 15. Therefore, this has been redesignated as Article 16 for the code.

(f) Complying with a request from a federal immigration agency to notify the agency before the release of an inmate;

(g) Providing a federal immigration agency with an inmate's incarceration status or release date;

(h) Assisting or cooperating with a federal immigration agency, including by providing enforcement assistance;

(i) Participating in any program or agreement authorized under Section 287 of the federal Immigration and Nationality Act, 8 U.S.C. § 1357 *et seq*;

(j) Permitting a federal immigration officer to enter and conduct enforcement activities at a municipal jail, county jail, or Division of Corrections and Rehabilitation Facility involving or related to the enforcement of federal immigration laws;

†§15-15-3. Mandatory duties of law enforcement agencies regarding immigration detainer.

(a) A law enforcement agency that takes initial custody of a person subject to an immigration detainer shall:

(1) Provide notice to the court authorized to grant or deny the person's release on bail or bond that the person is subject to an immigration detainer;

(2) Record in the person's case file that the person is subject to an immigration detainer; and

(3) Upon determining that the immigration detainer is facially sufficient as defined by §15-15-1 of this code, comply with the requests made in the immigration detainer to the extent required by law.

(b) A law enforcement agency is not required to perform a duty imposed by subsection (a) of this section with respect to a person who has been transferred to the custody of the agency by another law enforcement agency subject to the requirements of this section.

†NOTE: S. B. 302 (Chapter 280), which passed prior to this act, also created a new Article 15. Therefore, this has been redesignated as Article 16 for the code.

(c) A court of competent jurisdiction which receives notice that a person is subject to an immigration detainer shall cause the fact to be recorded in the court record, regardless of whether the notice is received before or after a judgment in the case.

†§15-15-4. Mandatory agreements for housing persons subject to immigration detainers.

(a) Each county jail or municipal jail, to the extent the same may exist, and the Division of Corrections and Rehabilitation shall enter into an agreement or agreements with a federal immigration agency for temporarily housing persons who are the subject of immigration detainers and for the payment of the costs of housing and detaining those persons.

(b) A compliant agreement under this section includes any contract with a federal immigration agency for housing or detaining persons subject to immigration detainers, such as basic ordering agreements, intergovernmental service agreements, agreements authorized by Section 287 of the federal Immigration and Nationality Act, 8 U.S.C. § 1357 *et seq.*, successor agreements, or other similar agreements authorized by federal law.

†§15-15-5. Complaint procedure; notice; equitable relief.

(a) Any person, including a federal agency, may file a complaint with the Attorney General alleging that a state entity, local entity, or law enforcement agency has violated or is violating this article. The person shall include with the complaint any evidence the person has in support of the complaint.

(b) A state entity, local entity, or law enforcement agency for which the Attorney General has received a complaint pursuant to this section shall comply with any document requests, including a request for supporting documents, from the Attorney General relating to the complaint.

(c) If the Attorney General determines there is sufficient evidence that a local entity or law enforcement agency has violated

†NOTE: S. B. 302 (Chapter 280), which passed prior to this act, also created a new Article 15. Therefore, this has been redesignated as Article 16 for the code.

or is violating the provisions of this article, the Attorney General may file a petition for declaratory or injunctive relief, mandamus, or other appropriate relief in Circuit Court for Kanawha County, or in the Circuit Court for a county in which the principal office of the entity or agency is located, against the entity or agency suspected of violating this article.

(d) If a court finds a state entity, local entity, or law enforcement agency has violated or is violating this article, the court shall enjoin the violation. The court shall have continuing jurisdiction over the parties and subject matter and may enforce its orders with contempt proceedings as provided by law.

(e) An order approving a consent decree or granting any relief under this section shall include written findings of fact that describe with specificity the existence and nature of the violation.

(f) In an appeal related to a suit brought under this section, the appellate court shall render its final order or judgment with the least possible delay.

†§15-15-6. Removal from office for malfeasance, neglect of duty, and failure to faithfully discharge duties of office.

Any elected official who takes official action that results in a law, ordinance, resolution, rule, regulation, policy, directive, order, practice, or procedure to come into or continue in effect that violates the provisions of this article has failed to faithfully execute the duties of his or her office, has acted with neglect of duty, and has engaged in malfeasance in office, and thus may be removed from the same in accordance with Article IV, §6 of the constitution of this state, §6-6-5 of this code, §6-6-7 of this code, or any other applicable provision of the law of this state.

†§15-15-7. Attorney General to defend good-faith compliance upon request.

(a) The Attorney General may defend a local entity or law enforcement agency in any action in any court if:

†NOTE: S. B. 302 (Chapter 280), which passed prior to this act, also created a new Article 15. Therefore, this has been redesignated as Article 16 for the code.

(1) The executive head or governing body, as applicable, of the local entity or law enforcement agency requests the Attorney General's assistance in the defense; and

(2) The Attorney General determines that the local entity or law enforcement agency that is the subject of the suit has made a good-faith effort to comply with this article.

†§15-15-8. Report of violations; whistle-blower protections.

(a) A state entity, local entity, or law enforcement agency shall not discharge, threaten, or otherwise discriminate or retaliate against any official, representative, agent, or employee for reporting a known or probable violation of the provisions of this article to the Attorney General.

(b) All provisions of §6C-1-1 *et seq.* of this code, the Whistle-Blower Law, shall apply to an official, representative, agent, or employee of a state entity, local entity, or law enforcement agency who is discharged, threatened, or otherwise discriminated or retaliated against because he or she reported a known or probable violation of the provisions of this article to the Attorney General.

†§15-15-9. Implementation; discrimination prohibited.

(a) This article code shall be implemented in a manner consistent with federal laws and regulations governing immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens.

(b) A state entity, local entity, or law enforcement agency, or a person employed by or otherwise under the direction or control of a state entity, local entity, or law enforcement agency, shall not base its actions under this article on the gender, race, color, religion, language, national origin, or physical disability of a person except to the extent authorized by the United States Constitution, the constitution and laws of this state, or other applicable federal law.

†NOTE: S. B. 302 (Chapter 280), which passed prior to this act, also created a new Article 15. Therefore, this has been redesignated as Article 16 for the code.

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CHAPTER 283

**(Com. Sub. for H. B. 2762 - By Delegates Nestor, Horst,
Clark, Hanna, Longanacre, Martin, Hott, Riley, Honaker,
Vance and Statler)**

[Passed March 2, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §15A-11-3 and §15A-11-5 of the Code of West Virginia, 1931, as amended, all relating to requiring the State Fire Commission to promulgate rules pertaining to sprinkler protection; requiring that buildings commencing construction after a certain date shall be protected by automatic sprinkler systems; providing that certain buildings are exempt from State Fire Code rules pertaining to sprinkler protection; providing that certain buildings are exempt from State Building Code rules pertaining to sprinkler protection.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. FIRE COMMISSION.

§15A-11-3. Promulgation of rules and State Fire Code.

(a) Pursuant to the provisions of §29A-3-1 *et seq.* of this code, the State Fire Commission shall propose and promulgate comprehensive rules for the safeguarding of life and property from the hazards of fire and explosion to be known as the State Fire Code. Rules embodied in the State Fire Code shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and have the force and effect of law in the several counties, municipalities, and political subdivisions of the state: *Provided*, That buildings or structures utilized primarily for agricultural

purposes shall be exempt from the provisions of the State Building Code, the State Fire Code, and any county or municipal building code or ordinance that is or may be adopted, such as the ICC International Property Maintenance Code. The rule shall include, but not be limited to, standard safe practices for the design, construction, location, installation, maintenance, and operation of liquefied petroleum gas systems, and training standards and qualifications for persons who install or maintain liquefied petroleum gas systems.

(b) The State Fire Commission may establish work groups and seek input in the rulemaking process from groups or individuals with an interest in any aspect of the fire code.

(c) For purposes of this section, the term “agricultural purposes” means the raising, cultivation, drying, harvesting, marketing, production, or storage of agricultural products, including both crops and livestock, for sale or use in agriculture or agricultural production, or the storage of machinery or equipment used in support of agricultural production.

(d) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code relating to sprinkler protection, specifically providing that buildings commencing construction after July 1, 2023, housing emergency fire, rescue, or ambulance services shall be protected throughout by approved automatic sprinkler systems: *Provided*, That emergency services buildings that house only equipment, are less than 5,000 square feet, and do not have designated sleeping areas or quarters within them, regardless when constructed or commencing construction, are exempt from this requirement.

§15A-11-5. Promulgation of rules and statewide building code.

(a) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state through the adoption of a State Building Code.

The rule may include provisions regarding building construction, renovation, and all other aspects as related to the construction and mechanical operations of a structure. The rule shall include building energy codes. The rules shall be in accordance with standard safe practices so embodied in widely recognized standards of good practice for building construction and all aspects related thereto and have force and effect in those counties and municipalities adopting the State Building Code: *Provided*, That each county or municipality may adopt the code to the extent that it is only prospective and not retroactive in its application; *Provided, however*, That buildings or structures utilized primarily for agricultural purposes shall be exempt from the provisions of the State Building Code, the State Fire Code, and any county or municipal building code or ordinance that is or may be adopted, such as the ICC International Property Maintenance Code.

(b) The State Fire Commission may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the State Building Code or related construction or renovation practices.

(c) For the purpose of this section, the term "building code" is intended to include all aspects of safe building construction and mechanical operations and all safety aspects related thereto. Whenever any other state law, county, or municipal ordinance, or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Building Code, the provisions of the state law, county or municipal ordinance, or regulation of any agency thereof governs if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the State Fire Commission determines the relative priority of any such state law, county or municipal ordinance, or regulation of any agency thereof, and determines compliance with State Building Code by officials of the state, counties, municipalities, and political subdivisions of the state.

(d) Enforcement of the provisions of the State Building Code is the responsibility of the respective local jurisdiction. Also, any

county or municipality may enter into an agreement with any other county or municipality to provide inspection and enforcement services: *Provided*, That any county or municipality may adopt the State Building Code with or without adopting the BOCA National Property Maintenance Code. If a county adopts a property maintenance code or ordinance including, but not limited to, the ICC International Property Maintenance Code, such code or ordinance shall exempt all property used for agricultural purposes or otherwise cause such property to be exempted from any such code or ordinance from enforcement. Any such code that may be or is adopted by any county shall be and is unenforceable as to agricultural property.

(e) After the State Fire Commission has promulgated rules as provided in this section, each county or municipality intending to adopt the State Building Code shall notify the State Fire Marshal of its adoption.

(f) The State Fire Commission may conduct public meetings in each county or municipality adopting the State Building Code to explain the provisions of the rules.

(g) The provisions of the State Building Code relating to the construction, repair, alteration, restoration, and movement of structures are not mandatory for existing buildings and structures identified and classified by the State Register of Historic Places under the provisions of §29-1-8 of this code or the National Register of Historic Places, pursuant to 54 U.S.C. § 302101 *et seq.* Prior to renovations regarding the application of the State Building Code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the Division of Culture and History, State Historic Preservation Office. The final decision is vested in the State Fire Marshal. Additions constructed on a historic building are not excluded from complying with the State Building Code.

(h) For purposes of this section, the term "agricultural purposes" has the same meaning as is set forth in §15A-11-3 of this code.

(i) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code relating to sprinkler protection, specifically providing that buildings commencing construction after July 1, 2023, housing emergency fire, rescue, or ambulance services shall be protected throughout by approved automatic sprinkler systems: *Provided*, That emergency services buildings that house only equipment, are less than 5,000 square feet, and do not have designated sleeping areas or quarters within them, regardless when constructed or commencing construction, are exempt from this requirement

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CHAPTER 284

**(Com. Sub. for H. B. 2860 - By Delegates Heckert, Foggin,
Westfall, Anderson, Brooks, Crouse, Vance, Honaker,
Shamblin, Chiarelli and Jennings)**

[Passed March 6, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §29-3-5g of the Code of West Virginia, 1931, as amended, relating to providing for the safe disposal of used aqueous film forming foam; defining a term; requiring the State Fire Commission to dispose of used aqueous film forming and other class B fire-fighting foams.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5g. Class B fire-fighting foam.

(a) The State Fire Commission shall, on or before July 1, 2021, propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to provide:

(1) Standard safe practices for the discharge or otherwise use class B fire-fighting foam that contains intentionally added polyfluoroalkyl substances (PFAS).

(2) For purposes of this section:

“Aqueous Film Forming Foam (AFFF)” means a fluorinated surfactant with a foam stabilizer which is diluted with water to act as a temporary barrier to exclude air from mixing with the fuel vapor by developing an aqueous film on the fuel surface of some hydrocarbons which is capable of suppressing the generation of fuel vapors.

"Class B fire-fighting foam" means any foam designed to extinguish flammable liquid fires.

"PFAS chemicals" means nonpolymeric perfluoroalkyl and polyfluoroalkyl substances that are a group of man-made chemicals that contain at least two (2) fully fluorinated carbon atoms, excluding gases, and volatile liquids.

"Testing" means calibration testing, conformance testing, or fixed system testing.

"Testing Facility" allows the discharge of foam in a non-emergency situation for the evaluation and calibration of firefighting equipment and foam. This facility may also have the capability to provide some level of needed training for firefighters.

"Fixed Foam System" means a complete installation piped from a central foam station, discharging through fixed discharge devices on the flammable liquid hazard being protected. Foam proportioning components are permanently installed. The system has been engineered for the hazard and often contains multiple (UL or FM) listed components and foam.

"Foam Training Facility" shall mean to allow the discharge of foam in a nonemergency situation for the training of firefighters and readiness of equipment. This facility may also have the capability to provide some level of needed evaluation and calibration of equipment and foam.

(b) On or after July 1, 2021, no person, fire department, state department, agency, board, bureau, office, commission, public corporation, or authority; county, municipal corporation, school district, or other political subdivision of this state may discharge or otherwise use class B fire-fighting foam that contains intentionally added PFAS chemicals unless:

(1) The discharge or other use occurs in fire prevention or in response to an emergency fire-fighting operation; or

(2) The discharge or other use is for training or testing purposes which occurs at a facility that has implemented containment,

storage, treatment, and disposal measures to prevent uncontrolled releases of such class B fire-fighting foam into the environment.

(c) Nothing in this code section may be construed to:

(1) Restrict the manufacture, sale, or distribution of class B fire-fighting foam that contains intentionally added PFAS chemicals or restrict the discharge or other use of class B fire-fighting foam in response to an emergency fire-fighting operation; or

(2) Prevent the use of nonfluorinated foams, including other class B fire-fighting foams, for purposes of training for fire-fighting operations.

(d) The State Fire Commission may establish work groups and seek input in the rulemaking process from groups or individuals with an interest in any aspect of the use of class B fire-fighting foams.

(e) The State Fire Commission shall find a method to dispose of used or accumulated AFFF and other class B fire-fighting foams, including, but not limited to, transporting the contained AFFF to an accredited disposal company. If necessary, the State Fire Commission shall contract with an accredited disposal company for this purpose. The State Fire Commission may coordinate with the Department of Environmental Protection to ensure safe disposal.

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CHAPTER 285

**(Com. Sub. for H. B. 3210 - By Delegates Phillips, Horst,
Crouse and Thorne)**

[Passed March 2, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §15A-10-15 of the Code of West Virginia, 1931, as amended, relating to the performance of installation of propane gas systems; providing definitions; and creating certain prohibitions related to liquefied petroleum containers without consent of the owner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FIRE MARSHAL.

§15A-10-15. Performance of installation of propane gas systems.

(a) Notwithstanding any statutory or regulatory provisions to the contrary, any person who installs, fuels, maintains, or services any fuel gas system to a one- or two-family dwelling shall comply with rules promulgated by the Fire Commission relating to fuel gas systems.

(b) This section does not apply to any person who performs this work on a single-family dwelling, owned or leased, and occupied by that person. The personal exemption provided in this subsection is the same as the personal exemption provided in §29-3D-1, *et seq.* of this code.

(c) Use of, refilling of, or work upon a liquefied petroleum gas container without the consent of the tank owner is prohibited.

(d) No person shall sell, install, fill, refill, deliver or permit to be delivered, or use in any manner any liquefied petroleum gas container unless the container is owned by the person, or its use is authorized by its owner.

(e) For purposes of this section "Liquefied petroleum gas" means propane and or predominantly a mixture of propane and butane.

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CHAPTER 286

**(Com. Sub. for H. B. 3233 - By Delegates Cooper, Toney,
Heckert and Hott)**

[By Request of Adjutant General]

[Passed March 9, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §15-1B-11 of the Code of West Virginia, 1931, as amended, relating generally to uniform and equipment allowances for the National Guard.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. NATIONAL GUARD.

§15-1B-11. Uniforms, arms, equipment and supplies.

(a) The uniforms, arms, equipment, and supplies necessary for performance of duties shall be those prescribed by applicable federal laws and regulations. Officers shall provide themselves with uniforms and equipment prescribed, and there shall be annually allowed, to aid them in procuring and maintaining the same in condition for service, the sum of \$100 each or a higher sum not to exceed \$750 as determined at the discretion of the Adjutant General. Such sum shall be paid during the last month of each fiscal year for such year. In the event of service for less than the full fiscal year one-twelfth of such sum shall be allowed for each month of service during such year.

(b) Any member of the National Guard requiring a maternity or other specialty uniform, may request a sum or reimbursement to offset any expenses incurred in procuring such uniform, not to exceed the amount provided in subsection (a) of this section once in a 36-month period. Sums or reimbursements made pursuant to

this subsection are made at the discretion of the Adjutant General. Any approved sum or reimbursement shall be paid during the last month of the fiscal year in which the request was approved.

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CHAPTER 287

(Com. Sub. for H. B. 3315 - By Delegates Cooper and Heckert)

[By Request of the Adjutant General]

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §15-1B-25 of the Code of West Virginia, 1931, as amended, relating generally to readiness enhancement and commission bonuses; authorizing Adjutant General to establish certain bonus programs; requiring a schedule of bonus amounts; and authorizing recoupment of bonus paid under certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. NATIONAL GUARD.

§15-1B-25. Readiness Enhancement and Commissioning Bonus.

(a) The Adjutant General may establish within the limitations of this section a program to provide enlistment bonuses to eligible prospects who become members of the West Virginia National Guard.

(1) Eligibility for the bonus is limited to a candidate who: (A) Joins the National Guard as an enlisted member; (B) Serves satisfactorily during the period of, and completes, the person's initial entry training, if applicable; and (C) Has expertise, qualifications, or potential for military service deemed by the Adjutant General as sufficiently important to the readiness of the National Guard or a unit of the National Guard. The Adjutant

General may, within the limitations of this subsection and other applicable laws, determine additional eligibility criteria for the bonus.

(2) The enlistment bonus payments are to be in an amount to generally encourage the candidate's enlistment in the National Guard, subject to available appropriations, and on a schedule that is determined and published in department regulations by the Adjutant General.

(3) If a member fails to complete a term of enlistment for which a bonus was paid, the Adjutant General may seek to recoup a prorated amount of the bonus as determined by the Adjutant General.

(b) The Adjutant General may establish a program to provide a reenlistment or commissioning bonus to eligible members of the West Virginia National Guard who extend their term of service in the National Guard within the limitations of this subsection. Eligibility for the bonus is limited to a member of the National Guard who: (1) Is serving satisfactorily as determined by the Adjutant General; (2) Has 12 or fewer years of service creditable for retirement; and (3) Has military training and expertise deemed by the Adjutant General as sufficiently important to the readiness of the National Guard or a unit of the National Guard, or has accepted a commission as an officer in the National Guard. The Adjutant General may, within the limitations of this subsection and other applicable laws, determine additional eligibility criteria for the bonus.

(1) The enlistment bonus payments are to be in an amount to generally encourage the member's reenlistment or commissioning in the National Guard, subject to available appropriations, and on a schedule that is determined and published in department regulations by the Adjutant General.

(2) If a member fails to complete a term of reenlistment or an obligated term of commissioned service for which a bonus was paid, the Adjutant General may seek to recoup a prorated amount of the bonus as determined by the Adjutant General.

(c) Upon graduation from the officer candidate school conducted at the regional training institute, Camp Dawson, each member of the West Virginia Army National Guard who accepts a commission shall be entitled to a commissioning bonus of \$2,000.

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CHAPTER 288

**(Com. Sub. for H. B. 3369 - By Delegates Kelly, Hott, Garcia,
Worrell, Westfall, Fast and Kimble)**

[By the Request of the Department of Homeland Security]

[Passed March 9, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 21, 2023.]

AN ACT to amend and reenact §15-2D-1, §15-2D-2 and §15-2D-3 of the Code of West Virginia, 1931, as amended, relating to creating a School Safety Unit within the Division of Protective Services; making findings, establishing duties and powers of the School Safety Unit; clarifying certain security services of the division; clarifying the confidentiality of certain records; clarifying that certain interagency agreements are discretionary; clarifying mandatory and discretionary duties of the director relating to the School Safety Unit; and correcting references to the Department of Homeland Security.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-1. Legislative findings.

The Legislature finds and declares that citizens, state employees and visitors who park, attend functions, conduct business or work at the capitol complex and other state facilities should be safe and secure. The Legislature further finds and declares that it is in the public interest to establish a division within the Department of Homeland Security for the purpose of providing safety and security to individuals who visit, conduct business or work at the capitol complex and other state facilities. The legislature further finds there is a compelling interest in the safety

of school facilities throughout the state and that it is in the public interest to dedicate within the West Virginia Department of Homeland Security a law enforcement unit focused on primary and secondary school safety matters.

§15-2D-2. Duties and powers of the director and officers.

(a) The state facilities protection division within the Department of Homeland Security shall hereafter be designated the Division of Protective Services. The purpose of the division is to provide safety and security at the capitol complex and other state facilities: *Provided*, That nothing in this section shall be construed as limiting the law-enforcement authority of the division set forth in §15-2D-3 of this code.

(b) The Governor shall appoint, with the advice and consent of the Senate, the director of the division whose qualifications shall include at least 10 years of service as a law-enforcement officer with at least three years in a supervisory law-enforcement position, the successful completion of supervisory and management training, and the professional training required for police officers at the West Virginia state police academy or an equivalent professional law-enforcement training at another state, federal or United States Military institution.

§15-2D-3. Duties and powers of the director and officers.

(a) The director is responsible for the control and supervision of the division. The director and any officer of the division may carry designated weapons and have the same powers of arrest and law enforcement in Kanawha County as members of the West Virginia State Police as set forth in §15-2-12(b) and §15-2-12(d) of this code. The director and any officer of the division shall also have such powers throughout the State of West Virginia in investigating and performing law-enforcement duties for offenses committed on the Capitol Complex or related to the division's security and protection duties at the Capitol Complex and throughout the state relating to offenses and activities occurring on any property owned, leased, or operated by the State of West Virginia when undertaken at the request of the agency occupying

the property: *Provided*, That nothing in this article shall be construed as to obligate the director or the division to provide, or be responsible for providing, security at state facilities outside the Capitol Complex.

(b) The director shall establish a School Safety Unit within the Division of Protective Services. Officers shall be assigned to the School Safety Unit at the discretion of the director. The officers assigned to the School Safety Unit shall primarily be charged to make school safety inspections and to make recommendations to appropriate county school superintendents, principals, or other school administrators, regarding school safety. The officers assigned to the School Safety Unit shall also be authorized to respond to and investigate all school safety matters, in consultation with county boards of education: *Provided*, That any officer of the School Safety Unit shall have statewide jurisdiction and powers of general law enforcement and arrest for violations of law committed in their presence.

(c) Any officer of the division shall be certified as a law-enforcement officer by the Governor's Committee on Crime, Delinquency, and Correction or may be conditionally employed as a law-enforcement officer until certified in accordance with the provisions of §30-29-5 of this code.

(d) The director may:

(1) Employ necessary personnel, all of whom shall be classified exempt, assign them the duties necessary for the efficient management and operation of the division, and specify members who may carry, without license, weapons designated by the director;

(2) Contract for security and other services;

(3) Purchase equipment as necessary to maintain security at the Capitol Complex and other state facilities. The provisions of §5A-3-3 of this code do not apply to purchases made pursuant to this subdivision;

(4) Establish and provide standard uniforms, arms, weapons, and other enforcement equipment authorized for use by members of the division and shall provide for the periodic inspection of the uniforms and equipment. All uniforms, arms, weapons, and other property furnished to members of the division by the State of West Virginia is and remains the property of the state;

(5) Appoint security officers to provide security on premises owned or leased by the State of West Virginia;

(6) Consistent with the provisions in §15-2D-5 of this code, provide security for the Speaker of the House of Delegates, the President of the Senate, the Governor, or a justice of the Supreme Court of Appeals;

(7) Gather information from a broad base of employees at and visitors to the Capitol Complex to determine their security needs and develop a comprehensive plan to maintain and improve security at the Capitol Complex based upon those needs;

(8) Assess safety and security needs and make recommendations for safety and security at any proposed or existing state facility as determined by the Secretary of the Department of Homeland Security, upon request of the secretary of the department to which the facility is or will be assigned: *Provided*, That records of such assessments, and any other records determined by the Secretary of the Department of Homeland Security to compromise the safety and security at any proposed or existing state facility, including primary and secondary schools, are not public records and are not subject to disclosure in response to a Freedom of Information Act request under §29B-1-1 *et seq.* of this code; and

(9) Enter into an interagency agreement with the Secretary of the Department of Homeland Security and the Secretary of the Department of Administration, which delineates their respective rights and authorities under any contracts or subcontracts for security personnel. A copy of the interagency agreement shall be delivered to the Governor, the President of the Senate, and the

Speaker of the House of Delegates, and a copy shall be filed in the office of the Secretary of State and shall be a public record.

(e) The director shall:

(1) Propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code. The rules shall, at a minimum, establish ranks and the duties of officers within the membership of the division.

(2) Consistent with subsection (b) of this section, provide services to all public primary and secondary schools in furtherance of the purposes of the School Safety Unit: *Provided*, That the director may provide services to any private primary and secondary schools in the state upon request.

(3) Deliver a monthly status report to the Speaker of the House of Delegates and the President of the Senate.

(4) Require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol Complex, or who have access to sensitive or critical information, to have its employees submit to a fingerprint-based state and federal background inquiry through the state repository, and require a new employee who is employed to provide services on the grounds or in the building of the Capitol Complex to submit to an employment eligibility check through E-verify.

(i) After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol Complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol Complex for purposes of verifying compliance with this section.

(ii) All current service providers shall, within 90 days of the amendment and reenactment of this section by the 80th Legislature, ensure that all of its employees who are providing services on the grounds or in the buildings of the Capitol Complex or who have access to sensitive or critical information submit to a fingerprint-

based state and federal background inquiry through the state repository.

(iii) Any contract entered into, amended, or renewed by an agency or entity of state government with a service provider shall contain a provision reserving the right to prohibit specific employees thereof from accessing sensitive or critical information or to be present at the Capitol Complex based upon results addressed from a criminal background check.

(iv) For purposes of this section, the term "service provider" means any person or company that provides employees to a state agency or entity of state government to work on the grounds or in the buildings that make up the Capitol Complex or who have access to sensitive or critical information.

(v) In accordance with the provisions of Public Law 92-544 the criminal background check information will be released to the Director of the Division of Protective Services.

(5) Be required to provide his or her approval prior to the installation of any and all electronic security systems purchased by any state agency which are designed to connect to the division's command center.

(f) Effective July 1, 2017, the Director of Security and security officers of the Department of Arts, Culture, and History shall be made part of, and be under the supervision and direction of, the Division of Protective Services. Security for all Capitol Complex properties of the Department of Arts, Culture, and History shall be the responsibility of the Division of Protective Services.

CHAPTER 289

(S. B. 544 - By Senator Queen)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §24-2-1 of the Code of West Virginia, 1931, as amended, relating to increasing the power purchase agreement cap from 25 kW to 50kW for residential customers and from 500 kW to 1,000 kW for commercial customers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

(a) The jurisdiction of the commission extends to all public utilities in this state and includes any utility engaged in any of the following public services:

(1) Common carriage of passengers or goods, whether by air, railroad, street railroad, motor, or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by land, water, or air;

(2) Transportation of oil, gas, or water by pipeline;

(3) Transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline;

(4) Sleeping car or parlor car services;

(5) Transmission of messages by telephone, telegraph, or radio;

(6) Generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility;

(7) Supplying water, gas, or electricity by municipalities or others: *Provided*, That natural gas producers who provide natural gas service to not more than 25 residential customers are exempt from the jurisdiction of the commission with regard to the provisions of the residential service: *Provided, however*, That upon request of any of the customers of the natural gas producers, the commission may, upon good cause being shown, exercise authority as the commission may consider appropriate over the operation, rates, and charges of the producer and for the length of time determined proper by the commission: *Provided further*, That the provision of a solar photovoltaic energy facility located on and designed to meet only the electrical needs of the premises of a retail electric customer, the output of which is subject to a power purchase agreement (PPAs) with the retail electric customer, shall not constitute a public service, subject to the following conditions and limitations:

(i) PPAs must be 11 point font or larger;

(ii) The aggregate of all PPAs and net metering arrangements in the state for any utility shall not exceed three percent of the utility's aggregate customer peak demand in the state during the previous year;

(iii) There shall be individual customer on-site generator limits of designing the photovoltaic energy facility to meet only the electrical needs of the premises of the retail electric customer and which in no case shall exceed 50kW for residential customers, 1,000 kW for commercial customers, and 2,000 kW for industrial customers;

(iv) Customers who enter into PPAs relating to photovoltaic facilities are to notify the utility of its intent to enter into a transaction. In response, the utility shall notify within 30 days if any of the caps have been reached. If the utility does not respond

within 30 days, the generator may proceed and the caps will be presumed not to have been reached; and

(v) The Public Service Commission may promulgate rules to govern and implement the provisions of interconnections for PPAs, except the PSC does not have authority over the power rates for the arrangements between the on-site generator and the customer;

(8) Sewer systems servicing 25 or more persons or firms other than the owner of the sewer systems: *Provided*, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission, regardless of the number of customers served by the innovative, alternative method;

(9) Any public service district created under the provisions of §16-13A-1 *et seq.* of this code, except that the Public Service Commission has no jurisdiction over the provision of stormwater services by a public service district;

(10) Toll bridges located more than five miles from a toll-free bridge which crosses the same body of water or obstacle, wharves, ferries; solid waste facilities; and

(11) Any other public service.

(b) The jurisdiction of the commission over political subdivisions of this state providing separate or combined water and/or sewer services and having at least 4,500 customers and annual combined gross revenues of \$3 million or more that are political subdivisions of the state is limited to:

(1) General supervision of public utilities, as granted and described in §24-2-5 of this code;

(2) Regulation of measurements, practices, acts, or services, as granted and described in §24-2-7 of this code;

(3) Regulation of a system of accounts to be kept by a public utility that is a political subdivision of the state, as granted and described in §24-2-8 of this code;

(4) Submission of information to the commission regarding rates, tolls, charges, or practices, as granted and described in §24-2-9 of this code;

(5) Authority to subpoena witnesses, take testimony, and administer oaths to any witness in any proceeding before or conducted by the commission, as granted and described in §24-2-10 of this code; and

(6) Investigation and resolution of disputes between a political subdivision of the state providing wholesale water and/or wastewater treatment or other services, whether by contract or through a tariff, and its customer or customers, including, but not limited to, rates, fees, and charges, service areas and contested utility combinations: *Provided*, That any request for an investigation related to a dispute that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission of the political subdivision and the commission shall resolve the dispute within 120 days of filing. The 120-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the rates, fees, and charges or other information required by the commission is filed: *Provided, however*, That the disputed rates, fees, and charges fixed by the political subdivision providing separate or combined water and/or sewer services shall remain in full force and effect until set aside, altered, or amended by the commission in an order to be followed in the future.

(7) Customers of water and sewer utilities operated by a political subdivision of the state may bring formal or informal complaints regarding the commission's exercise of the powers enumerated in this section and the commission shall resolve these complaints: *Provided*, That any formal complaint filed under this section that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission complained of and the commission shall resolve the complaint

within 180 days of filing. The 180-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the matter complained of is filed by the political subdivision: *Provided, however*, That whenever the commission finds any regulations, measurements, practices, acts, or service to be unjust, unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or finds that any service is inadequate, or that any service which is demanded cannot be reasonably obtained, the commission shall determine and declare, and by order fix reasonable measurement, regulations, acts, practices or services, to be furnished, imposed, observed, and followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate, or otherwise in violation of this chapter, and shall make an order that is just and reasonable: *Provided further*, That if the matter complained of would affect rates, fees, and charges fixed by the political subdivision providing separate or combined water and/or sewer services, the rates, fees, or charges shall remain in full force and effect until set aside, altered, or amended by the commission in an order to be followed in the future.

(8) If a political subdivision has a deficiency in either its bond revenue or bond reserve accounts, or is otherwise in breach of a bond covenant, any bond holder may petition the Public Service Commission for any redress that will bring the accounts to current status or otherwise resolve the breached covenant. The commission has jurisdiction to fully resolve the alleged deficiency or breach.

(c) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the State of West Virginia;

(2) The area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial. The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility may charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

(d) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, for which the facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, is subject to §24-2-11c(e) through §24-2-11c(j) of this code as if the certificate of public convenience and necessity for the facility were a siting certificate issued under §24-2-11c of this code, and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(2) Any person, corporation, or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be designated prior to commercial operation of the facility, for which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission is subject to

§24-2-11c(e) through §24-2-11c(j) of this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(3) An owner or operator of an electric generating facility located in this state that had not been designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both sales at retail and sales at wholesale and that had been constructed and had engaged in commercial operation on or before July 1, 2003, is not subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility, regardless of whether the facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable federal law: *Provided*, That the owner or operator is subject to §24-2-1(d)(5) of this code if a material modification of the facility is made or constructed.

(4) Any person, corporation, or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that will generate electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both sales at retail and sales at wholesale and that had not been constructed and had not been engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been

issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code, and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(5) An owner or operator of an electric generating facility described in this subsection shall, before making or constructing a material modification of the facility that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof, obtain a siting certificate for the modification from the commission pursuant to the provisions of §24-2-11c of this code, in lieu of a certificate of public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of this code and, except for the provisions of §24-2-11c of this code, is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the modification.

(6) The commission shall consider an application for a certificate of public convenience and necessity filed pursuant to §24-2-11 of this code, to construct an electric generating facility described in this subsection or to make or construct a material modification of the electric generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the application for the certificate of public convenience and necessity was filed with the commission prior to July 1, 2003, and if the commission has not issued a final order as of that date.

(7) The limitations on the jurisdiction of the commission over, and on the applicability of the provisions of this chapter to, the owner or operator of an electric generating facility as imposed by and described in this subsection do not affect or limit the commission's jurisdiction over contracts or arrangements between the owner or operator of the facility and any affiliated public utility subject to the provisions of this chapter.

(e) The commission does not have jurisdiction of Internet protocol-enabled service or voice-over Internet protocol-enabled service. As used in this subsection:

(1) "Internet protocol-enabled service" means any service, capability, functionality, or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communication is voice, data, or video.

(2) "Voice-over Internet protocol service" means any service that:

(i) Enables real-time, two-way voice communications that originate or terminate from the user's location using Internet protocol or a successor protocol; and

(ii) Uses a broadband connection from the user's location.

(3) The term "voice-over Internet protocol service" includes any service that permits users to receive calls that originate on the public-switched telephone network and to terminate calls on the public-switched telephone network.

(f) Notwithstanding any other provisions of this article, the commission does not have jurisdiction to review or approve any transaction involving a telephone company otherwise subject to §24-2-12 and §24-2-12a of this code, if all entities involved in the transaction are under common ownership.

(g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power systems are most fairly and effectively regulated by the local governing body. Therefore, notwithstanding any other provisions of this article, the commission does not have jurisdiction over the setting or adjustment of rates, fees, and charges of municipal power systems. Further, the jurisdiction of the Public Service Commission over municipal power systems is limited to that granted specifically in this code.

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CHAPTER 290

**(Com. Sub. for H. B. 2817 - By Delegates Cannon, Linville,
Riley, Keaton, Shamblin and Chiarelli)**

[Passed March 7, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §24-2D-2 and §24-2D-3 of the Code of West Virginia, 1931, as amended, all relating to Public Service Commission jurisdiction over alternative fuel for motor vehicles; clarifying the definitions of alternative fuel and alternative fuel vehicles; limiting Public Service Commission jurisdiction over temporary electric charging locations for alternative fuel vehicles with movable generators, provided the temporary electric charging locations are at fairs, festivals, and other special events, at locations where the electric distribution grid has been adversely effected by emergencies or disasters, natural or otherwise; or at locations which facilitate evacuations from such emergencies or disasters, impending or otherwise; and making technical improvements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. ALTERNATIVE FUEL INITIATIVES.

§24-2D-2. Incentives for use of alternative fuels in new technologies.

(a) For purposes of this article, "alternative fuel" shall mean natural gas, methanol, propane, and electricity, and "alternative fuel vehicles" shall mean motor vehicles whose primary source of fuel is natural gas, methanol, propane, or electricity.

(b) Upon a finding that it is in the public interest of this state to authorize the same, as provided in section one, article one of this chapter, the Public Service Commission shall authorize ratemaking

allowances for public utilities to encourage the use of alternative fuel in new demonstration technologies, including alternative fuel vehicles, which provide incentives to encourage investments in such technologies.

§24-2D-3. Limitation on commission jurisdiction over sales by nonutilities of alternative fuel for certain purposes, limitations on jurisdiction for temporary electric charging of alternative fuel motor vehicles.

(a) Notwithstanding any provision of this chapter to the contrary, the Public Service Commission shall have no jurisdiction over the ultimate sale by nonutilities of alternative fuel to be utilized solely as fuel for motor vehicles.

(b) Notwithstanding any provision of this chapter to the contrary, persons or entities generating electricity for retail sale for alternative fuel vehicles at temporary electric charging locations using movable generators are not public utilities and the Public Service Commission shall have no jurisdiction thereover: *Provided*, That the temporary electric charging locations are: (1) at fairs, festivals, and other special events; (2) at locations where the electric distribution grid has been adversely effected by emergencies or disasters, natural or otherwise; or (3) at locations which facilitate evacuations from such emergencies or disasters, impending or otherwise.

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CHAPTER 291

(Com. Sub. for H. B. 2865 - By Delegate Westfall)

[Passed March 11, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §24-2H-4, §24-2H-5, §24-2H-6, and §24-2H-8 of the Code of West Virginia, 1931, as amended, all relating to clarifying that the Public Service Commission may enter an order in a distressed or failing utility case requiring corrective measures up to and including an acquisition by an acquiring utility; providing the Commission shall provide the list of potentially unstable water and wastewater utilities to the West Virginia Rural Water Association; providing the Commission staff shall publish annually, by hyperlink, the list of potentially unstable water and wastewater utilities on the commission's homepage; providing that eligibility of a utility to receive state grant funding and federal grant funding in a similar manner as the distressed utility is a factor in determining whether a utility is a capable proximate utility; providing that petitions filed with the commission include factual data supporting the justification for the utility to be considered as a distressed or failing utility; providing that high water loss or unaccounted for water cannot be the sole evidence of a distressed or failing utility; and clarifying that an acquiring utility becomes such only after approval of the necessary operating agreement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2H. POWER OF COMMISSION TO ORDER MEASURES UP TO AND INCLUDING THE ACQUISITION OF DISTRESSED AND FAILING WATER AND WASTEWATER UTILITIES.

§24-2H-4. Preparation of list of potentially unstable water and wastewater utilities.

Annually, at least by November 1, the commission shall prepare a list of water and wastewater utilities that appear to be financially unstable by reviewing annual reports, rate case filings and other financial data available to it. Commission staff shall contact each utility placed on the list and provide advice and assistance in resolving any financial instability or managerial or operational issues that are contributing to the utility's financial instability. The commission shall provide the list of potentially unstable water and wastewater utilities to the West Virginia Rural Water Association. Commission staff shall publish annually, by hyperlink, the list of potentially unstable water and wastewater utilities on the commission's homepage no later than November 1.

§24-2H-5. Determination of whether a utility qualifies as a "distressed utility", "failing utility", or a "capable proximate utility".

(a) In determining whether a utility is distressed or failing, the commission shall consider the following factors:

(1) The financial, managerial, and technical ability of the utility;

(2) The level of expenditures necessary to make improvements to the water or wastewater utility to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety, or reasonableness of utility service and the impact of those expenditures on customer rates;

(3) The opinion and advice, if any, of the Department of Environmental Protection and the Bureau for Public Health as to steps that may be necessary to assure compliance with applicable statutory or regulatory standards concerning the adequacy, efficiency, safety, or reasonableness of utility service;

(4) The status of the utility's bond payments and other financial obligations;

(5) The status and result of any corrective measures previously put into place under §24-2H-7 of this code; and

(6) Any other relevant matter.

(b) In determining whether a utility is a capable proximate utility, the commission shall consider the following factors:

(1) The financial, managerial, and technical ability of all proximate public utilities providing the same type of service;

(2) Expansion of the franchise or operating area of the acquiring utility to include the service area of the distressed utility;

(3) The financial, managerial, operational, and rate demands that may result from the current proceeding and the cumulative impact of other demands where the utility has been identified as a capable proximate utility; and

(4) Eligibility of the capable proximate utility to receive state grant funding and federal grant funding in a similar manner as the distressed utility; and

(5) Any other relevant matter.

§24-2H-6. Notice to distressed or failing utility and formal proceeding.

(a) A proceeding under this article may be initiated by the commission on its own motion, or by the staff of the commission, or any other person or entity having a legal interest in the financial, managerial, or operational condition of the utility, by filing a petition with the commission that includes all of the factual data supporting the justification for the utility to be considered as a distressed or failing utility that the petitioner has available to them at the time of filing: *Provided*, That high water loss or unaccounted for water shall not be considered the sole evidence of a distressed or failing utility. In any such petition, the utility shall be named as the respondent. The commission shall include, as additional parties, any capable proximate public and private utilities that may be able to acquire the utility.

(b) The commission shall hold evidentiary and public hearing(s) in a location in or within 25 miles of the utility's service area. The commission shall give reasonable notice of the time, place, and subject matter of the hearing as follows:

(1) Issuance of a press release;

(2) Written notice by certified mail or registered mail to:

(A) The utility;

(B) The Consumer Advocate Division;

(C) Capable proximate public or private utility or utilities that were made parties to the proceeding; and

(D) The county commission if the utility is a public service district; or

(E) The municipality if the utility is owned and operated by the municipality.

(3) The utility shall give notice to its customers of the time, place, and subject matter of the hearing either as a bill insert or printed on its monthly bill statement as ordered by the commission.

(c) The public hearing shall be conducted to receive public comments, including, but not limited to, comments regarding possible options available to bring the distressed or failing utility into compliance with appropriate statutory and regulatory standards concerning actual or imminent public health problems or unreasonable quality and reliability service standards. At the evidentiary hearing, the commission shall receive evidence to determine if the utility is a distressed or failing utility and whether a capable proximate utility should acquire the utility. If there is more than one capable proximate utility, then sufficient evidence should be presented to allow the commission to determine the appropriate capable proximate utility to acquire the distressed or failing utility.

§24-2H-8. Commission approval of operating agreement, acquisition price; rates for distressed and failing utilities; improvement plan; debt obligations; cost recovery.

(a) After an order has been entered pursuant to §24-2H-7 of this code, the distressed utility and another acquiring public utility shall file a petition with the commission under §24-2-12 of this code to approve the necessary operating agreement if such alternative is directed by the commission. After an order has been entered pursuant to §24-2H-7 of this code, the failing utility and acquiring utility shall file a petition with the commission under §24-2-12 of this code, to approve the purchase price of the acquisition. Where the parties are unable to agree on an acquisition price, the filing may request that an evidentiary hearing be held so that the commission may determine the acquisition price and any other issues related to the acquisition. The acquisition price must, at a minimum, satisfy all outstanding loans, tax obligations, required grant repayment, liens, and indebtedness owed by the failing utility or the acquiring utility must agree to assume the indebtednesses if legally permitted. The acquiring utility shall consult with the lenders or lienholders regarding payment in full or the assumption, to the extent legally permissible, of any outstanding obligations of the failing utility.

(b) The parties to an acquisition may propose to the commission other methods of determining the acquisition price.

(c) As part of the proceeding, the acquiring utility may propose to the commission that it be permitted for a reasonable period of time after the date of acquisition, to charge and collect rates from the customers of the failing utility pursuant to a separate tariff, which may be higher or lower than the existing tariff of the distressed or failing utility, or may allow a surcharge on both the acquired and existing customers. A separate tariff or rate filing must be made by the acquiring utility before the commission will consider any increase in rates or allow a surcharge to be placed on the acquiring utility's acquired or existing ratepayers.

(d) As part of this proceeding, the acquiring utility shall submit to the commission for approval a plan, including a timetable for

bringing the failing utility into compliance with applicable statutory and regulatory standards, including, but not limited to, plans for regionalization. The acquiring utility shall have previously obtained the approval of the plan from the Department of Environmental Protection and the Bureau for Public Health, as applicable, and those agencies are directed to use their full discretion in working towards long-term solutions that will support compliance. The failing utility shall cooperate with the acquiring utility in negotiating agreements with state and federal agencies, including, but not limited to, negotiation of hold harmless agreements, consent orders or enforcement moratoria during any period of remediation. In addition, the failing utility shall cooperate with the acquiring utility in obtaining the consent of the failing utility's and the acquiring utility's bondholder(s) to the acquisition. The acquiring utility must present to the commission as part of its financing plan, documentation on how the failing utility's indebtedness will be paid or assumed.

(e) A nonprofit acquiring public utility may seek grant funding from the Distressed Utilities Account established pursuant to §31-15A-9(i) of this code to repair, maintain, and replace the distressed water and wastewater utilities facilities as needed. The reasonably and prudently incurred costs of the acquiring utility shall be recoverable in rates as provided in §24-2H-9 of this code.

(f) If the distressed or failing utility is a public service district, then the commission shall make a recommendation to the respective county commission(s) with regard to the acquisition of distressed or failing utilities as provided in §16-13A-2(a)(2) of this code. If the distressed or failing utility is a municipal corporation, then the commission shall make a recommendation to the respective municipal council with regard to the acquisition of distressed or failing utilities as provided in §8-12-17 of this code.

(g) The capable proximate utility may propose one or more of the cost recovery methods or incentives set forth in §24-2H-9 of this code as part of its petition for approval from the commission.

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CHAPTER 292

(Com. Sub. for H. B. 2870 - By Delegate Westfall)

[Passed March 7, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §24-2-11c of the Code of West Virginia, 1931, as amended, relating generally to siting certificates for certain electric generating facilities; correcting code cross references.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11c. Siting certificates for certain electric generating facilities or material modifications thereof.

(a) Notice of an application for a siting certificate required under the provisions of subdivisions (1), (2), (3), (4), and (5), subsection (d), section one of this article shall be given as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, with the publication area being each county in which all or a portion of the facility is located or to be located. Such notice shall also be published as a Class I legal advertisement in a newspaper published each weekday in Kanawha County and circulated both within and outside of Kanawha County. If no substantial protest is received within thirty days after the publication of notice, the commission may waive formal hearing on the application.

(b) The commission shall render its decision within three hundred days of the date of filing of an application for a siting certificate. If no decision is rendered within such time period, the commission shall issue a siting certificate as applied for.

(c) In deciding whether to issue, refuse to issue, or issue in part and refuse to issue in part a siting certificate, the commission shall appraise and balance the interests of the public, the general interests of the state and local economy, and the interests of the applicant. The commission may issue a siting certificate only if it determines that the terms and conditions of any public funding or any agreement relating to the abatement of property taxes do not offend the public interest, and the construction of the facility or material modification of the facility will result in a substantial positive impact on the local economy and local employment. The commission shall issue an order that includes appropriate findings of fact and conclusions of law that address each factor specified in this subsection. All material terms, conditions and limitations applicable to the construction and operation of the proposed facility or material modification of the facility shall be specifically set forth in the commission order.

(d) The commission may require an applicant for a siting certificate to provide such documents and other information as the commission deems necessary for its consideration of the application.

(e) If the commission issues the siting certificate, the commission shall have continuing jurisdiction over the holder of the siting certificate for the limited purposes of: (1) Considering future requests by the holder for modifications of or amendments to the siting certificate; (2) considering and resolving complaints related to the holder's compliance with the material terms and conditions of the commission order issuing the siting certificate, whether or not the complainant was a party to the case in which the siting certificate was issued, which complaints shall be filed, answered, and resolved in accordance with the commission's procedures for resolving formal complaints; and (3) enforcing the material terms and conditions of a commission order as provided in subsection (f) of this section.

(f) If the commission determines, in a proceeding instituted on its own motion or on the motion of any person, that the holder of a siting certificate has failed without reasonable justification to comply with any of the material terms and conditions of a

commission order issuing a siting certificate, modifying or amending a siting certificate, or resolving a complaint related to compliance of the holder with the material terms and conditions of a siting certificate, the commission may enforce the material terms and conditions of the commission order: (1) By requiring the holder to show cause why it should not be required so to comply; (2) through a proceeding seeking the imposition of a civil penalty not to exceed \$5,000 or criminal penalties as provided in §24-4-4 of this code, or both such civil and criminal penalties, and the imposition of either or both such civil penalty and criminal penalties shall be subject to the provisions of §24-4-8 of this code; (3) by mandamus or injunction as provided in section two of this article; or (4) prior to the completion of construction of the proposed facility or prior to the completion of construction of a material modification of the facility, by the suspension or revocation of the siting certificate, including the preliminary suspension of the siting certificate under the standards applicable to circuit courts of this state for the issuance of preliminary injunctions.

(g) Any person may seek to compel compliance with the material terms and conditions of a commission order issuing, modifying or amending a siting certificate, or resolving a complaint related to the holder's compliance with the material terms and conditions a siting certificate through appropriate proceedings in any circuit court having jurisdiction.

(h) The material terms and conditions of a commission order issuing, modifying or amending a siting certificate or resolving a complaint related to the holder's compliance with the material terms and conditions of a commission order issuing a siting certificate shall continue to apply to any transferee of the siting certificate or to any transferee of all or a portion of the ownership interest in an electric generating facility for which a siting certificate has been issued. In either case, the transferee or original holder of the siting certificate shall be subject to the continuing jurisdiction of the commission to the extent provided in subsections (e) and (f) of this section.

(i) Any party feeling aggrieved by a final order of the commission under this section may petition for a review thereof by the Supreme Court of Appeals pursuant to section one, article five of this chapter.

(j) The commission may prescribe such rules as may be necessary to carry out the provisions of this section in accordance with the provisions of §24-1-7 of this code. Such rules may include and provide for an application fee to be charged an applicant for a siting certificate, or for a modification of, or amendment to, a siting certificate previously issued, under the provisions of this section, which fee shall be paid into the State Treasury and kept in a special fund designated Public Service Commission fund as established in §24-3-6(a) of this code, to be used for the purposes set forth in that subsection.

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CHAPTER 293

**(Com. Sub. for H. B. 3308 - By Delegates Criss, Hardy,
Householder, Storch, Ferrell, Howell, Reynolds, Anderson,
Gearheart, Zatezalo and Espinosa)**

[Passed February 28, 2023; in effect from passage.]
[Approved by the Governor on March 11, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §24-2-4h and §24-2-21a, all relating to the authority of the Public Service Commission; authorizing the Public Service Commission of West Virginia to consider and authorize the recovery of certain costs by certain utilities through the issuance of consumer rate relief bonds; providing legislative findings; providing definitions; providing application process for financing order authorizing the recovery of certain costs; requiring certain information in application for financing order; providing for issuance of financing order and information contained therein; allowing for disposition of consumer rate relief property; providing for the effect and term of financing order; providing for subsequent Public Service Commission proceedings and limits on commission authority; providing for duties of certain utilities; providing for application of adjustment mechanism and filing of schedules with commission; providing for nonbypassability of consumer rate relief changes; providing consequences and procedures for utility default; providing for requirements and obligations of successors to certain utilities; providing for security interest in consumer rate relief property and transfer and sale of same; providing for limitation on taxation of consumer rate relief charges and exemption thereto; providing that consumer rate relief bonds are not debt of governmental entities or a pledge of taxing power; providing utility consumer rate relief bonds as legal investment; providing for certain pledge of state; providing for governing

law; providing for severability and non-utility status; providing for continued viability of certain bonds; and requiring that utilities must obtain consent and approval from the Public Service Commission prior to retiring, abandoning, closing, or otherwise permanently rendering incapable of operating certain plants or units.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4h. Utility consumer rate relief bonds.

(a) *Legislative findings.* — The Legislature hereby finds and declares as follows:

(1) That alternative financing mechanisms, as authorized in §24-2-4e and §22-2-4f of this code have heretofore been narrow exceptions to the general rate-making mechanisms available to the commission in carrying out the regulation of public utilities subject to its jurisdiction.

(2) That in 2005, the Legislature authorized an exception applicable to environmental control bonds, which was strictly limited to financing the construction and installation of emission control equipment at electric-generating facilities in the state under certain specific conditions.

(3) That in 2012, the Legislature authorized an exception applicable to consumer rate relief bonds, which was strictly limited to financing or refinancing expanded net energy costs of electric utilities under certain specific conditions.

(4) That the alternative financing arrangements approved by the commission and implemented pursuant to §24-2-4e and §24-2-4f of this code have proven to be highly effective in mitigating the rate impacts upon affected utility customers in the limited situations previously authorized.

(5) That, since the value of alternative financing mechanisms and the benefits which they can provide to the consumers of public utility services in the state have been demonstrated, the commission should be empowered to employ alternative financing mechanisms for an expanded set of eligible costs to be securitized, subject to the procedural protections provided herein.

(b) *Definitions.* — As used in this section:

(1) "Adjustment mechanism" means a formula-based mechanism for making adjustments to consumer rate relief charges to correct for over-collection or under-collection of such charges or otherwise to ensure the timely and complete payment and recovery of such charges and financing costs. The adjustment mechanism shall accommodate: (i) Standard adjustments to consumer rate relief charges that are limited to relatively stable conditions of operations; and (ii) nonstandard adjustments to consumer rate relief charges that are necessary to reflect significant changes from historical conditions of operations, such as the loss of significant electrical load. The adjustment mechanism is not to be used as a means to authorize the issuance of consumer rate relief bonds in a principal amount greater, or the payment or recovery of eligible costs to be securitized in an amount greater, than that which was authorized in the financing order which established the adjustment mechanism.

(2) "Ancillary agreement" means a bond insurance policy letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement or other similar agreement or arrangement entered into in connection with the issuance of consumer rate relief bonds that is designed to promote the credit quality and marketability of the bonds or to mitigate the risk of an increase in interest rates.

(3) "Assignee" means a person, corporation, limited liability company, trust, partnership or other entity to which an interest in consumer rate relief property is assigned, sold, or transferred, other than as security. The term also includes any entity to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to consumer rate relief property.

(4) "Bond" includes debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued by an electric utility or an assignee under a final financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance eligible costs to be securitized and that are secured by or payable from revenues from consumer rate relief charges.

(5) "Bondholder" means any holder or owner of a consumer rate relief bond.

(6) "Commission" means the Public Service Commission of West Virginia, as it may be constituted from time to time, and any successor agency exercising functions similar in purpose thereto.

(7) "Consumer rate relief charges" means the amounts which are authorized by the commission in a financing order to be collected from a qualifying utility's customers in order to pay and secure the debt service payments of consumer rate relief bonds and associated financing costs.

(8) "Consumer rate relief costs" means those costs, including financing costs, which are to be defrayed through consumer rate relief charges.

(9) "Consumer rate relief property" means the property, rights, and interests of a qualifying utility or an assignee under a final financing order, including the right to impose, charge, and collect the consumer rate relief charges that shall be used to pay and secure the payment of consumer rate relief bonds and financing costs, and including the right to obtain adjustments to those charges, and any revenues, receipts, collections, rights to payment, payments, moneys, claims, or other proceeds arising from the rights and interests created under the final financing order.

(10) "Eligible costs to be securitized" means historical and, if deemed appropriate by the commission, projected costs and investments, including financing costs, carrying charges on under-recovery balances, and costs incurred prior to the effective date of

this section, which have been authorized for recovery by an order of the commission, whether or not subject to judicial appeal, relating to: (i) environmental control costs; (ii) expanded net energy costs; (iii) storm recovery costs; and (iv) undepreciated generation utility plant balances, as such terms are defined in this section.

(11) "Environmental control costs" means costs and investments incurred or expected to be incurred by a qualifying utility to comply with the Coal Combustion Rule and the Electric Effluent Limitation Guidelines established by the United States Environmental Protection Agency.

(12) "Expanded net energy costs" means costs and investments incurred or expected to be incurred by a qualifying utility and adjudicated pursuant to the commission's expanded net energy cost proceedings.

(13) "Financing costs" means any of the following:

(A) Principal, interest, and redemption premiums that are payable on consumer rate relief bonds;

(B) A payment required under an ancillary agreement;

(C) An amount required to fund or replenish a reserve account or another account established under an indenture, ancillary agreement, or other financing document relating to consumer rate relief bonds or the payment of any return on the capital contribution approved by the commission to be made by a qualifying utility to an assignee;

(D) Costs of retiring or refunding an existing debt and equity securities of a qualifying utility in connection with the issuance of consumer rate relief bonds but only to the extent the securities were issued for the purpose of financing eligible costs to be securitized;

(E) Costs incurred by a qualifying utility to obtain modifications of or amendments to an indenture, financing agreement, security agreement, or similar agreement or instrument

relating to an existing secured or unsecured obligation of the utility in connection with the issuance of consumer rate relief bonds;

(F) Costs incurred by a qualifying utility to obtain a consent, release, waiver, or approval from a holder of an obligation described in paragraph (E) of this subdivision that are necessary to be incurred for the utility to issue or cause the issuance of consumer rate relief bonds;

(G) Taxes, franchise fees, or license fees imposed on consumer rate relief charges;

(H) Costs related to issuing or servicing consumer rate relief bonds or related to obtaining a financing order, including servicing fees and expenses, trustee fees and expenses, legal fees and expenses, administrative fees, placement fees, underwriting fees, capitalized interest and equity, rating-agency fees, and other related costs authorized by the commission in a financing order; and

(I) Costs that are incurred by the commission for a financial adviser with respect to consumer rate relief bonds.

(14) "Financing order" means an order issued by the commission under subsection (e) of this section that authorizes a qualifying utility to issue consumer rate relief bonds and recover consumer rate relief charges. A financing order may set forth conditions or contingencies on the effectiveness of the relief authorized therein and may grant relief that is different from that which was requested in the application.

(15) "Final financing order" means a financing order that has become final and has taken effect as provided in subdivision (10), subsection (e) of this section.

(16) "Financing party" means either of the following:

(A) A trustee, collateral agent, or other person acting for the benefit of any bondholder; or

(B) A party to an ancillary agreement, the rights and obligations of which relate to or depend upon the existence of

consumer rate relief property, the enforcement and priority of a security interest in consumer rate relief property, the timely collection and payment of consumer rate relief charges or a combination of these factors.

(17) "Financing statement" has the same meaning as in §46-9-102 of this code.

(18) "Nonbypassable" means that the payment of consumer rate relief charges as authorized by the commission for each customer, customer class, and special contract customer may not be avoided by any West Virginia retail customer of a qualifying utility or its successors and must be paid by any such customer that receives service from such utility or its successors for as long as the consumer rate relief bonds are outstanding.

(19) "Nonutility affiliate" means, with respect to any utility, a person that: (i) Is an affiliate of the utility as defined in 42 U.S.C. §16451(1); and (ii) is not a public utility that provides retail utility service to customers in the state within the meaning of §24-1-2 of this code.

(20) "Parent" means, with respect to a utility, a registered holding company or other person that holds a majority ownership or membership interest in the utility.

(21) "Qualifying utility" means a public utility engaged in the sale of electric service to retail customers in West Virginia which has applied for and received from the commission a final financing order under this section, including an affiliated electric utility which has applied jointly for and received such an order.

(22) "Registered holding company" means, with respect to a utility, a person that is: (i) A registered holding company as defined in 42 U.S.C. §16451(8); and (ii) an affiliate of the utility as defined in 42 U.S.C. §16451(1).

(23) "Regulatory sanctions" means, under the circumstances presented, a regulatory or ratemaking sanction or penalty that the commission is authorized to impose pursuant to this chapter or any proceeding for the enforcement of any provision of this chapter or

any order of the commission that the commission is authorized to pursue or conduct pursuant to this chapter, including without limitation: (i) The initiation of any proceeding in which the utility is required to show cause why it should not be required to comply with the terms and conditions of a financing order or the requirements of this section; (ii) the imposition of penalties pursuant to §24-4-1, *et seq.* of this code; and (iii) a proceeding by mandamus, injunction, or other appropriate proceeding as provided in §24-2-2 of this code.

(24) "Storm recovery costs" means expenses and investments incurred by a qualifying utility arising from or related to any major storm, extraordinary weather-related event or natural disaster, including costs of mobilization, staging, construction, reconstruction, repair, or replacement of production, generation, transport, transmission, distribution, or general facilities.

(25) "Successor" means, with respect to an entity, another entity that succeeds by operation of law to the rights and obligations of the first legal entity pursuant to any bankruptcy, reorganization, restructuring, or other insolvency proceeding, any merger, acquisition, or consolidation, or any sale or transfer of assets, regardless of whether any of these occur as a result of a restructuring of the electric power industry or otherwise.

(26) "Undepreciated generation utility plant balances" means any unrecovered capitalized costs of or undepreciated investments in one or more fossil-fired electric generating plants having nameplate capacity in excess of 1,000 megawatts each, and related supply, transmission, equipment, and fixtures. Undepreciated generation utility plant balances shall include (i) the net book value of assets on the qualifying utility's balance sheet related to such generating plants and related infrastructure, and (ii) carrying costs authorized by the commission: *Provided*, That (A) all costs of removing retired generating plant assets; (B) all capitalized costs and investments in fossil-fired electric generating plants and related supply, transmission, equipment, and fixtures incurred or made by a qualifying utility on or after December 31, 2022; and (C) all non-cash asset retirement obligation assets and related

accumulated depreciation, shall each be specifically excluded from the calculation of undepreciated generation utility plant balances.

(c) Application for financing order.

(1) If a public utility or affiliate obtains from the commission an authorization or waiver required by any other provision of this chapter or by commission order with respect to eligible costs to be securitized, a utility, or two or more affiliated utilities engaged in the delivery of utility service to customers in this state, may apply to the commission for a financing order that authorizes the following:

(A) The issuance of consumer rate relief bonds, in one or more series, to recover only those eligible costs to be securitized;

(B) The imposition, charging, and collection of consumer rate relief charges, in accordance with the adjustment mechanism approved by the commission under §24-2-4h(e)(5)(E) of this code, to recover sufficient amounts to pay and secure the debt service payments of consumer rate relief bonds and associated financing costs; and

(C) The creation of consumer rate relief property under the financing order.

(2) No utility shall be required to file an application for a financing order under this section or otherwise utilize the alternative financing mechanisms authorized by this section.

(d) Information required in application for financing order.

The application shall include all of the following:

(1) A description and quantification of the eligible costs to be securitized that the utility seeks to recover through the issuance of consumer rate relief bonds;

(2) An estimate of the date each series of consumer rate relief bonds is expected to be issued;

(3) The expected term during which the consumer rate relief costs for each series of consumer rate relief bonds are expected to be recovered;

(4) An estimate of the financing costs associated with the issuance of each series of consumer rate relief bonds;

(5) An estimate of the amount of consumer rate relief charges necessary to recover the consumer rate relief costs set forth in the application and the calculation for that estimate, which calculation shall take into account the estimated date or dates of issuance and the estimated principal amount of each series of consumer rate relief bonds;

(6) A proposed methodology for allocating consumer rate relief charges between and within tariff schedules and to special contract customers;

(7) A description of a proposed adjustment mechanism, reflecting the allocation methodology in subdivision (6) of this subsection;

(8) A description of the benefits to the qualifying utility's customers that are expected to result from the issuance of the consumer rate relief bonds, including a demonstration that the bonds and their financing costs are just and reasonable and are reasonably expected to achieve the lowest reasonably attainable cost in order to produce cost savings to customers and to mitigate rate impacts on customers, as compared to traditional financing mechanisms or traditional cost-recovery methods available to the qualifying utility; and

(9) Other information required by commission rules.

(e) *Issuance of financing order.*

(1) Except as otherwise provided in this section, proceedings on an application submitted by a utility under subsection (c) of this section are governed by the commission's standard procedural rules. Any party that participated in a proceeding in which the subject eligible costs to be securitized were authorized or approved

automatically has standing to participate in the financing order proceedings and the commission shall determine the standing or lack of standing of any other petitioner for party status.

(2) Within 30 days after the filing of an application under subsection (c) of this section, the commission shall issue a scheduling order for the proceeding.

(3) At the conclusion of proceedings on an application submitted by a utility under subsection (c) of this section, the commission shall issue either a financing order granting the application, in whole or with modifications, or an order denying the application.

(4) The commission may issue a financing order under this subsection if the commission finds that the issuance of the consumer rate relief bonds and the consumer rate relief charges authorized by the order are just and reasonable and are reasonably expected to achieve the lowest reasonably attainable cost in order to produce cost savings to customers and to mitigate rate impacts on customers, as compared to traditional financing mechanisms or traditional cost-recovery methods available to the qualifying utility.

(5) The commission shall include all of the following in a financing order issued under this subsection:

(A) A determination of the maximum amount and a description of the eligible costs to be securitized that may be recovered through consumer rate relief bonds issued under the financing order;

(B) A description of consumer rate relief property, the creation of which is authorized by the financing order;

(C) A description of the financing costs that may be recovered through consumer rate relief charges and the period over which those costs may be recovered;

(D) A description of the methodology and calculation for allocating consumer rate relief charges between and within tariff schedules and to special contract customers;

(E) A description and approval of the adjustment mechanism for use in the imposition, charging, and collection of the consumer rate relief charges, including: (i) The allocation referred to in paragraph (D) of this subdivision; and (ii) any specific requirements for adjusting and reconciling consumer rate relief charges for standard adjustments that are limited to relatively stable conditions of operations and nonstandard adjustments that are necessary to reflect significant changes from historical conditions of operations, such as the loss of substantial utility load, so long as each and every application of the adjustment mechanism is designed to assure the full and timely payment of consumer rate relief bonds and associated financing costs;

(F) The maximum term of the consumer rate relief bonds;

(G) A finding that the issuance of the consumer rate relief bonds, including financing costs, is just and reasonable and are reasonably expected to achieve the lowest reasonably attainable cost in order to produce cost savings to customers and to mitigate rate impacts on customers, as compared to traditional financing mechanisms or traditional cost-recovery methods available to the qualifying utility; and

(H) Any other provision the commission considers appropriate to ensure the full and timely imposition, charging, collection, and adjustment, pursuant to an approved adjustment mechanism, of the consumer rate relief charges, including, if applicable, rate adjustments or sur-credits, effective with the implementation of consumer rate relief charges, to reduce tariff rates by the amounts of revenue requirements related to securitized costs that are recovered in current tariff rates but which will be recovered through the securitization approved by the commission.

(6) To the extent the commission deems appropriate and compatible with the issuance advice letter procedure under subdivision (9) of this subsection, the commission, in a financing order, shall afford the qualifying utility flexibility in establishing the terms and conditions for the consumer rate relief bonds to accommodate changes in market conditions, including repayment schedules, interest rates, financing costs, collateral requirements,

required debt service and other reserves, and the ability of the qualifying utility, at its option, to effect a series of issuances of consumer rate relief bonds and correlated assignments, sales, pledges, or other transfers of consumer rate relief property. Any changes made under this subdivision to terms and conditions for the consumer rate relief bonds shall be in conformance with the financing order.

(7) A financing order shall provide that the creation of consumer rate relief property shall be simultaneous with the sale of that property to an assignee as provided in the application and the pledge of the property to secure consumer rate relief bonds.

(8) The commission, in a financing order, shall require that, after the final terms of each issuance of consumer rate relief bonds have been established, and prior to the issuance of those bonds, the qualifying utility shall determine the resulting initial consumer rate relief charges in accordance with the adjustment mechanism described in the financing order. These consumer rate relief charges shall be final and effective upon the issuance of the consumer rate relief bonds, without further commission action.

(9) Because the actual structure and pricing of the consumer rate relief bonds will not be known at the time the financing order is issued, in the case of every securitization approved by the commission, the qualifying utility which intends to cause the issuance of such bonds will provide to the commission and the commission's financial adviser, if any, prior to the issuance of the bonds, an issuance advice letter following the determination of the final terms of the bonds. The issuance advice letter shall indicate the final structure of the consumer rate relief bonds and provide the best available estimate of total ongoing costs. The issuance advice letter should report the initial consumer rate relief charges and other information specific to the consumer rate relief bonds to be issued, as the financing order may require. The qualifying utility may proceed with the issuance of the consumer rate relief bonds unless, prior to noon on the fourth business day after the commission receives the issuance advice letter, the commission issues a disapproval letter directing that the bonds as proposed shall not be issued and the basis for that disapproval. The financing order

may provide such additional provisions relating to the issuance advice letter process as the commission deems appropriate.

(10) If a qualified utility issues consumer rate relief bonds pursuant to a financing order from the commission, any determination of the commission made in connection with such financing order issued pursuant to this subsection, including a determination that certain costs constitute eligible costs to be securitized, is binding and a final order of the commission. Any party aggrieved by the issuance of any such order may petition for suspension and review thereof by the Supreme Court of Appeals, but only pursuant to §24-5-1, *et seq.* of this code. In the case of a petition for suspension and review, the Supreme Court of Appeals shall proceed to hear and determine the action as expeditiously as practicable and give the action precedence over other matters not accorded similar precedence by law.

(11) The financing order shall also provide for a procedure requiring the qualifying utility to adjust its rates or provide credits in a manner that would return to customers any overpayments resulting from the securitization for the eligible costs to be securitized in excess of actual prudently incurred costs as subsequently determined by the commission. However, the adjustment mechanism may not affect or impair the consumer rate relief property or the right to impose, collect, or adjust the consumer rate relief charges under this section.

(12) The commission may require, as a condition to the effectiveness of the financing order but in every circumstance subject to the limitations set forth in subdivision (3), subsection (g) of this section, that the qualifying utility give appropriate assurances to the commission that the qualifying utility and its parent will abide by the following conditions during any period in which any consumer rate relief bonds issued pursuant to a financing order are outstanding, in addition to any other obligation either may have under this code or federal law. Without first obtaining the prior consent and approval of the commission, the qualifying utility will not:

(A) Lend money, directly or indirectly, to a registered holding company or a nonutility affiliate; or

(B) Guarantee the obligations of a registered holding company or a nonutility affiliate.

(13) A financing order may require the qualifying utility to file with the commission a periodic report showing the receipt and disbursement of proceeds of consumer rate relief bonds and consumer rate relief charges. A financing order may authorize the staff of the commission to review and audit the books and records of the qualifying utility relating to the receipt and disbursement of such proceeds. The provisions of this subdivision do not limit the authority of the commission under this chapter to investigate the practices of the qualifying utility or to audit the books and records of the qualifying utility.

(14) In the case of two or more affiliated utilities that have jointly applied for a financing order as provided in subdivision (1), subsection (c) of this section, a financing order may authorize each affiliated utility to impose consumer rate relief charges on its customers and to cause to be issued consumer rate relief bonds and to receive and use the proceeds which it receives with respect thereto as provided in subdivision (1), subsection (j) of this section.

(15) The commission, in its discretion, may engage the services of a financial adviser for the purpose of assisting the commission in its consideration of an application for a financing order and a subsequent issuance of consumer rate relief bonds pursuant to a financing order.

(f) *Allowed disposition of consumer rate relief property.*

(1) The consumer rate relief property created in a final financing order may be transferred, sold, conveyed, or assigned to any affiliate of the qualifying utility created for the limited purpose of acquiring, owning, or administering that property, issuing consumer rate relief bonds under the final financing order or a combination of these purposes.

(2) All or any portion of the consumer rate relief property may be pledged to secure the payment of consumer rate relief bonds, amounts payable to financing parties and bondholders, amounts payable under any ancillary agreement and other financing costs.

(3) A transfer, sale, conveyance, assignment, grant of a security interest in or pledge of consumer rate relief property by a qualifying utility to an affiliate of the utility, to the extent previously authorized in a financing order, does not require the prior consent and approval of the commission under §24-2-12 of this code.

(4) The consumer rate relief property constitutes an existing, present property right, notwithstanding that the imposition, charging, and collection of consumer rate relief charges occurs in the future or depends on the qualifying utility or successors continuing to deliver retail electric service or continuing to perform servicing functions relating to the billing and collection of consumer rate relief charges or that the level of future energy consumption may change. That property exists regardless of whether the consumer rate relief charges have been billed, have accrued or have been collected and notwithstanding any requirement that the value or amount of the property is dependent on the future provision of service to customers by the qualifying utility.

(5) All such consumer rate relief property continues to exist until the consumer rate relief bonds issued under the final financing order are paid in full and all financing costs relating to the bonds have been paid in full.

(g) Final financing order to remain in effect.

(1) A final financing order remains in effect until the consumer rate relief bonds issued under the final financing order and all financing costs related to the bonds have been paid in full.

(2) A final financing order remains in effect and unabated, notwithstanding the bankruptcy, reorganization or insolvency of the qualifying utility, or any affiliate of the qualifying utility, or the

commencement of any judicial or nonjudicial proceeding on the final financing order.

(3) A final financing order is irrevocable and the commission may not impair, postpone, or terminate the consumer rate relief charges authorized in the final financing order or impair the property or the collection or recovery of consumer rate relief costs.

(h) *Subsequent commission proceeding.*

Upon petition, or upon its own motion, the commission may commence a proceeding and issue a subsequent financing order that provides for retiring and refunding consumer rate relief bonds issued under the final financing order if the commission finds that the subsequent financing order satisfies all of the requirements of subsection (e) of this section and does not violate the terms of the consumer rate relief bonds issued under the prior financing order. Effective on retirement of the refunded consumer rate relief bonds and the issuance of new consumer rate relief bonds, the commission shall adjust the related consumer rate relief charges accordingly.

(i) *Limits on commission authority.*

(1) The commission, in exercising its powers and carrying out its duties regarding regulation and ratemaking, may not do any of the following:

(A) Consider consumer rate relief bonds issued under a final financing order to be the debt of the qualifying utility;

(B) Consider the consumer rate relief charges imposed, charged or collected under a final financing order to be revenue of the qualifying utility; or

(C) Consider the consumer rate relief costs or financing costs authorized under a final financing order to be costs of the qualifying utility.

(2) The commission may not order or otherwise require, directly or indirectly, a qualifying utility to use consumer rate relief bonds to finance the recovery of eligible costs to be securitized.

(3) The commission may not refuse to allow the recovery of eligible costs to be securitized solely because a utility has elected or may elect to finance those costs through a financing mechanism other than the issuance of consumer rate relief bonds.

(4) If a qualifying utility elects not to finance such costs through the issuance of consumer rate relief bonds as authorized in a final financing order, those costs may be recovered as authorized by the commission previously or in subsequent proceedings: *Provided*, That previous findings and determinations made by the commission in a financing order related to those costs are not binding on the commission in such subsequent proceeding.

(5) Notwithstanding the foregoing, but without limiting the final and binding nature of any financing order of the commission issued pursuant to this subsection, nothing herein restricts the authority of the commission to limit cost recovery to just and reasonable costs that are prudently incurred, to require deferral of regulatory assets, and/or to determine capital structure and costs as the commission determines are prudent, just, and reasonable.

(j) *Duties of qualifying utility.*

(1) A qualifying utility shall cause the proceeds which it receives with respect to consumer rate relief bonds issued pursuant to a financing order to be used for the recovery of the eligible costs to be securitized which occasioned the issuance of the bonds, including the retirement of debt and/or equity of the qualifying utility which was incurred to finance or refinance such costs and for no other purpose.

(2) A qualifying utility shall annually provide a plain-English explanation of the consumer rate relief charges approved in the financing order, as modified by subsequent issuances of consumer rate relief bonds authorized under the financing order, if any, and by application of the adjustment mechanism as provided in

subsection (k) of this section. These explanations may be made by bill inserts, website information or other appropriate means as required, or as approved if proposed by the qualifying utility, by the commission.

(3) Collected consumer rate relief charges shall be applied solely to the repayment of consumer rate relief bonds and other financing costs.

(4) The failure of a qualifying utility to apply the proceeds which it receives with respect to an issuance of consumer rate relief bonds in a reasonable, prudent and appropriate manner or otherwise comply with any provision of this section does not invalidate, impair, or affect any financing order, consumer rate relief property, consumer rate relief charges, or consumer rate relief bonds. Subject to the limitations set forth in subsection (g) of this section, nothing in this subdivision prevents or precludes the commission from imposing regulatory sanctions against a qualifying utility for failure to comply with the terms and conditions of a financing order or the requirements of this section.

(k) Application of adjustment mechanism; filing of schedules with commission.

(1) A qualifying utility shall file with the commission, and the commission shall approve, with or without such modification as is allowed under this subsection, at least annually, or more frequently as provided in the final financing order, a schedule applying the approved adjustment mechanism to the consumer rate relief charges authorized under the final financing order, based on estimates of demand and consumption for each tariff schedule and special contract customer and other mathematical factors. The qualifying utility shall submit with the schedule a request for approval to make the adjustments to the consumer rate relief charges in accordance with the schedule.

(2) On the same day a qualifying utility files with the commission its calculation of the adjustment, it shall cause notice of the filing to be given, in the form specified in the financing order, as a Class I legal advertisement in compliance with the provisions

of §59-3-1, *et seq.* of this code in a newspaper of general circulation published each weekday in Kanawha County. This publication is only required if the calculation of the adjustment filed by the utility with the commission would result in an increase in the amount of the consumer rate relief charges.

(3) The commission's review of a request for a standard adjustment is limited to a determination of whether there is a mathematical error in the application of the adjustment mechanism to the consumer rate relief charges. No hearing is required for such an adjustment. Each standard adjustment to the consumer rate relief charges, in an amount as calculated by the qualifying utility but incorporating any correction for a mathematical error as determined by the commission, automatically becomes effective 15 days following the date on which the qualifying utility files with the commission its calculation of the standard adjustment.

(4) If the commission authorizes a nonstandard adjustment procedure in the financing order, and the qualifying utility files for such an adjustment, the commission shall allow interested parties 30 days from the date the qualifying utility filed the calculation of a nonstandard adjustment to make comments. The commission's review of the total amount required for a nonstandard adjustment shall be limited to the mathematical accuracy of the total adjustment needed to assure the full and timely payment of all debt service costs and related financing costs of the consumer rate relief bonds. The commission may also determine the proper allocation of those costs within and between classes of customers and to special contract customers, the proper design of the consumer rate relief charges and the appropriate application of those charges under the methodology set forth in the formula-based adjustment mechanism approved in the financing order. If the commission determines that a hearing is necessary, the commission shall hold a hearing on the comments within 40 days of the date the qualifying utility filed the calculation of the nonstandard adjustment. The nonstandard adjustment, as modified by the commission, if necessary, shall be approved by the commission within 60 days and the commission may shorten the filing and hearing periods above in the financing order to ensure this result. Any procedure for a

nonstandard adjustment must be consistent with assuring the full and timely payment of debt service of the consumer rate relief bonds and associated financing costs.

(5) No adjustment approved or deemed approved under this section affects the irrevocability of the final financing order as specified in subdivision (3), subsection (g) of this section.

(l) *Nonbypassability of consumer rate relief charges.*

(1) As long as consumer rate relief bonds issued under a final financing order are outstanding, the consumer rate relief charges authorized under the final financing order are nonbypassable and apply to and must be paid by all existing and future customers that receive electric service within the qualifying utility's geographic service territory notwithstanding any change in West Virginia law regarding the ability of retail customers of an electric utility to choose a provider of generation or transmission service from a party other than the qualifying utility in the future.

(2) The consumer rate relief charges shall be collected by the qualifying utility or the qualifying utility's successors, or a collection agent, in full through a charge that is separate and apart from the qualifying utility's base rates.

(m) *Utility default.*

(1) If a qualifying utility defaults on a required payment of consumer rate relief charges collected, a court, upon application by an interested party, or the commission, upon application to the commission or upon its own motion, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the consumer rate relief charges collected for the benefit of bondholders, assignees and financing parties. The order remains in full force and effect notwithstanding a bankruptcy, reorganization, or other insolvency proceedings with respect to the qualifying utility or any affiliate thereof.

(2) Customers of a qualifying utility shall be held harmless by the qualifying utility for its failure to remit any required payment of consumer rate relief charges collected but such failure does not

affect the consumer rate relief property or the rights to impose, collect, and adjust the consumer rate relief charges under this section.

(3) Consumer rate relief property under a final financing order and the interests of an assignee, bondholder, or financing party in that property under a financing agreement are not subject to set off, counterclaim, surcharge, or defense by the qualifying utility or other person, including as a result of the qualifying utility's failure to provide past, present, or future services, or in connection with the bankruptcy, reorganization, or other insolvency proceeding of the qualifying utility, any affiliate, or any other entity.

(n) *Successors to qualifying utility.*

A successor to a qualifying utility is bound by the requirements of this section. The successor shall perform and satisfy all obligations of the electric utility under the final financing order in the same manner and to the same extent as the qualifying utility including the obligation to collect and pay consumer rate relief charges to the person(s) entitled to receive them. The successor has the same rights as the qualifying utility under the final financing order in the same manner and to the same extent as the qualifying utility.

(o) *Security interest in consumer rate relief property.*

(1) Except as provided in subdivisions (3) through (5) of this subsection, the creation, perfection, priority and, to the extent set forth herein, enforcement of a security interest or lien in consumer rate relief property, including to secure the repayment of the principal of and interest on consumer rate relief bonds, amounts payable under any ancillary agreement and other financing costs, are governed by this section and not §46-9-1, *et seq.* of this code or other law.

(2) The description of the consumer rate relief property in a transfer or security agreement and a financing statement is sufficient only if the description refers to this section and the final financing order creating the property. This section applies to all

purported transfers of, and all purported grants of liens on or security interests in, that property, regardless of whether the related transfer or security agreement was entered into, or the related financing statement was filed, before or after the effective date of this section.

(3) A security interest in consumer rate relief property under a final financing order is created, valid, and binding when the applicable security agreement is executed and delivered and value is received for the consumer rate relief bonds.

(4) The security interest attaches without any physical delivery of collateral or other act and upon the filing of the financing statement with the Office of the Secretary of State. The security interest is valid, binding, and perfected against all parties, including those having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a transfer of an interest in the consumer rate relief property is perfected against, absolute and free from the claims of all parties having competing claims of any kind, including claims of other lien creditors or claims of the seller or creditors of the seller, whether or not supported by any prior judicial or other lien, other than creditors holding a prior security interest, ownership interest, or assignment in the property previously perfected in accordance with this subsection.

(5) The Secretary of State shall maintain any financing statement filed under this subsection in the same manner that the secretary maintains financing statements filed by utilities under §49-9-1, *et seq.* of this code. The filing of a financing statement under this subsection is governed by the provisions regarding the filing of financing statements in §46-9-1, *et seq.* of this code. However, a person filing a financing statement under this subsection is not required to file any continuation statements to preserve the perfected status of its security interest.

(6) A security interest in consumer rate relief property under a final financing order is a continuously perfected security interest and has priority over any other security interest or lien, created by

operation of law, contract or otherwise, that may by agreement of the holder of such security interest in consumer rate relief property or otherwise purportedly subsequently attach to that property or those rights or interests, unless the holder of any such security interest has agreed in writing otherwise.

(7) The priority of a security interest in consumer rate relief property is not affected by commingling with other amounts, and continues when any consumer rate relief property is collected and deposited in a cash or deposit account of the qualifying utility or other deposit account that contains other funds. Any other security interest that may by agreement of the holder of the security interest in consumer rate relief property apply to such consumer rate relief property shall be terminated when the funds are transferred to a segregated account for an assignee or a financing party with respect to such consumer rate relief property.

(8) No application of the adjustment mechanism as described in subsection (k) of this section affects the creation, validity, perfection, or priority of a security interest in or the transfer of consumer rate relief property under the final financing order.

(p) Transfer, sale, or assignment of consumer rate relief property.

(1) A sale, assignment or transfer of consumer rate relief property under a final financing order is an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title and interest in, to and under the property, if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an interest in that property may be created only when all of the following have occurred:

(A) The financing order has become final and taken effect;

(B) The documents evidencing the transfer of the property have been executed and delivered to the assignee; and

(C) Value has been received for the property.

(2) The characterization of the sale, assignment or transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser shall be effective and perfected against all third parties and is not affected or impaired by, among other things, the occurrence of any of the following:

(A) Commingling of collected consumer rate relief charges with other amounts;

(B) The retention by the seller of any of the following:

(i) A partial or residual interest, including an equity interest, in the consumer rate relief property, whether direct or indirect, or whether subordinate or otherwise;

(ii) The right to recover costs associated with taxes, franchise fees or license fees imposed on the collection of consumer rate relief charges;

(iii) Any recourse that the purchaser or any assignee may have against the seller;

(iv) Any indemnification rights, obligations, or repurchase rights made or provided by the seller;

(v) The obligation of the seller to collect consumer rate relief charges on behalf of an assignee;

(vi) The treatment of the sale, assignment or transfer for tax, financial reporting, or other purposes; or

(vii) Any application of the adjustment mechanism under the final financing order.

(q) *Taxation of consumer rate relief charges; consumer rate relief bonds not debt of governmental entities or a pledge of taxing powers.*

(1) The imposition, billing, collection, and receipt of consumer rate relief charges under this section are exempt from state income, sales, franchise, gross receipts, business and occupation, and other

taxes or similar charges: *Provided*, That neither this exemption nor any other provision of this subsection shall preclude any municipality from taxing consumer rate relief charges under the authority granted to municipalities pursuant to §8-13-5 and §8-13-5a of this code.

(2) Consumer rate relief bonds issued under a final financing order do not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state. Bondholders have no right to have taxes levied by this state or the taxing authority of any county, municipality, or any other political subdivision of this state for the payment of the principal of or interest on the bonds. The issuance of consumer rate relief bonds does not, directly, indirectly, or contingently, obligate this state or a county, municipality, or political subdivision of this state to levy a tax or make an appropriation for payment of the principal of or interest on the bonds.

(r) *Consumer rate relief bonds as legal investments.* Any of the following may legally invest any sinking funds, moneys, or other funds belonging to them or under their control in consumer rate relief bonds:

(1) The state, the West Virginia Investment Management Board, the West Virginia Housing Development Fund, municipal corporations, political subdivisions, public bodies, and public officers except for members of the Public Service Commission;

(2) Banks and bankers, savings and loan associations, credit unions, trust companies, building and loan associations, savings banks and institutions, deposit guarantee associations, investment companies, insurance companies and associations, and other persons carrying on a banking or insurance business, including domestic for life and domestic not for life insurance companies; and

(3) Personal representatives, guardians, trustees, and other fiduciaries.

This subsection shall not limit other persons authorized to invest in consumer rate relief bonds from making such investments.

(s) *Pledge of state.*

(1) The state pledges to and agrees with the bondholders, assignees, and financing parties under a final financing order that the state will not take or permit any action that impairs the value of consumer rate relief property under the final financing order or revises the consumer rate relief costs for which recovery is authorized under the final financing order or, except as allowed under subsection (k) of this section, reduce, alter, or impair consumer rate relief charges that are imposed, charged, collected, or remitted for the benefit of the bondholders, assignees and financing parties, until any principal, interest and redemption premium in respect of consumer rate relief bonds, all financing costs and all amounts to be paid to an assignee or financing party under an ancillary agreement are paid or performed in full.

(2) A person who issues consumer rate relief bonds is permitted to include the pledge specified in subdivision (1) of this subsection in the consumer rate relief bonds, ancillary agreements, and documentation related to the issuance and marketing of the consumer rate relief bonds.

(t) *West Virginia law governs; this section controls.*

(1) The law governing the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of consumer rate relief property under a final financing order, the creation of a security interest in any such property, consumer rate relief charges, or final financing order are the laws of this state as set forth in this section.

(2) This section controls in the event of a conflict between its provisions and any other law regarding the attachment, assignment, or perfection, the effect of perfection or priority of any security interest in or transfer of consumer rate relief property under a final financing order.

(u) *Severability.*

If any provision of this section or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity does not affect the Constitutionality or validity of any other provision of this section or its application or validity to any person, circumstance or transaction, including, without limitation, the irrevocability of a financing order issued pursuant to this section, the validity of the issuance of consumer rate relief bonds, the imposition of consumer rate relief charges, the transfer or assignment of consumer rate relief property or the collection and recovery of consumer rate relief charges. To these ends, the Legislature hereby declares that the provisions of this section are intended to be severable and that the Legislature would have enacted this section even if any provision of this section held to be unconstitutional or invalid had not been included in this section.

(v) *Non-utility status.*

An assignee or financing party is not a public utility or person providing utility service by virtue of engaging in the transactions with respect to consumer rate relief bonds.

(w) *Continuing validity of consumer rate relief bonds issued pursuant to §24-2-4f of this code and related matters.*

Notwithstanding any provisions of this section to the contrary, all consumer rate relief bonds issued pursuant to §24-2-4f of this code shall remain in full force and effect according to their terms and in accordance with the final financing order pursuant to which such bonds were issued and the laws of this state in existence at the time such bonds were issued. Further, all consumer rate relief charges and consumer rate relief property associated with any consumer rate relief bonds issued pursuant to §24-2-4f of this code shall not be affected by any provision of this section and all such consumer rate relief charges and consumer rate relief property shall be governed by the applicable final financing order pursuant to which the corresponding consumer rate relief bonds were issued and the law of this state in existence at the time such bonds were issued. No provision of this section shall affect any interest in the

consumer rate relief property or the continuing validity of a security interest in consumer rate relief property associated with any consumer rate relief bonds issued pursuant to §24-2-4f of this code.

§24-2-21a. Commission authority required when closing an electric generating plant and circumstances of closure in another jurisdiction.

(a) A public electric utility may not retire, abandon, close, or otherwise permanently render incapable of operating, any electric generating plant or unit without the prior consent and approval of the commission.

(b) If an electric utility serving customers in both West Virginia and in an area not subject to the jurisdiction of the commission is ordered to cease operations of a generating plant or unit by the regulating authority of the other jurisdiction and the costs of the plant or unit had been shared through an allocation process for rate making purposes and after a commission proceeding and determination that a generating plant or unit should continue to operate, then the utility shall recover all of the capital, operating and maintenance costs of the electric generation plant or unit from its West Virginia customers to the extent that such costs are no longer allocable to the other jurisdiction, and all of the associated capacity, energy, and environmental attributes shall be assigned to its customers and operations in West Virginia.

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CHAPTER 294

(H. B. 3428 - By Delegate Howell)

[Passed March 2, 2023; in effect from passage.]

[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §24-2-1n of the Code of West Virginia, 1931, as amended, relating to the West Virginia Business Ready Sites Program; establishing the West Virginia Business Ready Sites Program as a permanent program; authorizing industrial development agencies to recommend required criteria for utility service to certain industrial development sites; giving Public Service Commission discretion to certify sites based on required criteria for utility service; providing for public utilities that can meet required criteria to apply to Public Service Commission for a certain plan to provide utility services to industrial development sites; waiving public hearing on proposed rate change for utility service to industrial development sites if no substantial opposition is received; eliminating the cap on the number of industrial development sites that may be designated by the Public Service Commission; eliminating certain requirements that industrial development sites be apportioned geographically amongst West Virginia's congressional districts; and eliminating the sunset provision of the West Virginia Business Ready Sites Program.

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.

(a) The Legislature finds and declares that:

(1) Presently, West Virginia's available industrial sites lack competitiveness with industrial sites in surrounding states due in part to the lack of presently constructed, adequate utility infrastructure serving sites having industrial potential;

(2) Having construction-ready industrial sites with adequately developed utility infrastructure will increase the state's potential to attract new industrial projects to the state and advance the state's economic development efforts;

(3) Incentivizing utilities to construct adequate public utility infrastructure and provide services to sites identified as having industrial potential will increase the likelihood that such sites are developed; and

(4) Responsibly increasing the number of industrial sites with adequate and fully developed utility services is in the public interest of the state.

(b) Definitions. – For the purpose of this section:

"Industrial Development Agency" means any individual, incorporated organization, foundation, association, private incorporated entity, or agency to whose members or shareholders no profit inures, which has as its primary function the promotion, encouragement, and development of industrial, commercial, manufacturing, and tourist enterprises or projects in this state;

"Industrial Development Site" means a land development containing a minimum of 50 contiguous acres that is identified by the secretary as having potential for industrial development and that does not currently have adequate public utility services from one or more public utilities regulated by the Public Service Commission;

"Secretary" means the Secretary of the Department of Commerce; and

"Utility" means electricity, natural gas, water, or sewage service provided by a public utility regulated by the Public Service Commission.

(c) The secretary shall administer a program known hereafter as "The West Virginia Business Ready Sites Program" for the purpose of promoting economic development in certain areas of the state by facilitating the construction of utility infrastructure necessary to increase the attractiveness of such sites for industrial development within the state.

(d) An industrial development agency may identify a potential industrial development site and apply to the secretary for approval of the site as an industrial development site, including recommendations as to any required criteria for utility service to the site.

(e) Upon receipt of the application, the secretary shall determine whether the potential industrial development site has the attributes to accomplish the public purposes of this section; and, upon determining that the site has such attributes, the secretary may certify the site as an industrial development site subject to, at his or her discretion, all or some of the identified required criteria for utility service and communicate such certification to the Public Service Commission.

(f) After the Public Service Commission receives the certification described in subsection (e) of this section, public utilities that are able to meet the required criteria, if any, may file with the Public Service Commission an application for a multi-year comprehensive plan for infrastructure development to construct public utility infrastructure and provide services to industrial development sites. Subject to commission review and approval, a plan may be amended and updated by the public utility as circumstances warrant. The recovery of costs in support of the plans shall be allowed in the manner set forth in this section if the proposed plans have been found to be prudent and useful.

(g) The application submitted to the Public Service Commission under subsection (e) of this section is in lieu of a proceeding, pursuant to §24-2-11 of this code, and shall contain the following:

(1) A description of the infrastructure program, in such detail as the Public Service Commission prescribes, and the projected annual amount in approximate line sizes and feet, general location, type, and projected installation timing of the facilities that the applicant proposes to replace, construct, or improve;

(2) The projected net cost, on an annual basis, of the replacement, construction, or improvements;

(3) The projected start date for the infrastructure program;

(4) The projected numbers of potential new customers that may be served by the infrastructure program and the projected annual demand for public utility services of the customers;

(5) The projected debt for the infrastructure program funding and the projected capital structure for infrastructure program funding;

(6) A proposed full and timely cost recovery mechanism consistent with this section; and

(7) Other information the applicant considers relevant, or the Public Service Commission requires.

(h) Upon filing of the application, the applicant shall publish, in the form the Public Service Commission directs, which form shall include, but not be limited to, 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 in compliance with the provisions of §59-3-1 *et seq.* of this code, the publication area to be each county in which service is provided by the public utility, a notice of the filing of the application, and that the commission shall hold a hearing on the application within 90 days of the notice; unless no substantial opposition to the rate change is received by the commission within one week of the proposed hearing date, in which case the hearing can be waived, and issue a final order within 150 days of the application filing date.

(i) Upon notice and hearing, if required by the Public Service Commission, the commission shall approve the infrastructure program and allow expedited recovery of costs related to the expenditures, as provided in subsection (i) of this section, if the commission finds that the expenditures and the associated rate requirements are just, reasonable, and are not contrary to the public interest.

(j) Upon Public Service Commission approval, utilities will be authorized to implement the infrastructure programs and to recover related incremental costs, net of contributions to recovery of return, operation, and maintenance, depreciation and tax expenses directly attributable to the infrastructure program served by the infrastructure program investments, if any, as provided in the following:

(1) An allowance for return shall be calculated by applying a rate of return to the average planned net incremental increase to rate base attributable to the infrastructure program for the coming year, considering the projected amount and timing of expenditures under the infrastructure program plus any expenditures in previous years of the infrastructure program. The rate of return shall be determined by utilizing the rate of return on equity authorized by the Public Service Commission in the public utility's most recent rate case proceeding or in the case of a settled rate case, a rate of return on equity as determined by the commission, and the projected cost of the public utility's debt during the period of the infrastructure program to determine the weighted cost of capital based upon the public utility's capital structure.

(2) Income taxes applicable to the return allowed on the infrastructure program shall be calculated at the statutory tax rate for inclusion in rates.

(3) Incremental operation and maintenance, depreciation, and property tax expenses directly attributable to the infrastructure program shall be estimated for the upcoming year.

(4) Following Public Service Commission approval of its infrastructure program, a public utility shall place into effect rates

that include an increment that recovers the allowance for return, related income taxes at the statutory rate, operation and maintenance, depreciation, and property tax expenses associated with the public utility's estimated infrastructure program investments for the upcoming year, net of contributions to recovery of those incremental costs provided by new customers served by the infrastructure program investments, if any. In each year subsequent to the order approving the infrastructure program and the incremental cost recovery increment, the public utility shall file a petition with the Public Service Commission setting forth a new proposed incremental cost recovery increment based on investments to be made in the subsequent year, plus any under-recovery or minus any over-recovery of actual incremental costs attributable to the infrastructure program investments, for the preceding year.

(5) The facilities installed in an application approved by the Public Service Commission shall be considered used and useful as of the date of construction expenditure for rate recovery.

(k) The public utility may make any accounting accruals necessary to establish a regulatory asset or liability through which actual incremental costs incurred and costs recovered through the rate mechanism are tracked.

(l) Utilities may defer incremental operation and maintenance expenditures attributable to regulatory and compliance-related requirements introduced after the public utility's last rate case proceeding and not included in the public utility's current rates. In a future rate case, the Public Service Commission may allow recovery of the deferred costs amortized over a reasonable period of time to be determined by the commission provided the commission finds that the costs were reasonable and prudently incurred and were not reflected in rates in prior rate cases.

(m) The provisions of this section are effective upon passage.

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CHAPTER 295

**(Com. Sub. for H. B. 3042 - By Delegates Pinson, Crouse,
Foster, C. Pritt, Fast, Ridenour, Burkhammer, Kirby,
Mallow, Worrell and Martin)**

[Passed February 28, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §35-1A-1, all relating to forbidding excessive government limitations on exercise of religion; forbidding government from treating religious conduct more restrictively than any conduct of reasonably comparable risk; forbidding government from treating religious conduct more restrictively than comparable conduct because of alleged economic need or benefit; ensuring that, in all cases where state action is alleged to substantially burden the exercise of religion, that a compelling interest test is mandated, and strict scrutiny is applied; providing remedies; and addressing applicability and construction.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. EQUAL PROTECTION FOR RELIGION ACT.

§35-1A-1. Government limitations related to the exercise of religion.

(a) Notwithstanding any other provision of law, no state action may:

(1) Substantially burden a person's exercise of religion unless applying the burden to that person's exercise of religion in a particular situation is essential to further a compelling

governmental interest; and is the least restrictive means of furthering that compelling governmental interest; nor

(2) Treat religious conduct more restrictively than any conduct of reasonably comparable risk; nor

(3) Treat religious conduct more restrictively than comparable conduct because of alleged economic need or benefit.

(b) (1) A person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, in violation of this article may assert such violation or impending violation, including against the state or its political subdivisions, as a claim or as a defense in any judicial or administrative proceeding: *Provided*, That relief is limited to injunctive or declaratory relief and reimbursement of costs and reasonable attorney fees.

(2) Nothing in this article may be construed to create a cause of action by an employee against a nongovernmental employer; nor may anything in this article be construed to constitute a defense to any claim based upon a refusal to provide emergency medical services as required by the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd; nor may anything in this article be construed to protect actions or decisions to end the life of any human being, born or unborn, including, but limited to, any claim or defense arising out of a violation of §16-2F-1 et seq., §16-2I-1 et seq., §16-2M-1 et seq., §16-2O-1, §16-2P-1, §16-2Q-1, §16-2R-1 et seq., §16-5-22, §30-1-26, §33-42-8, or §61-2-8 of this code.

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CHAPTER 296

(Com. Sub. for S. B. 258 - By Senators Trump and Deeds)

[Passed March 10, 2023; in effect 90 days from passage (June 8, 2023)]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §46B-2-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §46B-3-8 of said code, all relating to the elimination of the maximum fair market value ceiling on consumer goods subject to the regulation of rent-to-own agreements provided for in this article; and permitting a dealer to require a security deposit for those items.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. FORMATION AND CONSTRUCTION OF AGREEMENTS FOR THE RENTAL OF CONSUMER GOODS.

§46B-2-1 Statute of Frauds.

(a) A rental agreement is not enforceable by a dealer by way of action or defense unless there is a writing, signed by both the dealer or his or her agent or employee and the consumer, sufficient to indicate that a rent-to-own agreement has been made between the parties, reasonably identifying and describing the consumer goods to be rented. Any purported rent-to-own agreement entered into without a written agreement may be voided by the consumer, who may return the consumer goods and be refunded all amounts previously paid to the dealer under the purported rental agreement.

(b) A rental agreement is not enforceable by a dealer against a consumer unless the written agreement contains all disclosures required by the provisions of this chapter, and unless a copy of the

written agreement is delivered to the consumer contemporaneously with the execution of the written agreement. Any written agreement executed by a consumer which does not comply with the requirements of this subsection may be voided by the consumer.

ARTICLE 3. DEFAULT.

§46B-3-8. Prohibitions for rent-to-own transactions.

No dealer may:

(1) Require any initial payment in any transaction except the payment for the first rental period, deposit fee, taxes, insurance or delivery fees and other disclosed fees or fees authorized by this chapter;

(2) Charge any fee at the time ownership of the consumer goods passes to the consumer, other than an applicable fee, if any, which actually is or will be paid to public officials for perfecting title or ownership in the consumer;

(3) Raise the amount of any payment or charge after the execution of the written agreement without both parties voluntarily entering into a second written agreement;

(4) Take any action to collect a payment which is prohibited by this chapter;

(5) Accept any cosigner other than a person who is in the household of the consumer and who is expected to use the consumer goods;

(6) Take any security interest in any property owned by the consumer;

(7) Require a damage waiver, insurance or form of insurance, insuring the consumer goods against loss or damage, unless the dealer requires such insurance for all goods of comparable type and value in every rent-to-own agreement;

(8) Require damage waiver from a particular insurer;

(9) Seek to collect any charge not authorized by this chapter and disclosed in a written agreement; or

(10) Have an initial period which is more than one week longer than any other rental period.

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CHAPTER 297

**(Com. Sub. for H. B. 3214 - By Delegates Capito, Riley,
Williams, Young, Storch and Jennings)**

[Passed March 10, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2A-25, relating to creating the Road Optimization and Assessment Data Pilot Program; setting forth legislative findings and purpose; requiring the Commissioner of Highways to implement the program; specifying assessment methods and term of program; and requiring reporting by the Division of Highways.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-25. Road optimization and assessment data pilot program; legislative findings and purposes; reporting.

(a) The Legislature hereby finds and declares that:

(1) Properly maintained roads are important to the economic and industrial growth and development of the state and to the health, education, welfare, and prosperity of the state's residents;

(2) Roads that are not well-maintained because of potholes, patching, cracking, road shoulder issues, canopy brush, or drainage issues do not contribute to the health, education, welfare, and prosperity of the residents of this state;

(3) Data is and has been collected by the West Virginia Division of Highways for purposes of an overall assessment and evaluation of road maintenance; and

(4) The purpose of this section is to create a pilot program to study alternative, advanced methods of assessing the conditions of the roads that will lead to improved processes of addressing road maintenance needs.

(b) The Road Optimization and Assessment Data (ROAD) Pilot Program is hereby created. The Commissioner of Highways shall develop and implement the pilot program concerning the collection of data and the overall assessment of the conditions of the paved roads of the state and the repairs and maintenance required to ensure well-maintained roads. The pilot program shall include a combination of urban and rural roads, using Monongalia County and Preston County as the test areas for this pilot program and, to the broadest extent feasible:

(1) Use existing assessments in the pilot counties to teach the program;

(2) Incorporate machine learning (ML), artificial intelligence (AI), or other advanced technologies to assess state roads;

(3) Use Global Positioning System (GPS) data or geotagging, including high accuracy precision GPS, to indicate road geometry and curvature;

(4) Use laser measuring systems, including video, that are capable of longitudinal profiling, identifying and measuring of cracks, pavement distress, potholes, patching, road shoulder issues, canopy brush, and drainage issues;

(5) Use video for road imagery as well as canopy brush and drainage documentation;

(6) Use a reflectometer system to check the reflectivity of painted lines;

(7) Utilize post-data capture processing to create a baseline for road condition assessment based on standards of the Division of Highways and the ASTM D6433-11 Standard Practice for Roads and Parking Lots Pavement Condition Index Surveys; and

(8) Incorporate the data gathered pursuant to this section within the Division of Highways' existing pavement management system, or an alternative machine learning or artificial intelligence system in order to improve predictive analysis of roads and to guide in the performance of preventive maintenance for roads rather than reactive maintenance.

(c) The commissioner shall provide for the data capturing and processing pursuant to this section at intervals determined by the commissioner to adequately collect and assess data for maintenance purposes: *Provided*, That data capturing and processing shall occur at least twice during the pilot project. The data shall compare the changes in road conditions, such as deterioration of roads from previous conditions, average daily traffic, and heavy truck traffic if such information is available.

(d) The term of this pilot program is five years. At the conclusion of year two and year four of the pilot program, and at the conclusion of the pilot program, the commissioner shall report to the Joint Legislative Oversight Commission on Department of Transportation Accountability on the steps taken to implement the pilot program, identify the technologies used in the pilot program, outline the data collected through the pilot program, identify costs of the pilot program, summarize any improvements in road maintenance and pavement management processes that may be realized through the pilot program, and make recommendations concerning improvements to and continuation of the pilot program.

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CHAPTER 298

(Com. Sub. for H. B. 2346 - By Delegate Toney)

[Passed March 9, 2023; in effect July 1, 2023.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-4-15a, relating to retired bus operators as substitutes in areas of critical need and shortage.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-15a. Employment of retired bus operators as substitutes in areas of critical need and shortage.

(a) The Legislature hereby finds and declares that due to a shortage of qualified substitute bus operators a compelling state interest exists in expanding the use of retired bus operators to provide service as substitute bus operators in an area of critical need and shortage.

(b) The Legislature further finds and declares that this shortage is significant and overarching, and in order to comply with §18-5-13(f)(1) of this code, this need supersedes any preclusion of modification of rights codified in §18-7A-28e of this code.

(1) For the purposes of this subsection: “Area of critical need and shortage for substitute bus operators” means that the number of available qualified substitute bus operators in the county who are not retired and are available and willing to accept substitute bus operator assignments is insufficient to meet the projected need for qualified substitute bus operators.

(2) A person receiving retirement benefits under §18-7A-1 *et seq.* of this code, or who is entitled to retirement benefits during the fiscal year in which that person retired, may accept employment as a critical need substitute bus operator for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled, subject to satisfaction of the following conditions:

(A) The county board adopts a policy recommended by the superintendent to address a critical need and shortage for substitute bus operators;

(B) The superintendent of the county board submits the policy to the State Board of Education for approval in the first year of its utilization. After initial approval by the State Board of Education, the county board must annually renew the policy at the local level and provide confirmation to the State Board of Education of its intent to utilize the policy in the subsequent year;

(C) The policy sets forth the critical need and shortage for substitute bus operators in the county in accordance with the definition of area of critical need and shortage for substitute bus operators as provided in subdivision (1) of this subsection;

(D) The policy provides for the employment of retired bus operators as critical need substitute bus operators during the school year on an expanded basis in areas of critical need and shortage for substitute bus operators as provided in this subsection;

(E) The policy provides that a retired bus operator may be employed as a substitute bus operator in an area of critical need and shortage for substitute bus operators on an expanded basis as provided in this subsection only when no other qualified bus operator who is not retired is available and accepts the substitute assignment; and

(F) Prior to employment of a retired bus operator as a critical need substitute bus operator beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board, the superintendent of the affected county

submits to the state board in a form approved by the Consolidated Public Retirement Board and the state board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired bus operators as substitutes to address its critical need and shortage, the name or names of the person or persons to be employed as a critical need substitute pursuant to the policy, the date that the person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. Upon verification of compliance with this section and the eligibility of the critical need substitute bus operator for employment beyond the post-retirement limit, the state board shall submit the affidavit to the Consolidated Public Retirement Board.

(3) Any person who retires and begins work as a critical need substitute bus operator within the same fiscal year in which that person retired shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree critical need substitute bus operator in that fiscal year and ending with the month following the date the retiree ceases to perform service as a critical need substitute bus operator.

(4) Retired bus operators employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and may not accrue seniority.

(5) A retired bus operator is eligible to be employed as a critical need substitute bus operator to fill a vacant position without any loss of retirement benefits attributed to the annuity reserve only if the retired bus operator's retirement became effective before the first day of July preceding at least the fiscal year during which he or she is employed as a critical need substitute bus operator.

(6) When a retired bus operator is employed as a critical need substitute to fill a vacant position, the county board shall continue to post the vacant position until it is filled with a regularly employed bus operator who is fully qualified for the position.

(7) When a retired bus operator is employed as a critical need substitute to fill a vacant position, the position vacancy shall be posted electronically and easily accessible to prospective employees as determined by the state board.

(8) The provisions of this subsection shall expire on June 30, 2028.

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CHAPTER 299

(H. B. 2597 - By Delegates Toney, Vance, Ellington, Cooper, Brooks, Shamblin, Foggin, Heckert, Kirby and Hardy)

[Passed March 3, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §18A-3C-2 of the Code of West Virginia, 1931, as amended, relating to performance evaluations of professional educational personnel; requiring that performance evaluations provide an explanation and data in support of any measure or criterion in which the employee is rated less than accomplished.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. IMPROVING TEACHING AND LEARNING.

§18A-3C-2. Performance evaluations of professional personnel.

(a) The provisions of this section govern the performance evaluation of classroom teachers, principals and assistant principals employed in public schools and school systems. To the extent that this section conflicts with the provisions of §18A-2-12 of this code relating to professional personnel performance evaluations, this section shall govern.

(b) Before July 1, 2018, the state board shall adopt a legislative rule in accordance with §29A-3B-1 *et seq.* of this code, for annually evaluating the performance of each professional person. The rule shall provide for performance evaluations of professional personnel to be conducted in accordance with this section in each school and school system.

(c)(1) The process adopted by the state board for evaluating the performance of classroom teachers shall incorporate at least the following:

(A) Alignment with the West Virginia Professional Teaching Standards adopted by the state board that establish the foundation for educator preparation, teacher assessment, and professional development throughout the state;

(B) Employment of the professional teaching standards to provide explicit and extensive measures of the work of teaching and what teachers must know and be able to do and provide evaluative measures of educator performance; and

(C) The use of two pieces of evidence at two points in time over the instructional term to demonstrate student learning as an indicator of educator performance.

(2) Eighty percent of the evaluation shall be based on an appraisal of the educator's ability to perform the critical standard elements of the professional teaching standards. The appraisal shall include conferences with the evaluator reinforced through observation. Twenty percent of the evaluation shall be based on evidence of the learning of the students assigned to the educator in accordance with paragraph (C), subdivision (1) of this subsection.

(d)(1) The process adopted by the state board for evaluating the performance of principals and assistant principals shall include at least the following:

(A) Alignment with the West Virginia Professional Leadership Standards adopted by the state board establishing the responsibility of principals for the collective success of their school including the learning, growth, and achievement of students, staff, and self;

(B) Employment of the professional leadership standards to provide explicit and extensive measures of the work of school leadership focused on the continuous improvement of teaching and learning. The process shall include conferences and goal setting with the superintendent or his or her designee and the use of a survey of stakeholders to assist in identifying the needs and

establishing the goals for the school and the principal. The survey shall be distributed to at least the following stakeholders: Students, parents, teachers, and service personnel. The evaluative measures shall include the use of data, evidence, and artifacts to confirm the principal's performance on achieving the goals established by the principal and superintendent; and

(C) The use of two pieces of evidence at two points in time over the instructional term to demonstrate the growth in student learning at the school.

(2) Eighty percent of the evaluation shall be based on an appraisal of the principal's or the assistant principal's ability to perform the critical standard elements of the professional leadership standards and achieve the goals established for the principal and the school. Twenty percent of the evaluation shall be based on evidence of the learning of the students assigned to the school in accordance with paragraph (C), subdivision (1) of this subsection.

(e) Evaluations of the performance of professional personnel shall serve the following purposes:

(1) Serve as a basis for the improvement of the performance of the professional personnel in their assigned duties;

(2) Serve as the basis for providing professional development specifically targeted on the area or areas identified through the evaluation process as needing improvement. If possible, this targeted professional development should be delivered at the school site using collaborative processes, mentoring or coaching or other approaches that maximize use of the instructional setting;

(3) Serve as the basis for establishing priorities for the provision of county-level professional development when aggregate evaluation data from the county's schools indicates an area or areas of needed improvement;

(4) Serve as a basis for informing the teacher preparation programs in this state of an area or areas of needed improvement in the programs, or informing a specific program of needed

improvement, when state-level aggregate evaluation data indicates that beginning teachers who have graduated from the program have specific weaknesses;

(5) Provide an indicator of level of performance of the professional personnel and, if the evaluation indicates any area, quality, skill, or level of performance is less than accomplished, provide an explanation and data to support the evaluation;

(6) Serve as a basis for programs to increase the professional growth and development of professional personnel; and

(7) Serve as documentation for a dismissal on the grounds of unsatisfactory performance.

(f) The rule adopted by the state board shall include standards for the performance of professional personnel and the criteria to be used to determine whether their performance meets the standards. The rule also shall include guidance on best practices for providing time within the school day for teachers and leaders subject to performance evaluations under this section to participate in the collaborative mentoring or coaching and planning processes necessary for execution of the performance evaluation process and achieving advanced levels of performance.

(g) The rule adopted by the state board shall include provisions for written improvement plans when necessary to improve the performance of the professional personnel. The written improvement plan shall be specific as to what improvements are needed in the performance of the professional personnel and shall clearly set forth recommendations for improvements including recommendations for additional education and training of professionals subject to recertification. Professional personnel whose performance evaluation includes a written improvement plan shall be given an opportunity to improve his or her performance through the implementation of the plan.

(h) A professional person whose performance is considered to be unsatisfactory shall be given written notice of his or her deficiencies. A written improvement plan to correct these

deficiencies shall be developed by the employing county board and the employee. The professional person shall be given a reasonable period of time, not exceeding 12 months, to accomplish the requirements of the improvement plan and shall receive a written statement of the resources and assistance available for the purposes of correcting the deficiencies. If the next performance evaluation shows that the professional is now performing satisfactorily, no further action may be taken concerning the original performance evaluation. If the evaluation shows that the professional is still not performing satisfactorily, the evaluator either shall make additional written recommendations for improvement or may recommend the dismissal of the professional personnel in accordance with the provisions of §18A-2-8 of this code.

(i) No person may evaluate professional personnel for the purposes of this section unless the person has an administrative certificate issued by the state superintendent and has successfully completed education and training in evaluation skills approved by the state board which will enable the person to make fair, professional, and credible evaluations of the personnel whom the person is responsible for evaluating.

(j) Prior to implementation of the evaluation process pursuant to this section at a school, each affected employee shall be given training to ensure that the employees have a full understanding of the purposes, instruments, and procedures used in evaluating their performance. Thereafter, this training shall be held annually at the beginning of the employment term.

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CHAPTER 300

(H. B. 2602 - By Delegates Toney, Statler, Vance, Ellington, Cooper, Shamblin and Kirby)

[Passed February 10, 2023; in effect from passage.]
[Approved by the Governor on February 22, 2023.]

AN ACT to amend and reenact §18A-4-8 of the Code of West Virginia, 1931, as amended, relating to adding special teaching assistants Aide V and Aide VI to the class titles of service personnel of the state minimum pay scale and class titles that are set forth in §18A-4-8a of this code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be less than 10 months. A month is defined as 20 employment days. The county board may contract with all or part of these service personnel for a longer term.

(b) Service personnel employed on a yearly or 12-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the 200-day minimum employment term are paid for additional employment at a daily rate of not less than the daily rate paid for the 200-day minimum employment term.

(d) A service person may not be required to report for work more than five days per week without his or her agreement, and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) If a service person whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the service person is paid for at least one-half day of work for each day he or she reports for work. If the service person works more than three and one-half hours on any Saturday or Sunday, he or she is paid for at least a full day of work for each day.

(f) A custodian, aide, maintenance, office and school lunch service person required to work a daily work schedule that is interrupted is paid additional compensation in accordance with this subsection.

(1) A maintenance person means a person who holds a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in §18A-1-1 of this code.

(2) A service person's schedule is considered to be interrupted if he or she does not work a continuous period in one day. Aides are not regarded as working an interrupted schedule when engaged exclusively in the duties of transporting students;

(3) The additional compensation provided in this subsection:

(A) Is equal to at least one eighth of a service person's total salary as provided by the state minimum pay scale and any county pay supplement; and

(B) Is payable entirely from county board funds.

(g) When there is a change in classification or when a service person meets the requirements of an advanced classification, his or her salary shall be made to comply with the requirements of this article and any county salary schedule in excess of the minimum

requirements of this article, based upon the service person's advanced classification and allowable years of employment.

(h) A service person's contract, as provided in §18A-2-5 of this code, shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and on any county salary schedule in excess of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and class titles, set forth in §18A-4-8a of this code, are defined as follows:

(1) "Pay grade" means the monthly salary applicable to class titles of service personnel;

(2) "Years of employment" means the number of years which an employee classified as a service person has been employed by a county board in any position prior to or subsequent to the effective date of this section and includes service in the armed forces of the United States, if the employee was employed at the time of his or her induction. For the purpose of §18A-4-8a of this code, years of employment is limited to the number of years shown and allowed under the state minimum pay scale as set forth in §18A-4-8a of this code;

(3) "Class title" means the name of the position or job held by a service person;

(4) "Accountant I" means a person employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

(5) "Accountant II" means a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

(6) "Accountant III" means a person employed in the county board office to manage and supervise accounts payable, payroll procedures, or both;

(7) "Accounts payable supervisor" means a person employed in the county board office who has primary responsibility for the accounts payable function and who either has completed 12 college hours of accounting courses from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(8) "Aide I" means a person selected and trained for a teacher-aide classification such as monitor aide, clerical aide, classroom aide or general aide;

(9) "Aide II" means a service person referred to in the "Aide I" classification who has completed a training program approved by the state board, or who holds a high school diploma or has received a general educational development certificate. Only a person classified in an Aide II class title may be employed as an aide in any special education program;

(10) "Aide III" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed six semester hours of college credit at an institution of higher education; or

(B) Is employed as an aide in a special education program and has one year's experience as an aide in special education;

(11) "Aide IV" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed 18 hours of State Board-approved college credit at a regionally accredited institution of higher education, or

(B) Has completed 15 hours of State Board-approved college credit at a regionally accredited institution of higher education; and has successfully completed an in-service training program

determined by the State Board to be the equivalent of three hours of college credit;

(12) "Aide V (Special Education Assistant Teacher) – Temporary Authorization" means a person who does not possess minimum requirements for the Aide V permanent authorization, but is enrolled in and pursuing requirements as prescribed by the state board of education. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and been selected to fill a posted position which specifically requires the successful candidate to hold or be enrolled in and pursuing the requirements for the classification. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

"Aide V (Special Education Assistant Teacher)" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate and who has completed the requirements and experience to be prescribed by the state board of education. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and been selected to fill a posted position which specifically requires the successful candidate to hold or be enrolled in and pursuing the requirements for the classification. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

(13) "Aide VI (Behavioral Support Assistant Teacher – Temporary Authorization)" means a person who does not possess minimum requirements for the Aide VI permanent authorization, but is enrolled in and pursuing the requirements as prescribed by the state board of education. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and been selected to fill a posted position which specifically requires the successful candidate to hold or be enrolled in and pursuing the requirements for the classification. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

"Aide VI (Behavioral Support Assistant Teacher)" means a person who works with a student or students who have identified behavior difficulties, holds at least an Aide III classification and has completed the requirements and experience to be prescribed by the state board of education. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and been selected to fill a posted position which specifically requires the successful candidate to hold or be enrolled in and pursuing the requirements for the classification. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

(14) "Audiovisual technician" means a person employed to perform minor maintenance on audiovisual equipment, films, and supplies and who fills requests for equipment;

(15) "Auditor" means a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

(16) "Autism mentor" means a person who works with autistic students and who meets standards and experience to be determined by the State Board. A person who has held or holds an aide title and becomes employed as an autism mentor shall hold a multiclassification status that includes both aide and autism mentor titles, in accordance with §18A-4-8b of this code;

(17) "Braille specialist" means a person employed to provide braille assistance to students. A service person who has held or holds an aide title and becomes employed as a braille specialist shall hold a multiclassification status that includes both aide and braille specialist title, in accordance with §18A-4-8b of this code;

(18) "Bus operator" means a person employed to operate school buses and other school transportation vehicles as provided by the State Board;

(19) "Buyer" means a person employed to review and write specifications, negotiate purchase bids and recommend purchase

agreements for materials and services that meet predetermined specifications at the lowest available costs;

(20) "Cabinetmaker" means a person employed to construct cabinets, tables, bookcases and other furniture;

(21) "Cafeteria manager" means a person referred to in the Cook III classification who is employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, monitoring freezers and temperatures on equipment, communicating with the food service supervisor or food service director, preparing financial reports, keeping records pertinent to food services of a school and maintaining that an appropriate time per day will be for ordering/emailing and paper work as needed;

(22) "Carpenter I" means a person classified as a carpenter's helper;

(23) "Carpenter II" means a person classified as a journeyman carpenter;

(24) "Chief mechanic" means a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained;

(25) "Clerk I" means a person employed to perform clerical tasks;

(26) "Clerk II" means a person employed to perform general clerical tasks, prepare reports and tabulations, and operate office machines;

(27) "Computer operator" means a qualified person employed to operate computers;

(28) "Cook I" means a person employed as a cook's helper;

(29) "Cook II" means a person employed to prepare and serve meals in a food service program of a school. This definition includes a service person who has been employed as a "Cook I" for a period of four years;

(30) "Cook III" means a person employed to assist the cafeteria manager, interpret menus and to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system, and act as the cafeteria manager if that employee is absent;

(31) "Crew leader" means a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;

(32) "Custodian I" means a person employed to keep buildings clean and free of refuse;

(33) "Custodian II" means a person employed as a watchman or groundsman;

(34) "Custodian III" means a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;

(35) "Custodian IV" means a person employed as a head custodian. In addition to providing services as defined in "Custodian III" duties may include supervising other custodian personnel;

(36) "Director or coordinator of services" means an employee of a county board who is assigned to direct a department or division.

(A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title;

(B) Professional personnel holding this class title may not be defined or classified as service personnel unless the professional person held a service personnel title under this section prior to holding the class title of "director or coordinator of services;"

(C) The director or coordinator of services is classified either as a professional person or a service person for state aid formula funding purposes;

(D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person; and

(E) A person employed under the class title "director or coordinator of services" may not be exclusively assigned to perform the duties ascribed to any other class title as defined in this subsection: *Provided*, That nothing in this paragraph prohibits a person in this position from being multi-classified;

(37) "Draftsman" means a person employed to plan, design and produce detailed architectural/engineering drawings;

(38) "Early childhood classroom assistant teacher I" means a person who does not possess minimum requirements for the permanent authorization requirements, but is enrolled in and pursuing requirements;

(39) "Early childhood classroom assistant teacher II" means a person who has completed the minimum requirements for a state-awarded certificate for early childhood classroom assistant teachers as determined by the State Board;

(40) "Early childhood classroom assistant teacher III" means a person who has completed permanent authorization requirements, as well as additional requirements comparable to current paraprofessional certificate;

(41) "Educational sign language interpreter I" means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who holds the Initial Paraprofessional Certificate – Educational Interpreter pursuant to State Board policy;

(42) "Educational sign language interpreter II" means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who

holds the Permanent Paraprofessional Certificate – Educational Interpreter pursuant to State Board policy;

(43) "Electrician I" means a person employed as an apprentice electrician helper or one who holds an electrician helper license issued by the State Fire Marshal;

(44) "Electrician II" means a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the State Fire Marshal;

(45) "Electronic technician I" means a person employed at the apprentice level to repair and maintain electronic equipment;

(46) "Electronic technician II" means a person employed at the journeyman level to repair and maintain electronic equipment;

(47) "Executive secretary" means a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties;

(48) "Food services supervisor" means a qualified person who is not a professional person or professional educator as defined in §18A-1-1 of this code. The food services supervisor is employed to manage and supervise a county school system's food service program. The duties include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;

(49) "Foreman" means a skilled person employed to supervise personnel who work in the areas of repair and maintenance of school property and equipment;

(50) "General maintenance" means a person employed as a helper to skilled maintenance employees, and to perform minor repairs to equipment and buildings of a county school system;

(51) "Glazier" means a person employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;

(52) "Graphic artist" means a person employed to prepare graphic illustrations;

(53) "Groundsman" means a person employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;

(54) "Handyman" means a person employed to perform routine manual tasks in any operation of the county school system;

(55) "Heating and air conditioning mechanic I" means a person employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(56) "Heating and air conditioning mechanic II" means a person employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(57) "Heavy equipment operator" means a person employed to operate heavy equipment;

(58) "Inventory supervisor" means a person employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;

(59) "Key punch operator" means a qualified person employed to operate key punch machines or verifying machines;

(60) "Licensed practical nurse" means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;

(61) "Locksmith" means a person employed to repair and maintain locks and safes;

(62) "Lubrication man" means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

(63) "Machinist" means a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. A person holding this class title also should have the ability to work from blueprints and drawings;

(64) "Mail clerk" means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

(65) "Maintenance clerk" means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

(66) "Mason" means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;

(67) "Mechanic" means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

(68) "Mechanic assistant" means a person employed as a mechanic apprentice and helper;

(69) "Multiclassification" means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale is the higher pay grade of the class titles involved;

(70) "Office equipment repairman I" means a person employed as an office equipment repairman apprentice or helper;

(71) "Office equipment repairman II" means a person responsible for servicing and repairing all office machines and equipment. A person holding this class title is responsible for the purchase of parts necessary for the proper operation of a program of continuous maintenance and repair;

(72) "Painter" means a person employed to perform duties painting, finishing and decorating wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

(73) "Paraprofessional" means a person certified pursuant to §18A-3-2a of this code to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.

(A) A person employed on the effective date of this section in the position of an aide may not be subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional;

(B) A person who has held or holds an aide title and becomes employed as a paraprofessional shall hold a multiclassification status that includes both aide and paraprofessional titles in accordance with §18A-4-8b of this code; and

(C) When a service person who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

(74) "Payroll supervisor" means a person employed in the county board office who has primary responsibility for the payroll function and who either has completed 12 college hours of accounting from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(75) "Plumber I" means a person employed as an apprentice plumber and helper;

(76) "Plumber II" means a person employed as a journeyman plumber;

(77) "Printing operator" means a person employed to operate duplication equipment, and to cut, collate, staple, bind and shelve materials as required;

(78) "Printing supervisor" means a person employed to supervise the operation of a print shop;

(79) "Programmer" means a person employed to design and prepare programs for computer operation;

(80) "Roofing/sheet metal mechanic" means a person employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

(81) "Sanitation plant operator" means a person employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection;

(82) "School bus supervisor" means a qualified person:

(A) Employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, students, bus operators and other employees; and

(B) Certified to operate a bus or previously certified to operate a bus;

(83) "Secretary I" means a person employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

(84) "Secretary II" means a person employed in any elementary, secondary, kindergarten, nursery, special education,

vocational, or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes; stenotype, mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. Nothing in this subdivision prevents a service person from holding or being elevated to a higher classification;

(85) "Secretary III" means a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities in purchasing and financial control or any person who has served for eight years in a position which meets the definition of "Secretary II" or "Secretary III";

(86) "Sign support specialist" means a person employed to provide sign supported speech assistance to students who are able to access environments through audition. A person who has held or holds an aide title and becomes employed as a sign support specialist shall hold a multiclassification status that includes both aide and sign support specialist titles, in accordance with §18A-4-8b of this code.

(87) "Supervisor of maintenance" means a skilled person who is not a professional person or professional educator as defined in §18A-1-1 of this code. The responsibilities include directing the upkeep of buildings and shops, and issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a county board;

(88) "Supervisor of transportation" means a qualified person employed to direct school transportation activities properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system. After July 1, 2010, all persons employed for the first time in a position with this classification title or in a multiclassification position that includes this title shall have five

years of experience working in the transportation department of a county board. Experience working in the transportation department consists of serving as a bus operator, bus aide, assistant mechanic, mechanic, chief mechanic or in a clerical position within the transportation department;

(89) "Switchboard operator-receptionist" means a person employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

(90) "Truck driver" means a person employed to operate light or heavy duty gasoline and diesel-powered vehicles;

(91) "Warehouse clerk" means a person employed to be responsible for receiving, storing, packing and shipping goods;

(92) "Watchman" means a person employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties;

(93) "Welder" means a person employed to provide acetylene or electric welding services for a school system; and

(94) "WVEIS data entry and administrative clerk" means a person employed to work under the direction of a school principal to assist the school counselor or counselors in the performance of administrative duties, to perform data entry tasks on the West Virginia Education Information System, and to perform other administrative duties assigned by the principal.

(j) Notwithstanding any provision in this code to the contrary, and in addition to the compensation provided for service personnel in §18A-4-8a of this code, each service person is entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee's hours of employment or the methods or sources of compensation.

(k) A service person whose years of employment exceeds the number of years shown and provided for under the state minimum pay scale set forth in §18A-4-8a of this code may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.

(l) Each county board shall review each service person's job classification annually and shall reclassify all service persons as required by the job classifications. The state superintendent may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order a county board to correct immediately any improper classification matter and, with the assistance of the Attorney General, shall take any legal action necessary against any county board to enforce the order.

(m) Without his or her written consent, a service person may not be:

(1) Reclassified by class title; or

(2) Relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year; or for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

(n) Any county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(o) Notwithstanding any provision of this code to the contrary, a service person who holds a continuing contract in a specific job classification and who is physically unable to perform the job's duties as confirmed by a physician chosen by the employee, shall be given priority status over any employee not holding a continuing

contract in filling other service personnel job vacancies if the service person is qualified as provided in §18A-4-8e of this code.

(p) Any person employed in an aide position on the effective date of this section may not be transferred or subject to a reduction in force for the purpose of creating a vacancy for the employment of a licensed practical nurse.

(q) Without the written consent of the service person, a county board may not establish the beginning work station for a bus operator or transportation aide at any site other than a county board-owned facility with available parking. The workday of the bus operator or transportation aide commences at the bus at the designated beginning work station and ends when the employee is able to leave the bus at the designated beginning work station, unless he or she agrees otherwise in writing. The application or acceptance of a posted position may not be construed as the written consent referred to in this subsection.

(r) Itinerant status means a service person who does not have a fixed work site and may be involuntarily reassigned to another work site. A service person is considered to hold itinerant status if he or she has bid upon a position posted as itinerant or has agreed to accept this status. A county board may establish positions with itinerant status only within the aide and autism mentor classification categories and only when the job duties involve exceptional students. A service person with itinerant status may be assigned to a different work site upon written notice 10 days prior to the reassignment without the consent of the employee and without posting the vacancy. A service person with itinerant status may be involuntarily reassigned no more than twice during the school year. At the conclusion of each school year, the county board shall post and fill, pursuant to §18A-4-8b of this code, all positions that have been filled without posting by a service person with itinerant status. A service person who is assigned to a beginning and ending work site and travels at the expense of the county board to other work sites during the daily schedule, is not considered to hold itinerant status.

(s) Any service person holding a classification title on June 30, 2013, that is removed from the classification schedule pursuant to amendment and reenactment of this section in the year 2013, has his or her employment contract revised as follows:

(1) Any service person holding the braille or sign language specialist classification title has that classification title renamed on his or her employment contract as either braille specialist or sign support specialist. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the braille or sign language specialist classification prior to July 1, 2013, continues to be credited as seniority earned in the braille specialist or sign support specialist classification;

(2) Any service person holding the paraprofessional classification title and holding the initial paraprofessional certificate – educational interpreter has the title educational sign language interpreter I added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the educational sign language interpreter I classification; and

(3) Any service person holding the paraprofessional classification title and holding the permanent paraprofessional certificate – educational interpreter has the title educational sign language interpreter II added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the educational sign language interpreter II classification;

(t) Any person employed as an aide in a kindergarten program who is eligible for full retirement benefits before the first day of the instructional term in the 2020-2021 school year, may not be subject to a reduction in force or transferred to create a vacancy for the employment of a less senior early childhood classroom assistant teacher;

(u) A person who has held or holds an aide title and becomes employed as an early childhood classroom assistant teacher shall hold a multiclassification status that includes aide and/or paraprofessional titles in accordance with §18A-4-8b of this code.

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CHAPTER 301

**(Com. Sub. for H. B. 2890 - By Delegates Gearheart,
Ellington, Westfall, Storch, Bridges, Foster, Butler,
Householder, Cooper, Dean and Heckert)**

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §18A-5-1 of the Code of West Virginia, 1931, as amended, relating to authority of teachers and other school personnel for discipline of students; allowing student that behaves in a manner that obstructs the teaching or learning process of others in the classroom to be excluded; limiting application of certain discipline provisions to grades six through 12 and excluding application to elementary schools; mandating minimum duration of exclusion for certain behaviors; requiring principal to communicate with teacher within 24 hours about exclusion for certain behaviors; establishing time limit for teacher to report exclusion for certain behaviors to the West Virginia Education Information System; providing consequences for student removed for certain behaviors three times in one month; requiring county board policies to encourage the use of alternatives to discipline practices; requiring each county school board to ensure that each school implements a tier system policy to provide a framework for student behaviors and punishments; requiring principal to support the teacher in discipline of the students under certain conditions; prohibiting teacher from being reprimanded under certain conditions; and requiring procedure for teachers to appeal certain exclusion related actions of principal.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of students having infectious diseases; suspension or expulsion of disorderly students; corporal punishment abolished.

(a) The teacher shall stand in the place of the parent(s), guardian(s), or custodian(s) in exercising authority over the school and has control of all students enrolled in the school from the time they reach the school until they have returned to their respective homes, except where transportation of students is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the students while they are in transit to and from the school.

(b) Subject to the rules of the state Board of Education, the teacher shall exclude from the school any student known to have, or who is suspected of having, any infectious disease, or any student who has been exposed to any infectious disease and shall immediately notify the proper health officer or medical inspector of the exclusion. Any student so excluded may not be readmitted to the school until he or she has complied with all the requirements of the rules governing those cases or has presented a certificate of health signed by the medical inspector or other proper health officer.

(c) The teacher, may exclude from his or her classroom or school bus any student who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who behaves in a manner that obstructs the teaching or learning process of others in the classroom; who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a student; who willfully disobeys a school employee; or who uses abusive or profane language directed at a school employee. Any student excluded shall be placed under the control of the principal of the school or a designee. The excluded student may be admitted to the classroom or school bus only when the principal, or a designee, provides written certification to the teacher that the student may be readmitted and specifies the specific type of disciplinary action, if any, that was taken. If the principal finds that disciplinary action is warranted, he or she shall provide written and,

if possible, telephonic notice of the action to the parent(s), guardian(s), or custodian(s). When a student is excluded from a classroom or a school bus two times in one semester, and after exhausting all reasonable methods of classroom discipline provided in the school discipline plan, the student may be readmitted to the classroom or the school bus only after the principal, teacher and, if possible, the parent(s), guardian(s), or custodian(s) of the student have held a conference to discuss the student's disruptive behavior patterns, and the teacher and the principal agree on a course of discipline for the student and inform the parent(s), guardian(s), or custodian(s) of the course of action. Thereafter, if the student's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the student to another setting. The Legislature finds that isolating students or placing them in alternative learning centers may be the best setting for chronically disruptive students. The county board shall create more alternative learning centers or expand its capacity for alternative placements, subject to funding, to correct these students' behaviors so they can return to a regular classroom without engaging in further disruptive behavior.

(d) When a grade six through 12 teacher, excluding an elementary school teacher, determines that the behavior of the student is disorderly conduct, is interfering with an orderly educational process, or obstructs the teaching or learning process of others in the classroom:

(1) The student may be excluded from that teacher's classroom and if excluded may not re-enter that teacher's classroom for at least the remainder of the instructional day;

(2) If the student is excluded pursuant to subdivision (1) of this subsection;

(A) The principal shall communicate with the teacher within 24 hours of the student being excluded from the teacher's classroom about the exclusion;

(B) The teacher has 24 hours to create an electronic record and place the report of this action into the West Virginia Education

Information System (WVEIS), without any repercussion to the teacher; and

(C) If the student is removed from a classroom a total of three times in one month for one or more of the behaviors set forth in this subsection, the student shall receive as determined by the principal an in-school suspension, an out-of-school suspension, or may be considered for placement in an alternative learning center if one is available within the school district.

(e) The Legislature finds that suspension from school is not appropriate solely for a student's failure to attend class. Therefore, a student may not be suspended from school solely for not attending class. Other methods of discipline may be used for the student which may include, but are not limited to, detention, extra class time, or alternative class settings.

(f) Corporal punishment of any student by a school employee is prohibited.

(g) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions. These policies shall encourage the use of alternatives to discipline practices, provide for the training of school personnel in alternatives to discipline practices, and provide for encouraging the involvement of parent(s), guardian(s) or custodian(s) in the maintenance of school discipline. To promote a teaching and learning environment free from substantial classroom disturbances, each county board shall ensure that each school implements a tier system policy, with teacher input, to provide a framework for student behaviors and punishments. The policy shall be clear and concise with specific guidelines and examples. The principal shall support the teacher in the discipline of the students if proper cause and documentation is provided following the schoolwide discipline policy. The teacher may not be reprimanded if their actions are legal and within the structure of the county board's policy for student behavior and punishment. The county board policies shall also include an appeal procedure whereby a teacher may appeal to the county superintendent if a school principal refuses to allow the exclusion

of a student from the classroom or if a teacher believes the school principal has prematurely ended the exclusion of a student from the classroom. The county boards shall provide for the immediate incorporation and implementation in schools of a preventive discipline program which may include the responsible student program and a student involvement program, which may include the peer mediation program, devised by the West Virginia Board of Education. Each county board may modify those programs to meet the particular needs of the county. The county boards shall provide in-service training for teachers and principals relating to assertive discipline procedures and conflict resolution. The county boards also may establish cooperatives with private entities to provide middle educational programs, which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem issues, stress management and decision making for students, and any other program related to preventive discipline.

(h) For the purpose of this section:

(1) "Student" includes any child, youth or adult who is enrolled in any instructional program or activity conducted under board authorization and within the facilities of, or in connection with, any program under public school direction: *Provided*, That, in the case of adults, the student–teacher relationship shall terminate when the student leaves the school or other place of instruction or activity;

(2) "Teacher" means all professional educators as defined in §18A-1-1 of this code and includes the driver of a school bus or other mode of transportation; and

(3) "Principal" means the principal, assistant principal, vice principal or the administrative head of the school, or a professional personnel designee of the principal or the administrative head of the school.

(i) Teachers shall exercise other authority and perform other duties prescribed for them by law or by the rules of the state board not inconsistent with the provisions of this chapter and chapter 18 of this code.

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CHAPTER 302

**(H. B. 3547 - By Delegates Clark, Ferrell, Longanacre,
Maynor, Jennings, Walker, Ellington and Toney)**

[Passed March 3, 2023; in effect July 1, 2023.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §18A-4-10 of the Code of West Virginia, 1931, as amended, relating to increasing number of personal leave days an employee may use without regard to the cause for the absence; and providing for use on consecutive days.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.

(a) Personal Leave.

(1) At the beginning of the employment term, any full-time employee of a county board is entitled annually to at least one and one-half days personal leave for each employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative without limitation and is transferable within the state. A change in job assignment during the school year does not affect the employee's rights or benefits.

(2) A regular full-time employee who is absent from assigned duties due to accident, sickness, death in the immediate family, or life-threatening illness of the employee's spouse, parents or child, or other cause authorized or approved by the board, shall be paid the full salary from his or her regular budgeted salary appropriation

during the period which the employee is absent, but not to exceed the total amount of leave to which the employee is entitled.

(3) Each employee is permitted to use four days of leave annually without regard to the cause for the absence: *Provided*, That effective July 1, 2023, each employee is permitted to use five days of leave annually without regard to the cause for the absence. Personal leave without cause may not be used on consecutive work days unless authorized or approved by the employee's principal or immediate supervisor, as appropriate, or the employee may provide 14 days notice. For non-consecutive days, the employee shall give notice of leave without cause to the principal or immediate supervisor at least 24 hours in advance, except that in the case of sudden and unexpected circumstances, notice shall be given as soon as reasonably practicable. The principal or immediate supervisor may deny use of the day if, at the time notice is given, either 15 percent of the employees or three employees, whichever is greater, under the supervision of the principal or immediate supervisor, have previously given notice of their intention to use that day for leave. Personal leave may not be used in connection with a concerted work stoppage or strike. Where the cause for leave originated prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term. If an employee uses personal leave which the employee has not yet accumulated on a monthly basis and subsequently leaves the employment, the employee is required to reimburse the board for the salary or wages paid for the unaccumulated leave.

(4) The State Board shall maintain a rule to restrict the payment of personal leave benefits and the charging of personal leave time used to an employee receiving a workers' compensation benefit from a claim filed against and billed to the county board by which the person is employed. If an employee is awarded this benefit, the employee shall receive personal leave compensation only to the extent the compensation is required, when added to the workers' compensation benefit, to equal the amount of compensation regularly paid the employee. If personal leave compensation equal to the employee's regular pay is paid prior to the award of the

workers' compensation benefit, the amount which, when added to the benefit, is in excess of the employee's regular pay shall be deducted from the employee's subsequent pay. The employee's accrued personal leave days shall be charged only for such days as equal the amount of personal leave compensation required to compensate the employee at the employee's regular rate of pay.

(5) The county board may establish reasonable rules for reporting and verification of absences for cause. If any error in reporting absences occurs, the county board may make necessary salary adjustments:

(A) In the next pay after the employee has returned to duty; or

(B) In the final pay if the absence occurs during the last month of the employment term.

(b) Leave Banks.

(1) Each county board shall establish a personal leave bank that is available to all school personnel. The board may establish joint or separate banks for professional personnel and school service personnel. Each employee may contribute up to two days of personal leave per school year. An employee may not be coerced or compelled to contribute to a personal leave bank.

(2) The personal leave bank shall be established and operated pursuant to a rule adopted by the county board. The rule:

(A) May limit the maximum number of days used by an employee;

(B) Shall limit the use of leave bank days to an active employee with fewer than five days accumulated personal leave who is absent from work due to accident or illness of the employee; and

(C) Shall prohibit the use of days to:

(i) Qualify for or add to service for any retirement system administered by the State; or

(ii) Extend insurance coverage pursuant to §5-16-13 of this code.

(D) Shall require that each personal leave day contributed:

(i) Is deducted from the number of personal leave days to which the donor employee is entitled by this section;

(ii) Is not deducted from the personal leave days without cause to which a donor employee is entitled if sufficient general personal leave days are otherwise available to the donor employee;

(iii) Is credited to the receiving employee as one full personal leave day;

(iv) May not be credited for more or less than a full day by calculating the value of the leave according to the hourly wage of each employee; and

(v) May be used only for an absence due to the purpose for which the leave was transferred. Any transferred days remaining when the catastrophic medical emergency ends revert back to the leave bank.

(3) The administration, subject to county board approval, may use its discretion as to the need for a substitute where limited absence may prevail, when an allowable absence does not:

(i) Directly affect the instruction of the students; or

(ii) Require a substitute employee because of the nature of the work and the duration of the cause for the absence.

(4) If funds in any fiscal year, including transfers, are insufficient to pay the full cost of substitutes for meeting the provisions of this section, the remainder shall be paid on or before the August 31 from the budget of the next fiscal year.

(5) A county board may supplement the leave provisions in any manner it considers advisable in accordance with applicable rules of the State Board and the provisions of this chapter and chapter 18 of this code.

(c) Effective July 1, 2019, a classroom teacher who has not utilized more than four days of personal leave during the 200-day employment term shall receive a bonus of \$500 at the end of the school year. If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable classroom teachers, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all eligible classroom teachers. This bonus may not be counted as part of the final average salary for the purpose of calculating retirement.

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CHAPTER 303

(H. B. 3432 - By Delegate Hanshaw (Mr. Speaker))

[Passed March 11, 2023; in effect from passage.]

[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §2-2-10 and §2-2-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §4-1-13 of said code, all relating to statutory construction generally; defining terms; clarifying that where two bills affecting the same section of code pass the Legislature in the same session, the later passed version controls; and clarifying the authority of the legislative clerks.

Be it enacted by the Legislature of West Virginia:

CHAPTER 2. COMMON LAW, STATUTES, LEGAL HOLIDAYS, DEFINITIONS AND LEGAL CAPACITY.

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-10. Rules for construction of statutes.

(a) The following terms are defined for this code:

(1) "Convict" means a person confined in a penitentiary or correctional facility of this or any other state, or of the United States;

(2) "County court" includes any existing tribunal created in lieu of a county commission; the words "commissioner of the county court" and "county commissioner" mean, and have reference to, the commissioners, or one of them, composing a county commission in pursuance of section nine, article IX of the Constitution, as

amended, or any existing tribunal created in lieu of a county commission;

(3) "The Governor" is equivalent to "the executive of the state" or "the person having the executive power";

(4) "Judgment" includes decrees and orders for the payment of money, or the conveyance or delivery of land or personal property, or some interest therein, or any undertaking, bond or recognizance which has the legal effect of a judgment;

(5) "Land" or "lands" and the words "real estate" or "real property" include lands, tenements and hereditaments, all rights thereto and interests therein, except chattel interests;

(6) "Laws of the state" includes the Constitution of the State of West Virginia and the Constitution of the United States, and treaties and laws made in pursuance thereof;

(7) "Minor" mean persons under the age of 18 years;

(8) "Offense" includes every act or omission for which a fine, forfeiture, or punishment is imposed by law;

(9) "Person" or "whoever" includes corporations, societies, associations and partnerships, and other similar legal business organizations;

(10) "Personal estate" or "personal property" includes goods, chattels, real and personal, money, credits, investments, and the evidences thereof;

(11) "Property" or "estate" embraces both real and personal estate;

(12) "Railroad" and "railway" mean the same thing in law; and, in any proceeding in which a railroad company or a railway company is a party, it is not an error to call a railroad company a railway company or vice versa; nor may any demurrer, plea or any other defense be set up to a motion, pleading, or indictment in consequence of the misdescription;

(13) "State", when applied to a part of the United States and not restricted by the context, includes the District of Columbia and the several territories, and the words "United States" also include the said district and territories;

(14) "Town" includes a city, village or town, and the word "council", any body or board, whether composed of one or more branches, which is authorized to make ordinances for the government of a city, town, or village;

(15) "Written" or "in writing" includes any representation of words, letters, or figures, whether by printing, engraving, writing, or otherwise. But when the signature of any person is required, it must be in his or her own proper handwriting, or his or her mark, attested, proved, or acknowledged. Unless a provision of this code specifically provides otherwise, an electronic signature satisfies this signature requirement if the electronic signature meets the requirements of §39A-1-2 of this code;

(b) The following rules shall be observed in the construction of statutes unless a different intent on the part of the Legislature is expressed:

(1) A word importing the singular number only may be applied to several persons or things, as well as to one person or thing; a word importing the plural number only may be applied to one person or thing as well as to several; and a word importing the masculine gender only may be applied to females as well as males;

(2) Words purporting to give joint authority to three or more persons confers authority upon a majority of them, and not upon any less number;

(3) The sectional headings or headlines of the several sections of this code printed in black-faced type are intended as mere catchwords to indicate the contents of the section and are not titles of the sections, or any part of the statute, and, unless expressly so provided, they are not part of the statute when the sections, including the headlines, are amended or reenacted;

(4) When a council of a town, city, or village, or any board, number of persons, or corporations, are authorized to make ordinances, bylaws, rules, regulations, or orders, the same must be consistent with the laws of this state;

(5) An officer has qualified when he or she has done all that is required by law to be done before proceeding to exercise the authority and discharge the duties of his or her office;

(6) A statute is presumed to be prospective in its operation unless expressly made retrospective;

(7) Unless there is a provision in a section, article, or chapter of this code specifying that its provisions are not severable, the provisions of every section, article, or chapter of this code, whether enacted before or subsequent to the effective date of this subdivision, are severable so that if any provision of any section, article, or chapter is held to be unconstitutional or void, the remaining provisions of the section, article, or chapter remain valid, unless the court finds the valid provisions are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that the court cannot presume the Legislature would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent. The provisions of this subdivision are fully applicable to all future amendments or additions to this code, with like effect as if the provisions of this subdivision were set forth in extenso in every amendment or addition and were reenacted as a part thereof;

(8) A reference to any section, article, or chapter of this code applies to all reenactments, revisions, or amendments thereof;

(9) If a statute refers to a series of numbers or letters, the first and the last numbers or letters in the series are considered to be included;

(10) No legislative enactment of a regulatory, noncriminal nature may be construed to prohibit a lawful business or business

structure in existence and operating in this state prior to the effective date of the enactment of legislation prohibiting the operation of such business or business structure absent an express legislative declaration in the enactment that the existing business or business structure is prohibited from continuing after the effective date of the enactment.

(11) Statutes are construed to avoid absurd results;

(12) Statutes are to be read as a whole, in context, and, if possible, the court is to give effect to every word of the statute; and

(13) When two or more bills amending the same statute are passed during the same session of the Legislature, the form of the statute in the enrolled bill passed latest in time shall control.

§2-2-12. Headlines, etc., not part of act; notes, etc., attached to bills not to be construed as expressing legislative intent.

Chapter, article, or section headings, headlines or headnotes of any act of the Legislature, whether in the act at the time of passage or inserted by the Clerk of the House of Delegates in editing, compiling and publishing the acts of the Legislature, are mere catchwords and shall not be deemed or construed to be titles of such chapters, articles, or sections, or as any part thereof, or as indicating or expressing legislative intent or purpose.

Abstracts of bills or of changes proposed in existing statutes, explanatory notes, and declarations of purpose accompanying bills at the time of introduction in the Legislature or appended or attached thereto after introduction, and included with copies of such bills printed or otherwise reproduced by the Legislature or either house thereof, are not to be a part of such bills or of reports of committees thereon, and shall not be construed or interpreted as indicating or expressing legislative intent.

CHAPTER 4. THE LEGISLATURE.

**ARTICLE 1. OFFICERS, MEMBERS, AND EMPLOYEES;
APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF
FLAGS; RECORDS; USE OF CAPITOL BUILDING;**

**PREFILING OF BILLS AND RESOLUTIONS;
STANDING COMMITTEES; INTERIM MEETINGS;
NEXT MEETING OF THE SENATE.**

**§4-1-13. Clerk of house to be keeper of rolls; compensation;
duties as to acts; copies; fees; printing.**

(a) The Clerk of the House of Delegates shall be the keeper of the rolls, and for his or her duties as such, the clerk shall receive \$300 in addition to his salary as clerk. After a bill or joint resolution has passed both houses, the clerk shall cause the same to be correctly recorded, in a legible manner, in a well-bound book, to be kept for that purpose exclusively, which recording shall be equivalent to enrollment. The clerk shall have custody of the acts and joint resolutions of the Legislature and shall make a certified copy of them for any person requiring the same. For a copy of an act or joint resolution, the clerk may demand of the person at whose request it was made, 50 cents, or, at the clerk's option, 3 cents for every 30 words contained therein. As soon as possible after the close of each session, the clerk shall prepare a well-arranged index to the acts and joint resolutions passed at such session, and shall furnish to the printer who has the contract for such printing the manuscript of such acts, resolutions, and index and all matter directed by law to be printed therewith, properly prepared and arranged for publication, and shall superintend the printing thereof.

(b) When two or more bills amending the same statute are passed during the same session of the Legislature, the form of the statute in the enrolled bill passed latest in time shall control.

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CHAPTER 304

**(S. B. 149 - By Senators Roberts, Trump, Phillips, Deeds,
Azinger, Stuart, Clements, Maynard, Maroney, and Karnes)**

[Passed March 9, 2023; in effect 90 days from passage (June 7, 2023)]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating to exempt property from taxation used exclusively for divine worship and the operation of a pre-K school, primary school, middle school, secondary school, daycare center, or church camp for children, which school, daycare center, or church camp is operated by the church which owns the property or is operated by another not-for-profit organization or entity.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.

(a) All property, real and personal, described in this subsection, and to the extent limited by this section, is exempt from taxation:

(1) Property belonging to the United States, other than property permitted by the United States to be taxed under state law;

(2) Property belonging exclusively to the state;

(3) Property belonging exclusively to any county, district, city, village, or town in this state and used for public purposes;

(4) Property located in this state belonging to any city, town, village, county, or any other political subdivision of another state and used for public purposes;

(5) Property used exclusively for divine worship, or used exclusively for divine worship and the operation of a pre-K school, primary school, middle school, secondary school, daycare center, or church camp for children, which school, daycare center, or church camp is operated by the church which owns the property or is operated by another not-for-profit organization or entity;

(6) Parsonages and the household goods and furniture pertaining thereto;

(7) Mortgages, bonds, and other evidence of indebtedness in the hands of bona fide owners and holders hereafter issued and sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship or for the purpose of paying indebtedness thereon;

(8) Cemeteries;

(9) Property belonging to, or held in trust for, colleges, seminaries, academies, and free schools, if used for educational, literary, or scientific purposes, including books, apparatus, annuities, and furniture;

(10) Property belonging to, or held in trust for, colleges or universities located in West Virginia, or any public or private nonprofit foundation or corporation which receives contributions exclusively for such college or university, if the property or dividends, interest, rents, or royalties derived therefrom are used or devoted to educational purposes of such college or university;

(11) Public and family libraries;

(12) Property used for charitable purposes and not held or leased out for profit;

(13) Property used for the public purposes of distributing electricity, water or natural gas or providing sewer service by a duly chartered nonprofit corporation when such property is not held, leased out, or used for profit;

(14) Property used for area economic development purposes by nonprofit corporations when the property is not leased out for profit;

(15) All real estate not exceeding one acre in extent, and the buildings on the real estate, used exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if not used with a view to profit, including, but not limited to, property owned by a fraternity or sorority organization affiliated with a university or college or property owned by a nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization affiliated with a university or college, when the property is used as residential accommodations or as a dormitory for members of the organization;

(16) All property belonging to benevolent associations not conducted for private profit;

(17) Property belonging to any public institution for the education of the deaf, intellectually disabled, or blind or any hospital not held or leased out for profit;

(18) Houses of refuge and mental health facility or orphanage;

(19) Homes for children or for the aged, friendless, or infirm not conducted for private profit;

(20) Fire engines and implements for extinguishing fires, and property used exclusively for the safekeeping thereof, and for the meeting of fire companies;

(21) All property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year;

(22) Household goods to the value of \$200, whether or not held or used for profit;

(23) Bank deposits and money;

(24) Household goods, which for purposes of this section means only personal property and household goods commonly

found within the house and items used to care for the house and its surrounding property, when not held or used for profit;

(25) Personal effects, which for purposes of this section means only articles and items of personal property commonly worn on or about the human body or carried by a person and normally thought to be associated with the person when not held or used for profit;

(26) Dead victuals laid away for family use;

(27) All property belonging to the state, any county, district, city, village, town, or other political subdivision or any state college or university which is subject to a lease purchase agreement, and which provides that, during the term of the lease purchase agreement, title to the leased property rests in the lessee so long as lessee is not in default or shall not have terminated the lease as to the property;

(28) Personal property, including vehicles that qualify for a farm use exemption certificate pursuant to §17A-3-2 of this code and livestock, employed exclusively in agriculture, as defined in article X, section one of the West Virginia Constitution: *Provided*, That this exemption only applies in the case of such personal property used on a farm or farming operation that annually produces for sale agricultural products, as defined in rules of the Tax Commissioner;

(29) Real property owned by a nonprofit organization whose primary purpose is youth development by means of adventure, educational, or recreational activities for young people, which real property contains a facility built with the expenditure of not less than \$100 million that is capable of supporting additional activities within the region or the state and which is leased or used to generate revenue for the nonprofit organization whether or not the property is used by the nonprofit organization for its nonprofit purpose, subject to the requirements, limitations, and conditions set forth in §11-3-9(h) of this code; and

(30) Any other property or security exempted by any other provision of law.

(b) Notwithstanding the provisions of §11-3-9(a) of this code, no property is exempt from taxation which has been purchased or procured for the purpose of evading taxation whether temporarily holding the same over the first day of the assessment year or otherwise.

(c) Real property which is exempt from taxation by §11-3-9(a) of this code shall be entered upon the assessor's books, together with the true and actual value thereof, but no taxes may be levied upon the property or extended upon the assessor's books.

(d) Notwithstanding any other provisions of this section, this section does not exempt from taxation any property owned by, or held in trust for, educational, literary, scientific, religious, or other charitable corporations or organizations, including any public or private nonprofit foundation or corporation existing for the support of any college or university located in West Virginia, unless such property, or the dividends, interest, rents, or royalties derived therefrom, is used primarily and immediately for the purposes of the corporations or organizations.

(e) The Tax Commissioner shall, by issuance of rules, provide each assessor with guidelines to ensure uniform assessment practices statewide to affect the intent of this section.

(f) Inasmuch as there is litigation pending regarding application of this section to property held by fraternities and sororities, amendments to this section enacted in the year 1998 shall apply to all cases and controversies pending on the date of such enactment.

(g) The amendment to §11-3-9(a)(27) of this code, passed during the 2005 regular session of the Legislature, shall apply to all applicable lease purchase agreements in existence upon the effective date of the amendment.

(h) *Nonprofit youth organization exemption.* — Limitations, conditions, collection, and administration of one and one quarter percent fee, limitations, and distribution of moneys.

(1) The exemption from ad valorem taxation provided pursuant to the provisions of §11-3-9(a)(29) of this code does not apply to a property owned by a nonprofit organization otherwise qualifying for the exemption but which property or facilities are used for profit or outside the primary purpose of the owner which result in unrelated business taxable income as defined by Section 512 of the Internal Revenue Code of 1986, as amended, unless the income is generated by an activity upon which the one and one quarter percent fee authorized by §11-3-9(h)(2) of this code is applied as provided in §11-3-9(h)(3) of this code.

(2) The owner of real property exempt from ad valorem taxation under §11-3-9(a)(29) of this code shall pay an amount equal to one and one quarter percent of the gross revenues the owner receives in accordance with this subsection. For purposes of this subsection, "gross revenues" means the gross amount received by the owner as payment for use of the property or the facilities thereon.

(3) Gross revenues derived from the following facilities, uses, activities, and operations are subject to a fee of one and one quarter percent of such gross revenues:

(A) Gross revenues derived from the use of lodging and campground facilities by persons participating in meetings and multiday spectator sports or multiday recreational, celebratory, or ceremonial events held onsite where onsite lodging or camping is offered as part of the program. For purposes of this section the term "meeting" means, and is limited to, a gathering, assembly, or conference of two or more persons who have deliberately convened at a single specific location at a single specified time and date for a common specific purpose.

(B) Gross revenues derived from any retail store located at the facility that is open only to those persons who are attending meetings, spectator sports, recreational, celebratory, or ceremonial events held onsite at the facility.

(C) Gross revenues derived from operations of gift shops at a welcome or information center located adjacent to a public

highway operated by the nonprofit organization which is open to the general public.

(D) Gross revenues derived from the leasing of zip-lines, canopy tours, wheeled sports, and climbing facilities used by the general public on a for-profit basis: (i) Under a written agreement with a licensed commercial outfitter operating a business utilizing zip-lines, canopy tours, wheeled sports, or climbing areas of a similar nature in the same or an adjacent county where the facilities are located; and (ii) when the property or facilities are used as part of a training or advanced experience offered by the licensed commercial outfitter.

(E) Gross revenues derived from the use or operation of zip-lines, canopy tours, wheeled sports facilities, or activities, climbing facilities or activities and the use or operation of other sporting facilities on the exempt property that are leased on a for-profit basis for spectator events, such as concerts, spectator sporting events, or exhibitions or similar mass gathering events.

(F) Gross revenues derived from leases or agreements for use of the property for meetings and multiday spectator sports or events or multiday recreational, celebratory, or ceremonial events, held onsite.

(4) Notwithstanding any other provision of this section to the contrary, programs or activities occurring on the property or its facilities held in conjunction with a government organization or sponsored by other nonprofit organizations serving youth, veterans, military services, public service agencies including, fire, police, emergency, and search and rescue services, government agencies, schools and universities, health care providers, and similar organizations or groups which are designed to provide opportunities for learning or training in the areas of leadership, character education, science, technology, engineering, arts, and mathematics (STEAM) programs, physical challenges, sustainability, conservation, and outdoor learning shall be considered a charitable or nonprofit use for the purposes of this section and not subject to the one and one quarter percent fee.

(5) Notwithstanding any other provision of this section to the contrary, activities open to the public through individual visitor passes allowing tours and access to the property and its facilities for the purpose of viewing or participating in demonstrations, programs, and facilities providing information and experiences consistent with the owner's nonprofit purposes where zip-lines, canopy tours, wheeled sports, or climbing facilities are merely components of the demonstrations, programs, and facilities used shall be considered a charitable or nonprofit use for the purposes of this section and not subject to the one and one quarter percent fee: *Provided*, That such individual visitor passes may not include the rental or use of onsite overnight lodging or camping facilities.

(6) *Administration.* —

(A) The sheriff of the county wherein the majority of the acreage of the property is located as specified in the deed to such property, shall collect, on a monthly basis, all moneys derived from the fee of one and one quarter percent of the gross revenues imposed under this subsection.

(B) The sheriff of the county wherein the majority of the acreage of the property is located as specified in the deed to such property, shall prescribe such forms and schedules as may be necessary for the efficient, accurate, and expeditious payment and reporting of the one and one quarter percent fee specified in this subsection on gross revenues.

(C) The sheriff of the county wherein the majority of the acreage of the property is located as specified in the deed to such property, shall administer the fee imposed under this subsection, including refunds and adjustments.

(D) Payment, administration, and compliance of fee payers and administrators shall be subject to audit by the Office of Chief Inspector.

(E) All moneys so collected, net of refunds and adjustments, shall be paid into a special account in the State Treasury, which is hereby created, and the amount thereof shall be distributed and paid

annually, by the State Treasurer, on October 1 of each year, into the funds and to the distributees specified in of this code in the amounts specified therein.

(7) *Distribution.* —

(A) Twenty-five percent of moneys so collected, net of refunds and adjustments, shall be paid annually to the Tourism Promotion Fund established pursuant to §5B-2-12 of this code.

(B) Twenty-five percent of moneys so collected, net of refunds and adjustments, shall be paid annually to the sheriff of the county where the property is located which, but for the exemption provided in §11-3-9(a)(29) of this code, would be entitled to receive ad valorem taxes on the property. The sheriff shall treat all such payments in the same manner as payments in lieu of taxes, and such payments are subject to the adjustment mandated under §18-9A-12 of this code. For properties located in more than one county, the amount paid to the sheriff of the county shall be in proportion to the total number of acres located in each county at the close of the fiscal year, as specified in the deed to such property.

(C) Fifty percent of moneys so collected, net of refunds and adjustments, shall be divided equally and paid annually into separate accounts established and maintained by the sheriffs of the county or counties wherein the property is located and the sheriffs of any other county that is within the jurisdiction of the same economic development authority as the county or counties wherein the property is located to be used solely for the establishment and delivery of a science, technology, engineering, art, and math (STEAM) program in conjunction with the owner of the exempt property. The funds shall be divided equally for use in each county and the programs must be approved by the respective county superintendents of schools. Expenditures from the accounts shall be authorized by the county superintendent of schools.

(8) If lodging is furnished as part of a retreat, meeting, or multiday spectator sport or event being held onsite wherein onsite lodging or camping is offered as part of the program, any applicable hotel occupancy tax and state and local consumers sales

and service tax and use tax shall be paid based upon the actual location of such lodging.

(9) If merchants are allowed to do business on the property, the owner or lessee of the property shall offer space to local merchants on terms at least as favorable as are offered to other merchants.

(10) For the purposes of this subsection, owner includes the owner holding record title to the property and its affiliates to the extent they are commonly owned, controlled or have the power to appoint the governing body of the affiliate.

(11) The Tourism Commission shall include in its annual report submitted to the Governor and the Legislature a summary of funds paid into the Tourism Promotion Fund and recommendations pertaining to the administration of this section.

(12) This subsection may not be construed to prohibit the owner of property otherwise subject to this section from having portions of the property severed from the remainder of the property, assessed and taxed as if nonexempt and thereafter conducting business on such property the same as any other nonexempt property: *Provided*, That the area of property to be severed shall be approved by the county commission wherein the property lies so as to include in the severance all property substantially supporting the for-profit or business activity giving rise to the specific purpose of the severance and excluding all property entitled to the continued benefits of this act.

(i) To assure the implementation of §11-3-9(h) of this code does not harm local and regionally located businesses by use of the tax-exempt facility in a manner that cause unfair competition and unreasonable loss of revenue to those businesses, studies shall be periodically conducted to assure that further legislation is in order regarding the uses of the tax-exempt facility. The county commission of any county where such a property is located shall report to the Joint Committee on Government and Finance by the first day of January every five years after the effective date of this section. The report shall include information on any unfair business competition resulting from the establishment of the nonprofit

status, and include a report of the costs and benefits to its county of the tax exemption and associated fee, including an audit of that county's use of the net revenues. The West Virginia University Bureau of Business and Economic Research in coordination of the Center for Business and Economic Research at Marshall University, by January 1, 2020, shall undertake a study and report to the committee, the economic impact of this tax exemption and fee to the county and that region of the state, and make any recommendations regarding the benefits and disadvantages for continuing the provision of this tax exemption and fee, included, but not limited to, the impacts to other small and large businesses in the county, the costs to the county has incurred as a result of use of the facility, and any other relevant data that the universities may deem relevant.

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CHAPTER 305

**(Com. Sub. for S. B. 151 - By Senators Oliverio, Nelson,
Martin, Trump, and Maroney)**

[Passed March 10, 2023; in effect 90 days from passage (June 8, 2023)]
[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §11-21-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-21-3a; and to amend and reenact §11-21-20 of said code, all relating to West Virginia income tax paid by pass-through entities; authorizing certain entities to elect to pay West Virginia income tax; defining terms; imposing a tax on pass-through entities which elect to pay West Virginia income tax at the entity level; authorizing an income tax credit for an owner for such tax paid; providing rulemaking authority; providing for a tax credit for income tax paid to another state; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-3. Imposition of tax; persons subject to tax.

(a) *Imposition of tax.* — A tax determined in accordance with the rates hereinafter set forth in this article is hereby imposed for each taxable year on the West Virginia taxable income of every individual, estate, electing pass-through entity, and trust.

(b) *Partners and partnerships.* — A partnership or other pass-through entity as such shall not be subject to tax under this article, unless the partnership or other pass-through entity elects to be subject to the tax levied under this section for a taxable year pursuant to §11-21-3a of this code. Persons carrying on business as

partners or owners of a pass-through entity shall be liable for tax under this article only in their separate or individual capacities, unless the partnership or other pass-through entity elects to be subject to the tax levied under this section for a taxable year pursuant to §11-21-3a of this code. However, partnerships and other pass-through entities are subject to the tax imposed by this article to the extent they elect to pay additional West Virginia income taxes owed that are attributable to final federal partnership audit adjustments under §11-21A-3 of this code.

(c) *Associations taxable as corporations.* — An association, trust, or other unincorporated organization which is taxable as a corporation for federal income tax purposes, shall not be subject to tax under this article.

(d) *Exempt trusts and organizations.* — A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this article (regardless of whether subject to federal income tax on unrelated business taxable income).

(e) *Cross references.* — For definitions of West Virginia taxable income of:

- (1) Resident individual, see §11-21-11 of this code.
- (2) Resident estate or trust, see §11-21-18 of this code.
- (3) Nonresident individual, see §11-21-30 of this code.
- (4) Nonresident estate or trust, see §11-21-38 of this code.

(f) *Effective date.* — This section as amended in 2023 shall apply to taxable years beginning on and after January 1, 2022.

§11-21-3a. Imposition of tax; persons subject to tax.

(a) *Definitions.* — As used in this section, or §11-21-3 of this code, or both, the following terms have the following meanings. Any term used in this section that is not defined in this section has the same meaning as when used elsewhere in this article. Any term

undefined in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, in accordance with §11-21-9 of this code, unless a different meaning is clearly required.

(b) "Electing pass-through entity" means a qualifying pass-through entity that elects to be subject to the tax levied under this article for a taxable year.

(c) "Owner" means a person that is a partner, member, shareholder, or investor in an electing pass-through entity for any portion of the taxable year.

(d) "Income" means the sum of:

(1) The owners' distributive shares of the income, gain, expense, or loss of an electing pass-through entity for the taxable year, as reported for federal income tax purposes; and

(2) The resident owner's distributive share of the electing pass-through entity's income or loss not attributable to West Virginia.

(e) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate, as provided in §11-1-1 *et seq.* of this code.

(f) "Pass-through entity" means any partnership or other business entity that is not subject to tax under §11-24-1 *et seq.* of this code.

(g) "Entity" means any person that is not an individual.

(h) A pass-through entity that is not a disregarded entity for federal income tax purposes may elect to be subject to the tax levied under this section by filing with the Tax Commissioner a form prescribed by the commissioner making such election on or before the deadline to file the return, as specified in §11-21-51 of this code. Such election applies only to the taxable year for which the election is made and, once made, is irrevocable for that year.

(i) For taxable years beginning on and after January 1, 2022, an electing pass-through entity may make an election, in a format and according to such requirements and procedures established by the Tax Commissioner, to pay the tax levied by this article at the entity level for the taxable year.

(j) An electing pass-through entity required to file a return under this article shall make an election for the taxable period covered by such return. The election must be made on or before the due date for filing the applicable return, including any extensions that have been granted. Such election applies only to the taxable year for which the election is made and, once made, is irrevocable for that year.

(k) A tax equal to the top marginal rate on individuals under this article on the West Virginia taxable income of an electing pass-through entity that makes the election provided under this section, is hereby annually imposed.

(l) The tax levied under this section shall be calculated without regard to any deductions or credits otherwise permitted to be claimed by an owner or member of the electing pass-through entity in computing the owner's aggregate tax liability under this article and not utilized by the pass-through entity in determining its taxable income.

(m) An electing pass-through entity that elects to pay the tax under this section may be eligible for credits, deductions, or other adjustments to taxable income provided by any applicable sections of this code including the credit provided in §11-21-20 of this code: *Provided*, That a qualifying pass-through entity's taxable income shall be adjusted to eliminate any federal deduction for state and local income taxes.

(n) The full amount of the tax payable as shown on the return of the electing pass-through entity must be paid to the state within the time allowed for filing the return. In the case of any overpayment of the tax imposed under this section, only the electing pass-through entity may request a refund of the overpayment. In the case of any underpayment of tax imposed

under this section, the Tax Commissioner may collect the tax from the electing pass-through entity pursuant to §11-10-1 *et seq.* of this code: *Provided*, That shareholders, owners, and partners shall be jointly and severally liable for any underpayment of tax not paid by, or collected from, the pass-through entity.

(o) With respect to an electing pass-through entity that pays the tax imposed under this section, the tax shall be treated as a tax imposed on the pass-through entity itself. The tax levied under this section is intended to comply with the provisions of Internal Revenue Service Notice 2020-75 in which such tax paid by an electing pass-through entity is deductible to the entity for federal income tax purposes.

(p) The Tax Commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to administer the tax levied pursuant to the provisions of this section. These rules must include a description of how the adjustments to income and the credit authorized by this section apply to direct or indirect owners of an electing pass-through entity based upon various ownership structures.

(q) There is hereby allowed a credit against a taxpayer's aggregate tax liability under this article for a taxpayer who is an owner of an electing pass-through entity. The credit shall equal the owner's proportionate share of the tax levied under this article remitted by the owner's electing pass-through entity for the taxable year. The credit shall be claimed for the taxpayer's taxable year that includes the last day of the electing pass-through entity's taxable year for which the tax levied under this section was paid. If the credit exceeds the aggregate amount of tax otherwise due, the excess may be carried forward by the taxpayer for up to five taxable years. The Tax Commissioner may request that a taxpayer claiming a credit under this section furnish information as is necessary to support the claim for the credit under this section, and no credit shall be allowed unless information requested from the taxpayer is provided to the Tax Commissioner.

§11-21-20. Credit for income tax of another state.

(a) *General.* — A resident shall be allowed a credit against the tax otherwise due under this article for any income tax paid to

another state of the United States or by the District of Columbia for the taxable year, either directly paid by the individual or paid by a pass-through entity in accordance with §11-21-3a of this code and passed through by the entity to the individual taxpayer, upon income both derived therefrom and subject to tax under this article. As used in this subsection, "pass-through entity tax" refers to a state net income tax imposed by another state on a pass-through entity that is substantially similar to the tax imposed by §11-21-3a of this code. Solely for purposes of this section, an owner of a pass-through entity shall be considered liable for tax paid to another state by the pass-through entity pursuant to a pass-through entity tax imposed by the state (whether elected or otherwise) in an amount equal to that portion of the pass-through entity tax representing the owner's share of the pass-through entity's income subject to the tax, and the owner shall be considered to have paid that portion of the tax paid by the pass-through entity. The owner of a pass-through entity shall also be considered liable for and to have paid state income taxes to another state paid by the pass-through entity on behalf of an owner through withholding, a composite return, or otherwise. If an owner receives a refund or credit for overpayment of all or part of a pass-through entity tax imposed by another state, the amount paid by the owner shall be reduced by the refund or credit.

(b) *Limitations.* — (1) The credit under this section shall not exceed the percentage of the tax otherwise due under this article determined by dividing the portion of the taxpayer's West Virginia income subject to taxation by such other jurisdiction by the total amount of the taxpayer's West Virginia income.

(2) The credit under this section shall not reduce the tax otherwise due under this article to an amount less than would have been due if the income subject to taxation by such other jurisdiction were excluded from the taxpayer's West Virginia income.

(c) *Exception.* — No credit shall be allowed under this section for a tax of a jurisdiction which allows residents of this state a credit against the taxes imposed by such other jurisdiction for the tax under this article, if such other credit is substantially similar to the credit granted by §11-21-40 of this code.

(d) *Definition.* — For purposes of this section West Virginia income means:

(1) The West Virginia adjusted gross income of an individual;

(2) The amount of the income of an estate or trust, determined as if the estate or trust were an individual computing his or her West Virginia adjusted gross income under §11-21-12 of this code; or

(3) The taxable income of an electing pass-through entity for which election is made and determined in accordance with §11-21-3a of this code.

(e) *Effective date.* — This section as amended in 2023 shall apply to taxable years beginning on and after January 1, 2022.

CHAPTER 306

(S. B. 446 - By Senator Tarr)

[Passed March 11, 2023; to take effect July 1, 2023]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §11-14C-2 of the Code of West Virginia, 1931, as amended, relating to removing methanol and methanol fuel from the definition of special fuel.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-2. Definitions.

As used in this article and unless the context requires otherwise, the following terms have the meaning ascribed herein.

(1) "Agricultural purposes" means the activities of:

(A) Cultivating the soil, including the planting and harvesting of crops, for the commercial production of food, fiber and ornamental woodland products;

(B) Using land for breeding and management of farm livestock including dairy, apiary, equine or poultry husbandry; and

(C) Using land for the practice of horticulture including the growing of Christmas trees, orchards and nursery stock. Agricultural purposes do not include commercial forestry, growing of timber for commercial purposes or other activity that normally would not be included in subdivision (A), (B) or (C) of this definition.

(2) "Aircraft" includes any airplane or helicopter.

(3) "Alcohol" means motor fuel-grade ethanol or a mixture of motor fuel-grade ethanol and methanol, excluding denaturant and water that is a minimum of 98 percent ethanol or methanol by volume.

(4) "Alternative fuel" means a combustible gas or liquid that is used or suitable for use as a motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle, machine or mechanical contrivance and includes, but is not limited to, products commonly known as butane, propane, compressed natural gas, liquefied natural gas, liquefied petroleum gas, natural gas hydrocarbons and derivatives, liquid hydrocarbons derived from biomass, P-series fuels and hydrogen. "Alternative fuel" does not include diesel fuel, gasoline, blended fuel, aviation fuel or any special fuel. For purposes of this article electricity is not an alternative fuel.

(5) "Alternative-fuel bulk end user" means a person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a motor vehicle.

(6) "Alternative-fuel commercial refueling infrastructure" means property owned by a commercial establishment and used for storing alternative fuels and for dispensing such alternative fuels into the fuel tanks of vehicles owned by the same person or entity that owns the alternative-fuel commercial refueling infrastructure or into the fuel tanks of privately owned vehicles or commercial vehicles other than those owned by the same person or entity that owns the alternative-fuel commercial refueling infrastructure, or any combination thereof. "Alternative-fuel vehicle commercial refueling infrastructure" includes, but is not limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered: *Provided*, That the property is not located on a private residence or private home. "Alternative-fuel commercial refueling infrastructure" does not include any building, infrastructure, equipment, apparatus, terminal or connections for servicing, charging or providing electricity to plug-in hybrid electric vehicles or electric vehicles. "Alternative-fuel vehicle commercial refueling infrastructure" includes alternative-fuel vehicle commercial refueling

infrastructure property as described in this subdivision which is owned by a lessor or landlord and leased to or rented to a lessee or tenant as part of a residence for such lessee or tenant.

(7) "Alternative-fuel home refueling infrastructure" means property owned by a private individual for personal use that is located at the individual's private residence or private home and used for storing and dispensing alternative fuels into fuel tanks of the property owner's motor vehicles. This includes, but is not limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered. For purposes of this article, "alternative-fuel home refueling infrastructure" does not include any building, infrastructure, equipment, apparatus, terminal or connections for servicing, charging or providing electricity to plug-in hybrid electric vehicles or electric vehicles. "Alternative-fuel home refueling infrastructure" does not include alternative-fuel vehicle refueling infrastructure property owned by a lessor or landlord which is leased to or rented to a lessee or tenant as part of a residence for such lessee or tenant.

(8) "Article" or "this article" means article fourteen-c, chapter eleven of this code.

(9) "Assessment" means a written determination by the commissioner of the amount of taxes owed by a taxpayer.

(10) "Aviation fuel" means aviation gasoline or aviation jet fuel.

(11) "Aviation gasoline" means motor fuel designed for use in the operation of aircraft other than jet aircraft and sold or used for that purpose.

(12) "Aviation jet fuel" means motor fuel designed for use in the operation of jet or turbo-prop aircraft and sold or used for that purpose.

(13) "Biodiesel fuel" means motor fuel or mixture of motor fuels that is derived, in whole or in part, from agricultural products or animal fats, or the wastes of such products or fats, and is

advertised as, offered for sale as, suitable for use or used as motor fuel in an internal combustion engine.

(14) "Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid including, but not limited to, gasoline blend stocks, gasohol, ethanol, methanol, fuel-grade alcohol, diesel fuel enhancers and resulting blends, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a motor fuel in a highway vehicle.

(15) "Blender" means a person who produces blended motor fuel outside the bulk transfer/terminal system.

(16) "Blending" means the mixing of one or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane or a marine vessel. Blending does not include mixing that occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oil in the production of lubricating oils and greases.

(17) "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(18) "Bulk transfer" means any transfer of motor fuel from one location to another by pipeline tender or marine delivery within a bulk transfer/terminal system, including, but not limited to, all of the following:

(A) Movement of motor fuel from a refinery or terminal to a terminal by a marine vessel;

(B) Pipeline movements of motor fuel from a refinery or terminal to a terminal;

(C) Book transfer of motor fuel within a terminal between licensed suppliers prior to completion of removal across the rack; and

(D) Two-party exchange between licensed suppliers or between licensed suppliers and permissive suppliers.

(19) "Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of the stored motor fuel to operate a motor vehicle, watercraft or aircraft.

(20) "Bulk transfer/terminal system" means the motor fuel distribution system consisting of refineries, pipelines, marine vessels and terminals. Motor fuel in a refinery, a pipeline, a terminal or a marine vessel transporting motor fuel to a refinery or terminal is in the bulk transfer/terminal system. Motor fuel in a motor fuel storage facility including, but not limited to, a bulk plant that is not part of a refinery or terminal, in the motor fuel supply tank of an engine or motor vehicle, in a marine vessel transporting motor fuel to a motor fuel storage facility that is not in the bulk transfer/terminal system, or in a tank car, rail car, trailer, truck or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

(21) "Carrier" means an operator of a pipeline or marine vessel engaged in the business of transporting motor fuel above the terminal rack.

(22) "Code" means the Code of West Virginia, 1931, as amended.

(23) "Commercial watercraft" means a watercraft employed in the business of commercial fishing, transporting persons or property for compensation or hire or other trade or business.

(24) "Commissioner" or "Tax Commissioner" means the West Virginia State Tax Commissioner or his or her delegate.

(25) "Compressed natural gas" means natural gas that has been compressed and dispensed into motor fuel storage containers and is advertised as, offered for sale as, suitable for use as or used as an engine motor fuel.

(26) "Corporate or partnership officer" means an officer or director of a corporation, partner of a partnership or member of a

limited liability company who as an officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership or limited liability company, the tax collection, accounting or remitting obligations.

(27) "Dead storage" is the amount of motor fuel that cannot be pumped out of a motor fuel storage tank because the motor fuel is below the mouth of the draw pipe. The amount of motor fuel in dead storage is 200 gallons for a tank with a capacity of less than 10,000 gallons and 400 gallons for a tank with a capacity of 10,000 gallons or more.

(28) "Denaturants" means and includes gasoline, natural gasoline, gasoline components or toxic or noxious materials added to motor fuel-grade ethanol to make it unsuitable for beverage use but not unsuitable for automotive use.

(29) "Designated inspection site" means a state highway inspection station, weigh station, agricultural inspection station, mobile station or other location designated by the commissioner to be used as a motor fuel inspection site.

(30) "Destination state" means the state, territory or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container or a type of transportation equipment for the purpose of resale or use. The term does not include a tribal reservation of a recognized Native American tribe.

(31) "Diesel fuel" means a liquid that is advertised as, offered for sale as, sold for use as, suitable for use as or used as a motor fuel in a diesel-powered highway vehicle or watercraft. The term includes #1 fuel oil, #2 fuel oil, undyed diesel fuel and kerosene but does not include gasoline or aviation fuel.

(32) "Distributor" means a person who acquires motor fuel from a licensed supplier, permissive supplier or from another licensed distributor for subsequent sale or use.

(33) "Diversion" means transporting motor fuel outside a reasonably direct route from the source to the destination state.

(34) "Division" or "State Tax Division" means the Tax Division of the West Virginia Department of Revenue.

(35) "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of section 4082, Title 26, United States Code, regardless of how the diesel fuel was dyed.

(36) "End seller" means the person who sells motor fuel to the ultimate user of the motor fuel.

(37) "Export" means to obtain motor fuel in West Virginia for sale or other distribution in another state, territory or foreign country.

(38) "Exporter" means a person that exports motor fuel from this state. The seller is the exporter of motor fuel delivered out-of-state by or for the seller and the purchaser is the exporter of motor fuel delivered out-of-state by or for the purchaser.

(39) "Fuel" means motor fuel.

(40) "Fuel-grade ethanol" means the ASTM standard in effect on the effective date of this article as the D-4806 specification for denatured motor fuel grade ethanol for blending with gasoline.

(41) "Fuel supply tank" means a receptacle on a motor vehicle from which motor fuel is supplied for the propulsion of the motor vehicle.

(42) "Gallon" means a unit of liquid measure as customarily used in the United States containing 231 cubic inches by volume and expresses the volume at 60 degrees Fahrenheit.

(43) "Gasohol" means a blended motor fuel composed of gasoline and motor fuel alcohol.

(44) "Gasoline" means a product commonly or commercially known as gasoline, regardless of classification, that is advertised as, offered for sale as, sold for use as, suitable for use as or used as motor fuel in an internal combustion engine, including gasohol, but does not include special fuel as defined in this section.

(45) "Gasoline blend stocks" includes any petroleum product component of gasoline, such as naphtha, reformato, or toluene, listed in Treas. Reg. §48.4081-1(c) (3) that can be blended for use in a motor fuel. The term does not include any substance that will be ultimately used for consumer nonmotor fuel use and is sold or removed in drum quantities of 55 gallons or less at the time of the removal or sale.

(46) "Gallon equivalent" means the amount of an alternative fuel that is considered to be the equivalent of a gallon of gasoline according to the National Institute of Standards and Technology Handbook 130 or pursuant to guidelines issued by the Tax Commissioner.

(47) "Gross gallons" means the total measured product, exclusive of any temperature or pressure adjustments, considerations or deductions, in U. S. gallons.

(48) "Governmental entity" means this state or a political subdivision thereof or the United States or its commissioners, agencies and instrumentalities.

(49) "Heating oil" means any combustible liquid, including, but not limited to, #1 fuel oil, #2 dyed fuel oil and kerosene that is burned in a boiler, furnace or stove for heating or industrial processing purposes.

(50) "Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this state including the streets and alleys in towns and cities.

(51) "Highway vehicle" means any self-propelled vehicle, trailer or semitrailer that is designed or used for transporting persons or property over the public highway and includes all vehicles subject to registration under article three, chapter seventeen-a of this code.

(52) "Import" means to bring motor fuel into this state by motor vehicle, marine vessel, pipeline or any other means. Import does not include bringing motor fuel into this state in the motor fuel

supply tank of a motor vehicle if the motor fuel is used to power that motor vehicle.

(53) "Importer" means a person that imports motor fuel into this state. The seller is the importer for motor fuel delivered into this state from outside of this state by or for the seller and the purchaser is the importer for motor fuel delivered into this state from outside of this state by or for the purchaser.

(54) "Import verification number" means the number assigned by the commissioner to a single transport vehicle delivery into this state from another state upon request for an assigned number by an importer or the transporter carrying taxable motor fuel into this state for the account of an importer.

(55) "In this state" means the area within the borders of West Virginia including all territory within the borders of West Virginia that is owned by the United States of America.

(56) "Invoiced gallons" means the gallons actually billed on an invoice for payment.

(57) "Licensee" means a person licensed by the commissioner pursuant to section ten of this article.

(58) "Liquid" means a substance that is liquid above its freezing point.

(59) "Liquefied natural gas" means natural gas that has been liquefied at -126.1 degrees centigrade and stored in insulated cryogenic tanks for use as an engine motor fuel.

(60) "Motor carrier" means a vehicle used, designated or maintained for the transportation of persons or property and having two axles and a gross vehicle weight exceeding 26,000 pounds or having three or more axles regardless of weight or used in combination when the weight of the combination exceeds 26,000 pounds or registered gross vehicle weight, and any aircraft, barge or other watercraft or railroad locomotive transporting passengers or freight in or through this state: *Provided*, That the gross vehicle weight rating of the vehicles being towed is in excess of 10,000

pounds. The term "motor carrier" does not include any type of recreational vehicle.

(61) "Motor fuel" means gasoline, blended fuel, aviation fuel, any special fuel and alternative fuel.

(62) "Motor fuel transporter" means a person who transports motor fuel outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car or a marine vessel.

(63) "Motor vehicle" means automobiles, motor carriers, motor trucks, motorcycles and all other vehicles or equipment, engines or machines which are operated or propelled by combustion of motor fuel.

(64) "Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of 60 degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds pressure per square inch.

(65) "Permissive supplier" is a person who may not be subject to the taxing jurisdiction of this state but who meets both of the following requirements: (A) Is registered under Section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal system; and (B) a position holder in motor fuel only located in another state or a person who receives motor fuel only in another state pursuant to a two-party exchange: *Provided*, That a person is classified as a supplier if it has or maintains, occupies or uses, within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent or representative (by whatever name called) operating within this state under the authority of the supplier or its subsidiary.

(66) "Person" means an individual, firm, cooperative, association, corporation, limited liability corporation, estate, guardian, executor, administrator, trust, business trust, syndicate, partnership, limited partnership, copartnership, organization, limited liability partnership, joint venture, receiver and trustee in bankruptcy. "Person" also means a club, society or other group or

combination acting as a unit, a public body including, but not limited to, this state and any other state and an agency, commissioner, institution, political subdivision or instrumentality of this state or any other state and, also, an officer, employee or member of any of the foregoing who, as an officer, employee or member, is under a duty to perform or is responsible for the performance of an act prescribed by the provisions of this article.

(67) "Position holder" means the person who holds the inventory position in motor fuel in a terminal as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for motor fuel at the terminal. The term includes a terminal operator who owns motor fuel in the terminal.

(68) "Principal" means:

(A) If a partnership, all its partners;

(B) If a corporation, all its officers, directors, and controlling direct or indirect owners;

(C) If a limited liability company, all its members; or

(D) An individual.

(69) "Producer/manufacturer" means a person who produces, refines, blends, distills, manufactures or compounds motor fuel.

(70) "Provider of alternative fuel" means a person who does one or more of the following:

(A) Acquires alternative fuel for sale or delivery to an alternative-fuel bulk end user or an alternative-fuel retailer;

(B) Maintains storage facilities for alternative fuel including alternative-fuel home refueling infrastructures and alternative-fuel commercial refueling infrastructures, part or all of which the person uses or sells to someone other than an alternative-fuel bulk end user or an alternative-fuel retailer to operate a highway vehicle;

(C) Sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicles to the engine of the vehicle;

(D) Imports alternative fuel into this state by a means other than the usual tank or receptacle connected with the engine of a highway vehicle for use by that person to operate a highway vehicle.

(71) "Rack" means a mechanism for delivering motor fuel from a refinery, terminal, marine vessel or bulk plant into a transport vehicle, railroad tank car or other means of transfer that is outside the bulk transfer/terminal system.

(72) "Railroad locomotive" means diesel-powered equipment or machinery that rides on railroad rails and includes a switching engine.

(73) "Receive" means acquisition of ownership or possession of motor fuel.

(74) "Refiner" means a person who owns, operates or otherwise controls a refinery.

(75) "Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

(76) "Removal" means a physical transfer other than by evaporation, loss or destruction. A physical transfer to a transport vehicle or other means of conveyance outside the bulk transfer/terminal system is complete upon delivery into the means of conveyance.

(77) "Retailer" means a person who sells motor fuel at retail or dispenses motor fuel at a retail location.

(78) "Retailer of alternative fuel" means a person who maintains storage facilities, including alternative-fuel vehicle commercial refueling infrastructure, for alternative fuel and who

sells the fuel at retail or dispenses the fuel at a retail location to operate a motor vehicle.

(79) "Special fuel" means a gas or liquid, other than gasoline, used or suitable for use as motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle, machine, or mechanical contrivance and includes products commonly known as natural or casing-head gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel, transmix, ethanol, M100, ethanol fuel, E100, ethanol fuel blend, E85 and any fuel mixture that contains 85 percent or more alcohol by volume when combined with gasoline or other fuels and liquid fuel derived from coal through the Fischer-Tropsch process. "Special fuel" does not include alternative fuel or any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil or lubricant, unless blended in or sold for use as motor fuel in an internal combustion engine.

(80) "State" or "this state" means the State of West Virginia.

(81) "Supplier" means a person that is:

(A) Subject to the general taxing jurisdiction of this state;

(B) Registered under Section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal distribution system; and

(C) One of the following:

(i) A position holder in motor fuel in a terminal or refinery in this state and may concurrently be a position holder in motor fuel in another state; or

(ii) A person who receives motor fuel in this state pursuant to a two-party exchange.

A terminal operator is not a supplier based solely on the fact that the terminal operator handles motor fuel consigned to it within a terminal.

(82) "Tax" or "this tax" is the motor fuel excise tax imposed by this article and includes within its meaning interest and additions to tax and penalties unless the context requires a more limited meaning.

(83) "Taxpayer" means a person required to file a return for the tax imposed by this article or a person liable for payment of the tax imposed by this article.

(84) "Terminal" means a motor fuel storage and distribution facility to which a terminal control number has been assigned by the Internal Revenue Service, to which motor fuel is supplied by pipeline or marine vessel and from which motor fuel may be removed at a rack.

(85) "Terminal operator" means a person who owns, operates or otherwise controls a terminal.

(86) "Transmix" means: (A) The buffer or interface between two different products in a pipeline shipment; or (B) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

(87) "Transport vehicle" means a vehicle designed or used to carry motor fuel over the highway and includes a straight truck, a straight truck/trailer combination and a semitrailer combination rig.

(88) "Trustee" means a person who is licensed as a supplier or a permissive supplier and receives tax payments from and on behalf of another pursuant to section twenty-four of this article.

(89) "Two-party exchange" means a transaction in which motor fuel is transferred from one licensed supplier or permissive supplier to another licensed supplier or permissive supplier pursuant to an exchange agreement; and

(A) Includes a transfer from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on the records of the terminal operator;

(B) Is completed prior to removal of the product from the terminal by the receiving exchange partner; and

(C) Is recorded on the terminal operator's books and records with the receiving exchange partner as the supplier that removes the motor fuel across the terminal rack for purposes of reporting the transaction to this state.

(90) "Use" means the actual consumption or receipt of motor fuel by a person into a motor vehicle, aircraft or watercraft.

(91) "Watercraft" means any vehicle used on waterways.



CHAPTER 307

(Com. Sub. for S. B. 478 - By Senators Grady and Plymale)

[Passed March 10, 2023; in effect from passage]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §11-21-12m and §11-21-25 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-24-10a of said code, to amend and reenact §18-30-3 of said code; and to amend and reenact §18-30A-3, §18-30A-10, §18-30A-11, and §18-30A-13 of said code, all relating generally to the Jumpstart Savings Program; clarifying that the entire amount of an account distribution used for certain qualified expenses is subject to reducing personal income tax modification; clarifying that the amount of an account distribution is only subject to reducing personal income tax modification to the extent that the amount is not allowable as certain federal deductions; establishing an increasing personal income tax modification for account distributions used for nonqualified expenses and previously applied toward the reducing personal income tax modification for account contributions; defining terms; providing that an employer may not claim a tax credit for matching contributions to an account if the employer is the account owner or account beneficiary; providing that an employer may not claim both the reducing personal income tax modification and the matching credit for an amount contributed to an employee's account; permitting employers to claim matching credit for certain amounts allowable as federal tax deductions; eliminating a definition related to an obsolete account; defining terms; expanding the occupations and professions in which an individual may incur qualified expenses; eliminating the minimum deposit required to open an account and for certain opening incentive deposits; authorizing the board to establish a minimum deposit to open

an account or for certain opening incentive deposits; establishing retroactive internal effective date of January 1, 2023, for certain provisions; and making technical and clarifying corrections to reporting requirements.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12m. Additional modifications related to a Jumpstart Savings Account.

(a) *Modification for contributions.* —

(1) For taxable years beginning on or after January 1, 2022, a modification reducing federal adjusted gross income is hereby authorized in an amount equal to a West Virginia taxpayer's contribution to a Jumpstart Savings Account for the taxable year in which the payment is made, in accordance with §18-30A-1 *et seq.* of this code, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year.

(2) The decreasing modification allowed pursuant to this subsection may not exceed \$25,000 in a single taxable year: *Provided*, That the taxpayer may also elect to carry forward the modification over a period not to exceed five taxable years, beginning in the taxable year in which the contribution was made.

(b) *Decreasing modification for qualified distributions not deductible from federal adjusted gross income.* —

(1) For taxable years beginning on or after January 1, 2022, a modification reducing federal adjusted gross income is hereby authorized in an amount equal to the entire amount of a distribution from a Jumpstart Savings Account received by a distributee that is used to pay for qualified expenses described in §18-30A-3(a)(11)(D) of this code. Such decreasing modification is authorized for the taxable year the distribution is made to the

distributee, but only to the extent the distribution amount is not allowable as a deduction when arriving at the distributee's federal adjusted gross income for the taxable year when the distribution was made. Any decreasing modification applied by a distributee shall be subject to disallowance to the extent that the distributed moneys are not used to pay for qualified expenses, as defined in §18-30A-3(a)(11)(D) of this code in the taxable year of receipt of the distribution or the next succeeding taxable year.

(2) The decreasing modification allowed pursuant to this subsection may not exceed \$25,000 for the taxable year.

(c) *Increasing modification for distributions not used for qualified expenses.* — For taxable years beginning on or after January 1, 2023, there shall be added to the federal adjusted gross income of a distributee, unless already included in federal adjusted gross income for the taxable year, any amount previously applied to a decreasing modification of federal adjusted gross income pursuant to subsection (a) of this section for any amount contributed to a Jumpstart Savings Account, that is subsequently withdrawn from said account and not used for qualified expenses in the taxable year of receipt of the distribution or the next succeeding taxable year.

(d) *Modification for rollover of certain distributions.* — A modification reducing federal adjusted gross income is hereby authorized for the account owner, to the extent that the amount is not allowable as a deduction when arriving at the account owner's federal adjusted gross income, in the amount as follows:

(1) An amount equal to a distribution from a Jumpstart Savings Account received in the taxable year, if the account owner deposits such amount into a West Virginia ABLE Account within 30 days of receiving the distribution, according to the requirements of §18-30A-1 *et seq.* of this code; and

(2) An amount equal to the portion of a distribution received in the taxable year from a college savings account, established pursuant to §18-30-1 *et seq.* of this code, if the taxpayer deposits the amount into a Jumpstart Savings Account within 30 days of

receiving the distribution according to the requirements of §18-30A-1 *et seq.* of this code.

(e) Nothing in this section shall be construed to decrease or otherwise impact any person's federal tax obligations or to authorize any act which violates federal law.

(f) *Definitions.* — For the purposes of this section:

"Distributee" means the person who is authorized to receive distributions from a Jumpstart Savings Account, according to §18-30A-1 *et seq.* of this code and the legislative rules and procedures adopted by the Board of Trustees of the West Virginia College and Jumpstart Savings Programs.

"Qualified expense" has the meaning provided in §18-30A-3 of this code.

(g) The modifications authorized in this section are authorized in addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12 of this code.

(h) The amendments to this section adopted during the regular session of the Legislature, 2023, are effective January 1, 2023.

§11-21-25. Nonrefundable credit for matching contribution to employee's Jumpstart Savings Account.

(a) A nonrefundable credit against the tax imposed by the provisions of this article is allowed against the tax liability imposed under this article of a qualified employer, for a matching contribution made to a Jumpstart Savings Account in the taxable year, if the account owner is an employee of the taxpayer and a West Virginia resident, subject to the requirements of §18-30A-1 *et seq.* of this code and the following:

(1) The employer must directly contribute an amount to a Jumpstart Savings Account that is equal to a contribution made by the employee to such account in the same taxable year.

(2) The credit allowed by this section may not exceed \$5,000 per employee per taxable year.

(3) The amount of the credit may not exceed the portion of the contribution that is attributable to the employer and that would otherwise be derived by the employer as income from his or her business for the taxable year.

(4) The employer may not claim the credit if the employer himself or herself is the account owner or beneficiary of the account to which the matching contribution was made.

(5) The employer may not claim a credit against more than one type of tax for a single contribution to a Jumpstart Savings Account.

(6) The employer may not claim both the credit and a decreasing modification authorized by §11-21-12m of this code for an amount contributed to an employee's account.

(b) In order to qualify for the credit provided by this section, an employer must submit any forms or other information, as required by the West Virginia Jumpstart Savings Board or the State Treasurer, and the Tax Commissioner, upon making the contribution.

(c) *Conduit Entities and Proprietorships Personal Income Taxes.* —

(1) If the employer directly contributing an amount to a Jumpstart Savings Account is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited liability company that is treated as a partnership for federal income tax purposes, the credit authorized pursuant to this section is allowed as a credit against the taxes imposed by this article on the flow through income of S corporation shareholders, partners, owners, and limited liability company members derived from such electing small business corporation, partnership, or limited liability company attributable to business or other activity.

(2) If the employer directly contributing an amount to a Jumpstart Savings Account is a sole proprietor, the credit authorized pursuant to this section is allowed as a credit against the taxes imposed by this article on the income of the sole proprietor attributable to the business.

(3) Electing small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its partners, owners, shareholders, or members in the same manner as profits and losses are allocated for the taxable year.

(4) No credit is allowed under this section against any employer withholding taxes imposed by this article.

(5) The credit allowed under this section must be used in the tax year in which the contribution is made. The credit may not be carried back to a prior tax year nor carried forward to a subsequent tax year. Any unused amount of the credit is forfeited.

(d) The amendments to this section adopted during the regular session of the Legislature, 2023, are effective January 1, 2023.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-10a. Nonrefundable credit for matching contribution to employee's Jumpstart Savings Account.

(a) A nonrefundable credit against the tax imposed by the provisions of this article is allowed for a matching contribution to a Jumpstart Savings Account made in the taxable year if the account owner is an employee of the taxpayer and a West Virginia resident, subject to the requirements of §18-30A-1 *et seq.* of this code and the following:

(1) The employer must directly contribute an amount to a Jumpstart Savings Account that is equal to a contribution made by the employee to such account in the same taxable year.

(2) The credit allowed by this section may not exceed \$5,000 per employee per taxable year.

(3) The employer may not claim the credit against more than one type of tax for a single contribution to a Jumpstart Savings Account.

(4) The employer may not claim both the credit and a decreasing modification authorized by §11-21-12m of this code for an amount contributed to an employee's account.

(b) In order to qualify for the credit provided by this section, an employer must submit any forms or other information, as required by the West Virginia Jumpstart Savings Board or the State Treasurer, or the Tax Commissioner, upon making the contribution.

(c) *Conduit Entities Corporation Net Income Tax.* —

(1) If the employer directly contributing an amount to a Jumpstart Savings Account is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, or a limited liability company that is treated as a partnership for federal income tax purposes, the credit authorized pursuant to this section is allowed as a credit against the taxes imposed by this article on the flow through income of S corporation shareholders, partners, owners, and limited liability company members derived from such electing small business corporation, partnership, or limited liability company attributable to business or other activity.

(2) Electing small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its corporate partners, owners, shareholders, or members in the same manner as profits and losses are allocated for the taxable year.

(3) No credit is allowed under this section against any employer withholding taxes imposed by this article.

(4) The credit allowed under this section must be used in the tax year in which the contribution is made. The credit may not be carried back to a prior tax year nor carried forward to a subsequent tax year. Any unused amount of the credit is forfeited.

(d) The amendments to this section adopted during the regular session of the Legislature, 2023, are effective January 1, 2023.

CHAPTER 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA COLLEGE SAVINGS PROGRAM ACT.

§18-30-3. Definitions.

For the purposes of this article, the following terms have the meanings ascribed to them, unless the context clearly indicates otherwise or as otherwise provided in 26 U.S.C. § 529:

"Account" means a savings plan account established in accordance with this article.

"Account owner" means the individual, corporation, association, partnership, trust, or other legal entity who enters into a savings plan contract and invests money in a savings plan account.

"Beneficiary" means the individual designated as a beneficiary at the time an account is established, the individual designated as the beneficiary when beneficiaries are changed, the individual entitled to receive distributions from an account, and any individual designated by the account owner, his or her agent, or his or her estate in the event the beneficiary is unable or unwilling to receive distributions under the terms of the contract.

"Board" means the Board of Trustees of the West Virginia College and Jumpstart Savings Programs as provided in §18-30-4 of this code.

"Distribution" means any disbursement from an account in accordance with 26 U.S.C. § 529.

"Eligible educational institution" means an institution of higher education or a private or religious primary, middle, or secondary school that qualifies under 26 U.S.C. § 529 as an eligible educational institution.

"Outstanding obligations of the Prepaid Tuition Plan" means the outstanding contract obligations of the board to persons owning Prepaid Tuition Plan accounts. The term also includes any fees, charges, expenses, penalties, or any other obligation or liability of the Prepaid Tuition Trust Fund or plan.

"Prepaid Tuition Program" means the Prepaid Higher Education Program and Plan, which was previously established and authorized by this article as reflected in chapter 80, Acts of the Legislature, Regular Session, 1997, and which was closed in 2021.

"Program" means the West Virginia College Savings Program established pursuant to this article and as defined in §18-30-4(a) of this code.

"Qualified education expenses" means expenses treated as "qualified higher education expenses" under 26 U.S.C. § 529.

"Savings plan" means the plan that allows account distributions for qualified higher educational expenses and tuition at private or religious primary, middle, and secondary schools.

"Savings plan account" means an account established by an account owner pursuant to this article, in order for the beneficiary to apply distributions toward qualified higher education expenses and tuition expenses at eligible educational institutions.

"Savings plan contract" means a contract entered into by the board or its agent, if any, and an account owner establishing a savings plan account.

"Treasurer" means the West Virginia State Treasurer.

"Tuition" means the quarter, semester, or term charges imposed by an eligible educational institution and all mandatory fees required as a condition of enrollment by all students for full-time attendance.

ARTICLE 30A. WEST VIRGINIA JUMPSTART SAVINGS ACT.

§18-30A-3. Definitions.

(a) For the purposes of this article, the following terms shall have the following meanings:

(1) "Account owner" means the person who opens and invests money into a Jumpstart Savings Account, as provided in this article.

"Advanced Career Education" or ACE, shall mean the same as that term is used in §18-25-11 of this code.

(2) "Beneficiary" means the person designated as a beneficiary at the time an account is established, or the individual designated as the beneficiary when the beneficiary is changed.

(3) The "board" means the Board of Trustees of the West Virginia College and Jumpstart Savings Programs created in §18-30-4 of this code.

(4) "Contribution" means any amount of money deposited into a Jumpstart Savings Account according to the procedures established and required by the board or the Treasurer.

(5) "Deduction" as used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Deduction means and refers to a deduction allowable under the federal income tax code for the purpose of determining federal taxable income or federal adjusted gross income, unless text clearly indicates otherwise.

(6) "Distributee" has the same meaning provided in §11-21-12m of this code.

(7) "Distribution" means any disbursement from an account.

(8) The term "family member", as used to describe a person's relationship to a designated beneficiary, includes any of the following:

(A) The spouse of the beneficiary;

(B) A child of the beneficiary or a descendant of the beneficiary's child;

(C) A brother, sister, stepbrother, or stepsister of the beneficiary;

(D) The father or mother of the beneficiary, or an ancestor of either;

(E) A first cousin of the beneficiary;

(F) A stepfather or stepmother of the beneficiary;

(G) A son or daughter of a brother or sister of the beneficiary;

(H) A brother or sister of the father or mother of the beneficiary;

(I) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the beneficiary; or

(J) The spouse of any person described in paragraphs (B) through (I) of this subdivision.

(K) Any term set forth in this subdivision means and includes such term as established through a lawful adoption, including, but not limited to, adoptions of a child or children, or other natural person, by a natural person or natural persons who are not the father, mother, or stepparent of the child or person.

(9) "Labor organization" means any organization, agency, association, union, or employee representation committee of any kind that exists, in whole or in part, to assist employees in negotiating with employers concerning grievances, labor disputes, wages, rates of pay, or other terms or conditions of employment.

(10) The "program" refers to the Jumpstart Savings Program established by this article.

(11) "Qualified expense" means an account distribution, or any amount thereof, expended by an account beneficiary in the taxable

year of receipt of the distribution or the next succeeding taxable year that:

(A) Is allowable as a federal personal income tax deduction pursuant to 26 U.S.C. § 162, as an ordinary and necessary business expense, and is incurred in carrying on a qualifying profession;

(B) Is allowable as a federal personal income tax deduction pursuant to 26 U.S.C. § 195(b), as a business start-up expenditure, and is incurred in carrying on a qualifying profession; or

(C) Is expended for goods, services, or other expenses that qualify for a federal personal income tax deduction for depreciation or amortization over time, pursuant to a provision of 26 U.S.C. § 161-199a and that are used to carry on a qualifying profession; or

(D) Is not allowable as any one of the federal personal income tax deductions described in paragraphs (A) through (C) of this subdivision and is expended for:

(i) The purchase of tools, equipment, or supplies used exclusively in a qualifying profession;

(ii) Costs to establish a business in this state to practice a qualifying profession; or

(iii) Fees for required certification or licensure in a qualifying profession: *Provided*, That in no event shall any dues, fees, subscriptions, or any other payments to a labor organization constitute qualified expenses for the purposes of this article; and

(iv) Is not reimbursed by the taxpayer's employer.

(12) "Qualifying profession" means an occupation, profession, or trade for which the designated beneficiary is required to:

(A) Complete an apprenticeship program registered and certified with the United States Department of Labor, as provided in 29 U.S.C. § 50;

(B) Complete an apprenticeship program required by any provision of this code or a legislative rule promulgated pursuant to this code;

(C) Earn a license or certification from an Advanced Career Education (ACE) career center; or

(D) Earn an associate degree or certification from a community and technical college or from a school or program, authorized by the West Virginia Council for Community or Technical College Education or a similar agency in another state, to award associates degrees or technical certifications;

(E) Earn a license or certification from a career and technical education or vocational training program at a public secondary school; or

(F) Complete any other apprenticeship or educational program consistent with the purposes of this article, as approved by the board.

(13) The "Treasurer" refers to the West Virginia State Treasurer or his or her designee.

(b) The amendments to this section adopted during the regular session of the Legislature, 2023, are effective January 1, 2023.

§18-30A-10. Opening a Jumpstart Savings Account; deposits.

(a) Beginning on July 1, 2022, a person may open a Jumpstart Savings Account.

(b) To open a Jumpstart Savings Account, the account owner must:

(1) Provide all information required by the Treasurer;

(2) Make a minimum opening deposit, if required by the board; and

(3) Name a single person as the designated beneficiary: *Provided*, That the designated beneficiary may be the account

owner himself or herself, or another person: *Provided, however,* That the beneficiary may not be a business, corporation, or enterprise.

(c) The Treasurer will deposit \$100 from the College and Jumpstart Savings Administrative Account into a newly opened Jumpstart Savings Account if the following criteria are met:

(1) The designated beneficiary is a resident of West Virginia;

(2) Any minimum deposit required by the board is made to the account within 30 days of the account's opening; and

(3) The account is opened when the designated beneficiary is under 18 years of age; or

(4) The account is opened within the 180 days following the date of the designated beneficiary's enrollment in an apprenticeship, training, or educational program described in §18-30A-3(a)(12) of this code.

(d) Any person may make a contribution to a Jumpstart Savings Account after the account is opened, subject to applicable state and federal laws.

(e) The Treasurer shall prescribe all forms required to open and make deposits to a Jumpstart Savings Account and make the forms available in a prominent location on the Treasurer's website.

(f) The board may establish minimum deposits or amounts for accounts to be considered active and may establish procedures to close inactive accounts.

§18-30A-11. Distributions.

(a) A distribution from a Jumpstart Savings Account that was used to pay for qualified expenses is not subject to the increasing income tax modification provided in §11-21-12m(c) of this code.

(b) A change in the designated beneficiary of a Jumpstart Savings Account is not a distribution for the purposes of this article

or §11-21-1 *et seq.* of this code if the new beneficiary is a family member of the prior beneficiary.

(c) Pursuant to the rule-making authority provided in this article, the board shall promulgate rules specifying the expenditures that constitute qualified expenses, according to §18-30A-3(a)(11)(D) of this code.

§18-30A-13. Reports and account; annual audit.

(a) In addition to any other requirements of this article, the board shall:

(1) Prepare and provide an annual summary of information on the financial condition of the Jumpstart Savings Trust Fund and statements on the savings program accounts to the respective account owners; and

(2) Prepare, or have prepared, a quarterly report on the status of the program, including the Jumpstart Savings Trust Fund and the College and Jumpstart Savings Administrative Account, and provide a copy of the report to the Joint Committee on Government and Finance: *Provided*, That the report submitted pursuant to §18-30-10 of this code fulfills this subdivision's requirement concerning the College and Jumpstart Savings Administrative Account.

(b) All accounts administered under the program, including the Jumpstart Savings Trust Fund, are subject to an annual external audit by an accounting firm, selected by the board, of which all members or partners assigned to head the audit are members of the American Institute of Certified Public Accountants. The audit shall comply with the requirements and standards in §5A-2-33 of this code.

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CHAPTER 308

(S. B. 487 - By Senators Weld and Chapman)

[Passed March 8, 2023; in effect 90 days from passage (June 6, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §11-21-12d of the Code of West Virginia, 1931, as amended, relating to extending the additional modification reducing federal adjusted gross income.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12d. Additional modification reducing federal adjusted gross income.

(a) In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12(c) of this code, any person who retires under an employer-provided defined benefit pension plan that terminates prior to or after the retirement of that person and the pension plan is covered by a guarantor whose maximum benefit guarantee is less than the maximum benefit to which the retiree was entitled had the plan not terminated may subtract annually from his or her federal adjusted income a sum equal to the difference in the amount of the maximum annual pension benefit the person would have received for such tax year had the plan not terminated and the maximum annual pension benefit actually received from the guarantor under a benefit guarantee plan: *Provided*, That if the Tax Commissioner determines that this adjustment reduces the revenues of the state by \$2 million or more in any one year, then the Tax Commissioner shall reduce the percentage of the reduction to a level at which the commissioner believes will reduce the cost of the adjustment to \$2

million for the next year. This tax adjustment is effective for taxable years beginning on and after January 1, 2008: *Provided, however,* That for the taxable year 2007, the tax adjustment shall be effective and shall apply retroactively: *Provided further,* That the adjustment terminates for the tax years on and after January 1, 2015.

(b) This adjustment shall be effective for tax years beginning on January 1, 2020, and shall terminate for taxable years on and after January 1, 2028.

(c) This modification is available regardless of the type of return form filed.

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CHAPTER 309

(Com. Sub. for Com. Sub. for S. B. 522 - By Senators Tarr and Woodrum)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §11-22-2 of the Code of West Virginia, 1931, as amended, relating to excise taxes on transfers of title to real estate; requiring a certain percentage of certain excise taxes be allocated to the county in which it was collected; providing for distribution of funds from certain excise taxes allocated to the county in which it was received; authorizing the Secretary of State to propose legislative rules establishing standards for election administration, infrastructure, and security; and providing for allocation of funds when certain minimum standards or reserve amounts are met.

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; county clerk funding for election administration, infrastructure, and security, and other county clerk purposes.

(a) Every person who delivers, accepts, or presents for recording any document, or in whose behalf any document is delivered, accepted, or presented for recording, is subject to pay for, and in respect to the transaction or any part thereof, an excise tax upon the privilege of transferring title to real estate at the rate of \$1.10 for each \$500 value or fraction thereof as represented by

the document as defined in §11-22-1 of this code: *Provided*, That beginning July 1, 2021, ten percent of each excise tax collected pursuant to the provisions of this subsection shall be retained by the county wherein the tax was collected to be used for county purposes: *Provided, however*, That beginning July 1, 2022, 20 percent of each excise tax collected pursuant to the provisions of this section shall be retained by the county wherein the tax was collected to be used for county purposes: *Provided further*, That beginning July 1, 2023, thirty percent of each excise tax collected pursuant to the provisions of this section shall be retained by the county wherein the tax was collected to be used as provided in subsection (c) of this section: *And provided further*, That beginning July 1, 2024, 65 percent of each excise tax collected pursuant to the provisions of this section shall be retained by the county wherein the tax was collected to be used as provided in subsection (c) of this section: *And provided further*, That beginning July 1, 2025, the excise tax collected pursuant to this subsection shall be a county excise tax retained by the county wherein the tax was collected and to be used by the county as provided in subsection (c) of this section. The excise tax collected pursuant to this subsection is payable at the time of delivery, acceptance, or presenting for recording of the document. In addition to the excise tax described in this subsection, there is assessed a fee of \$20 upon the privilege of transferring real estate for consideration. The clerk of the county commission shall collect the additional \$20 fee before recording a transfer of title to real estate and shall deposit the moneys from the additional fees into the Affordable Housing Fund as provided in §31-18-20d of this code. The moneys collected from this additional fee shall be segregated from other funds of the West Virginia Housing Development Fund and shall be accounted for separately. None of these moneys may be expended by the West Virginia Housing Development Fund to defray administrative and operating costs and expenses actually incurred by the West Virginia Housing Development Fund. The West Virginia Housing Development Fund shall publish monthly on its Internet site an accounting of all revenue deposited into the fund during the month and a full disclosure of all expenditures from the fund including any person or entity receiving funds, its location, and any contractor awarded a construction contract.

(b) Effective January 1, 1968, and thereafter, there is imposed an additional county excise tax for the privilege of transferring title to real estate at the rate of 55 cents for each \$500 value or fraction thereof as represented by such document as defined in §11-22-1 of this code, which county tax shall be payable at the time of delivery, acceptance, or presenting for recording of such document: *Provided*, That after July 1, 1989, the county may increase said excise tax to an amount equal to the state excise tax. The additional tax hereby imposed is declared to be a county tax and to be used for county purposes: *Provided, however*, That after July 1, 2017, the county may increase the excise tax to an amount not to exceed \$1.65 for each \$500 value, or fraction thereof, as represented by a document, as defined in §11-22-1 of this code: *Provided further*, That only one such state tax and one such county tax shall be paid on any one document and shall be collected in the county where the document is first admitted to record and the tax shall be paid by the grantor therein unless the grantee accepts the document without such tax having been paid, in which event such tax shall be paid by the grantee: *And provided further*, That on any transfer of real property from a trustee or a county clerk transferring real estate sold for taxes, such tax shall be paid by the grantee. The county excise tax imposed under this section may not be increased in any county unless the increase is approved by a majority vote of the members of the county commission of such county. Any county commission intending to increase the excise tax imposed in its county shall publish a notice of its intention to increase such tax not less than 30 days nor more than 60 days prior to the meeting at which such increase will be considered, such notice to be published as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area shall be the county in which such county commission is located.

(c)(1) Beginning July 1, 2023, and ending June 30, 2024, the excise tax retained by the county wherein the tax was collected, pursuant to subsection (a) of this section, shall be used by the county and deposited as follows:

(A) Twenty percent of the moneys received shall be deposited into the county general fund to be used for county purposes;

(B) Five percent of the moneys received shall be deposited into a separate account and allocated for use by the clerk of the county commission in improving election administration, infrastructure, and security, in accordance with the standards established by the Secretary of State as provided in subdivision (4) of this subsection; and

(C) Five percent of the moneys received shall be deposited into a separate account for use by the clerk of the county commission for other purposes including, but not limited to, establishing, maintaining, and securing infrastructure to comply with the Uniform Real Property Electronic Recording Act, §39A-4-1 *et seq.* of this code.

(2) Beginning July 1, 2024, and ending June 30, 2025, the excise tax retained by the county wherein the tax was collected, pursuant to subsection (a) of this section, shall be used by the county and deposited as follows:

(A) Thirty percent of the moneys received shall be deposited into the county general fund to be used for county purposes;

(B) Seventeen and one-half percent of the moneys received shall be deposited into a separate account and allocated for use by the clerk of the county commission in improving election administration, infrastructure, and security, in accordance with the standards established by the Secretary of State as provided in subdivision (4) of this subsection; and

(C) Seventeen and one-half percent of the moneys received shall be deposited into a separate account for use by the clerk of the county commission for other purposes including, but not limited to, establishing, maintaining, and securing infrastructure to comply with the Uniform Real Property Electronic Recording Act, §39A-4-1 *et seq.* of this code.

(3) Beginning July 1, 2025, the excise tax retained by the county wherein the tax was collected, pursuant to subsection (a) of this section, shall be used by the county and deposited as follows:

(A) Ninety percent of the moneys received shall be deposited into the county general fund to be used for county purposes;

(B) Five percent of the moneys received shall be deposited into a separate account and allocated for use by the clerk of the county commission in improving election administration, infrastructure, and security, in accordance with the standards established by the Secretary of State as provided in subdivision (4) of this subsection; and

(C) Five percent of the moneys received shall be deposited into a separate account for use by the clerk of the county commission for other purposes including, but not limited to, establishing, maintaining, and securing infrastructure to comply with the Uniform Real Property Electronic Recording Act, §39A-4-1 *et seq.* of this code.

(4) The Secretary of State propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to establish minimum standards for election administration, infrastructure, and security, which rules shall include, but not be limited to, standards regarding cyber and physical security, and a minimum reserve funding requirement for each county from funds transferred to the separate fund required by this subsection for election administration, infrastructure, and security: *Provided*, That the minimum reserve funding requirement may not exceed the cost of upgrading voting equipment at the statewide average price to upgrade a voting system by precinct. Upon a determination by the Secretary of State that a county has satisfied the minimum reserve funding requirement and standards, the moneys in excess of the minimum reserve funding requirement may be transferred to the county's general fund at the county commission's direction.

(5) Any moneys that are deposited into two separate funds for use in improving election administration, infrastructure, and security, and other purposes relating to the office of the clerk of the

county commission, shall be in addition to and separate from typical county budget allocations and shall not be supplanted by a budget reduction to the clerk of the county commission's office: *Provided*, That reasonable budget reductions are permitted if made in the ordinary course for reasons other than offsetting the additional funding as provided in this section.

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CHAPTER 310

(Com. Sub. for S. B. 548 - By Senator Weld)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §11A-3-2, §11A-3-13, §11A-3-38, §11A-3-45 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11A-3-45a; to amend and reenact §11A-3-46, §11A-3-47, §11A-3-48 of said code; to amend said code by adding thereto a new section, designated §11A-3-48a; and to amend and reenact §11A-3-56 of said code, all relating to real property taxes; modifying who is entitled to redeem real estate that is subject to delinquent taxes; modifying certain public notices regarding the certification of real estate to the Auditor; modifying who is entitled to redeem nonentered or certified lands; specifying that participation in certain auctions conducted by West Virginia Auditor constitutes transacting business in West Virginia; providing eligibility requirements to bid on tax liens at certain auctions conducted by the Auditor; providing for certain rule-making authority, including emergency rulemaking; barring certain parties from participating in auctions conducted by Auditor; modifying certain public notices regarding certain auctions conducted by the Auditor; providing for the incurrence of legal expenses related to title examinations by the West Virginia Auditor and the reimbursement for those expenses; authorizing West Virginia Auditor to refuse to sell unsold lands to potential buyers who fail to meet certain criteria; and barring certain parties from purchasing unsold lands.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED, AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-2. Second publication of list of delinquent real estate; notice.

(a) On or before the September 10 of each year, the sheriff shall prepare a second list of delinquent lands, which shall include all real estate in his or her county remaining delinquent as of the first day of September, together with a notice of sale, in form or effect as follows:

Notice is hereby given that the following described tracts or lots of land or undivided interests therein in the County of _____ and the tax liens that encumber the same which are delinquent for the nonpayment of taxes for the year (or years) 20_____, will be certified to the Auditor for disposition pursuant to West Virginia Code §11A-3-44 on the 31st day of October, 20_____.

Upon certification to the Auditor, tax liens on each unredeemed tract or lot, or each unredeemed part thereof or undivided interest therein, shall be sold at public auction to the highest bidder in an amount which shall not be less than the taxes, interest, and charges which shall be due thereon to the date of sale, as set forth in the following table:

Name of person charged with taxes	Quantity of land	Local description	Total amount of taxes, interest, and charges due to date of sale

If any of said tracts or lots remain unsold following the auction, they shall be subject to sale by the Auditor without additional

advertising or public auction, such terms as the Auditor deems appropriate pursuant to §11A-3-48 of this code.

Any of the aforesaid tracts or lots, or part thereof or an undivided interest therein, may be redeemed by the payment to the undersigned sheriff (or collector) before certification to the Auditor, of the total amount of taxes, interest, and charges due thereon up to the date of redemption by credit card, cashier's check, money order, certified check, or United States currency. Payment must be received in the tax office by the close of business on the last business day prior to the certification.

After certification to the Auditor, any of the aforesaid tracts or lots may be redeemed by any person entitled to pay the taxes thereon, the owner of the same whose interest is not subject to separate assessment, or any person having a lien on the same, or on an undivided interest therein, at any time prior to the sale by payment to the Auditor of the total amount of taxes, interest, and charges due thereon up to the date of redemption.

Given under my hand this _____ day of
 _____, 20_____

Sheriff (or collector).

The sheriff shall publish the list and notice prior to the sale date fixed in the notice as a Class III-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county.

(b) In addition to such publication, no less than 30 days prior to the sale by the Auditor pursuant to §11A-3-44 of this code, the sheriff shall send a notice of the delinquency and the date of sale by certified mail: (1) To the last known address of each person listed in the land books whose taxes are delinquent; (2) to each person having a lien on real property upon which the taxes are due as disclosed by a statement filed with the sheriff pursuant to the provisions of §11A-3-3 of this code; (3) to each other person with

an interest in the property or with a fiduciary relationship to a person with an interest in the property who has in writing delivered to the sheriff on a form prescribed by the Tax Commissioner a request for such notice of delinquency; and (4) in the case of property which includes a mineral interest but does not include an interest in the surface other than an interest for the purpose of developing the minerals, to each person who has in writing delivered to the sheriff, on a form prescribed by the Tax Commissioner, a request for such notice which identifies the person as an owner of an interest in the surface of real property that is included in the boundaries of such property: *Provided*, That in a case where one owner owns more than one parcel of real property upon which taxes are delinquent, the sheriff may, at his or her option, mail separate notices to the owner and each lienholder for each parcel or may prepare and mail to the owner and each lienholder a single notice which pertains to all such delinquent parcels. If the sheriff elects to mail only one notice, that notice shall set forth a legally sufficient description of all parcels of property on which taxes are delinquent. In no event shall failure to receive the mailed notice by the landowner or lienholder affect the validity of the title of the property conveyed if it is conveyed pursuant to §11A-3-27 or §11A-3-59 of this code.

(c) To cover the cost of preparing and publishing the second delinquent list, a charge of \$25 shall be added to the taxes, interest, and charges already due on each item and all such charges shall be stated in the list as a part of the total amount due.

(d) To cover the cost of preparing and mailing notice to the landowner, lienholder, or any other person entitled thereto pursuant to this section, a charge of \$10 per addressee shall be added to the taxes, interest, and charges already due on each item and all such charges shall be stated in the list as a part of the total amount due.

(e) Any person whose taxes were delinquent on the first day of September may have his or her name removed from the delinquent list prior to the time the same is delivered to the newspapers for publication by paying to the sheriff the full amount of taxes and costs owed by the person at the date of such redemption. In such case, the sheriff shall include but \$3 of the costs provided in this

section in making such redemption. Costs collected by the sheriff under this section which are not expended for publication and mailing shall be paid into the General County Fund.

§11A-3-13. Publication by sheriff of certification list.

Within one month after completion of the certification, the sheriff shall prepare and publish a list of all the certifications made by him or her, in form or effect as follows, which list shall be published as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county.

List of tax liens on real estate in the county of _____, in the month (or months) of _____, 20_____, certified for nonpayment of taxes thereon for the year (or years) 20_____, and certified to the Auditor of the State of West Virginia:

Name of person charged with taxes	Local description of lands	Quantity of land charged

The owner of any real estate listed above, or any other person entitled to pay the taxes thereon whose interest is not subject to separate assessment, or any person having a lien on such real estate, or on an undivided interest therein may, however, redeem such real estate as provided by law.

Given under my hand this _____ day of _____, 20____.

Sheriff

To cover the costs of preparing and publishing such list, a charge of \$15 shall be added to the taxes, interest, and charges already due on each item listed.

§11A-3-38. Redemption of nonentered or certified lands.

(a) The owner of any real estate certified to the Auditor pursuant to §11A-3-8 of this code whose interest is not subject to separate assessment, or any person having a lien on such real estate, or on an undivided interest therein, or the owner of any nonentered real estate subject to the authority of the Auditor pursuant to §11A-3-37 of this code, or any other person who was entitled to pay the taxes thereon may redeem such real estate from the Auditor at any time prior to the certification of such real estate to the deputy commissioner as provided in §11A-3-44 of this code. Thereafter such real estate shall be subject to disposition pursuant to §11A-3-44 of this code, and subsequent sections.

(b) In order to redeem the person seeking redemption must pay to the Auditor such of the following amounts as may be due: (1) The taxes, interest and charges due on the real estate on the date of certification to the Auditor or the discovery of the nonentry, with interest at the rate of 12 percent per annum from the date of such certification or discovery; (2) all taxes assessed thereon for the year in which the certification occurred or nonentry was discovered, with interest at the rate of 12 percent per annum from the date on which they became delinquent, except when such taxes are currently due and payable to the sheriff; (3) all taxes except those for the current year which would have been assessed thereon since the certification had the certification not occurred, or which, in case of nonentered lands, would have been assessed thereon had the land been properly entered, with interest at the rate of 12 percent per annum from the date on which such taxes would have become delinquent: *Provided*, That in the case of nonentered lands, the owner shall not be liable for more than the taxes and interest which would have become due and payable during the 10 years immediately preceding the date of the discovery of the nonentry.

(c) In computing the amount due under subdivision (3), subsection (b) of this section on real estate certified to the Auditor by the sheriff, the Auditor shall use as the basis for computation the classification and valuation placed thereon by the assessor for each year since the sale. If such valuation and classification have not been made, he or she shall use the last valuation and

classification appearing on the property books. In computing the amount due under subdivision (3), subsection (b) of this section on nonentered real estate, the Auditor shall use as the basis for computation such classification and valuation as may, at the request of the Auditor or the person redeeming, be certified to the Auditor by the assessor as the classification and valuation which in his opinion would be proper for each year of nonentry.

(d) Redemption of an undivided interest included in a group assessment shall not be permitted until the applicable provisions of §11A-1-9 or §11A-1-10 of this code have been complied with, except that instead of presenting the assessor's certificate to the sheriff as therein provided, the person redeeming shall present it to the Auditor, who, after making the necessary changes in the land book, and in the record of delinquent lands kept in his or her office, shall compute the taxes due on the part or interest redeemed.

§11A-3-45. Auditor to hold annual auction.

(a) Each tract or lot certified by the Auditor pursuant to §11A-3-44 of this code shall be sold by him or her at public auction at the courthouse of the county to the highest eligible bidder during the courthouse's normal operating hours on any business working day within 90 days after the Auditor has certified the lands as required by §11A-3-44 of this code. The payment for any tract or lot purchased at a sale shall be made by check, U. S. currency, or money order payable to the Auditor and delivered before the close of business on the day of sale. No part or interest in any tract or lot subject to such sale, or any part thereof of interest therein, that is less than the entirety of such unredeemed tract, lot, or interest, as the same is described and constituted as a unit or entity in said list, shall be offered for sale or sold at such sale. If the sale shall not be completed on the first day of the sale, it shall be continued from day to day between the same hours until all the land shall have been offered for sale. Bidding at an auction held pursuant to this section constitutes transacting business in this state for purposes of §31B-10-1001 *et seq.*, §31D-15-1501 *et seq.*, and §31E-14-1401 *et seq.* of this code.

(b) A private, nonprofit, charitable corporation, incorporated in this state, which has been certified as a nonprofit corporation pursuant to the provisions of Section 501(c)(3) of the federal Internal Revenue Code, as amended, which has as its principal purpose the construction of housing or other public facilities and which notifies the Auditor of an intention to bid and subsequently submits a bid that is not more than five percent lower than the highest bid submitted by any person or organization which is not a private, nonprofit, charitable corporation as defined in this subsection, shall be sold the property offered for sale at public auction by the Auditor pursuant to the provisions of this section at the public auction as opposed to the highest bidder.

The nonprofit corporation referred to in this subsection does not include a business organized for profit, a labor union, a partisan political organization, or an organization engaged in religious activities, and it does not include any other group which does not have as its principal purpose the construction of housing or public facilities.

(c) To attain eligibility to bid at a public auction held pursuant to this section, a potential bidder must register in advance of such public auction with the Auditor's office or complete and execute a notarized affidavit affirming that they meet the requirements set forth in this article on the day of the sale. Registration shall be done in accordance with rules promulgated by the State Auditor's office. The Auditor may deregister or refuse to register a potential bidder who:

(1) Has failed to make a payment owed at a prior auction held pursuant to this section;

(2) At the time of registration is delinquent in the payment of real property tax, for which registrant is the most recent owner of record, to any county in this state;

(3) Has a history of noncompliance with code enforcement violations issued by a county or municipality pursuant to §7-1-3ff and §8-12-16 of this code;

(4) At the time of registration is subject to legal proceedings in any county or municipality that are related to code enforcement violations regarding real property owned by him or her; and

(5) Within the preceding five years prior to the auction, has failed to comply with a valid raze or repair order (or any other similar order) issued by a county or municipality.

(d) Potential bidders who are domestic or foreign entities as defined in chapters 31B, 31D, and 31E of this code must show proof at the time of their registration that they properly registered with the Secretary of State's office and are authorized to conduct business in this state.

(e) In order to effectuate the purposes of this section, the Auditor may promulgate procedural rules, interpretive rules, and legislative rules, including emergency rules, or any combination thereof, in accordance with §29A-3-1 *et seq.* of this code.

11A-3-45a. Certain parties barred from participating in public auctions.

(a) Citizens of or entities organized in or controlled by citizens or governments of any country designated as a Country of Particular Concern by the Department of State of the United States of America are ineligible from participating in any public auction held pursuant to §11A-3-45 of this code.

(b) For purposes of this section, "Country of particular concern" means a country that has been designated as such by the Department of State of the United States of America pursuant to Section 408(a) of 22 USC 6448.

§11A-3-46. Publication of notice of auction.

(a) Once a week for three consecutive weeks prior to the auction required in §11A-3-45 of this code, the Auditor shall publish notice of the auction as a Class III-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county.

The notice shall be in form or effect as follows:

Notice is hereby given that the following described tracts or lots of land in the County of _____, have been certified by the Auditor of the State of West Virginia, for sale at public auction. The lands will be offered for sale by the undersigned Auditor at public auction in (specify location) the courthouse of _____ County between the hours of _____ in the morning and _____ in the afternoon, on the _____ day of _____, 20_____.

Each tract or lot as described below will be sold to the highest eligible bidder at the auction. The payment for any tract or lot purchased at a sale shall be made by check or money order payable to the Auditor and delivered before the close of business on the day of the sale. If any of said tracts or lots remain unsold following the auction, they will be subject to later sale without additional advertising or public auction. All potential bidders must register in advance of the auction with the Auditor's office. Citizens of or entities organized in or controlled by citizens of any country designated as a Country of Particular Concern by the Department of State of the United States of America are ineligible from participating in the auction held pursuant to this section. Bidding at the auction constitutes transacting business in this state for purposes of §31B-10-1001 *et seq.*, §31D-15-1501 *et seq.*, and §31E-14-1401 *et seq.* of this code. The Auditor's sale may include tracts or lots remaining unsold from a previous auction not required by law to be readvertised and described for this subsequent auction of those same tracts and lots. All sales are subject to the approval of the Auditor of the State of West Virginia.

(here insert description of advertised lands to be sold)

Any of the aforesaid tracts or lots may be redeemed by any person entitled to pay the taxes thereon, the owner of the same whose interest is not subject to separate assessment, or any person having a lien on the same, or on an undivided interest therein, at any time prior to the sale by payment to the Auditor of the total amount of taxes, interest, and charges due thereon up to the date of redemption. Lands listed above as escheated or waste and unappropriated lands may not be redeemed.

Given under my hand this _____ day of _____, 20_____.

_____ Auditor of the State of West Virginia.

(b) The description of lands required in the notice shall be in the same form as the list certifying said lands for sale. If the Auditor is required to auction lands certified to him or her in any previous years, pursuant to §11A-3-48 of this code, he or she shall include such lands in the auction without further advertisement, with reference to the year of certification and the item number of the tract or interest.

(c) To cover the cost of preparing and publishing the notice, a charge of \$30 shall be added to the taxes, interest, and charges due on the delinquent and nonentered property.

§11A-3-47. Redemption prior to sale.

Any of the delinquent and nonentered lands certified to the deputy commissioner may be redeemed, prior to the auction, by the owner of such land or any other person entitled to pay the taxes thereon, the owner of such lands whose interest is not subject to separate assessment, or any person having a lien on such land, or on an undivided interest therein, by payment of the taxes, interest, and charges due. The deputy commissioner shall prepare an original and five copies of the receipt, give to the person redeeming the original receipt, retain one copy for his files and forward one copy each to the sheriff, Auditor, assessor, and the clerk of the county commission, each of whom shall note the fact of such redemption on their respective records of delinquent lands. Any person redeeming the interest of another shall be subrogated to the lien of the state on such interest as provided in section nine, article one of this chapter.

§11A-3-48. Unsold lands subject to sale without auction or additional advertising.

(a) If any of the lands which have been offered for sale at the public auction provided in §11A-3-45 of this code shall remain unsold following such auction, or were sold at a tax sale auction within the previous five years which were not redeemed and for

which no deed was secured by the purchaser, or if the Auditor refuses to approve the sale pursuant to §11A-3-51 of this code, the Auditor may sell the lands without any further public auction or additional advertising of the land, in the following priority: (1) To a person vested with an ownership interest in an adjacent tract or parcel of land: *Provided*, That if more than one adjacent landowner desires to acquire the same tract or lot, then the Auditor shall sell such tract or lot to the highest bidder; (2) to the municipality in which the tract or lot is located; (3) the county commission of the county in which the tract or lot is located; (4) to the West Virginia Land Stewardship Corporation as part of its Land Bank Program set forth in §31-21-11 of this code; or (5) to any party willing to purchase such property.

(b) The price of such property shall be as agreed upon by the Auditor and purchaser: *Provided*, That the Auditor may engage a licensed attorney to provide a title examination on lands set forth in the preceding subsection and require that a purchaser reimburse the Auditor for any expenses related to the title examination as a condition for the sale: *Provided, however*, That instead of the Auditor, a purchaser may engage a licensed attorney to provide a title examination at his or her own cost.

(c) The Auditor may refuse to sell unsold lands to a potential buyer that is subject to any of the following:

(1) Has failed to make a payment owed at a prior previous auction held pursuant to §11A-3-45 of this code;

(2) At the time of registration is delinquent in the payment of real property tax, for which registrant is the most recent owner of record, to any county in this state;

(3) Has a history of noncompliance with code enforcement violations issued by a county or municipality pursuant to §7-1-3ff and §8-12-16 of this code;

(4) At the time of registration is subject to legal proceedings in any county or municipality that are related to code enforcement violations regarding real property owned by them; and

(5) Within the preceding five years prior to the purchase, has failed to comply with a valid raze or repair order (or any other similar order) issued by a county or municipality.

§11A-3-48a. Certain parties barred from purchasing unsold lands.

(a) Citizens of or entities organized in or controlled by citizens or governments of any country designated as a country of particular concern by the United States Department of State shall be barred from purchasing unsold lands pursuant to §11A-3-48 of this code.

(b) For purposes of this section, a "Country of particular concern" means a country that has been designated as such by the Department of State of the United States of America pursuant to Section 408(a) of 22 USC 6448.

§11A-3-56. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to §11A-3-45 or §11A-3-48 of this code, the owner of, or any other person who was entitled to pay the taxes on any real estate for which a tax lien thereon was purchased whose interest is not subject to separate assessment, or any person having a lien on such real estate, or on an undivided interest therein, may redeem at any time before a tax deed is issued therefor. In order to redeem, he or she must pay to the Auditor the following amounts:

(1) An amount equal to the taxes, interest, and charges due on the date of the sale, with interest thereon at the rate of one percent per month from the date of sale;

(2) All other taxes thereon, which have since been paid by the purchaser, or his or her heirs, with interest at the rate of one percent per month from the date of payment;

(3) Such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and for any licensed attorney's title examination incident thereto, with

interest at the rate of one percent per month from the date of payment, but the amount he or she shall be required to pay, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by §11A-3-52 of this code, and for any licensed attorney's title examination incident thereto, shall not exceed \$500. An attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-52 of this code;

(4) All additional statutory costs paid by the purchaser; and

(5) The Auditor's fee and commission as provided by §11A-3-66 of this code. Where the Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, or of any licensed attorney's title examination incident thereto, in the form of receipts or other evidence thereof, the person redeeming shall pay the Auditor the sum of \$500 plus interest thereon at the rate of one percent per month from the date of the sale for disposition pursuant to the provisions of §11A-3-57, §11A-3-58, and §11A-3-64 of this code. Upon payment to the Auditor of those and any other unpaid statutory charges required by this article, and of any unpaid expenses incurred by the sheriff, the Auditor, and the deputy commissioner in the exercise of their duties pursuant to this article, the Auditor shall prepare an original and five copies of the receipt for payment and shall note on said receipts that the property has been redeemed. The original of such receipt shall be given to the person redeeming. The Auditor shall retain a copy of the receipt and forward one copy each to the sheriff, assessor, and the clerk of the county commission. The clerk shall endorse on the receipt the fact and time of such filing and note the fact of redemption on his or her record of delinquent lands.

(b) Any person for reasons of financial hardship may petition the Auditor to redeem his or her primary residence in installments. The petition shall certify to the Auditor that the real estate is the primary residence of the redeeming party. The Auditor may approve a financial hardship plan and it shall be signed by him or her and the party making the request. A copy of the document

evidencing such acceptance shall be filed with the clerk of the county commission in which the property is located.

(c) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased at the public auction or at a subsequent sale, is compelled in order to protect himself or herself to redeem the tax lien on all of such real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of such other person for the amount paid to redeem such interest. He or she shall lose his or her right to the lien, however, unless within 30 days after payment he or she shall file with the clerk of the county commission his or her claim in writing against the owner of such interest, together with the receipt provided for in this section. The clerk shall docket the claim on the judgment lien docket in his or her office and properly index the same. Such lien may be enforced as other judgment liens are enforced.



CHAPTER 311

(H. B. 2309 - By Delegate Howell)

[Passed March 3, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §11-1C-11 of the Code of West Virginia, 1931, as amended, relating to the creation of an online renewal process for the Managed Timberland Program of the West Virginia Division of Forestry; creating a deadline for the Division of Forestry to maintain an online renewal application form; providing guidelines for initial information on the form; ensuring the submission of the form is of no cost to the individual; and preserving any costs for the initial application that is used by the West Virginia Division of Forestry.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-11. Managed timberland; findings, purposes and declaration of legislative intent; implementation; inspection and determination of qualification; creation of online application renewal form.

(a) The Legislature finds and declares that the public welfare is enhanced by encouraging and sustaining the abundance of high quality forest land within the state; that economic pressures may force industrial, residential or other land development inconsistent with sustaining the forests; and that tax policy should provide an incentive for private owners of forest land to preserve the character and use of land as forest land and to make management decisions which enhance the quality of the future forest.

(b) In exercising the authority granted by the provisions of section fifty-three, article VI of the Constitution of West Virginia, the Legislature makes the following declarations of its intent:

(1) Notwithstanding the provisions of section twenty-four, article three of this chapter, timberland certified by the Division of Forestry as managed timberland shall be valued as managed timberland as provided in this article when it is managed under a cooperative contract with the Division of Forestry and the certification has not been surrendered by the owner of the property or revoked by the director of the Division of Forestry.

The Division of Forestry shall, at the time of contracting, notify the owner that the owner shall incur a penalty as set forth in section five-a, article three of this chapter if the owner fails to provide written notice to the county assessor of a change in use of the managed timberland.

(2) Property certified as managed timberland which prior to certification is properly taxed in Class II, as defined in section five, article eight of this chapter and section one, article X of the Constitution of West Virginia, may not be reclassified to Class III or Class IV, as defined in section five, article eight of this chapter, merely because the property is certified as managed timberland unless there is some other event or change in the use of the property that disqualifies it from being taxed in Class II.

(c) To aid the Legislature in assessing the impact of the managed timberland program on the State of West Virginia, the Division of Forestry and the Tax Commissioner, on or before December 31, 2001, and on December 31, each year thereafter, shall report in writing to the Joint Committee on Government and Finance of the Legislature or its designated subcommittee. The Tax Commissioner shall include in his or her report a complete and accurate assessment of the impact of the managed timberland program on the tax collections of the state, including projected increases or decreases in tax collection. The Division of Forestry shall include in its report detailed information on the number of acres designated as managed timberland and any identified impacts of the program on the state's timber industry.

(d) In order to expedite the renewal process for the Managed Timberland Program, the Division of Forestry shall create and maintain an online renewal process no later than October 1, 2023. The first question on the online renewal form shall read "Has your information from last year changed?" If the answer is no, then the individual using the online renewal form shall have to check a box and submit the form, and that shall be a completed renewal application. If an individual's information has changed, then the individual shall have a space on the online form to complete that summarizes those changes. There shall be no charge to the individual for any submission of an online renewal form. This section does not affect the costs associated with the initial application.

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CHAPTER 312

(Com. Sub. for H. B. 2526 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 4, 2023; in effect from passage.]
[Approved by the Governor on March 7, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended; by adding thereto a new article, designated §11-13MM-1, §11-13MM-2, §11-13MM-3, §11-13MM-4, §11-13MM-5, §11-13MM-6, §11-13MM-7, §11-13MM-8, §11-13MM-9, and §11-13MM-10; and to amend said code by adding thereto two new sections, designated §11-21-4g and §11-21-4h, all relating to reducing the personal income tax; providing for reduced graduated income tax rates; reducing the rate of tax on composite returns; reducing the rate of withholding tax on nonresident income; reducing the rate of withholding tax on the nonresident sale of real estate; reducing the rate of withholding on gambling winnings; applying the rates retroactively to January 1, 2023; providing for additional reductions in the personal income tax rates when certain criteria have been met; providing for a method for calculating the rate reduction and cap on the reduction; providing for certification to the Tax Commissioner; authorizing a refundable tax credit applied against personal income tax or corporation net income tax based upon amount of property tax timely paid on motor vehicles; providing for the treatment of credit upon transfer of eligible motor vehicle; authorizing a refundable tax credit applied against personal income tax based upon the amount of real property tax timely paid on a homestead owned by eligible disabled veterans; authorizing a refundable tax credit against corporation net income tax or personal income tax based upon 50% of property tax timely paid on personal property owned

by a small business; designating a short title; providing findings and purpose; defining terms; providing for the application of tax credits; allowing rulemaking; providing for annual reports to the legislature; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13MM. WEST VIRGINIA PROPERTY TAX ADJUSTMENT ACT.

§11-13MM-1. Findings and Purpose

(a) This article shall be known and cited as the West Virginia Property Tax Adjustment Act.

(b) The Legislature finds that the encouragement of economic growth and development in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in business and industry in this state and thereby increase economic development, there is hereby provided certain tax credits against the taxes imposed under §11-21-1 *et seq.* of this code, or against the tax imposed under §11-24-1 *et seq.* of this code based upon the amount of property tax timely paid on certain property subject to *ad valorem* property taxation.

§11-13MM-2. Definitions.

(a) *General.* — When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section unless a different meaning is clearly required by the context in which the term is used.

(b) *Terms defined.* —

(1) “*Ad valorem* property tax” means and is limited to the West Virginia *ad valorem* property tax.

(2) “Business” means any activity taxable under article §11-12-1 *et seq.* of this code, which is engaged in by any person in this State.

(3) "Disabled veteran taxpayer" means a person honorable discharged from any branch of the armed services of the United States and who is considered at least ninety percent totally and permanently disabled due solely to service-connected disabilities by the Department of Veterans Affairs.

(4) "Eligible motor vehicle" means a motor vehicle on which the *ad valorem* property tax has been paid for the taxable year by the eligible taxpayer, and which is a motor vehicle as defined in this article.

(5) "Flow-through entity," "conduit entity," or "pass through entity" means an S Corporation, partnership, limited partnership, limited liability partnership, or limited liability company. The term "flow-through entity," "conduit entity," or "pass through entity" includes a publicly traded partnership as that term is defined in section 7704 of the Internal Revenue Code that has equity securities registered with the Securities and Exchange Commission under section 12 of Title I of the Securities Exchange Act of 1934, 15 USC §781: *Provided*, That a publicly traded partnership as defined in section 7704 of the Internal Revenue Code having equity securities registered with the Securities and Exchange Commission under section 12 of Title I of the Securities Exchange Act of 1934, 15 USC §781, and any other person or entity that is treated as a C corporation for federal income tax purposes, shall be treated as a corporation taxable under article §11-24-1 *et seq.* of this code for purposes of this article.

(6) "Motor Vehicle" means the following class of vehicles defined in §17A-10-1 of this code: Class A, Class B, Class G, Class H, Class T, Class V, Class X, and all-terrain vehicles and utility terrain vehicles as defined in §20-15-2 of this code.

(7) "Person" means and includes an individual, a trust, estate, partnership, pass through entity, association, company, or corporation.

(8) "Personal property" shall have the same meaning as in §11-5-1 *et seq.* of this code: *Provided*: That, for the purposes of this article, the term "personal property" shall not include a working

interest in any oil, natural gas, or natural gas liquid producing property or any property of a public service company.

(9) “Personal property taxes paid” means the aggregate of regular levies, excess levies and bond levies extended against personal property that are paid during the calendar year and determined after any application of any discount for early payment of taxes. “Personal property taxes paid” does not include any untimely *ad valorem* property tax paid, or any payment of delinquent *ad valorem* property tax, or payment of “back tax” *ad valorem* property taxes, or any penalty or interest for late payment of property taxes.

(10) "Public service company" means a corporation or other business entity which delivers services considered essential to the public interest that are regulated by the applicable federal or state regulatory body, including, but not limited to, businesses furnishing electricity, natural gas, telecommunications, and water, and those transporting personal property or passengers, including, but not limited to, airlines, railroads, trucking, and bus companies, and which are centrally assessed by the state for property tax purposes.

(11) “Real property taxes paid” means the aggregate of regular levies, excess levies and bond levies that are paid during the calendar year and determined after any application of any discount for early payment of taxes. “Real property taxes paid” does not include any untimely *ad valorem* property tax paid, or any payment of delinquent *ad valorem* property tax, or payment of “back tax” *ad valorem* property taxes, or any penalty or interest for late payment of property taxes.

§11-13MM-3. Motor vehicle property tax adjustment credit.

(a) *Credit allowed.* — There shall be allowed to every eligible taxpayer a credit, as determined under this section, against the tax imposed under §11-21-1 *et seq.* of this code, or against the tax imposed under §11-24-1 *et seq.* of this code, as applicable.

(b) “Eligible taxpayer” *defined.*—

(1) “Eligible taxpayer” – Owned motor vehicles — “Eligible taxpayer” means any person who owns a motor vehicle for which the *ad valorem* property tax has been paid during the corporation net income tax taxable year or the personal income tax taxable year, as applicable. For purposes of this definition, ownership of a motor vehicle includes ownership and possession of a motor vehicle for which a title has been issued by the Division of Motor Vehicles to the eligible taxpayer. For purposes of this definition, ownership of a motor vehicle also includes ownership and possession of a motor vehicle, subject to a purchase financing arrangement whereby a financial institution holds a lien on the motor vehicle, or for which ultimate issuance of title by the Division of Motor Vehicles to the taxpayer, as owner of the motor vehicle, is contingent upon payment in full of the purchase price of the motor vehicle pursuant to an installment payment financing arrangement.

(2) “Eligible taxpayer” – Leased motor vehicles — “Eligible taxpayer” also means and includes any lessor of a motor vehicle, as herein defined, who owns a motor vehicle for which the *ad valorem* property tax has been paid during the corporation net income tax taxable year or the personal income tax taxable year, as applicable: *Provided*, That, the lessor shall pass on to the lessee the value of the tax credit asserted by the lessor by causing a decreasing in the amount of rent or lease payment payable by the lessee on the leased motor vehicle.

(3) “Eligible taxpayer” – Pass through entities — “Eligible taxpayer” also means and includes any owner, interest holder, partner or S corporation shareholder that derives conduit income from a pass-through entity.

(4) “Eligible taxpayer” – Prohibition for motor vehicle dealers — “Eligible taxpayer” does not mean or include any motor vehicle dealer, motor vehicle dealership, retailer or any business that sells new or used motor vehicles at the retail level, other than a lessor of motor vehicles. In circumstances where any such motor vehicle dealer, motor vehicle dealership, retailer or business that sells new or used motor vehicles at the retail level is engaged in both retail sales of motor vehicles, and leasing of motor vehicles as lessor, the tax credit authorized by this article may only be asserted by such

business based upon the *ad valorem* property tax paid on leased motor vehicles, and only to the extent that the lessor has passed on, to the lessee, the value of the tax credit asserted by the lessor by causing a decreasing in the amount of rent or lease payment payable by the lessee on the leased motor vehicle. No credit may be asserted or applied by the business based upon *ad valorem* property tax paid on motor vehicle retail inventories, not actively leased to lessees. To the extent that motor vehicle retail inventories may be held as both motor vehicle retail inventories, and as motor vehicles potentially subject to lease during the taxable year, *ad valorem* property tax paid on such motor vehicles is excluded from eligibility for the tax credit authorized by this article.

(c) *Amount of credit.* – The amount of credit allowed under this article to the eligible taxpayer is the amount of West Virginia *ad valorem* property tax timely paid during the personal income taxable year or the corporation net income tax taxable year, as applicable, to a county sheriff on the value of a motor vehicle owned by the eligible taxpayer: *Provided*, That in no case shall any credit be allowed under this article for any untimely *ad valorem* property tax paid, or any payment of delinquent *ad valorem* property tax, or payment of “back tax” *ad valorem* property taxes.

(d) *Application of credit against personal income tax and corporation net income tax.* –

(1) Personal income tax – If the eligible taxpayer is subject to the personal income tax imposed by §11-21-1 *et seq.* of this code, the amount of credit allowed shall be taken against the personal income tax liability of the eligible taxpayer for the current personal income tax taxable year.

(2) Corporation net income tax — If the eligible taxpayer is subject to the corporation net income tax imposed by §11-24-1 *et seq.* of this code, the amount of credit allowed shall be taken against the corporation net income tax liability of the eligible taxpayer for the current corporation net income tax taxable year.

(e) *Refundable portion of annual credit allowance.* — If annual tax credit allowed under this article exceeds the amount of personal

income tax or corporation net income tax, as applicable, subject to offset under this article in any taxable year, the eligible taxpayer may claim, for that taxable year, the excess amount as a refundable tax credit.

(f) *Transfer or sale of the motor vehicle.* —

(1) Where there is a sale or transfer of the motor vehicle from an eligible taxpayer to any other person or entity, the transferor retains entitlement to the tax credit authorized under this article for the timely paid *ad valorem* property tax paid by the transferor in the transferor's personal income tax taxable year or corporation net income tax taxable year, as applicable, on the transferred motor vehicle.

(2) If the transferee meets all requirements for qualification as an eligible taxpayer under this article and meets all requirements for entitlement to the tax credit authorized under this article, then the transferee shall be entitled to the tax credit authorized under this article for the timely paid *ad valorem* property tax paid by the transferee in the transferee's personal income tax taxable year or corporation net income tax taxable year, as applicable on the eligible motor vehicle.

(3) In no case shall the transferor and the transferee take the tax credit authorized under this article for the same taxable year.

(g) *Annual schedule.* — The Tax Commissioner shall prescribe and supply all necessary instructions and forms for administration of this section. For purposes of asserting the credit against tax, the taxpayer shall prepare and file an annual schedule showing the amount of personal income tax paid for the taxable year, and the amount of property tax paid on the motor vehicle for the taxable year, and the amount of credit allowed under this article. The annual schedule shall set forth the information and be in the form prescribed by the Tax Commissioner.

§11-13MM-4. Disabled veteran real property tax credit.

(a) *Credit allowed.* — Disabled veterans may receive a tax credit against the tax imposed under §11-21-1 *et seq.* of this code

in the amount of West Virginia *ad valorem* property tax timely paid on his or her homestead during the personal income taxable year.

(b) *Amount of credit.* — Any homeowner meeting the definition of a disabled veteran under this article, shall be allowed a refundable credit against the taxes imposed by §11-21-1 *et seq.* of this code equal to the amount of West Virginia *ad valorem* real property taxes timely paid a county sheriff on a homestead which is used or occupied exclusively for residential purposes, as those terms are defined in §11-6B-2, during the personal income taxable year: *Provided*, That in no case shall any credit be allowed under this article for any untimely real property tax paid, or any payment of delinquent real property tax, or payment of “back tax” real property taxes.

(c) *Application of credit against personal income tax.* — The amount of credit allowed under this section shall be taken against the personal income tax liability, imposed by article §11-21-1 *et seq.* of this code, of the eligible taxpayer.

(d) *Refundable portion of annual credit allowance.* — If annual tax credit allowed under this article exceeds the amount of personal income tax subject to offset under this article in any taxable year, the eligible taxpayer may claim, for that taxable year, the excess amount as a refundable tax credit.

(e) *Termination of tax credit.* — Any tax credit approved in accordance with the provisions of this section shall terminate immediately when any of the following events occur:

(1) The death of the owner of the property for which the tax credit was authorized;

(2) The sale of the property for which the tax credit was approved; or

(3) A determination by the assessor that the property for which the tax credit was approved no longer qualifies for the tax credit in accordance with the provisions of this section.

(f) *Forms and instructions.* — The Tax Commissioner shall prescribe and supply all necessary instructions and forms for administration of this section.

§11-13MM-5. Small business property tax adjustment credit.

(a) *Credit allowed.* — There shall be allowed to every eligible small business taxpayer a credit, as determined under this section, against the tax imposed under §11-21-1 *et seq.* of this code, or against the tax imposed under §11-24-1 *et seq.* of this code, as applicable.

(b) *Definitions* — The following definitions apply to this section:

(1) “Aggregate appraised value” means the true and actual value of all property in the state owned by the eligible taxpayer including the true and actual value of all property of any related entity;

(2) “Related entity” means:

(A) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by the taxpayer;

(B) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer;

(C) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this section, “control”, with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power

of all classes of the stock of the corporation which entitles its owner to vote. “Control”, with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the United States Internal Revenue Code, as amended: *Provided*, That paragraph (3) of section 267(c) of the United States Internal Revenue Code shall not apply.

(3) “*Small business*” means a business with personal property located in this state with an aggregate appraised value of \$1 million or less; *Provided*, That, for the purposes of this section, “small business” does not include any person holding a working interest in any oil, natural gas, or natural gas liquid producing property or any public service company that is centrally assessed by the state for property tax purposes.

(c) *Amount of credit*. — The amount of credit allowed pursuant to this article to the eligible small business taxpayer is 50% of the amount of West Virginia *ad valorem* property tax due and owing and timely paid to a county sheriff by the eligible taxpayer on personal property, as that term is defined in this article: *Provided*, That in no case shall any credit be allowed under this article for any untimely *ad valorem* property tax paid, or any payment of delinquent *ad valorem* property tax, or payment of “back tax” *ad valorem* property taxes.

(d) *Application of credit against personal income tax and corporation net income tax*. — The amount of credit determined under this section is allowed as a credit against 100 percent of that portion of the taxpayer’s state income tax liability and applied as provided in subsections (1) and (2), and in that order.

(1) Corporation net income taxes. — If the eligible taxpayer is subject to the corporation net income tax imposed by §11-24-1 *et seq.* of this code, the amount of credit allowed shall be taken

against the corporation net income tax liability of the eligible taxpayer for the current corporation net income tax taxable year.

(2) Personal income taxes. — If the small business taxpayer is an electing small business corporation, as defined in section 1361 of the United States Internal Revenue Code, a partnership, a limited liability company that is treated as a partnership for federal income tax purposes, or a sole proprietorship, then any unused credit is allowed as a credit against the taxes imposed by §11-21-1 *et seq.* of this code.

(3) Electing small business corporations, limited liability companies treated as partnerships for federal income tax purposes, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(4) No credit is allowed under this section against any employer withholding taxes imposed by §11-21-1 *et seq.* of this code.

(e) *Refundable portion of annual credit allowance.* — If the annual tax credit allowed under this article exceeds the amount of personal income tax or corporation net income tax, as applicable, subject to offset under this article in any taxable year, the eligible taxpayer may claim, for that taxable year, the excess amount as a refundable tax credit.

(f) *Annual schedule.* — The Tax Commissioner shall prescribe and supply all necessary instructions and forms for administration of this section. For purposes of asserting the credit against tax, the taxpayer shall prepare and file an annual schedule showing the amount of personal income tax paid for the taxable year, and the amount of property tax paid on the personal property subject to *ad valorem* property taxation pursuant to this chapter and pursuant to Article X of the Constitution of this State, as applicable for the taxable year, and the amount of credit allowed pursuant to this article. The annual schedule shall set forth the information and be in the form prescribed by the Tax Commissioner.

§11-13MM-6. Rulemaking.

The Tax Commissioner may promulgate such interpretive, legislative, and procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of §11-13MM-1 *et seq.* of this code and to implement the intent of the Legislature. All rules shall be promulgated in accordance with the provisions of §29A-3-1 *et seq.* of this code.

§11-13MM-7. Annual Reports.

The Tax Commissioner shall make an annual report, as soon as possible after the close of each tax year, of the actions taken by the West Virginia Tax Division with respect to the tax credits authorized pursuant to this article. This report shall be filed with the Joint Committee on Government and Finance. The report shall include at a minimum the amount of the credit claimed in the preceding tax year in each of the categories set forth in this article. Information set forth in the report shall be subject to the confidentiality restrictions of §11-10-1 *et seq.* of this code, and shall be redated and otherwise formatted and presented so as to preserve the confidentiality of taxpayers and tax information.

11-13MM-8. Tax administration and procedures.

(a) Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in §11-10-1 *et seq.* of this code applies to the tax credits allowed under §11-13MM-1 *et seq.* of this code, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the tax credit allowed by §11-13MM-1 *et seq.* of this code and were set forth *in extenso* in this article.

(b) Each and every provision of the “West Virginia Tax Crimes and Penalties Act” set forth in §11-9-1 *et seq.* of this code applies to the tax credit allowed by §11-13MM-1 *et seq.* of this code with like effect as if that act were applicable only to the tax credit §11-13MM-1 *et seq.* of this code and were set forth *in extenso* in this article.

§11-13MM-9. Severability.

(a) If any provision of §11-13MM-1 *et seq.* of this code, or the application thereof, is for any reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not affect, impair, or invalidate the remainder of §11-13MM-1 *et seq.* of this code, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered, and the applicability of the provision to other persons or circumstances may not be affected thereby.

(b) If any provision of §11-13MM-1 *et seq.* of this code, or the application thereof, is made invalid or inapplicable by reason of the repeal or any other invalidation of any statute therein addressed or referred to, such invalidation or inapplicability may not affect, impair, or invalidate the remainder of §11-13MM-1 *et seq.* of this code, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing, or referring to the statute, and the application of the provision with regard to other statutes or in other instances not affected by any such repealed or invalid statute may not be abrogated or diminished in any way.

§11-13MM-10. Effective Date.

This article shall be effective for personal income taxable years beginning on or after January 1, 2024, and for corporation net income tax taxable years beginning on or after January 1, 2024. Subject to the restrictions, limitations and requirements set forth in this article, *ad valorem* property tax timely paid in the personal income tax taxable year, or the corporation net income tax taxable year, as applicable, beginning on or after January 1, 2024, may qualify for the tax credits specified in this article.

ARTICLE 21. PERSONAL INCOME TAX**§11-21-4g Rate of tax — Taxable years beginning on and after January 1, 2023.**

(a) *Rate of tax on individuals (except married individuals filing separate returns), individuals filing joint returns, heads of households, and estates and trusts.* — The tax imposed by §11-21-

3 of this code on the West Virginia taxable income of every individual (except married individuals filing separate returns); every individual who is a head of a household in the determination of his or her federal income tax for the taxable year; every husband and wife who file a joint return under this article; every individual who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse; and every estate and trust shall be determined in accordance with the following table:

If the West Virginia taxable income is:	The tax is:
Not over \$10,000	2.36% of the taxable income
Over \$10,000 but not over \$25,000	\$236 plus 3.15% of excess over \$10,000
Over \$25,000 but not over \$40,000	\$708.50 plus 3.54% of excess over \$25,000
Over \$40,000 but not over \$60,000	\$1,239.50 plus 4.72% of excess over \$40,000
Over \$60,000	\$2,183.50 plus 5.12% of excess over \$60,000

(b) *Rate of tax on married individuals filing separate returns.* — In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by §11-21-3 of this code on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

If the West Virginia taxable income is:	The tax is:
Not over \$5,000	2.36% of the taxable income
Over \$5,000 but not over \$12,500	\$118 plus 3.15% of excess over \$5,000

Over \$12,500 but not over \$20,000	\$354.25 plus 3.54% of excess over \$12,500
Over \$20,000 but not over \$30,000	\$619.75 plus 4.72% of excess over \$20,000
Over \$30,000	\$1,091.75 plus 5.12% of excess over \$30,000

(c) Effect of rates on Nonresident Composite and Withholding Obligations — Notwithstanding any provision of this article to the contrary, for taxable years beginning on and after the retroactive date specific in §11-21-4g(d) of this code, whenever the words “six and one-half percent” appear in §11-21-51a, §11-21-71a, §11-21-71b, or §11-21-77, of this article, with relation to a tax return of, or the tax rate imposed on income of individuals, individuals filing joint returns, heads of households, and estates and trusts, the stated percentage shall be changed to 5.12%.

(d) *Applicability of this section.* — The provisions of this section shall be applicable in determining the rates of tax imposed by this article and shall apply retroactively for all taxable years beginning on and after January 1, 2023, and shall be in lieu of the rates of tax specified in §11-21-4e of this code.

§11-21-4h Future personal income tax reductions.

(a) For the purposes of this section, the terms defined in this section have the meanings ascribed to them unless a different meaning is clearly required by the context in which the term is used:

(1) “Adjusted consumer price ratio” means the fiscal year consumer price index divided by the base year consumer price index.

(2) “Adjusted general revenue fund collections” means all net general revenue fund collections minus the net general revenue

fund collections related to the imposition of the taxes imposed under the provisions of §11-13A-1, *et seq.* of this code.

(3) “Base year revenues” means actual general revenue fund collections for 2019 fiscal year, which is \$4,293,884,754

(4) “Base year consumer price index” means a 12-month average of the not seasonally adjusted Consumer Price Index for all urban consumers for the months between July 2018 and June 2019.

(5) “Excess fiscal year general revenue fund collections” means the positive difference from subtracting the inflation adjusted base year revenues from the adjusted general revenue fund collections from the immediately preceding fiscal year.

(6) “Fiscal year consumer price index” means a 12-month average of the not seasonally adjusted Consumer Price Index for all urban consumers for the months between July and June of the immediately preceding fiscal year.

(7) “Inflation adjusted base year revenues” means the base year general revenue fund collections multiplied by the adjusted consumer price ratio.

(b) *Future personal income tax rate reductions.* — Beginning on August 15, 2024, and every August 15 thereafter, the Secretary of Revenue will determine whether the total fiscal year adjusted general revenue fund collections from the immediately preceding fiscal year are in excess of the inflation adjusted base year revenues. If the total fiscal year adjusted general revenue fund collections from the immediately preceding fiscal year are in excess of the inflation adjusted base year revenues, then there will be a reduction in the personal income tax rates as determined under this section beginning in the next taxable year.

(c) *Determination of rate.* — In order to determine the amount of a personal income tax reduction, the excess fiscal year general revenue fund collections will be divided by the amount of the immediately preceding fiscal year’s total personal income tax collections for all funds and will be rounded down to the nearest

whole percentage. The amount of the percentage of reduction will be applied equally across the tax rates applicable in the tax year immediately preceding the rate reduction: *Provided*, That reduction in personal income tax rates may not result in an amount larger than a 10% reduction in the rates set forth in §11-21-4e of this code.

(d) *Certification of reduction.* — The Secretary of Revenue and the State Auditor will certify to the Tax Commissioner that a rate change is required under this section as soon as possible after August 15 so that the Tax Commissioner may notify taxpayers of any change in personal income tax rates. The certification will provide base year revenues, the total fiscal year general revenue fund collections from the immediately preceding fiscal year, the base year consumer price index, the fiscal year consumer price index, the adjusted consumer price ratio, the amount of inflation adjusted base year revenues, the amount of excess fiscal year general revenue fund collections and the amount of the immediately preceding fiscal year's total personal income tax collections for all funds.

(e) *Applicability of this section.* — The provisions of this section shall be applicable in determining the rates of tax imposed by this article and shall apply for all taxable years beginning on and after January 1, 2025, and shall be in lieu of the rates of tax specified in §11-21-4g of this code.

(f) *Annual Reports.* — The Tax Commissioner shall prepare an annual report to the Joint Committee on Government and Finance detailing any relevant modifications to the personal income tax.

(g) *Rulemaking.* — Notwithstanding any provision of this code to the contrary, the Tax Commissioner may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code explaining and implementing this section.

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CHAPTER 313

**(Com. Sub. for H. B. 2587 - By Delegates Smith, Barnhart,
Howell, Dean, Hardy, Linville, Clark, Steele, Householder,
McGeehan and Foster)**

[Passed March 2, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §11A-1-12 of the Code of West Virginia, 1931, as amended, relating to the accrual and collection of taxes; requiring the sheriff to provide a receipt for taxes collected; specifying payment information contained on the receipt; requiring the name of the sheriff and the officer receiving payment including their initials on the receipt.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-12. Receipt for taxes.

(a) The sheriff or his or her deputy shall deliver to the person paying any taxes a written or printed, or if taxes are paid online, a digital receipt therefor, and shall retain for his or her records the stub or duplicate of such receipt. The receipt and the stub or duplicate shall specify the total value of personal property; the number of acres of land, and the number of town lots, with the valuation of each tract or lot separately charged; and shall separately show the distribution amount of the tax paid for state, school current, county current, municipal current, district current, and any other purpose if levied.

(b) The receipt shall show the name of the sheriff and the officer receiving payment. The receipt shall include their initials.

(c) The sheriff shall furnish to each taxpayer a statement showing the levies laid for each class of taxable property in each taxing district of the county when requested so to do by the taxpayer. The sheriff shall cause a statement of the levies, as aforesaid, to be posted at the front door of the courthouse and at two conspicuous places in his or her office, but failure to post such statement shall in no wise affect the rights of the state, or any of its agencies, to collect such taxes. The Tax Commissioner may prescribe uniform tax statements and receipts, not inconsistent herewith, for use in all counties of the state.

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CHAPTER 314

**(Com. Sub. for H. B. 2759 - By Delegates Summers, Tully,
Forsht, Miller, Heckert, Petitto and Reynolds)**

[Passed March 8, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend and reenact §11-27-39 of the Code of West Virginia, 1931, as amended, relating to updating the rate of a certain health care provider tax and expand the practitioners eligible for payment fee schedules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-39. Contingent increase of tax rate on certain eligible acute care hospitals to increase practitioner payment fee schedules.

(a) In addition to the rate of the tax imposed by §11-27-9, §11-27-15, and §11-27-38 of this code on providers of inpatient and outpatient hospital services, there shall be imposed on certain eligible acute care hospitals an additional tax of 0.13 percent on the gross receipts received or receivable by an eligible acute care hospital that provides inpatient or outpatient hospital services in this state.

(b) Beginning July 1, 2023, the tax rate shall be increased as needed, to provide non-federal share funding for practitioner payments, as described in subsection (d) of this section, to the maximum amount allowed by the Centers for Medicare and Medicaid Services (CMS). The CMS allowable tax rate and maximum payment amount shall be calculated by the West Virginia Bureau for Medical Services (BMS) pursuant to CMS-approved methodology. Using the certified calculations from the

West Virginia Bureau for Medical Services, the Tax Commissioner shall publish by Administrative Notice, 30 days prior to implementation, the rates to be applicable.

(c) For purposes of this section, the term "eligible acute care hospital" means any inpatient or outpatient hospital conducting operations in this state that is not:

(1) A state-owned or designated facility;

(2) A critical access hospital designated as a critical access hospital after meeting all federal eligibility criteria;

(3) A licensed free-standing psychiatric or medical rehabilitation hospital;

(4) A licensed long-term acute care hospital; or

(5) A facility designated pursuant to §16-5B-14 of this code.

(d) The provisions of this section are intended to maximize federal funding to increase practitioner payment fee schedules for practitioners employed by eligible acute care hospitals as described in this section. For the purposes of this section, the term "practitioner" means a physician licensed pursuant to the provisions of §30-3-1 *et seq.* and §30-14-1 *et seq.* of this code: *Provided,* That upon the first rate increase permitted pursuant to subsection (b) of this section, the term "practitioner" shall include a physician contracted with billing and collection responsibility by an eligible acute care hospital.

(e) The taxes imposed by this section may not be imposed or collected until the occurrence of each of the following:

(1) The West Virginia Bureau for Medical Services incorporates the payment methodology into the appropriate contracts and agreements; and

(2) The West Virginia Bureau for Medical Services receives the necessary approvals from the Centers for Medicare and Medicaid Services.

(f) There is continued a special fund known as the Acute Care Clearing Fund. The amount of taxes collected under this section and under §11-27-38 of this code, including any interest, additions to tax, and penalties collected under §11-10-1 *et seq.* of this code, less the amount of allowable refunds, the amount of any interest payable with respect to such refunds, and costs of administration and collection, shall be deposited into the Acute Care Clearing Fund created by this section. The Tax Commissioner shall maintain the funds collected under this section and then periodically distribute the same by the fifth day of the month following the end of the calendar quarter in which the taxes were collected: *Provided*, that notwithstanding any provision of the code to the contrary, the portion attributable to the taxes, any interest, additions to tax, and penalties associated with the tax imposed under §11-27-38 of this code shall be distributed into the Eligible Acute Care Provider Enhancement Account and the portion attributable to the taxes, any interest, additions to tax, and penalties associated with the tax imposed under this section shall be distributed into a new account to be created under the Medicaid State Share Fund to be designated as the Eligible Acute Care Practitioner Enhancement Account. Disbursements from the Eligible Acute Care Practitioner Enhancement Account within the Medicaid State Share Fund may be used only to support increasing practitioner payment fee schedules for practitioners employed by eligible acute care hospitals.

(g) The imposition and collection of taxes imposed by this section shall be suspended immediately upon the occurrence of any of the following:

(1) The effective date of any action by Congress that would disqualify the taxes imposed by this section from counting towards state Medicaid funds available to be used to determine the federal financial participation;

(2) The effective date of any decision, enactment, or other determination by the Legislature or by any court, officer, department, agency, or office of the state or federal government that disqualifies the tax from counting towards state Medicaid funds available to determine federal financial participation for

Medicaid matching funds or creates for any reason a failure of the state to use the assessment of the Medicaid program as described in this section; and

(3) If the tax payments remitted by the eligible acute care hospitals are not used to effectuate the provisions of this section.

(h) Any funds remaining in the Eligible Acute Care Practitioner Enhancement Account, upon the occurrence of any of the events described in subsection (g) of this section, that cannot be used to match eligible federal Medicaid funds for this program, shall be transferred to the West Virginia Medical Services Fund. These funds shall be used during the state fiscal year in which they were transferred at the discretion of the West Virginia Bureau for Medical Services.

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CHAPTER 315

(H. B. 2776 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed February 3, 2023; in effect from passage.]
[Approved by the Governor on February 14, 2023.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2021, but prior to January 1, 2023, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2023, may be given any effect.

(b) *Medical savings accounts.* — The term "taxable trust" does not include a medical savings account established pursuant to §33-15-20 or §33-16-15 of this code. Employer contributions to a medical savings account established pursuant to those sections are not wages for purposes of withholding under §11-21-71 of this code.

(c) *Surtax.* — The term "surtax" means the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-15-20 of this code and the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-16-15 of this code which are collected by the Tax Commissioner as tax collected under this article.

(d) *Effective date.* — The amendments to this section enacted in the year 2023 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2023, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

(e) For purposes of the refundable credit allowed to a low-income senior citizen for property tax paid on his or her homestead in this state, the term "laws of the United States" as used in subsection (a) of this section means and includes the term "low income" as defined in §11-21-21(b) of this code and as reflected in the poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2).

(f) For taxable years beginning on and after January 1, 2018, whenever this article refers to "each exemption for which he or she is entitled to a deduction for the taxable year for federal income tax purposes", this phrase means the exemption the person would have been allowed to claim for the taxable year had the federal income tax law not been amended to eliminate the personal exemption for federal tax years beginning on or after January 1, 2018.

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CHAPTER 316

(H. B. 2777 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed February 3, 2023; in effect from passage.]
[Approved by the Governor on February 14, 2023.]

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.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2021, but prior to January 1, 2023, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2023, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order, or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) *Effective date.* — The amendments to this section enacted in the year 2023 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2023, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

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CHAPTER 317

**(Com. Sub. for H. B. 2821 - By Delegates Cannon, Steele,
Fluharty, Riley, Nestor, Storch and Espinosa)**

[Passed March 9, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-12n, relating to authorizing for taxable years beginning on and after January 1, 2020, a decreasing modification reducing federal adjusted gross income for state personal income tax purposes in amount of certain West Virginia gaming and gambling losses, not to exceed the amount of West Virginia gaming and gambling winnings, for the taxable year; allowing taxpayer to amend previously filed returns for the 2020, 2021, and 2022 tax years to recognize this decreasing modification; providing that based on such amended returns as specified herein, any fines, assessments, penalties, or interest levied thereon are void, and returnable to the taxpayer; requiring detailed records substantiating losses; and placing burden of proving any loss on taxpayer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12n. Additional modification reducing federal adjusted gross income related to gaming and gambling losses.

(a) In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12, a modification reducing federal adjusted gross income is hereby authorized for taxable years beginning on and after January 1, 2020. When calculating income from West Virginia gaming

activity and West Virginia gambling activity for the taxable year, the taxpayer may apply a decreasing modification against West Virginia adjusted gross income in the amount of West Virginia gaming and gambling losses allowable as an itemized deduction under the United States Internal Revenue Code, not to exceed the amount of West Virginia gaming and gambling winnings, for that year: *Provided*, That this decreasing modification may not include costs and expenses incurred in connection with the gaming or gambling activity: *Provided further*, That the taxpayer may amend previously filed returns for the 2020, 2021, and 2022 tax years to recognize this decreasing modification. Based on such amended returns as specified herein, any fines, assessments, penalties, or interest levied thereon are void, and returnable to the taxpayer.

(b) The following gaming and gambling losses are not subject to this decreasing modification:

(1) Gaming and gambling losses that have been applied as a deduction in determining the taxpayer's federal adjusted gross income; and

(2) Gaming and gambling losses incurred in any unlawful gambling activity.

(c) The taxpayer shall maintain detailed records substantiating losses if the taxpayer intends to apply the decreasing modification allowable under this section for those losses. The taxpayer shall have the burden of proving any loss.

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CHAPTER 318

**(Com. Sub. for H. B. 3012 - By Delegates Anderson, Zatezalo,
Foggin, Heckert, Hott, Barnhart, Ferrell, Young, Hansen,
Fehrenbacher and Rowe)**

[Passed March 8, 2023; in effect ninety days from passage.]

AN ACT to amend and reenact §11-13A-3c of the Code of West Virginia, 1931, as amended, relating to the imposition of the tax on the privilege of severing other natural resources; providing for an exemption from the imposition of the severance tax for a period of 9 years beginning on July 1, 2023, for severing rare earth elements and critical minerals; and defining rare earth elements and critical minerals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3c. Imposition of tax on privilege of severing other natural resources.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use any other natural resource product or product not taxed under section three, three-a, three-b or four of this article, there is hereby levied and shall be collected from every person exercising this privilege an annual privilege tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be four percent of the gross value of the natural resource produced, as shown by the gross proceeds derived from the sale thereof by producer, except as otherwise provided in

this article: *Provided*, That beginning July 1, 1993, the tax imposed by this section shall be levied and collected at the rate of four and one-half percent, and beginning July 1, 1994, the tax imposed by this section shall be levied and collected at the rate of five percent: *Provided, however*, That there is an exemption from the imposition of the tax provided for in this article for 9 years beginning July 1, 2023, for severing, extracting, reducing to possession and producing for sale, profit or commercial use rare earth elements and critical minerals. For the purposes of this section, "rare earth elements" (also known as rare earth metals or rare earth oxides) are only yttrium, lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium, and scandium, and "critical minerals" are only aluminum, antimony, arsenic, barite, beryllium, bismuth, cesium, chromium, cobalt, fluorspar, gallium, germanium, graphite, hafnium, indium, iridium, lithium, magnesium, manganese, nickel, niobium, palladium, platinum, rhodium, rubidium, ruthenium, tantalum, tellurium, tin, titanium, tungsten, vanadium, zinc, zirconium, uranium, osmium, strontium, rhenium, potash, and bauxite.

(c) Tax in addition to other taxes. — The tax imposed by this section shall apply to all persons severing other natural resources in this state, and shall be in addition to all other taxes imposed by law.

(d) Effective date. — This section, as amended in the year 1993, shall apply to gross proceeds derived after May 31 of such year. The language of section three of this article, as in effect on January 1, of such year, shall apply to gross proceeds derived prior to June 1 of such year and, with respect to such gross proceeds, shall be fully and completely preserved.

CHAPTER 319

(H. B. 3286 - By Delegate Criss)

[Passed March 9, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-24-6c, relating to an additional modification decreasing federal taxable income; providing for definitions; and providing for net liability under apportionment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6c. Additional modification decreasing federal taxable income; net liability under apportionment.

In addition to the adjustments to federal taxable income under section six of this article, the amounts under this section are subtracted from the federal taxable income of a corporation determined before the apportionment provided by section seven of this article in determining West Virginia taxable income.

(a) For purposes of this section, "net deferred tax liability" means deferred tax liabilities that exceed the deferred tax assets of the taxpayer, as computed in accordance with generally accepted accounting principles, and "net deferred tax asset" means that deferred tax assets exceed the deferred tax liabilities of the taxpayer, as computed in accordance with generally accepted accounting principles.

(b) Only publicly traded companies, including affiliated corporations participating in the filing of a publicly traded company's financial statements prepared in accordance with

generally accepted accounting principles, as of the effective date of this section, shall be eligible for this subtraction.

(c) If the application of (1) The Proviso contained in subsection (e) of section seven of this article; (2) Paragraph (C) of subdivision (11) of subsection (e) of section seven of this article; and (3) Subdivision (13) of subsection (e) of section seven of this article results in an aggregate increase to the taxpayer's net deferred tax liability or an aggregate decrease to the taxpayer's net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the taxpayer shall be entitled to a subtraction, as determined in this section.

(d) For the 10-year period beginning with the taxpayer's taxable year that begins on or after January 1, 2033, a taxpayer shall be entitled to a subtraction in computing West Virginia taxable income equal to one tenth of the amount necessary to offset the increase in the net deferred tax liability or decrease in the net deferred tax asset, or the aggregate net change thereof, from a net deferred tax asset to a net deferred tax liability, as described in subsection (c) of this section, as computed in accordance with generally accepted accounting principles, that resulted from the application of (1) The Proviso contained in subsection (e) of section seven of this article; (2) Paragraph (C) of subdivision (11) of subsection (e) of section seven of this article; and (3) Subdivision (13) of subsection (e) of section seven of this article, but for the subtraction provided under this section.

(e) The subtraction calculated under this section shall not be reduced as a result of any events subsequent to such calculation including, but not limited to, any disposition or abandonment of assets. Such subtraction shall be calculated without regard to the federal tax effect and shall not alter the tax basis of any asset. If the subtraction under this section is greater than taxpayer's federal taxable income as adjusted by section six of this article, any excess subtraction shall be carried forward and applied as a subtraction to taxpayer's federal taxable income in determining taxpayer's West Virginia taxable income in future tax years until fully utilized.

(f) Any taxpayer intending to claim a subtraction under this section shall file a statement with the Tax Commissioner on or before July 1, 2024, specifying the total amount of the subtraction which the taxpayer claims. The statement shall be made on such form and in such manner as prescribed by the commissioner and shall contain such information or calculations as the commissioner may specify. No subtraction shall be allowed under this section for any taxable year except to the extent claimed in accordance with this subsection, in the manner prescribed by the commissioner. Nothing in this subsection shall limit the authority of the commissioner to review or re-determine the proper amount of any subtraction claimed, whether on the statement required under this subsection or on a tax return for any taxable year.

CHAPTER 320

(H. B. 3391 - By Delegates Householder and Gearheart)

[Passed March 3, 2023; in effect from passage.]
[Approved by the Governor on March 23, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-3-25b; and to amend and reenact §11-10A-19 of said code, all relating to appeals to the Office of Tax Appeals; establishing filing deadlines for appeals of property tax valuations and issues involving property tax classification and taxability to the West Virginia Office of Tax Appeals, providing that appeal petitions of property tax issues to the West Virginia Office of Tax Appeals shall be heard *de novo*, providing a time frame for hearings before the Office of Tax Appeals regarding property tax matters, clarifying that the Intermediate Court of Appeals has jurisdiction to hear appeals from a final decision of a property tax matter by the Office of Tax Appeals, and clarifying that further appeals are to the Supreme Court of Appeals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-25b. Appeal to Office of Tax Appeals.

(a) In all cases involving appeal to the Office of Tax Appeals from a property tax valuation pursuant to §11-3-15i or §11-3-23a of this code, or from an order of a County Commission sitting as a Board of Equalization and Review pursuant to §11-3-24 of this code, the appeal petition must be filed with the Office of Tax Appeals by March 31 of the property tax year as defined in §11-3-1 of this code to be considered timely filed. If a petition of appeal

is not filed with the Office of Tax Appeals by March 31 of the property tax year, then it shall be dismissed as untimely.

(b) In all cases involving appeal to the Office of Tax Appeals from a property tax ruling on taxability or classification by the Tax Commissioner pursuant to §11-3-24a of this code, the appeal petition must be filed within 30 days after receiving written notice of the Tax Commissioner's ruling. If a petition of appeal is not timely filed with the Office of Tax Appeals, then it shall be dismissed.

(c) In all cases involving property tax matters brought before the Office of Tax Appeals pursuant to subsections (a) and (b) of this section, the hearing before the Office of Tax Appeals shall be *de novo* as provided in §11-10A-10 of this code. Notwithstanding the provisions of §11-10A-10 of this code, a property tax appeal to the Office of Tax Appeals involving valuation, classification, or taxability may be set for hearing within 90 days of the due date of the answer unless continued by order of the Office of Tax Appeals for good cause.

(d) The provisions of this section shall be effective for all property tax appeals to the Office of Tax Appeals made on or after January 1, 2023.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-19. Judicial review of office of tax appeals decisions.

(a) Either the taxpayer or the commissioner, or both, or in the case of property taxes the county assessor, or county commission, may appeal the final decision or order of the Office of Tax Appeals by taking an appeal to the Intermediate Court of Appeals of this state within 30 days after entry of the final decision or order.

(b) The Office of Tax Appeals may not be made a party in any judicial review of a decision or order it issued.

(c) The appeal proceeding shall be instituted by filing a notice of appeal with the Intermediate Court of Appeals, within the 30 day period prescribed in subsection (a) of this section.

(d) If the appeal is of an assessment, except a jeopardy assessment for which security in the amount thereof was previously filed with the Tax Commissioner, then within 90 days after the notice of appeal is filed, or sooner if ordered by the Intermediate Court of Appeals, the petitioner shall file with the clerk of the Intermediate Court of Appeals a cash bond or a corporate surety bond approved by the clerk. The surety must be qualified to do business in this state. These bonds shall be conditioned upon the petitioner performing the orders of the court. The penalty of this bond shall be not less than the total amount of tax or revenue plus additions to tax, penalties, and interest for which the taxpayer was found liable in the administrative decision of the office of tax appeals. Notwithstanding the foregoing and in lieu of the bond, the Tax Commissioner, upon application of the petitioner, may upon a sufficient showing by the taxpayer, certify to the clerk of the Intermediate Court of Appeals that the assets of the taxpayer are adequate to secure performance of the orders of the court: *Provided*, That if the Tax Commissioner refuses to certify that the assets of the taxpayer or other indemnification are adequate to secure performance of the orders of the court, then the taxpayer may apply to the Intermediate Court of Appeals for the certification. No bond may be required of the Tax Commissioner.

(e) The Intermediate Court of Appeals shall hear the appeal as provided in §29A-5-4 of this code: *Provided*, That when the appeal is to review a decision or order on a petition for refund or credit, the court may determine the legal rights of the parties, but in no event shall it enter a judgment for money.

(f) Unless the Tax Commissioner appeals an adverse court decision, the commissioner, upon receipt of the certified order of the court, shall promptly correct his or her assessment or issue his or her requisition on the treasury or establish a credit for the amount of an overpayment.

(g) Either party may appeal an Intermediate Court of Appeals' decision to the Supreme Court of Appeals as provided in §29A-6-1 *et seq.* of this code.

(h) For all appeals regarding property tax assessments, taxability, and classifications pursuant to §11-3-1 *et seq.*, the standard of proof which a taxpayer must meet at all levels of review and appeal shall be a preponderance of the evidence standard.



CHAPTER 321

(Com. Sub. for H. B. 3168 - By Delegates Criss, Hanshaw (Mr. Speaker), Riley and Espinosa)

[Passed March 9, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §5B-2E-3, §5B-2E-5, §5B-2E-6, §5B-2E-7 and §5B-2E-7a of the Code of West Virginia, 1931, as amended; all relating to amending and modernizing the Tourism Development Act; modifying definition of approved costs; allowing eligible company to operate or intend to operate directly or indirectly through a management company; modifying definition of tourism attraction; modifying definitions of tourism development project and tourism development expansion project; providing discretion regarding subjective criteria; modifying project requirements relating to production of revenues; providing for application of effective date; modifying terms and provisions of agreements between Department of Economic Development and approved company; providing additional conditions under which allowable credit is increased; providing a mechanism by which a project may amend the date by which it is to be complete; extending availability of enhanced credits; extending enhanced credit to projects involving historic structures; authorizing an additional fifteen-year term for companies to continue taking authorized and outstanding tax credits; removing provisions for carry forward, carry back and forfeiture of credits; providing for elections to not use credit; and updating references to “department” and its secretary.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.**§5B-2E-3. Definitions.**

As used in this article, unless the context clearly indicates otherwise:

(1) "Agreement" means a tourism development agreement entered into, pursuant to section six of this article, between the department and an approved company with respect to a project.

(2) "Approved company" means any eligible company approved by the department pursuant to section five of this article seeking to undertake a project.

(3) "Approved costs" means:

(a) *Included costs:*

(i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, delivery persons and material persons in connection with the acquisition, construction, equipping or installation of a project;

(ii) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(iii) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, or installation of a project which is not paid by the vendor, supplier, delivery person, contractor or otherwise provided;

(iv) All costs of architectural and engineering services, including, but not limited to: Estimates, plans and specifications, preliminary investigations and supervision of acquisition, construction, equipping and installation of a project, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping or installation of a project;

(v) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping or installation of a project;

(vi) All costs required for the installation of utilities, including, but not limited to: Water, sewer, sewer treatment, gas, electricity, communications and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons; and

(vii) All other costs comparable with those described in this subdivision;

(b) *Excluded costs.* — The term "approved costs" does not include any portion of the cost required to be paid for the acquisition, construction, equipping or installation of a portion of a project that is financed with state grants or for which the eligible taxpayer elects to qualify for other state tax credits, including, but not limited to, those provided by article thirteen-q, chapter eleven of this code. The exclusion of certain costs of a project under this paragraph (b) does not disqualify the remainder of the costs of the project.

(4) "Base tax revenue amount" means the average monthly amount of consumer sales and service tax collected by an approved company, based on the twelve-month period ending immediately prior to the opening of a new tourism development project for business or a tourism development expansion project, as certified by the State Tax Commissioner.

(5) "Department" means the West Virginia Department of Economic Development as provided in article two of this chapter.

(6) "Crafts and products center" means a facility primarily devoted to the display, promotion and sale of West Virginia products and at which a minimum of eighty percent of the sales occurring at the facility are of West Virginia arts, crafts or agricultural products.

(7) "Eligible company" means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture or any other entity operating or intending to operate a project, whether owned or leased, within the state that meets the standards required by the department. An eligible company may operate or intend to operate directly or indirectly through a lessee or management company.

(8) "Ineligible company" means any West Virginia pari-mutuel racing facility licensed to operate multiple video lottery machines as authorized by article twenty-two-a, chapter twenty-nine of this code or any limited lottery retailer holding a valid license issued under article seven, chapter sixty of this code.

(9) "Entertainment destination center" means a facility containing a minimum of two hundred thousand square feet of building space adjacent or complementary to an existing tourism attraction, an approved project, or a major convention facility and which provides a variety of entertainment and leisure options that contain at least one major theme restaurant and at least three additional entertainment venues, including, but not limited to, live entertainment, multiplex theaters, large-format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions or other cultural and leisure time activities. Entertainment and food and drink options shall occupy a minimum of sixty percent of total gross area, as defined in the application, available for lease and other retail stores shall occupy no more than forty percent of the total gross area available for lease.

(10) "Final approval" means the action taken by the Secretary of the department qualifying the eligible company to receive the tax credits provided in this article.

(11) "Project" means a tourism development project and/or a tourism development expansion project administered in accordance with the provisions of this article.

(12) "Qualified professional services destination facility" means a facility with a minimum qualified investment, as defined

in this article, of not less than \$80 million physically located in this state and adjacent or complementary to a historic resort hotel, which primarily furnishes and provides personal or professional services, or both types of services, to individuals who primarily are residents of another state or foreign county.

(13) "State agency" means any state administrative body, agency, department, division, board, commission or institution exercising any function of the state that is not a municipal corporation or political subdivision.

(14) "Tourism attraction" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomenon or scenic beauty, a West Virginia crafts and products center, or an entertainment destination center or a qualified professional services destination facility. A project or tourism attraction does not include any of the following:

(A) Lodging facility, unless:

(i) The facility constitutes a portion of a project and represents less than fifty percent of the total approved cost of the project, or the facility is to be located on recreational property owned or leased by the state or federal government and the facility has received prior approval from the appropriate state or federal agency;

(ii) The facility involves the substantial reconstruction, restoration, or rehabilitation of a structure that is listed individually in the national register of historic places or is located in a national register historic district and certified by the state historic preservation officer as contributing to the historic significance of the district and the substantial reconstruction, rehabilitation, or restoration project has been approved in advance by the state historic preservation officer; or

(iii) The facility involves the construction, reconstruction, restoration, rehabilitation or upgrade of a full-service lodging facility or the reconstruction, restoration, rehabilitation or upgrade of an existing structure into a full-service lodging facility having not less than five hundred guest rooms, with construction,

reconstruction, restoration, rehabilitation or upgrade costs exceeding ten million dollars;

(B) A facility that is primarily devoted to the retail sale of goods, other than an entertainment destination center, a West Virginia crafts and products center or a project where the sale of goods is a secondary and subordinate component of the project; and

(C) A recreational facility that does not serve as a likely destination where individuals who are not residents of the state would remain overnight in commercial lodging at or near the project or existing attraction.

(15) "Tourism development project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten years; the design, construction, and equipping of a tourism attraction; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, installation of a tourism attraction, including, but not limited to, surveys, installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons.

(16) "Tourism development expansion project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten years; the design, construction, equipping, and installation of additions, betterments, and improvements to facilities necessary or desirable for the expansion of an existing tourism attraction including, but not limited to, surveys, installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extension to the boundaries of real estate on which the facilities are located, all of which are to be used to improve the economic situation of the

approved company in a manner that allows the approved company to attract persons.

(17) "Tourism development project tax credit" means the tourism development project tax credit allowed by section seven of this article.

(18) "Tourism development expansion project tax credit" means the tourism development expansion project tax credit allowed by section seven-a of this article.

§5B-2E-5. Project application; evaluation standards; approval of projects.

(a) Each eligible company that seeks to qualify a project for the tourism development project tax credit provided by section seven of this article, or for the tourism development expansion project tax credit provided by section seven-a of this article, as applicable, must file a written application for approval of the project with the department.

(b) With respect to each eligible company making an application to the department for a tourism development project tax credit or a tourism development expansion project tax credit, the department shall make inquiries and request documentation, including a completed application, from the applicant that shall include: A description and location of the project; capital and other anticipated expenditures for the project and the sources of funding therefor; the anticipated employment and wages to be paid at the project; business plans that indicate the average number of days in a year in which the project will be in operation and open to the public; and the anticipated revenues and expenses generated by the project.

(c) On and after the effective date of this section as amended in 2023, the Secretary of the Department, within sixty days following receipt of an application or receipt of any additional information requested by the Department respecting the application, whichever is later, shall act to grant or not to grant approval of the application,

based on the following criteria, all subjective criteria is subject to the sole discretion of the Department:

(1) The project will attract at least twenty-five percent of its visitors from outside of this state;

(2) The project will have approved costs in excess of \$1,000,000;

(3) The project will have a significant and positive economic impact on the state considering, among other factors, the extent to which the project will compete directly with or complement existing tourism attractions in the state and the amount by which increased tax revenues from the project will exceed the credit given to the approved company;

(4) The project is expected to produce sufficient revenues and public demand to be operating and open to the public for a minimum of one hundred days per year, not accounting for any unforeseen weather or other force majeure events;

(5) The project will provide additional employment opportunities in the state;

(6) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;

(7) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;

(8) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other industrial or commercial businesses;

(9) Whether the project will, directly or indirectly, assist in the creation of additional employment opportunities in the area where the project will be located;

(10) Whether the project helps to diversify the local economy;

(11) Whether the project is consistent with the goals of this article;

(12) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting; and

(13) The ability of the eligible company to carry out the project.

(d) The department may establish other criteria for consideration when approving the applications.

(e) The decision by the Secretary of the Department is final.

§5B-2E-6. Agreement between department and approved company.

The department, upon final approval of an application by the Secretary, may enter into an agreement with any approved company with respect to its project. The terms and provisions of each agreement shall include, but not be limited to:

(1) The estimated amount of approved costs of the project that qualify for a sales tax credit, as provided in section seven or section seven-a of this article, as applicable. Within six months of the actual completion date, which, for purposes of this section, means the date on which the project is completed and opened to the public, the approved company shall document the actual cost of the project through a certification of the costs to the department by an independent certified public accountant acceptable to the department; and

(2) A date certain by which the approved company reasonably expects the project to be completed and to be opened to the public: *Provided*, That such date may be updated and amended as necessary, with the written approval of the department upon a submission by the approved company outlining the reason for amendment, and, if approved, the completion and opening of the project either prior to or after the initial proposed date shall not impact the qualification of the approved company for the tax credit as provided in §5B-2E-7 or §5B-2E-7a of this code.

§5B-2E-7. Amount of credit allowed for tourism development project; approved projects.

(a) Approved companies are allowed a credit against the West Virginia consumers sales and service tax imposed by §11-15-1 *et seq.*, of this code and collected by the approved company on sales generated by or arising from the operations of the tourism development project: *Provided*, That if the consumers sales and service tax collected by the approved company is not solely attributable to sales resulting from the operation of the new tourism development project, the credit shall only be applied against that portion of the consumers sales and service tax collected in excess of the base tax revenue amount. The amount of this credit is determined and applied as provided in this article.

(b) The maximum amount of credit allowable in this article is equal to twenty-five percent of the approved company's approved costs as provided in the agreement: *Provided*, That, if the tourism development project site is located within the permit area or an adjacent area of a surface mining operation, as these terms are defined in §22-3-3 of this code, from which all coal has been or will be extracted prior to the commencement of the tourism development project; or the tourism development project site is a structure that is listed individually in the national register of historic places or is located in a national register historic district and certified by the state historic preservation officer as contributing to the historic significance of the district; or the tourism development project site is located on or within five miles of recreational property owned or leased by the state or federal government and when the project is located on property owned or leased by the state or federal government, the project has received prior approval from the appropriate state or federal agency, the maximum amount of credit allowable is equal to thirty-five percent of the approved company's approved costs as provided in the agreement.

(c) The amount of credit allowable may be taken over a 10-year period, at the rate of one 10th of the amount thereof per taxable year, beginning with the taxable year in which the project is opened to the public, unless the approved company elects to delay the

beginning of the 10-year period until the next succeeding taxable year. This election may be made in the first consumers sales and service tax return filed by the approved company following the date the project is opened to the public. Once made, the election cannot be revoked. If any credit remains after application of this initial ten-year period, the approved company may request an additional 15 year credit application period from the department. If any unused credit remains after the 25th year, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

(d) The amount determined under subsection (b) of this section is allowed as a credit against the consumers sales and service tax collected by the approved company on sales from the operation of the tourism development project. The amount determined under said subsection may be used as a credit against taxes required to be remitted on the approved company's monthly consumers sales and service tax returns that are filed pursuant to section sixteen, article fifteen, chapter eleven of this code. The approved company shall claim the credit by reducing the amount of consumers sales and service tax required to be remitted with its monthly consumers sales and service tax returns by the amount of its aggregate annual credit allowance until such time as the full current year annual credit allowance has been claimed. Once the total credit claimed for the tax year equals the approved company's aggregate annual credit allowance no further reductions to its monthly consumers sales and service tax returns will be permitted.

(e) Notwithstanding any other provision of this code, an approved company may elect not to utilize the tax credit awarded in this article for any reason whatsoever, including, but not limited to, utilizing other tax credits permitted in this code, after the project is completed and placed in use but prior to making an election pursuant to subsection (c) of this section. Any decision not to utilize the tax credit for an approved company in this article may not impact the approved company's eligibility under this article or affect its designation as a Tourism Development District.

§5B-2E-7a. Amount of credit allowed for tourism development expansion project; approved projects.

(a) Approved companies are allowed a credit against the West Virginia consumers sales and service tax imposed by article fifteen, chapter eleven of this code and collected by the approved company on sales generated by or arising from the operations of the tourism development expansion project: *Provided*, That the tourism development expansion project tax credit allowed under this section is separate and distinct from any credit allowed for a tourism development project in accordance with the provisions of section seven of this article: *Provided, however*, That if the consumers sales and service tax collected by the approved company is not solely attributable to sales resulting from the operation of the tourism development expansion project, the credit shall only be applied against that portion of the consumers sales and service tax collected in excess of the base tax revenue amount. The amount of this credit is determined and applied as provided in this article.

(b) The maximum amount of credit allowable in this article is equal to twenty-five percent of the approved company's approved costs as provided in the agreement: *Provided*, That, if the tourism development expansion project site is located within the permit area or an adjacent area of a surface mining operation, as these terms are defined in section three, article three, chapter twenty-two of this code, from which all coal has been or will be extracted prior to the commencement of the tourism development project; or the tourism development expansion project site is a structure that is listed individually in the national register of historic places or is located in a national register historic district and certified by the state historic preservation officer as contributing to the historic significance of the district; or the tourism development project site is located on or with 5 miles of a recreational property owned or leased by the state or federal government and when the project is located on property owned or leased by the state or federal government, the project has received prior approval from the appropriate state or federal agency, the maximum amount of credit

allowable is equal to thirty-five percent of the approved company's approved costs as provided in the agreement.

(c) The amount of credit allowable may be taken over a 10-year period, at the rate of one 10th of the amount thereof per taxable year, beginning with the taxable year in which the project is opened to the public, unless the approved company elects to delay the beginning of the 10-year period until the next succeeding taxable year. This election may be made in the first consumers sales and service tax return filed by the approved company following the date the project is opened to the public. Once made, the election cannot be revoked. If any credit remains after application of this initial 10-year period, the approved company may request an additional 15 year credit application period from the Department. If any unused credit remains after the 25th year, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

(d) The amount determined under subsection (b) of this section is allowed as a credit against the consumers sales and service tax collected by the approved company on sales from the operation of the tourism development expansion project. The amount determined under said subsection may be used as a credit against taxes required to be remitted on the approved company's monthly consumers sales and service tax returns that are filed pursuant to section sixteen, article fifteen, chapter eleven of this code. The approved company shall claim the credit by reducing the amount of consumers sales and service tax required to be remitted with its monthly consumers sales and service tax returns by the amount of its aggregate annual credit allowance until such time as the full current year annual credit allowance has been claimed. Once the total credit claimed for the tax year equals the approved company's aggregate annual credit allowance no further reductions to its monthly consumers sales and service tax returns will be permitted.

(e) Notwithstanding any other provision of this code, an approved company may elect not to utilize the tax credit awarded in this article for any reason whatsoever, including, but not limited to, utilizing other tax credits permitted in this code, after the project is completed and placed in use but prior to making an election

pursuant to subsection (c) of this section. Any decision not to utilize the tax credit for an approved company in this article may not impact the approved company's eligibility under this article or affect its designation as a Tourism Development District.

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CHAPTER 322

**(Com. Sub. for H. B. 2062 - By Delegates Tully, Barnhart,
Hanshaw (Mr. Speaker), Storch, Hardy, Ferrell, Riley,
Linville, Phillips, Longanacre and Honaker)**

[Passed February 27, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 8, 2023.]

AN ACT to amend and reenact §17C-1-70 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-11-8 of said code, all relating to modifying e-bike regulations to more closely comport to federal law; creating new definitions of e-bikes in West Virginia; permitting Class 2 e-bikes to use throttles; allowing Class 1 and Class 2 e-bikes to be operated on public lands to as to increase their usage and accessibility; and stating that users of e-bikes will not be given special privileges not otherwise given to similarly situated riders.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-70. Electric bicycles; definitions.

For the purpose of this section, the term "electric bicycle" means a two or three wheeled vehicle with fully operable pedals and an electric motor of fewer than 750 watts. There is a "three-class system" to differentiate between the models and top-assisted speeds of electric bicycles.

"Class 1" electric bicycles have a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the e-bike reaches 20 mph.

"Class 2" electric bicycles have a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the e-bike reaches 20 mph.

"Class 3" electric bicycles have a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the e-bike reaches 28 mph.

"Throttle" refers to a device that controls the flow of power to the electric motor on an electric bicycle for the purpose of propelling the electric bicycle.

ARTICLE 11. OPERATION OF BICYCLES AND PLAY VEHICLES.

§17C-11-8. Electric bicycles; requirements; exclusions; age restrictions.

(a) The operator of an electric bicycle has all of the rights and privileges and is subject to all of the duties applicable to the driver of a vehicle subject to this chapter, except as otherwise provided by this section and except as to those provisions of this chapter which by their nature can have no application.

(b) A person owning or operating an electric bicycle is not subject to the provisions of §17A-1-1 *et seq.*, §17B-1-1 *et seq.*, or §17D-1-1 *et seq.* of this code, relating to registration, title, driver's license, and financial responsibility requirements.

(c) A person may not tamper with or modify an electric bicycle so as to change the motor-powered speed capability or motor engagement between pedal-assist and throttle-assist types of engagement. If a motor on an electric bicycle is modified so that a limit established in §17C-1-70 of this code is exceeded, that vehicle is no longer an electric bicycle. The provisions of this subsection are not applicable to a modified electric bicycle operated solely and exclusively on a person's own property.

(d) An electric bicycle must comply with the equipment and manufacturing requirements for bicycles adopted by the United

States Consumer Product Safety Commission (16 C.F.R. Part 1512).

(e) The motor on an electric bicycle must disengage or cease to propel the electric bicycle when the operator stops pedaling, or when the operator applies the brakes and stops pedaling.

(f) A Class 3 electric bicycle must be equipped with a speedometer that displays the speed the electric bicycle is traveling in miles per hour.

(g) Class 2 electric bicycles are permitted to use a throttle to propel the bicycle.

(h) Electric bicycles operated on public roadways, public bicycle paths, public multiuse paths, and other public rights-of-way where bicycles are permitted to travel are subject to the following restrictions:

(1) Class 1, and Class 2 electric bicycles being used on roads and trails where traditional, non-electronic bicycle use is allowed will be given the same rights and privileges of a traditional, non-electric bicycle and will be subject to all of the duties of a traditional, non-electric bicycle. This rule intends to facilitate increased access to public lands that may otherwise be inaccessible to those with disabilities, health issues, or age-related limitations.

(2) A Class 3 electric bicycle may not be operated on a bicycle path, multiuse trail, or single-use trail unless it is within a highway or roadway: *Provided*, That the provisions of this subdivision are not applicable to a bicycle path, multiuse trail, or single-use trail if the municipality, local authority, or governing body of a state agency that has jurisdiction over the bicycle path, multiuse trail, or single-use trail expressly permits that operation.

(3) Electric bicycles will not be given special access beyond what traditional or non-electric bicycles are allowed. For example, electric bicycles will not be allowed on roads or trails or in areas where traditional, non-electric bicycle travel is prohibited.

(4) This subsection may not be construed to limit the authority of the owner of a private way or the owner of private property to restrict or allow the operation of electric bicycles on the way or property.

(i) Age restrictions related to the operation of electric bicycles are as follows:

(2) A person under 15 years of age who is an operator or passenger on an electric bicycle shall wear a properly fitted and fastened bicycle helmet, pursuant to the Child Bicycle Safety Act, §17C-11A-1 *et seq.* of this code.

(j) A person under the influence of alcohol or controlled substances shall not operate a Class 1, Class 2 or Class 3 electric bicycle.

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CHAPTER 323

**(Com. Sub. for H. B. 2218 - By Delegates Westfall, Garcia,
Fast, Kelly, Kump, Fluharty and Warner)**

[Passed March 11, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2023.]

AN ACT to amend and reenact §17C-14-15 of the Code of West Virginia, 1931, as amended, relating to distracted driving; modifying the scope of prohibitions on distracted driving by establishing the Electronically Distracted Driving Act; defining terms; providing limitations for the use of wireless telecommunications devices and stand-alone electronic devices; prohibiting certain actions by all drivers; prohibiting certain actions by school bus drivers and commercial motor vehicle drivers; providing that each violation constitutes a separate offense; providing for penalties for violations, including criminal penalties, fines, driver's license suspension and revocation, and points on the driver's record maintained by the Division of Motor Vehicles; providing exceptions; and providing a name for certain amendments.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-15. Electronically Distracted Driving Act.

(a) *Definitions* — As used in this section:

(1) “Smartwatch” means a wearable computer that provides a local touchscreen for daily use, associated with applications, and connected to a cellular or Wi-Fi network;

(2) “Stand-alone electronic device” means a portable device other than a wireless telecommunications device which stores audio or video data files to be retrieved on demand by a user;

(3) “Utility services” means and includes electric, natural gas, water, wastewater, cable, telephone, or telecommunications services, or the repair, location, relocation, improvement, or maintenance of utility poles, transmission structures, pipes, wires, fibers, cables, easements, rights-of-way, or associated infrastructure;

(4) “Wireless telecommunications device” means one of the following portable devices:

(A) A cellular telephone;

(B) A portable telephone;

(C) A text-messaging device;

(D) A personal digital assistant;

(E) A stand-alone computer including, but not limited to, a tablet, laptop, or notebook computer;

(F) A handheld global positioning system receiver;

(G) A device capable of displaying a video, movie, broadcast television image, or visual image;

(H) Any substantially similar portable wireless device that is used to initiate or receive communication, information, or data;

(I) “Wireless telecommunications device” does not include a smartwatch, any type of radio including but not limited to, radios used by first responders or school bus operators; citizens band radio or radio hybrid; commercial two-way radio communication device or its functional equivalent; subscription-based emergency communication device; prescribed medical device; amateur or ham radio device, or any built-in vehicle equipment for security, navigation, communications, or remote diagnostics; and

(5) “Voice-operated or hands-free feature or function” means a feature or function that allows a person to use a wireless telecommunications device without the use of either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

(b) The driver of a school bus shall not use or operate a wireless telecommunications device or two-way radio while loading or unloading passengers.

(c) The driver of a school bus shall not use or operate a wireless telecommunications device while the bus is in motion nor while stationary in traffic nor at a traffic control signal, unless that device is being used in a similar manner as a two-way radio to allow live communication between the driver and school officials or public safety officials.

(d) A driver shall exercise due care in operating a motor vehicle on the highways of this state and shall not engage in any actions involving any stand-alone electronic device or wireless telecommunications device that distracts such driver from the safe operation of the vehicle.

(e) While operating a motor vehicle on any street, highway, or property open to the public for vehicular traffic in this state, no driver may:

(1) Physically hold or support, with any part of his or her body, a wireless communication device or stand-alone electronic device: *Provided*, That such prohibition shall not apply to the wearing of a smartwatch;

(2) Write, send, or read any text-based communication including, but not limited to, a text message, instant message, e-mail, or social media interaction on a wireless telecommunications device or stand-alone electronic device: *Provided*, That such prohibition shall not apply to a voice-operated or hands-free communication feature which is automatically converted by such device to be sent as a message in a written form;

(3) Make any communication involving a wireless telecommunications device, including a phone call, voice message, or one-way voice communication: *Provided*, That such prohibition shall not apply to a voice operated or hands-free communication feature or function;

(4) Engage in any form of electronic data retrieval or electronic data communication on a wireless telecommunications device or stand-alone electronic device;

(5) Manually enter letters, numbers, or symbols into any website, search engine, or application on a wireless telecommunications device or stand-alone electronic device;

(6) Watch a video or movie on a wireless telecommunications device or standalone electronic device other than watching data related to the navigation of such vehicle;

(7) Record, post, send, or broadcast video, including a video conference on a wireless telecommunications device or stand-alone electronic device: *Provided*, That such prohibition does not apply to electronic devices used for the sole purpose of continuously recording or broadcasting video within or outside of the motor vehicle; or

(8) Actively play any game on a wireless telecommunications device or stand-alone electronic device.

(f) While operating a commercial motor vehicle on any highway of this state, no driver may:

(1) Use more than a single button on a wireless telecommunications device to initiate or terminate a voice communication; or

(2) Reach for a wireless telecommunications device or stand-alone electronic device in such a manner that requires the driver to:

(A) No longer be in a seated driving position; or

(B) No longer be properly restrained by a safety belt.

(g) Each violation of this section shall constitute a separate offense.

(h) It is a misdemeanor for any driver to violate any of the provisions of this section. Every driver convicted of a misdemeanor for a violation of any of the provisions of this section shall be punished as follows:

(1) For a first conviction with no prior conviction of and no plea of no contest accepted to a charge of violating this section within the previous 24-month period, as measured from the date of any prior conviction or plea, a fine of not more than \$100;

(2) For a second conviction within a 24-month period, as measured from the date of any prior conviction or plea, a fine of not more than \$200;

(3) For a third or subsequent conviction within a 24-month period, as measured from the date of any prior conviction or plea:

(A) A fine of not more than \$350;

(B) Three points on the driver's record maintained by the Division of Motor Vehicles; and

(C) At the court's discretion, suspension of the driver's license for a period of 90 days;

(4) Any driver who causes physical harm to property as the proximate result of committing a violation of this section is guilty of a misdemeanor punishable up to 30 days in jail or a fine not less than \$100 and not more than \$500;

(5) Any driver who causes serious physical harm to another person as the proximate result of committing a violation of this section is guilty of a misdemeanor and shall be fined not less than \$500 nor more than \$1,000, or confined in jail up to 120 days, or both fined and confined, and such driver shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year; and

(6) Any driver who causes the death of another as the proximate result of committing a violation of this section is guilty of negligent homicide and shall be punished in accordance with §17C-5-1 of this code.

(i) The Department of Transportation shall cause to be erected signs upon any highway entering the state of West Virginia on which a welcome to West Virginia sign is posted, and any other highway where the Division of Highways deems appropriate, posted at a distance of not more than one mile from each border crossing, each sign to bear an inscription clearly communicating to motorists entering the state that texting, or the use of a wireless communication device without hands-free equipment, is illegal within this state.

(j) Nothing contained in this section shall be construed to authorize seizure of a cell phone or electronic device by any law-enforcement agency.

(k) No policy providing liability coverage for personal lines insurance shall contain a provision which may be used to deny coverage or exclude payment of any legal damages recoverable by law for injuries proximately caused by a violation of this section, as long as such amounts are within the coverage limits of the insured.

(l) This section shall not apply to:

(1) Drivers reporting to state, county, or local authorities a traffic accident, medical emergency, fire, an actual or potential criminal or delinquent act, or a road condition that causes an immediate and serious traffic or safety hazard;

(2) An employee or contractor of a utility services provider acting within the scope of his or her employment while responding to a utility emergency;

(3) A driver operating a commercial vehicle while using a mobile data terminal that transmits and receives data;

(4) A law-enforcement officer, firefighter, emergency medical services personnel, ambulance driver, or other similarly employed public safety first responder during the performance of his or her official duties; or

(5) While in a motor vehicle that is lawfully parked.

(m) This section does not supersede the provisions of §17B-2-3a of this code, or any more restrictive provisions for drivers of commercial motor vehicles prescribed either by the provisions of §17E-1-1 *et seq.* of this code or by federal law or rule.

(n) The amendments to this section adopted during the regular session of the Legislature in 2023, shall be known as the Robin W. Ames Memorial Act.

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CHAPTER 324

(H. B. 2533 - By Delegate Linville)

[By Request of the Department of Transportation]

[Passed February 6, 2023; in effect ninety days from passage.]
[Approved by the Governor on February 15, 2023.]

AN ACT to amend and reenact §17C-13-6 of the Code of West Virginia, 1931, as amended, relating to a permanent windshield placard to be valid for the duration of the applicant's life.

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.

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

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

(3) The applicant shall specify whether he or she is applying for a special registration plate, a removable windshield placard, or

both on the application form prescribed and furnished by the commissioner.

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

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

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

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

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

(A) Cannot walk 200 feet without stopping to rest;

(B) Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device, or another person;

(C) Is restricted by lung disease to such an extent that the person's force (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than 60 mm/hg on room air at rest;

(D) Uses portable oxygen;

(E) Has a cardiac condition to such an extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards established by the American Heart Association; or

(F) Is severely limited in his or her ability to walk because of an arthritic, neurological, or other orthopedic condition;

(2) "Special registration plate" means a registration plate that displays the international symbol of access, as adopted by the Rehabilitation International Organization in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled, in a color that contrasts with the background, in letters and numbers the same size as those on the plate, and which may be used in lieu of a regular registration plate;

(3) "Removable windshield placard" (permanent or temporary) means a two-sided, hanger-style placard measuring three inches by nine and one-half inches, with all of the following on each side:

(A) The international symbol of access, measuring at least three inches in height, centered on the placard, in white on a blue background for permanent designations and in white on a red background for temporary designations;

(B) An identification number measuring one inch in height;

(C) An expiration date in numbers measuring one inch in height for a temporary placard; and

(D) The seal or other identifying symbol of the issuing authority;

(4) "Regular registration fee" means the standard registration fee for a vehicle of the same class as the applicant's vehicle;

(5) "Public entity" means state or local government or any department, agency, special purpose district, or other instrumentality of a state or local government;

(6) "Public facility" means all or any part of any buildings, structures, sites, complexes, roads, parking lots, or other real or personal property, including the site where the facility is located;

(7) "Place or places of public accommodation" means a facility or facilities operated by a private entity whose operations affect commerce and fall within at least one of the following categories:

(A) Inns, hotels, motels, and other places of lodging;

(B) Restaurants, bars, or other establishments serving food or drink;

(C) Motion picture houses, theaters, concert halls, stadiums, or other places of exhibition or entertainment;

(D) Auditoriums, convention centers, lecture halls, or other places of public gatherings;

(E) Bakeries, grocery stores, clothing stores, hardware stores, shopping centers, or other sales or rental establishments;

(F) Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals, or other service establishments;

(G) Terminals, depots, or other stations used for public transportation;

(H) Museums, libraries, galleries, or other places of public display or collection;

(I) Parks, zoos, amusement parks, or other places of recreation;

(J) Public or private nursery, elementary, secondary, undergraduate, or post-graduate schools or other places of learning and day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies, or other social services establishments; and

(K) Gymnasiums, health spas, bowling alleys, golf courses, or other places of exercise or recreation;

(8) "Commercial facility" means a facility whose operations affect commerce and which are intended for nonresidential use by a private entity;

(9) "Accessible parking" formerly known as "handicapped parking" is the present phrase consistent with language within the Americans with Disabilities Act (ADA).

(10) "Parking enforcement personnel" includes any law-enforcement officer as defined by §30-29-1 of this code, and private security guards, parking personnel, and other personnel authorized by a city, county, or the state to issue parking citations.

Any person who falsely or fraudulently obtains or seeks to obtain the special plate or the removable windshield placard provided for in this section, and any person who falsely certifies that a person is mobility impaired in order that an applicant may be issued the special registration plate or windshield placard under

this section is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$500. Any person who fabricates, uses, or sells unofficially issued windshield placards to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$500 per placard fabricated, used, or sold. Any person who fabricates, uses, or sells unofficially issued identification cards to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$700 per identification card fabricated, used, or sold. Any person who fabricates, uses, or sells unofficially issued labels imprinted with a future expiration date to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$700. Any person covered by this section who sells or gives away their officially issued windshield placard to any person or organization not qualified to apply for or receive the placard and then reapplies for a new placard on the basis it was stolen is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she, or they may otherwise incur, shall lose their right to receive or use a special placard or special license plate for a period of not less than five years.

(c) The commissioner shall set the expiration date for special registration plates on the last day of a given month and year, to be valid for a minimum of one year but not more than five years, after which time a new application must be submitted to the commissioner. After the commissioner receives the new application, signed by a certified physician, chiropractor, advanced nurse practitioner, or physician's assistant if required under this subsection, the commissioner shall issue: (i) A new special registration plate or new permanent or temporary removable windshield placard; or (ii) official labels imprinted with the new expiration date and designed so as to be placed over the old dates on the original registration plate or windshield placard: *Provided*,

That a new application under this subsection must not be accompanied by a certificate pursuant to §17C-13-6(a)(4) of this code if a prior application is on file with the commissioner, such application includes a certificate issued pursuant to §17C-13-6(a)(4) of this code, such certificate specifies that the applicant's disability is permanent for life, and such certificate was made within 10 years of the new application.

(d) The commissioner shall set the expiration date of temporary removable windshield placards to be valid for a period of approximately six months after the application was received and approved by the commissioner. Permanent removable windshield placards are valid for the duration of the applicant's life.

(e) The commissioner shall issue to each applicant who is granted a special registration plate or windshield placard an identification card bearing the applicant's name, assigned identification number, and expiration date. The applicant shall thereafter carry this identification card on his or her person whenever parking in an accessible parking space. The identification card shall be identical in design for both registration plates and removable windshield placards.

(f) An accessible parking space should comply with the provisions of the Americans with Disabilities Act accessibility guidelines, contained in 28 C.F.R. 36, Appendix A, Section 4.6. In particular, the parking space should be a minimum of eight feet wide with an adjacent eight-foot access aisle for vans having side mounted hydraulic lifts or ramps, or a five-foot access aisle for standard vehicles. Access aisles should be marked using diagonal two- to four-inch-wide stripes spaced every 12 or 24 inches apart along with the words "no parking" in painted letters which are at least 12 inches in height. All accessible parking spaces must have a signpost in front or adjacent to the accessible parking space displaying the international symbol of access sign mounted at a minimum of eight feet above the pavement or sidewalk and the top of the sign. Lines or markings on the pavement or curbs for parking spaces and access aisles may be in any color, although blue is the generally accepted color for accessible parking.

(g) A vehicle displaying a disabled veterans special registration plate issued pursuant to §17A-3-14(c)(6) of this code shall be recognized and accepted as meeting the requirements of this section.

(h) A vehicle from any other state, United States territory, or foreign country displaying an officially issued special registration plate, placard, or decal bearing the international symbol of access shall be recognized and accepted as meeting the requirements of this section, regardless of where the plate, placard, or decal is mounted or displayed on the vehicle.

(i) Stopping, standing or parking places marked with the international symbol of access shall be designated in close proximity to all public entities, including state, county, and municipal buildings and facilities, places of public accommodation, and commercial facilities. These parking places shall be reserved solely for persons with a mobility impairment and disabled veterans at all times.

(j) Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: *Provided*, That this privilege does not mean that the vehicle may park in any zone where stopping, standing, or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provision of any ordinance of any political subdivision of this state is contrary to the provisions of this section, the provisions of this section take precedence and apply.

The parking privileges provided for in this subsection apply only during those times when the vehicle is being used for the loading or unloading of a person with a mobility impairment. Any person who knowingly exercises, or attempts to exercise, these privileges at a time when the vehicle is not being used for the loading or unloading of a person with a mobility impairment is

guilty of a misdemeanor and, upon first conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$200; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$300; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$500.

(k) Any person whose vehicle does not display a valid, special registration plate or removable windshield placard may not stop, stand, or park a motor vehicle in an area designated, zoned, or marked for accessible parking with signs or instructions displaying the international symbol of access, either by itself or with explanatory text. The signs may be mounted on a post or a wall in front of the accessible parking space and instructions may appear on the ground or pavement, but use of both methods is preferred. Accessible parking spaces for vans having an eight-foot adjacent access aisle should be designated as "van accessible" but may be used by any vehicle displaying a valid special registration plate or removable windshield placard.

Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$200; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$300; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$500.

(l) All signs that designate areas as "accessible parking" or that display the international symbol of access shall also include the words "Up to \$500 fine".

(m) No person may stop, stand, or park a motor vehicle in an area designated or marked off as an access aisle adjacent to a van-accessible parking space or regular accessible parking space. Any person, including a driver of a vehicle displaying a valid removable windshield placard or special registration plate, who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$200; upon second conviction

thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$300; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$500.

(n) Parking enforcement personnel who otherwise enforce parking violations may issue citations for violations of this section and shall reference the number on the vehicle's license plate, since the driver normally will not be present.

(o) Law-enforcement agencies may establish a program to use trained volunteers to collect information necessary to issue citations to persons who illegally park in designated accessible parking spaces. Any law-enforcement agency choosing to establish a program shall provide for workers' compensation and liability coverage. The volunteers shall photograph the illegally parked vehicle and complete a form, to be developed by supervising law-enforcement agencies, that includes the vehicle's license plate number, date, time, and location of the illegally parked vehicle. The photographs must show the vehicle in the accessible space and a readable view of the license plate. Within the discretion of the supervising law-enforcement agency, the volunteers may issue citations or the volunteers may submit the photographs of the illegally parked vehicle and the form to the supervising law-enforcement agency, who may issue a citation, which includes the photographs and the form, to the owner of the illegally parked vehicle. Volunteers shall be trained on the requirements for citations for vehicles parked in marked, zoned, or designated accessible parking areas by the supervising law-enforcement agency.

(p) Local authorities who adopt the basic enforcement provisions of this section and issue their own local ordinances shall retain all fines and associated late fees. These revenues shall be used first to fund the provisions of subsection (o) of this section, if adopted by local authorities, or otherwise shall go into the local authorities' General Revenue Fund. Otherwise, any moneys collected as fines shall be collected for and remitted to the state.

(q) The commissioner shall prepare and issue a document to applicants describing the privileges accorded a vehicle having a special registration plate and removable windshield placard as well as the penalties when the vehicle is being inappropriately used as described in this section and shall include the document along with the issued special registration plate or windshield placard. In addition, the commissioner shall issue a separate document informing the general public regarding the new provisions and increased fines being imposed either by way of newspaper announcements or other appropriate means across the state.

(r) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

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CHAPTER 325

**(Com. Sub. for H. B. 2760 - By Delegates Ross, Dillon,
Burkhammer, A. Hall and Riley)**

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §17C-1-6 of the Code of West Virginia, 1931, as amended, relating to permitting firefighters to drive ambulances when both attendants are needed to administer patient care.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-6. Authorized emergency vehicle.

"Authorized emergency vehicle" means vehicles of a fire department, duly chartered rescue squad, police department, ambulance service, hospital police department, state, county, or municipal agency, and such privately owned ambulances, tow trucks, wreckers, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, postal service vehicles, snow removal equipment, Class A vehicles of firefighters, Class A vehicles of members of ambulance services, Class A vehicles of members of duly chartered rescue squads, emergency management and operations vehicles operated by airports and designated pursuant to §17C-15-26 of this code, and all other emergency vehicles as are designated by the agency responsible for the operation and control of these persons or organizations. Class A vehicles are as defined by §17A-10-1 of this code. Agency authorization and emergency equipment are provided in §17C-15-26 of this code. Agencies responsible for issuing authorization for emergency vehicle permits may

promulgate such regulations that are necessary for the issuance of permits for emergency vehicles. In the event that emergency medical technicians ("EMTs") or paramedics on the scene of an emergency are unable to drive an ambulance in the course of administering patient care, firefighters on the scene shall be permitted to drive an ambulance: *Provided*, That the fire department with which the firefighters are associated or members and the emergency medical services provider that owns the ambulance have previously entered into a memorandum of understanding or other agreement authorizing such action and the firefighter driving the ambulance has completed an Emergency Vehicle Operations Course ("EVOC") otherwise required by this code or legislative rule promulgated thereunder.

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CHAPTER 326

**(Com. Sub. for S. B. 527 - By Senators Trump, Azinger,
Grady, Rucker, Stover, Stuart, Takubo, Tarr, Taylor, Weld,
Woodrum, Caputo, Deeds, Smith, Clements, Hamilton, and
Maynard)**

[Passed March 10, 2023; in effect 90 days from passage (June 8, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §7-1-31l of the Code of West Virginia, 1931, as amended, relating to extending the right to receive copies or view, free of charge, copies of the discharge certificate or report of separation from active duty to the family members of persons discharged from the United States Armed Forces.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-31l. Clerk of the county commission duties relating to record keeping of military discharge forms.

(a) The county commission shall order that the clerk of the county commission wherein a person discharged from the Armed Forces of the United States resides record, upon presentation, free of charge, the original or a properly authenticated copy of either the discharge certificate or the report of separation from active duty (Department of Defense Document DD-214), or both, and maintain the discharge certificate or report, or both, in the clerk's office in a secure manner, rendering the records unavailable to the public.

(b) Notwithstanding the provisions of §29B-1-1 *et seq.* of this code, discharge certificates and reports of separation from active

duty recorded pursuant to this section may be copied or inspected only by the following:

(1) The person of the record, their spouse, child, grandchild, parent, or sibling;

(2) The duly qualified conservator or guardian of the person of the record;

(3) The duly qualified executor or administrator of the estate of the person of the record, if deceased, or, in the event no executor or administrator has qualified, the next of kin of the deceased person;

(4) An attorney, attorney-in-fact, or other agent or representative of any of the persons described in subdivision (1), (2) or (3), subsection (b) of this section, acting pursuant to a written power of attorney or other written authorization; or

(5) A duly authorized representative of an agency or instrumentality of federal, state, or local government seeking the record in the ordinary course of performing its official duties.

(c) Under the circumstances where time is of the essence, including, but not limited to, requests for copies of records attendant to the making of funeral arrangements or arrangements for medical care, the clerk, in ascertaining whether a person seeking access to discharge certificates or reports of separation from active duty is qualified to do so pursuant to subsection (b) of this section, may rely upon the sworn statement of the requestor made in person before the clerk or his or her deputy.

(d) Notwithstanding the provisions of subsection (b) of this section, the clerk may permit access to discharge certificates or reports of separation from active duty of deceased persons for bona fide genealogical or other research purposes: *Provided*, That in accordance with federal law, the clerk shall permit access to discharge certificates or reports of separation from active duty of military veterans who retired, were discharged, or died in service 62 years or more prior to the date of such a request was made.

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CHAPTER 327

(Com. Sub. for H. B. 3398 - By Delegate McGeehan)

[Passed March 11, 2023; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §10-3B-1, §10-3B-2, §10-3B-3, §10-3B-4, §10-3B-5, and §10-3B-6, all relating to the establishment of the West Virginia Memorial to Fallen Heroes of the Global War on Terrorism; providing for legislative findings, purposes, intent, and short title; establishing a monument construction commission; defining membership and procedural rules of the monument construction commission; charging commission with construction of a monument to Fallen Heroes of the Global War on Terrorism; detailing guidelines for the commission; directing Division of Labor allocate funds for the monument; detailing guidelines for the affixation of an inscription or plaque to the monument; and terminating commission upon completion of the monument.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3B. THE WEST VIRGINIA MEMORIAL TO FALLEN HEROES OF THE GLOBAL WAR ON TERRORISM.

§10-3B-1. Legislative findings, purposes, intent, and short title.

(a) In order to preserve the memory of West Virginia servicemembers killed in action in the conflicts in Iraq, Afghanistan, and other locations during the United States War on Terror a monument shall be constructed on the State Capitol

grounds to recognize and honor those West Virginians who made the ultimate sacrifice while serving in these conflicts.

(b) This article may be cited as the "West Virginia Memorial to Fallen Heroes of the Global War on Terrorism."

§10-3B-2. Monument construction commission.

(a) A commission shall be established on or before July 1, 2023, to oversee construction of the monument. The commission shall be comprised of:

(1) The Curator of the Department of Arts, Culture, and History, who shall serve as chairperson ex officio;

(2) The Secretary of the Department of Administration;

(3) The Secretary of the Department of Veterans Assistance;

(4) A member of the West Virginia House of Delegates, who shall be appointed by the Speaker of the House of Delegates, with preference given to a member who is a veteran of the Armed Forces; and

(5) A member of the West Virginia Senate, who shall be appointed by the President of the Senate, with preference given to a member who is a veteran of the Armed Forces.

(b) A majority of the members of the commission must be present at a meeting in order to constitute a quorum, and a majority of those members present at a meeting must vote in the affirmative in order to pass a motion. A meeting called by the chair requires at least five days' written notice of the meeting be provided to the members. Additionally, the chair shall call a meeting upon written demand of at least three members.

§10-3B-3. Design, construction, and administration of the monument.

(a) The commission shall choose a design for the monument, to the greatest extent practicable, by December 31, 2023, that:

(1) Is in line with classical themes of veterans memorials throughout the nation while taking into account appropriate historical, religious, and philosophical themes as well as public comments submitted to the commission;

(2) Adheres to the principles described in §10-3B-1 of this code and is reflective of those West Virginians killed during the United State War on Terror;

(3) Is found to be aesthetically pleasing by the commission; and

(4) Is placed on the grounds of the West Virginia State Capitol.

(b) The commission shall solicit bids for construction of the monument and shall adhere to all state purchasing and payment processing laws and regulations in paying its vendors.

(c) The commission shall have a target date for the completion and dedication of the monument, to the greatest extent practicable, of December 31, 2024.

§10-3B-4. Funding for the monument; authority for obtaining additional funds to complete or enhance the monument.

The Division of Labor shall allocate funds in the amount up to \$750,000 toward the completion of the monument from any available funds that are managed or utilized by the Division of Labor. The commission shall have the authority to obtain funding through grants, charitable donations, or other appropriate means for the completion or enhancement of the monument.

§10-3B-5. Memorial inscription or plaque.

There shall be inscribed or engraved upon the monument, or otherwise permanently affixed by means of a plaque the following text:

(1) The names of all West Virginia servicemembers killed in action during the United States War on Terror as described in §10-3B-1 of this code; and

(2) Any other text the commission deems appropriate in accordance with §10-3B-3(a)(1) of this code.

§10-3B-6. Conclusion of the commission's work.

(a) The commission shall be disbanded at such time that the monument has been completed and has been appropriately dedicated in accordance with the provisions of this article; *Provided, however,* If the monument is not completed or dedicated by December 31, 2024, the commission shall be continued until such time that the monument is completed and dedicated.

(b) Upon the commission's termination, ownership of the monument shall be transferred to the Department of Arts, Culture, and History, and any funds remaining in the commission's control at that time shall be granted to the Department of Arts, Culture, and History for the monument's enhancement and perpetual maintenance.

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CHAPTER 328

(H. B. 3451 - By Delegates Hillenbrand, Ridenour, Sheedy, Street and Cooper)

[Passed March 11, 2023; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §6-13-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §6-13-2, all relating to updating the veteran preference ratings in state code for state employment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. PREFERENCE RATING OF VETERANS ON WRITTEN EXAMINATION ON NONPARTISAN MERIT BASIS.

§6-13-1. Definitions.

(a) “Active duty” or “active-duty service” means full-time duty in the armed forces of the United States, as defined in 10 USC §101(d) or 32 USC §502, §503, or §904.

(b) “Active duty for training” means full-time duty in the armed forces of the United States for a period of more than 90 consecutive days for training purposes performed by members of the National Guard or Military Reserves.

(c) “Armed forces” shall have the same definition as provided in 5 U.S.C. §2101(2) and means the Army, Navy, Air Force, Marine Corps, Coast Guard, and Space Force.

(d) “Certification” means any written document from the armed forces that certifies that a service member is expected to be

discharged or released from active-duty service in the armed forces under honorable conditions not later than 120 days after the date the certification is submitted for consideration in the hiring process, at the time and in the manner prescribed by the applicable job opportunity announcement. Prior to appointment, the service member's character of service and qualifying discharge release must be verified through a DD Form 214 or equivalent documentation.

(e) "Disabled veteran" means a person who has been discharged or released from active-duty service under honorable conditions performed at any time, or who has a certification as defined in subsection (c) of this section, and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or a pension because of a statute administered by the Department of Veterans Affairs or by a military department.

(f) "Rule of 3" refers to the rule under which managers are required to select new employees from among the top three available candidates rated and referred to them by an examining office.

(g) "Veteran" means a person who has been discharged or released from active-duty service in the armed forces under honorable conditions, or who has completed active duty for training for a period of more than 90 consecutive days as a member of the National Guard or Military Reserves.

§6-13-2. Preference rating categories for veterans; benefits to be granted on written examinations for positions in state departments filed under nonpartisan merit system; other benefits.

(a) For positions in any agency as defined in §5F-1-4 of this code or any other political subdivision of this state in which positions are filled under civil service or any job classification system, a 5-Point Preference category or a 10-Point Compensable Disability Preference category shall be applied to qualifying veterans. A veteran who qualifies for either the 5-Point Preference

category or the 10-Point Compensable Disability Preference category shall have the corresponding preference points added to his or her regular numerical score on employment examinations or category ratings: *Provided, however;* That the preference points may only be added to a passing score.

(b) If a veteran who qualifies for either the 5-Point Preference category or the 10-Point Compensable Disability Preference category also qualifies for another preference category, the veteran shall only be qualified to receive the benefits that correspond with the highest numerical preference category.

(c) To receive preference under this article, the veteran's separation from active duty must have been under honorable conditions.

(d) The benefits conferred pursuant to this article shall be made for the benefit and preference in appointment of all veterans who have heretofore, or who shall hereafter, take examinations, but shall not operate to the detriment of any person previously appointed to a position in any agency defined in §5F-1-4 of this code or any other political subdivision of this state.

(e) *5-Point Preference category applicability.* — A 5-Point Preference shall be used for veterans who participated in active duty service as set forth in §6-13-1(a) and §6-13-1(b) of this code.

(f) *5-Point Preference benefits.* — Under the 5-Point Preference, a qualifying veteran:

(1) Shall receive an additional five points that shall be added to the regular numerical score or rating of an employment examination: *Provided, however;* These preference points may only be added to a passing score or rating prior;

(2) Shall receive preference points as other eligibles do when the Rule of 3 is applied;

(3) Shall be entitled to be listed ahead of non-preference eligibles with the same score on an examination, or listed ahead of

non-preference eligibles in the same quality category when agencies are using category rating;

(4) Shall be entitled to receive the same pass-over rights as other preference eligibles; and

(5) Shall be entitled to credit experience in the armed forces to meet the qualification requirements for employment.

(g) *10-Point Compensable Disability Preference category applicability.* — A 10-Point Compensable Disability Preference shall be used for veterans who:

(1) Served on active duty for any period of time and meet the definitional requirement of “disabled veteran” as set forth in §6-13-1(e) of this code; or

(2) Received a Purple Heart medal.

(h) *10-Point Compensable Disability Preference benefits.* — Under the 10-Point Compensable Disability Preference, a qualifying veteran:

(1) Shall receive an additional 10 points that shall be added to the regular numerical score or rating of an employment examination: *Provided, however;* These preference points may only be added to a passing score or rating;

(2) Shall receive preference points as other eligibles do when the Rule of 3 is applied;

(3) Shall be entitled to be listed ahead of non-preference eligibles with the same score on an examination, or listed ahead of non-preference eligibles in the same quality category when agencies are using category rating;

(4) Shall be entitled to receive the same pass-over rights as other preference eligibles; and

(5) Shall be entitled to credit experience in the armed forces to meet the qualification requirements for employment.

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CHAPTER 329

(S. B. 608 - By Senators Trump and Deeds)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §61-7-2 of the Code of West Virginia, 1931, as amended, relating to dangerous weapons; correcting the partial list of items which are considered deadly weapons; and removing certain age restrictions relating to pepper spray.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-2. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Antique firearm" means:

(A) Any firearm, including, but not limited to, a firearm with a match lock, flintlock, percussion cap, or similar type of ignition system which was manufactured on or before 1898;

(B) Any replica of any firearm described in paragraph (A) of this subdivision if such replica is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(C) Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol, which is designed to use black powder, or black powder substitute, and which cannot use fixed ammunition. For purposes of this subdivision, the term "antique firearm" shall

not include any weapon which includes a firearm frame or receiver, any firearm which is converted into a muzzle-loading weapon, or any muzzle-loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

(2) "Blackjack" means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. The term "blackjack" includes, but is not limited to, a billy, billy club, sand club, sandbag, or slapjack.

(3) "Concealed" means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee is considered to be carrying on or about his or her person while in or on a motor vehicle if the firearm is located in a storage area in or on the motor vehicle.

(4) "Controlled substance" has the same meaning as is ascribed to that term in §60A-1-101(e) of this code.

(5) "Deadly weapon" means an instrument which is designed to be used to produce serious bodily injury or death or is readily adaptable to such use. The term "deadly weapon" includes, but is not limited to, the instruments defined in subdivisions (1), (2), (5), (7), (8), (9), (10), (11), (12), (13), (14), and (15), inclusive, of this section or other deadly weapons of like kind or character which may be easily concealed on or about the person. For the purposes of §18A-5-1a of this code and §61-7-11a of this code, in addition to the definition of "knife" set forth in subdivision (9) of this subsection, the term "deadly weapon" also includes any instrument included within the definition of "knife" with a blade of three and one-half inches or less in length. Additionally, for the purposes of §18A-5-1a of this code and §61-7-11a of this code, the term "deadly weapon" includes explosive, chemical, biological, and radiological materials. Notwithstanding any other provision of this

section, the term "deadly weapon" does not include any item or material owned by the school or county board, intended for curricular use, and used by the student at the time of the alleged offense solely for curricular purposes. The term "deadly weapon" does not include pepper spray as defined in subdivision (12) of this subsection when used by any person solely for self-defense purposes.

(6) "Drug" has the same meaning as is ascribed to that term in §60A-1-101(m) of this code.

(7) "Firearm" means any weapon which will expel a projectile by action of an explosion: *Provided*, That it does not mean an antique firearm as defined in subdivision (1) of this subsection except for the purposes of §48-27-502 of this code.

(8) "Gravity knife" means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force and when released is locked in place by means of a button, spring, lever, or other locking or catching device.

(9) "Knife" means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle which is capable of inflicting cutting, stabbing, or tearing wounds. The term "knife" includes, but is not limited to, any dagger, dirk, poniard, or stiletto, with a blade over three and one-half inches in length, any switchblade knife or gravity knife, and any other instrument capable of inflicting cutting, stabbing, or tearing wounds. A pocket knife with a blade three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports, or other recreational uses, or a knife designed for use as a tool or household implement is not included within the term "knife" as defined in this subdivision unless the knife is knowingly used or intended to be used to produce serious bodily injury or death.

(10) "Metallic or false knuckles" means a set of finger rings attached to a transverse piece to be worn over the front of the hand for use as a weapon and constructed in such a manner that, when striking another person with the fist or closed hand, considerable

physical damage may be inflicted upon the person who was struck. The terms "metallic or false knuckles" includes any such instrument without reference to the metal or other substance or substances from which the metallic or false knuckles are made.

(11) "Nunchaku" means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope, or other nonrigid, flexible, or springy material, constructed in a manner that allows the rigid parts to swing freely so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.

(12) "Pepper spray" means a temporarily disabling aerosol that is composed partly of capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose, throat, and skin that is intended for self-defense use.

(13) "Pistol" means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.

(14) "Revolver" means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.

(15) "Switchblade knife" means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch, or other releasing device in its handle.

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CHAPTER 330

(Com. Sub. for S. B. 661 - By Senators Roberts and Tarr)

[Passed March 11, 2023; in effect 90 days from passage (June 9, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend and reenact §23-5A-3 of the Code of West Virginia, 1931, as amended, relating to the preferential recall rights of an employee who is off work due to a compensable injury; providing that any demand for reinstatement made by an injured employee must be made in writing; providing for how and where the demand for reinstatement must be mailed; providing requirements for an injured employee's reinstatement to his or her former position; providing for a preferential recall time period of 120 days when the injured employee is employed by contractors as defined by §30-42-3 of said code; stating that it is the employee's obligation to continually seek the possibility of employment during the preferential recall period; and providing that the employee's right to preferential recall terminates once the employer offers the employee his or her former position or a comparable position.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. DISCRIMINATORY PRACTICES.

§23-5A-3. Termination of injured employees prohibited; reemployment of injured employees.

(a) It shall be a discriminatory practice within the meaning of section one of this article to terminate an injured employee while the injured employee is off work due to a compensable injury within the meaning of §23-4-1 *et seq.* of this code and is receiving or is eligible to receive temporary total disability benefits, unless

the injured employee has committed a separate dischargeable offense. A separate dischargeable offense shall mean misconduct by the injured employee wholly unrelated to the injury or the absence from work resulting from the injury. A separate dischargeable offense shall not include absence resulting from the injury or from the inclusion or aggregation of absence due to the injury with any other absence from work.

(b) It shall be a discriminatory practice within the meaning of section one of this article for an employer to fail to reinstate an employee who has sustained a compensable injury to the employee's former position of employment upon demand made in writing and transmitted by the United States Postal Service, return receipt requested, to the employer's principal office for such reinstatement provided that the position in which the employee sustained the compensable injury is still available and the employee is not disabled from performing the duties of such position. If the former position is not available, the employee shall be reinstated to another comparable position which is available and which the employee is capable of performing. A comparable position for the purposes of this section shall mean a position which is comparable as to wages, working conditions and, to the extent reasonably practicable, duties to the position held at the time of injury. A written statement from a duly licensed physician that the physician approves the injured employee's return to his or her regular employment shall be prima facie evidence that the worker is able to perform such duties. In the event that neither the former position nor a comparable position is available, the employee shall have a right to preferential recall to any job which the injured employee is capable of performing which becomes open after the injured employee notifies the employer that he or she desired reinstatement. Said right of preferential recall shall be in effect for one year from the day the injured employee notifies the employer that he or she desires reinstatement: *Provided*, That the employee provides to the employer a current mailing address during this one-year period.

(c) For the preferential recall rights authorized by this section when an employee is employed by an employer defined by §30-42-

3(d) of this code, the employee's right to preferential recall shall be no greater than 120 days from the date the employee is released by a duly licensed physician to return to his or her regular employment. It is the employee's obligation to continually seek the possibility of employment during the employee's preferential recall period under this subsection. The employee's right to preferential recall authorized by this subsection terminates once the employer offers the employee his or her former position or a comparable position.

(d) Any civil action brought under this section shall be subject to the seniority provisions of a valid and applicable collective bargaining agreement, or arbitrator's decision thereunder, or to any court or administrative order applying specifically to the injured employee's employer, and shall further be subject to any applicable federal statute or regulation.

(e) Nothing in this section shall affect the eligibility of the injured employee to workers' compensation benefits under this chapter.

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CHAPTER 331

**(Com. Sub. for H. B. 3270 - By Delegates Hott, Westfall,
Householder, Criss, Espinosa, Hardy, Cooper, Heckert,
Howell, Hillenbrand and Jennings)**

[Passed March 10, 2023; in effect ninety days from passage.]

AN ACT to amend and reenact §23-4-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §23-4-2a, all relating to the deliberate intent exception to the immunities provided under Workers Compensation; clarifying certain definitions of employee; clarifying the proof required for certain claims; clarifying the recoverable amount payable for compensatory damages for noneconomic losses; and requiring a yearly increase in certain limitations for compensatory damages to account for inflation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; legislative declarations and findings; "deliberate intention" defined.

(a) Notwithstanding anything contained in this chapter, no employee or dependent of any employee is entitled to receive any sum under the provisions of this chapter on account of any personal injury to or death to any employee caused by a self-inflicted injury or the intoxication of the employee. Upon the occurrence of an injury which the employee asserts, or which reasonably appears to have, occurred in the course of and resulting from the employee's employment, the employer may require the employee to undergo a

blood test for the purpose of determining the existence or nonexistence of evidence of intoxication: *Provided*, That the employer must have a reasonable and good faith objective suspicion of the employee's intoxication and may only test for the purpose of determining whether the person is intoxicated. If any blood test for intoxication is given following an accident, at the request of the employer or otherwise, and if any of the following are true, the employee is deemed intoxicated and the intoxication is the proximate cause of the injury:

(1) If a blood test is administered within two hours of the accident and evidence that there was, at that time, more than five hundredths of one percent, by weight, of alcohol in the employee's blood; or

(2) If there was, at the time of the blood test, evidence of either on or off the job use of a nonprescribed controlled substance as defined in the West Virginia Uniform Controlled Substances Act, West Virginia Code §60A-2-201, *et seq.*, Schedules I, II, III, IV and V.

(b) For the purpose of this chapter, the commission may cooperate with the Office of Miners' Health, Safety and Training and the State Division of Labor in promoting general safety programs and in formulating rules to govern hazardous employments.

(c) If injury results to any employee from the deliberate intention of his or her employer to produce the injury or death, the employee, or, if the employee has been found to be incompetent, his or her conservator or guardian, may recover under this chapter and bring a cause of action against the employer, as if this chapter had not been enacted, for any excess of damages over the amount received or receivable in a claim for benefits under this chapter. If death results to any employee from the deliberate intention of his or her employer to produce the injury or death, the representative of the estate may recover under this chapter and bring a cause of action, pursuant to section six, article seven of chapter fifty-five of this code, against the employer, as if this chapter had not been

enacted, for any excess of damages over the amount received or receivable in a claim for benefits under this chapter. To recover under this section, the employee, the employee's representative or dependent, as defined under this chapter, must, unless good cause is shown, have filed a claim for benefits under this chapter.

(d)(1) It is declared that enactment of this chapter and the establishment of the workers' compensation system in this chapter was and is intended to remove from the common law tort system all disputes between or among employers and employees regarding the compensation to be received for injury or death to an employee except as expressly provided in this chapter and to establish a system which compensates even though the injury or death of an employee may be caused by his or her own fault or the fault of a co-employee; that the immunity established in sections six and six-a, article two of this chapter is an essential aspect of this workers' compensation system; that the intent of the Legislature in providing immunity from common lawsuit was and is to protect those immunized from litigation outside the workers' compensation system except as expressly provided in this chapter; that, in enacting the immunity provisions of this chapter, the Legislature intended to create a legislative standard for loss of that immunity of more narrow application and containing more specific mandatory elements than the common law tort system concept and standard of willful, wanton and reckless misconduct; and that it was and is the legislative intent to promote prompt judicial resolution of the question of whether a suit prosecuted under the asserted authority of this section is or is not prohibited by the immunity granted under this chapter.

(2) The immunity from suit provided under this section and under sections six and six-a, article two of this chapter may be lost only if the employer or person against whom liability is asserted acted with "deliberate intention". This requirement may be satisfied only if:

(A) It is proved that the employer or person against whom liability is asserted acted with a consciously, subjectively and deliberately formed intention to produce the specific result of injury or death to an employee. This standard requires a showing

of an actual, specific intent and may not be satisfied by allegation or proof of: (i) Conduct which produces a result that was not specifically intended; (ii) conduct which constitutes negligence, no matter how gross or aggravated; or (iii) willful, wanton or reckless misconduct; or

(B) The trier of fact determines, either through specific findings of fact made by the court in a trial without a jury, or through special interrogatories to the jury in a jury trial, that all of the following facts are proven:

(i) That a specific unsafe working condition existed in the workplace which presented a high degree of risk and a strong probability of serious injury or death;

(ii) That the employer, prior to the injury, had actual knowledge of the existence of the specific unsafe working condition and of the high degree of risk and the strong probability of serious injury or death presented by the specific unsafe working condition.

(I) In every case actual knowledge must specifically be proven by the employee or other person(s) seeking to recover under this section, and shall not be deemed or presumed: *Provided*, That actual knowledge may be shown by evidence of intentional and deliberate failure to conduct an inspection, audit or assessment required by state or federal statute or regulation and such inspection, audit or assessment is specifically intended to identify each alleged specific unsafe working condition.

(II) Actual knowledge is not established by proof of what an employee's immediate supervisor or management personnel should have known had they exercised reasonable care or been more diligent.

(III) Any proof of the immediate supervisor or management personnel's knowledge of prior accidents, near misses, safety complaints or citations from regulatory agencies must be proven by documentary or other credible evidence.

(iii) That the specific unsafe working condition was a violation of a state or federal safety statute, rule or regulation, whether cited

or not, or of a commonly accepted and well-known safety standard within the industry or business of the employer.

(I) If the specific unsafe working condition relates to a violation of a commonly accepted and well-known safety standard within the industry or business of the employer, that safety standard must be a consensus written rule or standard promulgated by the industry or business of the employer, such as an organization comprised of industry members: *Provided*, That the National Fire Protection Association Codes and Standards or any other industry standards for Volunteer Fire Departments shall not be cited as an industry standard for Volunteer Fire Departments, Municipal Fire Departments and Emergency Medical Response Personnel as an unsafe working condition as long as the Volunteer Fire Departments, Municipal Fire Departments and the Emergency Medical Response Personnel have followed the Rules that have been promulgated by the Fire Commission.

(II) If the specific unsafe working condition relates to a violation of a state or federal safety statute, rule or regulation that statute, rule or regulation:

(a) Must be specifically applicable to the work and working condition involved as contrasted with a statute, rule, regulation or standard generally requiring safe workplaces, equipment or working conditions;

(b) Must be intended to address the specific hazard(s) presented by the alleged specific unsafe working condition; and,

(c) The applicability of any such state or federal safety statute, rule or regulation is a matter of law for judicial determination.

(iv) That notwithstanding the existence of the facts set forth in subparagraphs (i) through (iii), inclusive, of this paragraph, the person or persons alleged to have actual knowledge under subparagraph (ii) nevertheless intentionally thereafter exposed an employee to the specific unsafe working condition; and

(v) That the employee exposed suffered serious compensable injury or compensable death as defined in section one, article four,

chapter twenty-three as a direct and proximate result of the specific unsafe working condition. For the purposes of this section, serious compensable injury may only be established by one of the following four methods:

(I) It is shown that the injury, independent of any preexisting impairment:

(a) Results in a permanent physical or combination of physical and psychological injury rated at a total whole person impairment level of at least thirteen percent (13%) as a final award in the employees workers' compensation claim; and

(b) Is a personal injury which causes permanent serious disfigurement, causes permanent loss or significant impairment of function of any bodily organ or system, or results in objectively verifiable bilateral or multi-level dermatomal radiculopathy; and is not a physical injury that has no objective medical evidence to support a diagnosis; or

(II) Written certification by a licensed physician that the employee is suffering from an injury or condition that is caused by the alleged unsafe working condition and is likely to result in death within eighteen (18) months or less from the date of the filing of the complaint. The certifying physician must be engaged or qualified in a medical field in which the employee has been treated, or have training and/or experience in diagnosing or treating injuries or conditions similar to those of the employee and must disclose all evidence upon which the written certification is based, including, but not limited to, all radiographic, pathologic or other diagnostic test results that were reviewed.

(III) If the employee suffers from an injury for which no impairment rating may be determined pursuant to the rule or regulation then in effect which governs impairment evaluations pursuant to this chapter, serious compensable injury may be established if the injury meets the definition in subclause (I)(b).

(IV) If the employee suffers from an occupational pneumoconiosis, the employee must submit written certification by

a board certified pulmonologist that the employee is suffering from complicated pneumoconiosis or pulmonary massive fibrosis and that the occupational pneumoconiosis has resulted in pulmonary impairment as measured by the standards or methods utilized by the West Virginia Occupational Pneumoconiosis Board of at least fifteen percent (15%) as confirmed by valid and reproducible ventilatory testing. The certifying pulmonologist must disclose all evidence upon which the written certification is based, including, but not limited to, all radiographic, pathologic or other diagnostic test results that were reviewed: *Provided*, That any cause of action based upon this clause must be filed within one year of the date the employee meets the requirements of the same: *Provided further*, That the employee asserting a cause of action based upon this clause must prove that the employer fraudulently concealed or manipulated dust samples or air quality samples.

(C) In cases alleging liability under the provisions of paragraph (B) of this subdivision:

(i) The employee, the employee's guardian or conservator, or the representative of the employee's estate shall serve with the complaint a verified statement from a person with knowledge and expertise of the workplace safety statutes, rules, regulations and consensus industry safety standards specifically applicable to the industry and workplace involved in the employee's injury, setting forth opinions and information on:

(I) The person's knowledge and expertise of the applicable workplace safety statutes, rules, regulations and/or written consensus industry safety standards;

(II) The specific unsafe working condition(s) that were the cause of the injury that is the basis of the complaint; and

(III) The specific statutes, rules, regulations or written consensus industry safety standards violated by the employer that are directly related to the specific unsafe working conditions: *Provided, however*, That this verified statement shall not be admissible at the trial of the action and the Court, pursuant to the Rules of Evidence, common law and subclause two-c,

subparagraph (iii), paragraph (B), subdivision (2), subsection (d), section two, article four, chapter twenty-three of this code, retains responsibility to determine and interpret the applicable law and admissibility of expert opinions.

(ii) No punitive or exemplary damages shall be awarded to the employee or other plaintiff;

(iii) Notwithstanding any other provision of law or rule to the contrary, and consistent with the legislative findings of intent to promote prompt judicial resolution of issues of immunity from litigation under this chapter, the employer may request and the court shall give due consideration to the bifurcation of discovery in any action brought under the provisions of subparagraphs (i) through (v), of paragraph (B) such that the discovery related to liability issues be completed before discovery related to damage issues. The court shall dismiss the action upon motion for summary judgment if it finds pursuant to rule 56 of the rules of civil procedure that one or more of the facts required to be proved by the provisions of subparagraphs (i) through (v), inclusive, paragraph (B) of this subdivision do not exist, and the court shall dismiss the action upon a timely motion for a directed verdict against the plaintiff if after considering all the evidence and every inference legitimately and reasonably raised thereby most favorably to the plaintiff, the court determines that there is not sufficient evidence to find each and every one of the facts required to be proven by the provisions of subparagraphs (i) through (v), inclusive, paragraph (B) of this subdivision; and

(iv) The provisions of this paragraph and of each subparagraph thereof are severable from the provisions of each other subparagraph, subsection, section, article or chapter of this code so that if any provision of a subparagraph of this paragraph is held void, the remaining provisions of this act and this code remain valid.

(e) Any cause of action brought pursuant to this section shall be brought either in the circuit court of the county in which the alleged injury occurred or the circuit court of the county of the employer's principal place of business. With respect to causes of

action arising under this chapter, the venue provisions of this section shall be exclusive of and shall supersede the venue provisions of any other West Virginia statute or rule.

(f) The reenactment of this section in the regular session of the Legislature during the year 2015 does not in any way affect the right of any person to bring an action with respect to or upon any cause of action which arose or accrued prior to the effective date of the reenactment.

(g) The amendments to this section enacted during the 2023 session of the Legislature shall apply to all injuries occurring on or after July 1, 2023.

§23-4-2a. Limit on liability for noneconomic loss.

(a) In any action brought pursuant to this article, the maximum amount recoverable as compensatory damages for noneconomic loss may not exceed the higher of two times the economic damages before offset or \$500,000 for each person, regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees.

(b) On January 1, 2024, and in each year thereafter, the limitation for compensatory damages contained in subsection (a) of this section shall increase to account for inflation by an amount equal to the Consumer Price Index published by the United States Department of Labor, not to exceed one hundred fifty percent of the amounts specified in said subsections.

(c) This section shall become effective for causes of action accruing on or after July 1, 2023.

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CHAPTER 332

**(Com. Sub. for S. B. 649 - By Senators Blair (Mr. President),
Trump, Rucker, and Barrett)**

[Passed March 9, 2023; in effect 90 days from passage (June 7, 2023)]
[Approved by the Governor on March 29, 2023.]

AN ACT to amend chapter 232, Acts of the Legislature, Regular Session 2008, by adding thereto a new section designated section six, relating to authorizing the Berkeley County Council to change its name to the Berkeley County Commission; providing that name change does not affect commission's powers, duties, or responsibilities, or number or terms of commission's members; and requiring public notice of council's intent to change its name.

Be it enacted by the Legislature of West Virginia:

BERKELEY COUNTY COMMISSION.

§6. Name change to Berkeley County Commission.

(a) The Berkeley County Council may, by a majority vote of the council, adopt a resolution that solely changes its name back to the Berkeley County Commission. The resolution shall not constitute a reformation, alteration, or modification of the form of county government. The council, upon changing its name, shall retain its powers, duties, and responsibilities as a county commission, as provided in the constitution and the general laws of this state. The change in the name of the council shall not affect or alter the number or terms of its members.

(b) At least 30 days prior to consideration of the resolution, the council shall give notice of the proposed change by publication of the intent to change its name in each weekly or daily newspaper as a Class II-0 legal advertisement in compliance with West Virginia Code §59-3-1 *et seq.*

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2023

CHAPTER 1

(H. B. 114 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage.]
[Approved by the Governor on August 14, 2023.]

AN ACT supplementing and amending appropriations of public moneys out of the Treasury in the State Fund, General Revenue, by decreasing an existing item of appropriation to the Department of Administration, Public Employees Insurance Agency, fund 0200, fiscal year 2024, organization 0225, by supplementing and amending appropriations for the fiscal year ending June 30, 2024.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 11, 2023, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included an estimate of revenues for the fiscal years 2023 and 2024, less net appropriation balances forwarded for fiscal year 2023 and regular and surplus appropriations appropriated and recommended for the fiscal years 2023 and 2024: and

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated August 6, 2023, which included an updated Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included a revised estimate of revenues for the fiscal year 2024,

less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

WHEREAS, It appears from the Executive Message dated August 6, 2023, Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0200, fiscal year 2024, organization 0225, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

29 – Public Employees Insurance Agency

(W.V. Code Chapter 5)

Fund 0200 FY 2024 Org 0225

	Appropriation	General Revenue Fund
1 PEIA Subsidy	80100	\$ 71,373,750



CHAPTER 2

(H. B. 115 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage.]
[Approved by the Governor on August 14, 2023.]

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 Education, State Board of Education – State Aid to Schools, fund 0317, fiscal year 2024, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 11, 2023, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included an estimate of revenues for the fiscal years 2023 and 2024, less net appropriation balances forwarded for fiscal year 2023 and regular and surplus appropriations appropriated and recommended for the fiscal years 2023 and 2024: and

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated August 6, 2023, which included an updated Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023 and further included a revised estimate of revenues for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

WHEREAS, It appears from the Executive Message dated August 6, 2023, Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the

Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0317, fiscal year 2024, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

46 – State Board of Education –

State Aid to Schools

(W.V. Code Chapters 18 and 18A)

Fund 0317 FY 2024 Org 0402

	Appropriation	General Revenue Fund
1 PEIA Subsidy	80100	\$ 71,373,750
15a Public Employees' Insurance		
Matching - Surplus	XXXXX	55,847,110

●

CHAPTER 3

(H. B. 116 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage.]
[Approved by the Governor on August 14, 2023.]

AN ACT supplementing and amending **Chapter 11, Acts of the Legislature, Regular Session, 2023, known as the budget bill, in Title II from the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Education, State Board of Education – State Aid to Schools, fund 0317, fiscal year 2024, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024 by increasing and decreasing items of appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That **Chapter 11, Acts of the Legislature, Regular Session, 2023, known as the budget bill, fund 0317, fiscal year 2024, organization 0402 be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

46 - State Board of Education –

State Aid to Schools

****NOTE:** The Budget Bill, Com. Sub. for H. B. 2024, is actually Chapter 8, Acts of the Legislature, Regular Session, 2023.

(W.V. Code Chapters 18 and 18A)

Fund 0317 FY 2024 Org 0402

1	Other Current Expenses	02200	\$ 180,252,485
2	Advanced Placement.....	05300	635,238
3	Professional Educators	15100	940,631,329
4	Service Personnel.....	15200	352,275,978
5	Fixed Charges.....	15300	112,158,500
6	Transportation	15400	87,405,241
7	Improved Instructional Programs.....	15600	57,904,455
8	Professional Student Support Services.....	65500	64,943,783
9	21 st Century Strategic Technology Learning Growth	93600	38,303,676
10	Teacher and Leader Induction.....	93601	<u>17,338,795</u>
11	Basic Foundation Allowances.....		1,851,849,480
12	Less Local Share		(535,560,337)
13	Adjustments		<u>(1,679,011)</u>
14	Total Basic State Aid		1,314,610,132
15	Public Employees' Insurance Matching....	01200	218,605,348
16	Teachers' Retirement System	01900	71,049,288
17	Retirement Systems – Unfunded Liability	77500	<u>285,469,999</u>
18	Total.....		\$1,889,734,767

●

CHAPTER 4

(H. B. 117 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage.]
[Approved by the Governor on August 14, 2023.]

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 Higher Education Policy Commission, Marshall University, General Administration Fund, fund 0348, fiscal year 2024, organization 0471 by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

Whereas, The Governor submitted an Executive Message to the Legislature on August 6, 2023, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0348, fiscal year 2024, organization 0471, be

supplemented and amended by creating a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

109 - Marshall University –

General Administration Fund

(W.V. Code Chapter 18B)

Fund 0348 FY 2024 Org 0471

	Appropriation	General Revenue Fund
6a Marshall University		
Cybersecurity Program – Surplus.....xxxxx	\$ 45,000,000	



CHAPTER 5

(H. B. 128 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage.]
[Approved by the Governor on August 14, 2023.]

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 Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2024, organization 0100 by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 11, 2023, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included an estimate of revenues for the fiscal years 2023 and 2024, less net appropriation balances forwarded for fiscal year 2023 and regular and surplus appropriations appropriated and recommended for the fiscal years 2023 and 2024: and

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated August 6, 2023, which included an updated Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023 and further included a revised estimate of revenues for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

WHEREAS, It appears from the Executive Message dated August 6, 2023, Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the

Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriations for the fiscal year ending June 30, 2024, to fund 0105, fiscal year 2024, 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

(W.V. Code Chapter 5)

Fund 0105 FY 2024 Org 0100

	Appropriation	General Revenue Fund
1a Civil Contingent Fund – Surplus (R) ...	26300	\$85,000,000



CHAPTER 6

(S. B. 1003 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

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 Homeland Security, Division of Corrections and Rehabilitation - West Virginia Parole Board, fund 0440, fiscal year 2024, organization 0608, to the Department of Homeland Security, Division of Corrections and Rehabilitation – Central Office, fund 0446, fiscal year 2024, organization 0608, to the Department of Homeland Security, Division of Corrections and Rehabilitation – Correctional Units, fund 0450, fiscal year 2024, organization 0608, and to the Department of Homeland Security, Division of Corrections and Rehabilitation – Bureau of Juvenile Services, fund 0570, fiscal year 2024, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

Whereas, The Governor submitted an Executive Message to the Legislature on August 6, 2023, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0440, fiscal year 2024, organization 0608, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

*74 -Division of Corrections and Rehabilitation –
West Virginia Parole Board*

(W.V. Code Chapter 62)

Fund 0440 FY 2024 Org 0608

	Appro- priation		General Revenue Fund
1a Personal Services and Employee Benefits - Surplus	24301	\$	<u>4,588</u>
4a Salaries of Members of West Virginia			
4b Parole Board - Surplus.....	22799	\$	<u>41,300</u>

And, that the total appropriation for the fiscal year ending June 30, 2024, to fund 0446, fiscal year 2024, organization 0608, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

*75 - Division of Corrections and Rehabilitation –
Central Office*

(WV Code Chapter 15A)

Fund 0446 FY 2024 Org 0608

	Appropriation	General Revenue Fund
1 Personal Services and Employee Benefits.....00100	\$	253,306
2 Personal Services and Employee Benefits - Surplus24301	\$	<u>4,588</u>
3 Salary and Benefits of Cabinet Secretary and 4 Agency Heads.....00201		126,000
5 Salary and Benefits of Cabinet Secretary and 6 Agency Heads – Surplus02099		<u>4,586</u>
7 Current Expenses13000		2,400
8 Directed Transfer - Surplus.....70099		<u>603,432</u>
9 Total.....		<u>994,312</u>

From the above appropriation for Directed Transfer – Surplus (fund 0446, organization 0608) \$55,066 shall be transferred to the Parolee Supervision Fees Fund (fund 6362), \$87,188 shall be transferred to the Regional Jail and Correctional Facility Authority Fund (fund 6675), \$940,712 shall be transferred to the Regional Jails Operating Cash Control Account (fund 6678) and \$123,898 shall be transferred to the Prison Industries Fund (fund 6303).

And, that the total appropriation for the fiscal year ending June 30, 2024, to fund 0450, fiscal year 2024, organization 0608, be supplemented and amended by creating new items of appropriation as follows:

TITLE II – APPROPRIATIONS.**Section 1. Appropriations from general revenue.****DEPARTMENT OF HOMELAND SECURITY***76 - Division of Corrections and Rehabilitation –**Correctional Units*

(WV Code Chapter 15A)

Fund 0450 FY 2024 Org 0608

	Appropriation	General Revenue Fund
5a Facilities Planning and Administration – Surplus.....xxxxx		<u>22,942</u>
6a Charleston Correctional Center – Surplus.....45699		<u>91,776</u>
7a Beckley Correctional Center – Surplus.....45099		<u>64,244</u>
8a Anthony Correctional Center – Surplus.....50499		<u>110,132</u>
9a Huttonsville Correctional Center – Surplus.....28500		<u>321,218</u>
10a Northern Correctional Center – Surplus.....53499		<u>156,020</u>
12a Pruntytown Correctional Center – Surplus.....54399		<u>229,442</u>
13a Corrections Academy - Surplus56999		<u>96,366</u>

Ch. 6]	APPROPRIATIONS	2439
15a	Martinsburg Correctional Center – Surplus.....	66399 <u>91,776</u>
16a	Parole Services - Surplus	68699 <u>344,164</u>
17a	Special Services - Surplus.....	68799 <u>275,330</u>
18a	Investigative Services - Surplus	71699 <u>82,600</u>
20a	Salem Correctional Center - Surplus.....	77499 <u>270,742</u>
23a	Parkersburg Correctional Center – Surplus.....	82899 <u>133,076</u>
24a	St. Mary's Correctional Center – Surplus.....	88199 <u>261,564</u>
25a	Denmar Correctional Center - Surplus..	88299 <u>137,666</u>
26a	Ohio County Correctional Center – Surplus.....	88399 <u>32,122</u>
27a	Mt. Olive Correctional Complex – Surplus.....	88899 <u>458,884</u>
28a	Lakin Correctional Center - Surplus	89699 <u>256,976</u>

And, that the total appropriation for the fiscal year ending June 30, 2024, to fund 0570, fiscal year 2024, organization 0608, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

77 - Division of Corrections and Rehabilitation –

Bureau of Juvenile Services

(WV Code Chapter 15A)

Fund 0570 FY 2024 Org 0608

	Appropriation	General Revenue Fund
1a Statewide Reporting Centers – Surplus.....	26299	<u>394,640</u>
2a Robert L. Shell Juvenile Center – Surplus.....	26799	<u>59,654</u>
4a Central Office - Surplus	70199	<u>82,600</u>
6a Gene Spadaro Juvenile Center – Surplus.....	79399	<u>64,244</u>
8a Kenneth Honey Rubenstein Juvenile Center – Surplus.....	98099	<u>133,076</u>
9a Vicki Douglas Juvenile Center – Surplus.....	98199	<u>41,300</u>
11a Lorrie Yeager Jr. Juvenile Center – Surplus.....	98399	<u>50,478</u>
12a Sam Perdue Juvenile Center - Surplus..	98499	<u>64,244</u>
13a Tiger Morton Center - Surplus.....	98599	<u>55,066</u>
14a Donald R. Kuhn Juvenile Center – Surplus.....	98699	<u>123,898</u>
15a J.M. "Chick" Buckbee Juvenile Center – Surplus.....	98799	<u>59,654</u>



CHAPTER 7

(S. B. 1004 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balances of moneys remaining unappropriated for the fiscal year ending June 30, 2024, to the Department of Homeland Security, Division of Corrections and Rehabilitation – Parolee Supervision Fees, fund 6362, fiscal year 2024, organization 0608, and to the Department of Homeland Security, Division of Corrections and Rehabilitation – Regional Jail and Correctional Facility Authority, fund 6675, fiscal year 2024, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

Whereas, The Governor has established that there now remains an unappropriated balances in the Department of Homeland Security, Division of Corrections and Rehabilitation – Parolee Supervision Fees, fund 6362, fiscal year 2024, organization 0608, and in the Department of Homeland Security, Division of Corrections and Rehabilitation – Regional Jail and Correctional Facility Authority, fund 6675, fiscal year 2024, organization 0608, that is available for expenditure during the fiscal year ending June 30, 2024, 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, 2024, to fund 6362, fiscal year 2024, organization 0608, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HOMELAND SECURITY

239 – Division of Corrections and Rehabilitation –

Parolee Supervision Fees

(W.V. Code Chapter 15A)

Fund 6362 FY 2024 Org 0608

	Appropriation	Other Funds
1 Personal Services and Employee Benefits.....00100	\$	55,066

And, that the total appropriation for the fiscal year ending June 30, 2024, to fund 6675, fiscal year 2024, organization 0608, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HOMELAND SECURITY

240 – Division of Corrections and Rehabilitation –

Regional Jail and Correctional Facility Authority

(W.V. Code Chapter 15A)

Fund 6675 FY 2024 Org 0608

	Appropriation	Other Funds
1 Personal Services and Employee Benefits.....00100	\$	87,188



CHAPTER 8

(S. B. 1005 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

AN ACT supplementing and amending the appropriations 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 Homeland Security, Division of Corrections and Rehabilitation – Correctional Units, fund 0450, fiscal year 2024, organization 0608 and to the Department of Homeland Security, Division of Corrections and Rehabilitation – Bureau of Juvenile Services, fund 0570, fiscal year 2024, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

Whereas, The Governor submitted an Executive Message to the Legislature on August 6, 2023, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular appropriations for the fiscal year 2024, and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0450, fiscal year 2024, organization 0608, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.**Section 1. Appropriations from general revenue.****DEPARTMENT OF HOMELAND SECURITY***76 - Division of Corrections and Rehabilitation –**Correctional Units*

(W.V. Code Chapter 15A)

Fund 0450 FY 2024 Org 0608

	Appropriation	General Revenue Fund
1 Employee Benefits	01000	\$ 1,258,136
2 Unclassified.....	09900	1,578,800
3 Current Expenses (R)	13000	57,690,483
4 Children's Protection Act (R).....	09000	838,437
5 Facilities Planning and Administration (R).....	38600	1,274,200
6 Charleston Correctional Center	45600	3,872,919
7 Beckley Correctional Center	49000	2,884,318
8 Anthony Correctional Center	50400	6,685,710
9 Huttonsville Correctional Center	51400	22,622,009
10 Northern Correctional Center.....	53400	9,318,451
11 Inmate Medical Expenses (R)	53500	62,226,064

Ch. 8]	APPROPRIATIONS	2445
12	Pruntytown Correctional Center	54300 9,866,455
13	Corrections Academy	56900 2,038,045
14	Information Technology Services	59901 2,759,052
15	Martinsburg Correctional Center	66300 5,217,643
16	Parole Services	68600 6,247,435
17	Special Services	68700 6,076,694
18	Directed Transfer	70000 7,432,686
19	Investigative Services.....	71600 3,619,432
20	Capital Outlay and Maintenance (R).....	75500 2,000,000
21	Salem Correctional Center	77400 12,704,177
22	McDowell County Correctional Center...	79000 2,542,590
23	Stevens Correctional Center.....	79100 7,863,195
24	Parkersburg Correctional Center.....	82800 7,153,442
25	St. Mary's Correctional Center	88100 16,445,446
26	Denmar Correctional Center	88200 5,808,341
27	Ohio County Correctional Center	88300 2,543,721
28	Mt. Olive Correctional Complex.....	88800 26,417,509
29	Lakin Correctional Center.....	89600 12,086,487
30	BRIM Premium.....	91300 <u>2,527,657</u>
31	Total.....	\$311,599,534

Any unexpended balances remaining in the appropriations for Children's Protection Act (fund 0450, appropriation 09000), Unclassified – Surplus (fund 0450, appropriation 09700), Current Expenses (fund 0450, appropriation 13000), Facilities Planning and Administration (fund 0450, appropriation 38600), Inmate Medical Expenses (fund 0450, appropriation 53500), Capital Improvements – Surplus (fund 0450, appropriation 66100), Capital Outlay and Maintenance (fund 0450, appropriation 75500), Security System Improvements – Surplus (fund 38 0450, appropriation 75501), and Roof Repairs and Mechanical System Upgrades (fund 0450, 39 appropriation 75502) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

The Commissioner of Corrections and Rehabilitation shall have the authority to transfer between appropriations.

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

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

The above appropriation for Directed Transfer (fund 0450, appropriation 70000) shall be transferred to the Regional Jails Operating Cash Control Account (fund 6678).

And, that the total appropriation for the fiscal year ending June 30, 2024, to fund 0570, fiscal year 2024, organization 0608, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY*77 - Division of Corrections and Rehabilitation –**Bureau of Juvenile Services*

(WV Code Chapter 15A)

Fund 0570 FY 2024 Org 0608

	Appropriation	General Revenue Fund
2 Robert L. Shell Juvenile Center	26700	189,707
6 Gene Spadaro Juvenile Center	79300	231,735
8 Kenneth Honey Rubenstein Juvenile Center	98000	291,265
9 Vicki Douglas Juvenile Center.....	98100	498,171
11 Lorrie Yeager Jr. Juvenile Center	98300	233,607
12 Sam Perdue Juvenile Center.....	98400	202,861
13 Tiger Morton Center	98500	177,260
14 Donald R. Kuhn Juvenile Center	98600	386,742
15 J.M. "Chick" Buckbee Juvenile Center.....	98700	449,401



CHAPTER 9

(S. B. 1019 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

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 West Virginia State Senate, fund 0165, fiscal year 2024, organization 2100, to the West Virginia House of Delegates, fund 0170, fiscal year 2024, organization 2200, and to Joint Expenses, fund 0175, fiscal year 2024, organization 2300, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

Whereas, The Governor submitted an Executive Message to the Legislature on August 6, 2023, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0165, fiscal year 2024, organization 2100, be

supplemented and amended by creating a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

LEGISLATIVE

1 - Senate

Fund 0165 FY 2024 Org 2100

	Appropriation	General Revenue Fund
7a Technology Improvements –		
Surplus.....	72500	5,200,000

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0170, fiscal year 2024, organization 2200, be supplemented and amended by creating a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

LEGISLATIVE

2 - House of Delegates

Fund 0170 FY 2024 Org 2200

	Appropriation	General Revenue Fund
6a Technology Improvements –		
Surplus.....	72500	5,200,000

And, that the total appropriation for the fiscal year ending June 30, 2024, to fund 0175, fiscal year 2024, organization 2300, be supplemented and amended by creating a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

LEGISLATIVE

3 - Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2024 Org 2300

	Appropriation	General Revenue Fund
5a Technology Improvements –		
Surplus.....	72500	\$ 1,100,000

●

CHAPTER 10

(S. B. 1022 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

AN ACT supplementing and amending the appropriations 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 Homeland Security, Division of Emergency Management, fund 0443, fiscal year 2024, organization 0606, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

Whereas, The Governor submitted an Executive Message to the Legislature on August 6, 2023, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0443, fiscal year 2024, organization 0606, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

73 - Division of Emergency Management

(W.V. Code Chapter 15)

Fund 0443 FY 2024 Org 0606

	Appropriation	General Revenue Fund
1 Personal Services and Employee Benefits.....	00100	\$ 2,228,903
2 Salary and Benefits of Cabinet		
3 Secretary and Agency Heads.....	00201	61,250
4 Unclassified.....	09900	21,022
5 Current Expenses	13000	51,065
6 Repairs and Alterations	06400	600
7 Radiological Emergency Preparedness ...	55400	17,052
8 SIRD.....	55401	600,000
9 Directed Transfer	70000	12,000,000
10 Federal Funds/Grant Match (R)	74900	1,488,195
11 Mine and Industrial Accident Rapid		
12 Response Call Center	78100	504,586
13 Early Warning Flood System (R).....	87700	1,298,686

14	BRIM Premium.....	91300	<u>96,529</u>
15	Total.....		\$ 18,367,888

Any unexpended balances remaining in the appropriations for Federal Funds/Grant Match (fund 0443, appropriation 74900), Early Warning Flood System (fund 0443, appropriation 87700), and Disaster Mitigation (fund 0443, appropriation 95200) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

From the above appropriation for Directed Transfer (fund 0443, appropriation 70000) \$3,000,000 shall be transferred to the All County Fire Protection Fund (fund xxxx) and \$3,000,000 shall be transferred to the County Fire Protection Fund (fund xxxx) and \$6,000,000 shall be transferred to the Fire Protection Fund (fund 7158).



CHAPTER 11

(S. B. 1023 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balances of moneys remaining unappropriated for the fiscal year ending June 30, 2024, to the Department of Homeland Security, Division of Emergency Management, All County Fire Protection Fund, fund xxxx, fiscal year 2024, organization 0606 and to the Department of Homeland Security, Division of Emergency Management, County Fire Protection Fund, fund xxxx, fiscal year 2024, organization 0606 by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

Whereas, The Governor has established that there now remains unappropriated balances in the Department of Homeland Security, Division of Emergency Management, All County Fire Protection Fund, fund xxxx, fiscal year 2024, organization 0606, and in the Department of Homeland Security, Division of Emergency Management, County Fire Protection Fund, fund xxxx, fiscal year 2024, organization 0606 that is available for expenditure during the fiscal year ending June 30, 2024, 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, 2024, to fund xxxx, fiscal year 2024, organization 0606, be supplemented and amended by creating a new item of appropriation:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HOMELAND SECURITY

238a – Division of Emergency Management –

All County Fire Protection Fund

(WV Code Chapter 7)

Fund xxxx FY 2024 Org 0606

	Appro-	Other
	priation	Funds
1 Current Expenses	13000	\$ 3,000,000

And, that the total appropriation for the fiscal year ending June 30, 2024, to fund xxxx, fiscal year 2024, organization 0606, be supplemented and amended by creating a new item of appropriation:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HOMELAND SECURITY

238b – Division of Emergency Management –

County Fire Protection Fund

(WV Code Chapter 7)

Fund xxxx FY 2024 Org 0606

	Appro-	Other
	priation	Funds
1 Current Expenses	13000	\$ 3,000,000



CHAPTER 12

(S. B. 1026 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

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 Transportation – Division of Highways, fund 0620, fiscal year 2024, organization 0803, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 11, 2023, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included an estimate of revenues for the fiscal years 2023 and 2024, less net appropriation balances forwarded for fiscal year 2023 and regular and surplus appropriations appropriated and recommended for the fiscal years 2023 and 2024: and

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated August 6, 2023, which included an updated Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023 and further included a revised estimate of revenues for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

WHEREAS, It appears from the Executive Message dated August 6, 2023, Statement of the State Fund, General Revenue,

there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That **Chapter 11, Acts of the Legislature, Regular Session, 2023, 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

87a – Division of Highways

(W.V. Code Chapter 17 and 17C)

Fund 0620 FY 2024 Org 0803

	Appropriation	General Revenue Fund
1 Directed Transfer - Surplus.....	70099	\$ 150,000,000

The above appropriation for Directed transfer – Surplus (fund 0620, appropriation 70099) shall be transferred to the cash balance of the State Road Fund to be utilized by 4 the Division of Highways.

****NOTE:** The Budget Bill, Com. Sub. for H. B. 2024, is actually Chapter 8, Acts of the Legislature, Regular Session, 2023.

●

CHAPTER 13

(S. B. 1027 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

AN ACT supplementing, amending, and increasing existing items of appropriation from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2024, organization 0803, for the fiscal year ending June 30, 2024.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 11, 2023, which included a Statement of the State Road Fund, setting forth therein the cash balance as of July 1, 2022, and further included an estimate of revenues for the fiscal year 2024, less net appropriation balances forwarded and regular appropriations for the fiscal years 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated August 6, 2023, which includes a revised Statement of the State Road Fund; and

WHEREAS, It appears from the Statement of the State Road Fund there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 9017, fiscal year 2024, organization 0803, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

122 – Division of Highways

(W.V. Code Chapters 17 and 17C)

Fund 9017 FY 2024 Org 0803

	Appropriation	State Road Fund
4 Maintenance	23700	100,000,000
6 Equipment Revolving.....	27600	50,000,000



CHAPTER 14

(S. B. 1029 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

AN ACT supplementing and amending **Chapter 11, Acts of the Legislature, Regular Session, 2023, known as the budget bill, as amended, in Title II from the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Economic Development – Office of the Secretary, fund 0256, fiscal year 2024, organization 0307, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 11, 2023, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included an estimate of revenues for the fiscal years 2023 and 2024, less net appropriation balances forwarded for fiscal year 2023 and regular and surplus appropriations appropriated and recommended for the fiscal years 2023 and 2024: and

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated August 6, 2023, which included an updated Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023 and further included a revised estimate of revenues for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

****NOTE:** The Budget Bill, Com. Sub. for H. B. 2024, is actually Chapter 8, Acts of the Legislature, Regular Session, 2023.

WHEREAS, It appears from the Executive Message dated August 6, 2023, Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0256, fiscal year 2024, organization 0307, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ECONOMIC DEVELOPMENT

42 – Department of Economic Development –

Office of the Secretary

(W.V. Code Chapter 5B)

Fund 0256 FY 2024 Org 0307

1	Personal Services and Employee Benefits.....00100	\$ 4,261,881
2	Unclassified.....09900	108,055
3	Current Expenses13000	4,738,464
4	National Youth Science Camp13200	241,570
5	Local Economic Development Partnerships (R)13300	1,250,000
6	ARC Assessment.....13600	152,585
7	Marshall University Research Corporation80701	500,000

8	Global Economic Development Partnerships (R)	20201	150,000
9	Guaranteed Work Force Grant (R).....	24200	988,088
10	Directed Transfer	70000	15,000,000
10a	Directed Transfer – Surplus	70099	25,000,000
11	Mainstreet Program.....	79400	173,222
12	BRIM Premium.....	91300	3,157
13	Hatfield McCoy Recreational Trail.....	96000	<u>198,415</u>
14	Total.....		\$ 52,765,437

Any unexpended balances remaining in the appropriations for Unclassified – Surplus (fund 0256, appropriation 09700), Partnership Grants (fund 0256, appropriation 13100), Local Economic Development Partnerships (fund 0256, appropriation 13300), Global Economic Development Partnerships (fund 0256, appropriation 20201), and Guaranteed Work Force Grant (fund 0256, appropriation 24200) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

From the above appropriation for Current Expenses (fund 0256, appropriation 13000), \$50,000 shall be used for the Western Potomac Economic Partnership, \$100,000 shall be used for Advantage Valley, \$750,000 shall be used for the Robert C. Byrd Institute, \$548,915 shall be used for West Virginia University, and \$298,915 shall be used for Southern West Virginia Community and Technical College for the Mine Training and Energy Technologies Academy.

The above appropriation to Local Economic Development Partnerships (fund 0256, appropriation 13300) shall be used by the Department of Economic Development for the award of funding assistance to county and regional economic development

corporations or authorities participating in the Certified Development Community Program developed under the provisions of W.V. Code §5B-2-14. The Department of Economic Development shall award the funding assistance through a matching grant program, based upon a formula whereby funding assistance may not exceed \$30,000 per county served by an economic development or redevelopment corporation or authority.

The above appropriation for Directed Transfer (fund 0256, appropriation 70000) shall be transferred to the Economic Enhancement Grant Fund (fund 3382).

The above appropriation for Directed Transfer – Surplus (fund 0256, appropriation 70099) shall be transferred to the Economic Development Fund (fund 9060).



CHAPTER 15

(S. B. 1030 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

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 Administration, Office of Technology, fund 0204, fiscal year 2024, organization 0231, by supplementing and amending **Chapter 11, Acts of the Legislature, Regular Session, 2023, known as the Budget Bill for the fiscal year ending June 30, 2024.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 11, 2023, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included an estimate of revenues for the fiscal years 2023 and 2024, less net appropriation balances forwarded for fiscal year 2023 and regular and surplus appropriations appropriated and recommended for the fiscal years 2023 and 2024: and

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated August 6, 2023, which included an updated Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023 and further included a revised estimate of revenues for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

****NOTE:** The Budget Bill, Com. Sub. for H. B. 2024, is actually Chapter 8, Acts of the Legislature, Regular Session, 2023.

WHEREAS, It appears from the Executive Message dated August 6, 2023, Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That **Chapter 11, Acts of the Legislature, Regular Session, 2023, known as the Budget Bil 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 ADMINISTRATION

27a – Office of Technology

(W.V. Code Chapter 5A)

Fund 0204 FY 2024 Org 0231

		General Revenue Fund
	Appro- priation	
1	Technology Improvements – Surplus ...72500	2,000,000

**NOTE: The Budget Bill, Com. Sub. for H. B. 2024, is actually Chapter 8, Acts of the Legislature, Regular Session, 2023.



CHAPTER 16

(S. B. 1031 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

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 Administration – Division of General Services, fund 0230, fiscal year 2024, organization 0211, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 11, 2023, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included an estimate of revenues for the fiscal years 2023 and 2024, less net appropriation balances forwarded for fiscal year 2023 and regular and surplus appropriations appropriated and recommended for the fiscal years 2023 and 2024: and

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated August 6, 2023, which included an updated Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included a revised estimate of revenues for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

WHEREAS, It appears from the Executive Message dated August 6, 2023, Statement of the State Fund, General Revenue,

there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0230, fiscal year 2024, organization 0211, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

21 – Division of General Services

(W.V. Code Chapter 5A)

Fund 0230 FY 2024 Org 0211

	Appropriation	General Revenue Fund
8a Consolidated State Laboratory – Surplus.....	37799	125,000,000



CHAPTER 17

(S. B. 1032 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

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 Commerce – Division of Forestry, fund 0250, fiscal year 2024, organization 0305 by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 11, 2023, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included an estimate of revenues for the fiscal years 2023 and 2024, less net appropriation balances forwarded for fiscal year 2023 and regular and surplus appropriations appropriated and recommended for the fiscal years 2023 and 2024: and

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated August 6, 2023, which included an updated Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023 and further included a revised estimate of revenues for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

WHEREAS, It appears from the Executive Message dated August 6, 2023, Statement of the State Fund, General Revenue,

there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0250, fiscal year 2024, organization 0305, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF COMMERCE

32 – Division of Forestry

(W.V. Code Chapter 19)

Fund 0250 FY 2024 Org 0305

	Appropriation	General Revenue Fund
6a Equipment – Surplus.....	34100	4,000,000

CHAPTER 18

(S. B. 1033 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2024, to the Department of Commerce, Geological and Economic Survey, fund 8704, fiscal year 2024, organization 0306, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2024, 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, 2024, to fund 8704, fiscal year 2024, organization 0306, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF COMMERCE

345 – Geological and Economic Survey

(W.V. Code Chapter 29)

Ch. 18]

APPROPRIATIONS

2471

Fund 8704 FY 2024 Org 0306

	Appropriation	Federal Funds
6 Other Assets	69000	2,000,000



CHAPTER 19

(S. B. 1034 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

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 Arts, Culture, and History, Division of Culture and History, fund 0293, fiscal year 2024, organization 0432, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 11, 2023, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included an estimate of revenues for the fiscal years 2023 and 2024, less net appropriation balances forwarded for fiscal year 2023 and regular and surplus appropriations appropriated and recommended for the fiscal years 2023 and 2024: and

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated August 6, 2023, which included an updated Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023 and further included a revised estimate of revenues for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

WHEREAS, It appears from the Executive Message dated August 6, 2023, Statement of the State Fund, General Revenue,

there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0293, fiscal year 2024, organization 0432, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

50 – Division of Culture and History

(W.V. Code Chapter 29)

Fund 0293 FY 2024 Org 0432

	Appropriation	General Revenue Fund
5a Current Expenses – Surplus	13099	1,000,000
11a Capital Outlay, Repairs, and Equipment – Surplus.....	67700	3,000,000



CHAPTER 20

(S. B. 1037 - By Senators Blair (Mr. President) and Woelfel)

[By Request of The Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

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 Veterans' Assistance, fund 0456, fiscal year 2024, organization 0613, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 11, 2023, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included an estimate of revenues for the fiscal years 2023 and 2024, less net appropriation balances forwarded for fiscal year 2023 and regular and surplus appropriations appropriated and recommended for the fiscal years 2023 and 2024: and

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated August 6, 2023, which included an updated Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included a revised estimate of revenues for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

WHEREAS, It appears from the Executive Message dated August 6, 2023, Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the

Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0456, fiscal year 2024, organization 0613, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF VETERANS’ ASSISTANCE

92 – Department of Veterans’ Assistance

(W.V. Code Chapter 9A)

Fund 0456 FY 2024 Org 0613

	Appropriation	General Revenue Fund
8a Veterans’ Nursing Home - Surplus	29100	1,000,000



CHAPTER 21

(S. B. 1038 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

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 Miscellaneous Boards and Commissions, Adjutant General – State Militia, fund 0433, fiscal year 2024, organization 0603, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 11, 2023, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included an estimate of revenues for the fiscal years 2023 and 2024, less net appropriation balances forwarded for fiscal year 2023 and regular and surplus appropriations appropriated and recommended for the fiscal years 2023 and 2024: and

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated August 6, 2023, which included an updated Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023 and further included a revised estimate of revenues for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

WHEREAS, It appears from the Executive Message dated August 6, 2023, Statement of the State Fund, General Revenue,

there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0433, fiscal year 2024, organization 0603, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

MISCELLANEOUS BOARDS AND COMMISSIONS

119 - Adjutant General –

State Militia

(W.V. Code Chapter 15)

Fund 0433 FY 2024 Org 0603

		General Revenue Fund
	Appro- priation	
6a	Armory Board Transfer – Surplus..... 70299	2,550,000
9a	Federal Funds/Grant Match – Surplus.... 85700	489,900



CHAPTER 22

(S. B. 1039 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

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, 2024, to the Department of Homeland Security, Division of Corrections and Rehabilitation – Regional Jail and Correctional Facility Authority, fund 6675, fiscal year 2024, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Homeland Security, Division of Corrections and Rehabilitation – Regional Jail and Correctional Facility Authority, fund 6675, fiscal year 2024, organization 0608, that is available for expenditure during the fiscal year ending June 30, 2024, 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, 2024, to fund 6675, fiscal year 2024, organization 0608, be supplemented and amended by decreasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HOMELAND SECURITY

240 - Division of Corrections and Rehabilitation –

Regional Jail and Correctional Facility Authority

(WV Code Chapter 15A)

Fund 6675 FY 2024 Org 0608

	Appropriation	Other Funds
2 Debt Service	04000	1,900,000
3 Repairs and Alterations	06400	4,500,000
4 Equipment	07000	1,750,000
6 Current Expenses	13000	195,472

And, That the total appropriation for the fiscal year ending June 30, 2024, to fund 6675, fiscal year 2024, organization 0608, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HOMELAND SECURITY

240 – Division of Corrections and Rehabilitation –

Regional Jail and Correctional Facility Authority

(WV Code Chapter 15A)

Fund 6675 FY 2024 Org 0608

	Appropriation	General Revenue Fund
6a Buildings	25800	15,000,000



CHAPTER 23

(S. B. 1041 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

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 Homeland Security, West Virginia State Police, fund 0453, fiscal year 2024, organization 0612, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 11, 2023, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included an estimate of revenues for the fiscal years 2023 and 2024, less net appropriation balances forwarded for fiscal year 2023 and regular and surplus appropriations appropriated and recommended for the fiscal years 2023 and 2024: and

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated August 6, 2023, which included an updated Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023 and further included a revised estimate of revenues for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

WHEREAS, It appears from the Executive Message dated August 6, 2023, Statement of the State Fund, General Revenue,

there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0453, fiscal year 2024, organization 0612, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

78 – West Virginia State Police

(W.V. Code Chapter 15)

Fund 0453 FY 2024 Org 0612

	Appropriation	General Revenue Fund
5a Current Expenses – Surplus	13099	1,000,000

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CHAPTER 24

(S. B. 1042 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

AN ACT expiring funds to the balance of the Department of Education, Vocational Consolidated Accounts Fund, fund 3945, fiscal year 2024, organization 0402, in the amount of \$12,000,000, from the State Department of Education, fund 3517, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

Whereas, The Governor finds that the account balance in the State Department of Education, fund 3517, fiscal year 2024, organization 0402, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2024 to the State Department of Education, fund 3517, fiscal year 2024, organization 0402, be decreased by expiring the amount of \$12,000,000 to the Department of Education, Vocational Consolidated Accounts Fund, fund 3945, organization 0402.



CHAPTER 25

(S. B. 1043 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

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, fund 0525, fiscal year 2024, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 11, 2023, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further included an estimate of revenues for the fiscal years 2023 and 2024, less net appropriation balances forwarded for fiscal year 2023 and regular and surplus appropriations appropriated and recommended for the fiscal years 2023 and 2024: and

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated August 6, 2023, which included an updated Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included a revised estimate of revenues for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

WHEREAS, It appears from the Executive Message dated August 6, 2023, Statement of the State Fund, General Revenue,

there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0525, fiscal year 2024, 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

58 – Consolidated Medical Services Fund

(W.V. Code Chapter 16)

Fund 0525 FY 2024 Org 0506

	Appropriation	General Revenue Fund
5a Behavioral Health Program – Surplus....63100		5,225,000

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CHAPTER 26

(S. B. 1006 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

AN ACT to amend and reenact §17B-2-1c of the Code of West Virginia, 1931, as amended, relating to temporary identification cards for released inmates; clarifying that the temporary identification cards are issued at no cost to the inmate; expanding eligibility requirements for temporary identification cards; and extending the period of validity of the temporary identification cards.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1c. Temporary identification card for released inmates.

(a) The West Virginia Division of Corrections and Rehabilitation is authorized to issue a temporary identification card to an eligible inmate at no cost, no earlier than seven days prior to the inmate's release from the division's custody. An identification card issued pursuant to this section shall be valid for 180 days after the date of issuance.

(b) A valid identification card issued pursuant to this section shall have the same force and effect as a standard identification card issued by the Division of Motor Vehicles pursuant to §17B-2-1(f) of this code.

(c)(1) Notwithstanding any other provision of this code, the Division of Motor Vehicles shall accept a valid identification card issued pursuant to this section as sufficient proof of identity, age, and residency of a person applying for an identification card or driver's license pursuant to §17B-2-1 of this code.

(2) If the Division of Motor Vehicles is unable to verify the person's Social Security number by another means, the Division of Motor Vehicles shall contact the Division of Corrections and Rehabilitation to verify the Social Security number provided by such person. The Division of Motor Vehicles shall accept verification by the Division of Corrections and Rehabilitation as sufficient documentation of the person's Social Security number for the purpose of issuing such person an identification card or driver's license pursuant to §17B-2-1 of this code.

(3) The Division of Corrections and Rehabilitation, in collaboration with the Division of Motor Vehicles, shall develop a policy to permit the sharing of released inmates' Social Security numbers for the limited purposes of this section, and shall obtain any necessary written authorization from an inmate prior to the inmate's release from the Division of Corrections and Rehabilitation's custody.

(d) An inmate is not eligible to receive an identification card pursuant to this section if the inmate is in possession of a valid West Virginia identification card or driver's license, which expires more than 30 days after the inmate's date of release from the Division of Corrections and Rehabilitation's custody, or if the inmate is not a citizen of the United States.

(e) Nothing in this section shall be construed to permit or require issuance of an identification card or driver's license for federal use, in violation of the standards promulgated pursuant to the REAL ID Act of 2005, 49 U.S.C. § 30301 *et seq.*

(f) During the six months preceding an inmate's release date from the Division of Corrections and Rehabilitation's custody, the division shall assist the inmate to obtain a certified copy of the inmate's birth certificate, a Social Security card, and a state-issued driver's license or identification card.

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CHAPTER 27

(S. B. 1007 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

AN ACT to amend and reenact §15A-3-16 of the Code of West Virginia, 1931, as amended, relating to regional jail per diem fees; requiring certain municipalities to reimburse responsible county for up to five days of regional jail per diem fees when municipality incarcerates individuals for offenses that could have been prosecuted in municipal court but were prosecuted in magistrate court; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

§15A-3-16. Funds for operations of jails under the jurisdiction of the commissioner.

(a) Any special revenue funds previously administered by the Regional Jail and Correctional Facility Authority or its executive director are continued and shall be administered by the commissioner.

(b) Funds that have been transferred by §15A-3-16(a) of this code shall be limited in use to operations of jail functions, and for payment to the Regional Jail and Correctional Facility Authority Board, for payment of indebtedness. In no case shall a fund be utilized to offset or pay operations of non-jail parts of the facility: *Provided*, That funds may be utilized on a pro rata basis for shared

staff and for operational expenses of facilities being used as both prisons and jails.

(c) Whenever the commissioner determines that the balance in these funds is more than the immediate requirements of this article, he or she may request that the excess be invested until needed. Any excess funds so requested shall be invested in a manner consistent with the investment of temporary state funds. Interest earned on any moneys invested pursuant to this section shall be credited to these funds.

(d) These funds consist of the following:

(1) Moneys collected and deposited in the State Treasury which are specifically designated by Acts of the Legislature for inclusion in these funds;

(2) Contributions, grants, and gifts from any source, both public and private, specifically directed to the operations of jails under the control of the commissioner;

(3) All sums paid pursuant to §15A-3-16(g) of this code; and

(4) All interest earned on investments made by the state from moneys deposited in these funds.

(e) The amounts deposited in these funds shall be accounted for and expended in the following manner:

(1) Amounts deposited shall be pledged first to the debt service on any bonded indebtedness;

(2) After any requirements of debt service have been satisfied, the commissioner shall requisition from these funds the amounts that are necessary to provide for payment of the administrative expenses of this article, as limited by this section;

(3) The commissioner shall requisition from these funds, after any requirements of debt service have been satisfied, the amounts that are necessary for the maintenance and operation of jails under his or her control. These funds shall make an accounting of all

amounts received from each county by virtue of any filing fees, court costs, or fines required by law to be deposited in these funds and amounts from the jail improvement funds of the various counties;

(4) Notwithstanding any other provisions of this article, sums paid into these funds by each county pursuant to §15A-3-16(g) of this code for each inmate shall be placed in a separate account and shall be requisitioned from these funds to pay for costs incurred; and

(5) Any amounts deposited in these funds from other sources permitted by this article shall be expended based on particular needs to be determined by the commissioner.

(f)(1) After a jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the jail facility in the jail facility, except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the previously promulgated, and hereby transferred standards and procedures developed by the Jail Facilities Standards Commission, and whom the sheriff or the circuit court elects to incarcerate therein.

(2) Notwithstanding the provisions of §15A-3-16(f)(1) of this code, circuit and magistrate courts are authorized to:

(A) Detain persons who have been arrested or charged with a crime in a county or municipal jail for a period not to exceed 96 hours; or

(B) Commit persons convicted of a crime in a county or municipal jail for a period not to exceed 14 days.

(g) When inmates are placed in a jail facility under the jurisdiction of the commissioner pursuant to §15A-3-16(f) of this code, the county, and municipality if the incarceration is a municipal violation, shall pay into this fund a cost per day for each

incarcerated inmate, to be determined as set forth in subsection (k) of this section.

(h) The per diem costs for incarcerating inmates may not include the cost of construction, acquisition, or renovation of the regional jail facilities: *Provided*, That each jail facility or unit operating in this state shall keep a record of the date and time that an inmate is incarcerated, and a county may not be charged for a second day of incarceration for an individual inmate until that inmate has remained incarcerated for more than 24 hours. After that, in cases of continuous incarceration, subsequent per diem charges shall be made upon a county only as subsequent intervals of 24 hours pass from the original time of incarceration.

(i) The county is responsible for costs incurred by the division for housing and maintaining inmates in its facilities who are pretrial inmates and convicted misdemeanants. The costs of housing shall be borne by the division on a felony conviction when an inmate is incarcerated beginning the calendar day following the day of conviction. In no case shall the county be responsible for any costs of housing and maintaining felony convicted inmate populations.

(j) The county is responsible for the costs incurred by the authority for housing and maintaining an inmate who, prior to a felony conviction on which the inmate is incarcerated and is awaiting transportation to a state correctional facility for a 60-day evaluation period as provided in §62-12-7a of this code.

(k) (1) Effective July 1, 2023, the cost per day, per inmate for an incarcerated inmate shall be determined as set forth in this subsection. The base per day, per inmate rate shall be set at \$54.48. The State Budget Office shall annually examine the most recent three fiscal years of costs submitted by the commissioner for the cost of operating the jail facilities and units under his or her jurisdiction, and taking an average per day, per inmate cost of maintaining the operations of the jail facilities or units shall adjust the per day, per inmate rate annually. Notice of the adjusted per day, per inmate rate shall be provided to each county commission.

(2) Beginning July 1, 2023, the commissioner shall determine the pro rata share of inmate days per county. This figure shall be calculated by multiplying each county's population as contained in the 2020 United States Census by .52.

(3) Each county shall pay as its annual per diem jail cost:

(A) Eighty percent of the current per diem rate for the first 80 percent of its pro rata share of total billed inmate days;

(B) One hundred percent of the current per diem rate for its inmate days that are greater than 80 percent and up to 100 percent of its pro rata share of total billed inmate days; and

(C) One hundred twenty percent of the current per diem rate for its inmate days that exceed 100 percent of its pro rata share of total billed inmate days.

(4) Beginning July 1, 2031, and every 10 years thereafter the pro rata share of inmate days per county shall be calculated by dividing the number of inmate days from the previous calendar year by the state's population according to the most recent United States Census data and then multiplying that number by each county's population.

(5) The commissioner shall post on the Division of Corrections and Rehabilitations webpage by county:

(i) The pro rata share of inmate days;

(ii) The base number of pro rata days;

(iii) The reduced rate of the per day, per inmate costs;

(iv) The increased per day, per inmate; and

(v) Any other information deemed necessary by the commissioner.

(l) In cases in which the incarcerated inmate was placed in a jail facility by the municipal police of a Class I or Class II municipal corporation as defined in §8-1-3 of this code, or of a

Class III municipal corporation as defined in §8-1-3 of this code but with a population in excess of 4,000 according to the most recent census taken under the authority of the United States, and the incarceration resulted from a charge that could have been brought in municipal court but was brought in a magistrate court of this state, the county commission responsible for paying the cost per day pursuant to this subsection shall be entitled to reimbursement from the municipal corporation of actual expenditures for up to five days of per diem costs borne by the county commission.

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CHAPTER 28

(S. B. 1009 - By Senator Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-4-13a, relating to inmate medical care; prohibiting the use of state funds for certain procedures or benefits that are not medically necessary for persons in the custody of the commissioner; authorizing the commissioner to establish rules, policies, or regulations relating to certain levels of care; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. CORRECTIONS MANAGEMENT.

§15A-4-13a. Prohibition on use of taxpayer resources for certain medical procedures.

(a) For purposes of this section:

(1) "Medical procedure" means health care services or products, surgery, in-patient or out-patient treatment, or the prescribing or dispensing of drugs or biologicals for the purpose of treating an illness, injury, disease, condition, or the symptoms thereof.

(2) "Medically necessary" means health care services or products that a prudent provider of health care would provide to a patient to prevent, diagnose, or treat an illness, injury, or disease, or any symptoms thereof to include the provision of contraception

by means of dispensing drugs or medical procedures, that are necessary and:

(A) Provided in accordance with generally accepted standards of medical practice;

(B) Clinically appropriate with regard to type, frequency, extent, location, and duration;

(C) Not provided primarily for the convenience of the patient or provider of health care;

(D) Required to improve a specific health condition of a patient or to preserve the existing state of health of the patient; and

(E) The most clinically appropriate level of health care that may be safely provided to the patient.

(3) A provider of health care prescribing, ordering, recommending, or approving a health care service or product does not, by itself, make that health care service or product medically necessary.

(b) No funds authorized or appropriated by state law shall be expended, directly or indirectly, for any medical procedure that the Commissioner of Corrections and Rehabilitation, or his or her designee or agent, after consulting with a medical professional determines is not medically necessary for any individual who is in the custody of the Division of Corrections and Rehabilitation.

(c) No funds authorized or appropriated by state law may be expended, directly or indirectly, for health benefits that cover any medical procedure that the Commissioner of Corrections and Rehabilitation, or his or her designee or agent, after consulting with a medical professional determines is not medically necessary for any individual who is in the custody of the Division of Corrections and Rehabilitation.

(d) The commissioner is authorized to establish written rules, policies, and regulations regarding medical procedures which may distinguish between inmates based upon, among other grounds, length of incarceration.

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CHAPTER 29

(S. B. 1020 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]

AN ACT to amend and reenact §7-22-9 of the Code of West Virginia, 1931, as amended, relating to authorizing the Mercer County Commission to levy a special district excise tax; authorizing the special district excise tax for the benefit of the Ridges Economic Opportunity Development District; and setting forth the land area within the special district subject to the special district excise tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-9. Authorization to levy special district excise tax.

(a) *General.* — County commissions have no inherent authority to levy taxes and have only that authority expressly granted to them by the Legislature. The Legislature is specifically extended, and intends by this article, to exercise certain relevant powers expressed in section six-a, article X of the Constitution of this state as follows: (1) The Legislature may appropriate state funds for use in matching or maximizing grants-in-aid for public purposes from the United States or any department, bureau, commission, or agency thereof, or any other source, to any county, municipality, or other political subdivision of the state, under such circumstances and subject to such terms, conditions, and restrictions as the Legislature may prescribe by law; and (2) the Legislature may impose a state tax or taxes or dedicate a state tax

or taxes or any portion thereof for the benefit of and use by counties, municipalities, or other political subdivisions of the state for public purposes, the proceeds of any such imposed or dedicated tax or taxes or portion thereof to be distributed to such counties, municipalities, or other political subdivisions of the state under such circumstances and subject to such terms, conditions, and restrictions as the Legislature may prescribe.

Because a special district excise tax would have the effect of diverting, for a specified period of years, tax dollars which to the extent, if any, are not essentially incremental to tax dollars currently paid into the General Revenue Fund of the state, the Legislature finds that in order to substantially ensure that such special district excise taxes will not adversely impact the current level of the General Revenue Fund of the state, it is necessary for the Legislature to separately consider and act upon each and every economic development district which is proposed, including the unique characteristics of location, current condition and activity of and within the area included in such proposed economic opportunity development district and that for such reasons a statute more general in ultimate application is not feasible for accomplishment of the intention and purpose of the Legislature in enacting this article. Therefore, no economic opportunity development district excise tax may be levied by a county commission until after the Legislature expressly authorizes the county commission to levy a special district excise tax on sales of tangible personal property and services made within district boundaries approved by the Legislature.

(b) *Authorizations.* — The Legislature authorizes the following county commissions to levy special district excise taxes on sales of tangible personal property and services made from business locations in the following economic opportunity development districts:

(1) The Ohio County Commission may levy a special district excise tax for the benefit of the Fort Henry Economic Opportunity Development District which comprises 500 contiguous acres of land. Notwithstanding the time limitations provisions of §7-22-

15(a)(2) of this code, the Fort Henry Economic Opportunity Development District shall not be abolished under §7-22-15(a)(2) of this code until the year 2044, unless sooner abolished and terminated in accordance with the provisions of §7-22-15(a)(1) of this code or any other provision of this code, or sooner abolished for any other reason: *Provided*, That on December 31, 2044, the provisions of §7-22-15(a)(2) of this code shall apply to abolish the Fort Henry Economic Opportunity Development District, if the district has not been abolished prior to that date.

(2) The Harrison County Commission may levy a special district excise tax for the benefit of the Charles Pointe Economic Opportunity Development District which comprises 437 acres of land.

(3) The Monongalia County Commission may levy a special district excise tax for the benefit of the University Town Centre Economic Opportunity Development District which comprises approximately 1,450 contiguous acres of land. Notwithstanding the time limitations provisions of §7-22-15(a)(2) of this code, the University Town Centre Economic Opportunity Development District shall not be abolished pursuant to §7-22-15(a)(2) of this code until the year 2053, unless sooner abolished and terminated in accordance with the provisions of subdivision §7-22-15(a)(1) of this code or any other provision of this code, or sooner abolished for any other reason: *Provided*, That on December 31, 2053, the provisions of §7-22-15(a)(2) of this code shall apply to abolish the University Town Centre Economic Opportunity Development District, if the district has not been abolished prior to that date.

(4) The Jefferson County Commission may levy a special district excise tax for the benefit of the Hill Top House Hotel Economic Opportunity District which comprises approximately 11 contiguous acres of land: *Provided*, That notwithstanding any other provision of this article to the contrary:

(A) The Jefferson County Commission may create the district and levy the special district excise tax by order entered of record as provided in §7-22-10 of this code without the approval of the executive director of the development office; and

(B) The Jefferson County Commission may determine the base district tax, the base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount in lieu of that determination by the development office as provided in §7-22-7 of this code. For purposes of determining the base tax revenue amount, the Jefferson County Commission shall promptly request a certification from the Tax Commissioner of the base tax revenue amount and the Tax Commissioner shall provide the certification to the Jefferson County Commission within 30 days.

(5) The Mercer County Commission may levy a special district excise tax for the benefit of the Ridges Economic Opportunity Development District which comprises approximately 390 contiguous acres of land.

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CHAPTER 30

(S. B. 1010 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 14, 2023.]

AN ACT to amend and reenact §62-12-28 and §62-12-29 of the Code of West Virginia, 1931, as amended, all relating to pretrial release programs; authorizing Supreme Court of Appeals to develop pretrial release programs in all circuits; requesting court to develop electronic pretrial court date reminder system; and requiring community supervision committee of administrative office of the court to make recommendation for development of electronic pretrial court date reminder system.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-28. Authorizing Supreme Court to develop pilot pretrial release programs.

(a) The West Virginia Supreme Court of Appeals is hereby authorized to develop pretrial release programs in all the circuits of this state with the aim of reducing regional jail populations of short-term detainees while ensuring the safety of law-abiding citizens.

(b) The programs authorized by subsection (a) of this section shall be available only to persons charged with non-violent misdemeanors.

(c) Any program developed pursuant to this section shall require input from arresting officers and shall allow for electronic authorization by magistrates of a charged person's participation.

(d) In developing the programs in the state for examples of successful practices authorized by this section the court is requested to review any existing programs.

(e) As part of any pretrial release program, the court is requested to develop an electronic system for pretrial court date reminders, through text messages, emails, or other electronic means, to reduce the risk of failure to appear, which should be available to all defendants on pretrial release and their counsel of record.

(f) The Supreme Court of Appeals is hereby requested to provide annual reports to the President of the Senate and the Speaker of the House of Delegates as to the efficacy of the programs.

§62-12-29. Shared information for community supervision.

(a) The Administrative Director of the Supreme Court of Appeals of West Virginia is requested to assemble a community supervision committee, to include representatives of the judiciary, probation, parole, day report centers, magistrates, sheriffs, corrections, and other members at the discretion of the director. The administrative director shall appoint a chair from among the members and attend the meeting *ex officio*.

(b) The committee shall:

(1) Design and deploy a method for probation officers, parole officers, day report centers, and others providing community supervision to electronically share offender information and assessments;

(2) Coordinate information reporting and access across agencies continuing supervision;

(3) Collect and share information about assessed and collected restitution among agencies continuing supervision;

(4) Collect sentencing-level data to enable the study of sentencing practices across the state;

(5) Coordinate with the Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency, and Correction in the discharge of these duties; and

(6) Research and recommend a means for the development and deployment of an electronic system for pretrial court date reminders, through text messages, emails, or other electronic means, to reduce the risk of failure to appear, which should be available to all defendants on pretrial release and their counsel of record.

(c) The committee shall annually submit a report on its activities during the previous year, on or before September 30, to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature.

CHAPTER 31

(H. B. 112 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage.]
[Approved by the Governor on August 16, 2023.]

AN ACT to amend and reenact §48-13-301, §48-13-403, §48-13-404, and §48-13-502 of the Code of West Virginia, 1931, as amended; all relating to child support; adjusting monthly child support obligation amounts; correcting citations; and updating child support worksheets.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS

PART 3. BASIC CHILD SUPPORT ORDER.

§48-13-301. Determining the basic child support obligation.

The basic child support obligation is determined from the following table of monthly basic child support obligations:

West Virginia						
Monthly Basic Child Support Obligations						
(Adjusted for West Virginia's Income Relative to U.S. Averages)						
COMBINED GROSS MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
550	101	153	185	207	228	247

600	110	167	202	226	248	270
650	119	181	219	244	269	292
700	128	195	235	263	289	314
750	137	208	252	281	310	337
800	146	222	269	300	330	359
850	155	236	285	319	351	381
900	164	250	302	337	371	403
950	173	264	319	356	392	426
1000	182	277	335	375	412	448
1050	191	291	352	393	432	470
1100	200	304	368	411	452	491
1150	208	316	382	427	470	510
1200	216	328	397	443	488	530
1250	223	340	411	460	506	549
1300	231	352	426	476	523	569
1350	239	365	441	492	541	589
1400	247	377	455	509	563	608
1450	255	389	470	525	577	628
1500	263	401	485	541	595	647
1550	271	413	499	558	613	667
1600	279	425	514	574	631	686
1650	287	437	528	590	649	706
1700	295	449	543	607	667	725
1750	303	461	558	623	685	745
1800	311	473	572	639	703	764

1850	319	485	587	656	721	784
1900	327	498	602	672	739	803
1950	335	510	616	688	757	823
2000	342	521	630	704	774	842
2050	350	533	645	720	792	861
2100	358	545	659	736	809	880
2150	366	557	673	752	827	899
2200	373	569	687	768	844	918
2250	381	580	702	784	862	937
2300	389	592	716	799	879	956
2350	396	604	730	815	897	975
2400	404	615	744	831	914	994
2450	412	627	758	847	932	1013
2500	420	639	772	863	949	1031
2550	427	651	786	878	966	1050
2600	435	662	801	894	984	1069
2650	443	674	815	910	1001	1088
2700	450	686	829	923	1018	1107
2750	458	697	843	942	1036	1126
2800	466	709	857	958	1053	1145
2850	473	721	871	973	1071	1164
2900	481	733	886	989	1088	1183
2950	489	744	900	1005	1105	1202
3000	496	756	914	1021	1123	1221
3050	504	768	928	1037	1140	1239

3100	512	779	942	1052	1158	1258
3150	520	791	956	1068	1175	1277
3200	527	803	970	1084	1192	1296
3250	535	814	985	1100	1210	1315
3300	543	826	999	1116	1227	1334
3350	550	838	1013	1131	1245	1353
3400	558	850	1027	1147	1262	1372
3450	566	861	1041	1163	1279	1391
3500	573	873	1055	1179	1297	1410
3550	581	885	1069	1194	1314	1428
3600	588	896	1083	1210	1331	1447
3650	596	907	1097	1225	1348	1465
3700	603	919	1111	1241	1365	1484
3750	611	930	1124	1255	1381	1501
3800	619	940	1135	1268	1395	1516
3850	626	950	1146	1281	1409	1531
3900	634	960	1158	1293	1423	1546
3950	641	970	1169	1306	1437	1562
4000	649	979	1181	1319	1451	1577
4050	656	989	1192	1331	1465	1592
4100	664	999	1203	1344	1479	1607
4150	671	1009	1215	1357	1493	1622
4200	679	1019	1226	1370	1507	1638
4250	686	1029	1238	1382	1521	1653
4300	694	1039	1249	1395	1535	1668

4350	701	1049	1260	1408	1549	1683
4400	708	1060	1274	1423	1565	1701
4450	715	1071	1287	1437	1581	1719
4500	722	1083	1300	1452	1597	1736
4550	729	1094	1313	1467	1613	1754
4600	735	1104	1325	1480	1628	1769
4650	741	1113	1336	1492	1642	1785
4700	747	1123	1348	1505	1656	1800
4750	752	1132	1359	1518	1670	1815
4800	758	1142	1370	1531	1684	1830
4850	764	1152	1382	1543	1698	1845
4900	770	1161	1393	1556	1712	1861
4950	776	1171	1404	1569	1726	1876
5000	782	1181	1416	1581	1740	1891
5050	787	1189	1426	1593	1752	1905
5100	792	1197	1435	1602	1763	1916
5150	797	1204	1443	1612	1773	1927
5200	802	1211	1452	1621	1784	1939
5250	807	1218	1460	1631	1794	1950
5300	811	1225	1468	1640	1804	1961
5350	816	1232	1477	1650	1815	1973
5400	821	1239	1485	1659	1825	1984
5450	826	1246	1494	1668	1835	1995
5500	830	1254	1502	1678	1846	2006
5550	835	1261	1511	1687	1856	2018

5600	840	1268	1519	1697	1866	2029
5650	845	1275	1527	1706	1877	2040
5700	850	1282	1536	1716	1887	2051
5750	854	1289	1544	1725	1897	2063
5800	857	1293	1549	1731	1904	2069
5850	860	1298	1554	1736	1909	2076
5900	863	1302	1559	1741	1915	2082
5950	866	1306	1564	1747	1921	2088
6000	869	1310	1568	1752	1927	2095
6050	872	1315	1573	1757	1933	2101
6100	875	1319	1578	1763	1939	2107
6150	878	1323	1583	1768	1945	2114
6200	881	1327	1587	1773	1951	2120
6250	884	1331	1592	1779	1956	2127
6300	887	1336	1597	1784	1962	2133
6350	890	1340	1602	1789	1968	2139
6400	893	1344	1607	1795	1974	2146
6450	895	1348	1611	1800	1980	2152
6500	898	1352	1615	1804	1984	2157
6550	901	1355	1617	1807	1987	2160
6600	904	1358	1620	1809	1990	2164
6650	906	1361	1622	1812	1993	2167
6700	909	1364	1625	1815	1997	2170
6750	911	1367	1627	1818	2000	2174
6800	914	1370	1630	1821	2003	2177

6850	917	1373	1632	1823	2006	2180
6900	919	1376	1635	1826	2009	2183
6950	922	1379	1637	1829	2012	2187
7000	925	1382	1640	1832	2015	2190
7050	927	1385	1642	1834	2018	2193
7100	930	1388	1645	1837	2021	2197
7150	933	1391	1647	1840	2024	2200
7200	935	1395	1650	1843	2027	2204
7250	939	1401	1658	1852	2038	2215
7300	943	1407	1667	1861	2048	2226
7350	946	1413	1675	1871	2058	2237
7400	950	1419	1683	1880	2068	2248
7450	954	1426	1691	1889	2078	2259
7500	957	1432	1699	1898	2088	2270
7550	961	1438	1708	1907	2098	2281
7600	965	1444	1716	1917	2108	2292
7650	969	1450	1724	1926	2118	2303
7700	972	1457	1732	1935	2129	2314
7750	976	1463	1741	1944	2139	2325
7800	980	1469	1749	1953	2149	2336
7850	983	1475	1757	1963	2159	2347
7900	987	1482	1765	1972	2169	2358
7950	990	1485	1770	1977	2174	2364
8000	992	1488	1772	1979	2177	2366
8050	994	1491	1774	1981	2180	2369

8100	997	1493	1776	1984	2182	2372
8150	999	1496	1778	1986	2185	2375
8200	1001	1498	1780	1988	2187	2378
8250	1003	1501	1782	1991	2190	2380
8300	1006	1503	1784	1993	2192	2383
8350	1008	1506	1786	1995	2195	2386
8400	1010	1509	1788	1998	2198	2389
8450	1012	1511	1791	2000	2200	2391
8500	1014	1514	1793	2002	2203	2394
8550	1017	1516	1795	2005	2205	2397
8600	1019	1519	1797	2007	2208	2400
8650	1021	1521	1799	2009	2210	2403
8700	1024	1525	1803	2014	2215	2408
8750	1027	1529	1807	2018	2220	2413
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8900	1036	1541	1819	2032	2235	2430
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9000	1042	1549	1827	2041	2245	2440
9050	1045	1553	1831	2045	2250	2446
9100	1048	1557	1835	2050	2255	2451
9150	1051	1561	1839	2054	2260	2456
9200	1054	1565	1843	2059	2265	2462
9250	1057	1569	1847	2063	2270	2467
9300	1060	1573	1851	2068	2275	2473

9350	1063	1577	1855	2072	2280	2478
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9500	1076	1594	1874	2093	2302	2503
9550	1080	1600	1881	2101	2311	2512
9600	1085	1607	1888	2109	2320	2521
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9700	1094	1619	1902	2124	2337	2540
9750	1098	1626	1909	2132	2345	2549
9800	1103	1632	1916	2140	2354	2559
9850	1107	1638	1923	2148	2363	2568
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10000	1121	1657	1944	2171	2388	2596
10050	1125	1663	1951	2179	2397	2605
10100	1130	1670	1958	2187	2405	2615
10150	1134	1676	1965	2195	2414	2624
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10250	1143	1689	1979	2210	2431	2643
10300	1148	1695	1986	2218	2440	2652
10350	1152	1701	1993	2226	2448	2661
10400	1157	1708	2000	2234	2457	2671
10450	1161	1714	2007	2241	2466	2680
10500	1166	1720	2014	2249	2474	2689
10550	1169	1726	2021	2257	2483	2699

10600	1172	1731	2028	2265	2492	2708
10650	1176	1737	2035	2273	2500	2718
10700	1179	1742	2042	2281	2509	2727
10750	1182	1748	2049	2289	2517	2737
10800	1186	1753	2056	2296	2526	2746
10850	1189	1758	2063	2304	2535	2755
10900	1192	1764	2070	2312	2543	2765
10950	1195	1769	2077	2320	2552	2774
11000	1199	1775	2084	2328	2561	2784
11050	1202	1780	2091	2336	2569	2793
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11150	1209	1791	2105	2352	2587	2812
11200	1212	1796	2112	2359	2595	2821
11250	1215	1802	2119	2367	2604	2831
11300	1219	1807	2126	2375	2613	2840
11350	1222	1813	2133	2383	2621	2849
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11450	1228	1823	2148	2399	2639	2868
11500	1232	1829	2155	2407	2647	2878
11550	1235	1834	2162	2415	2656	2887
11600	1238	1840	2169	2422	2665	2896
11650	1241	1844	2174	2429	2672	2904
11700	1244	1848	2178	2433	2676	2909
11750	1246	1851	2182	2437	2681	2914
11800	1249	1855	2186	2442	2686	2920

11850	1251	1858	2190	2446	2691	2925
11900	1254	1862	2194	2450	2696	2930
11950	1257	1866	2198	2455	2700	2935
12000	1259	1869	2202	2459	2705	2941
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12100	1264	1876	2209	2468	2715	2951
12150	1267	1880	2213	2472	2720	2956
12200	1269	1883	2217	2477	2724	2961
12250	1272	1887	2222	2482	2730	2967
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12350	1278	1895	2230	2491	2740	2978
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12450	1283	1903	2238	2500	2750	2990
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12650	1295	1918	2256	2520	2771	3013
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12900	1312	1942	2280	2547	2801	3045
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13000	1319	1951	2290	2558	2813	3058
13050	1323	1956	2295	2563	2819	3065

13100	1326	1961	2300	2569	2826	3071
13150	1330	1966	2305	2574	2832	3078
13200	1334	1971	2310	2580	2838	3085
13250	1337	1975	2315	2585	2844	3091
13300	1341	1980	2320	2591	2850	3098
13350	1345	1985	2325	2596	2856	3105
13400	1348	1990	2329	2602	2862	3111
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13500	1355	1999	2339	2613	2874	3125
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13650	1366	2014	2354	2630	2893	3144
13700	1370	2019	2359	2635	2899	3151
13750	1374	2024	2364	2641	2905	3158
13800	1377	2028	2369	2646	2911	3164
13850	1381	2033	2374	2652	2917	3171
13900	1385	2038	2379	2658	2923	3178
13950	1388	2043	2384	2663	2929	3184
14000	1392	2048	2389	2669	2935	3191
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14200	1403	2061	2403	2684	2952	3209
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14300	1407	2067	2408	2690	2959	3216

14350	1409	2070	2411	2693	2962	3220
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14450	1414	2076	2417	2699	2969	3227
14500	1416	2079	2419	2702	2973	3231
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14600	1421	2085	2425	2709	2979	3239
14650	1423	2088	2428	2712	2983	3242
14700	1426	2091	2430	2715	2986	3246
14750	1428	2093	2433	2718	2990	3250
14800	1430	2096	2436	2721	2993	3253
14850	1433	2099	2439	2724	2996	3257
14900	1435	2102	2442	2727	3000	3261
14950	1437	2105	2444	2730	3003	3265
15000	1439	2108	2447	2733	3007	3268
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15100	1444	2114	2453	2740	3014	3276
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15200	1449	2120	2458	2746	3020	3283
15250	1451	2123	2461	2749	3024	3287
15300	1453	2125	2463	2752	3027	3290
15350	1455	2128	2466	2754	3030	3293
15400	1457	2130	2468	2757	3033	3297
15450	1460	2134	2472	2761	3038	3302
15500	1464	2139	2479	2769	3046	3311
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15600	1471	2151	2492	2784	3062	3328
15650	1475	2156	2499	2791	3070	3337
15700	1479	2162	2505	2798	3078	3346
15750	1482	2167	2512	2806	3086	3355
15800	1486	2173	2518	2813	3094	3363
15850	1490	2179	2525	2820	3102	3372
15900	1494	2184	2531	2828	3110	3381
15950	1497	2190	2538	2835	3118	3390
16000	1501	2195	2545	2842	3127	3399
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16100	1509	2207	2558	2857	3143	3416
16150	1513	2212	2564	2864	3151	3425
16200	1516	2218	2571	2872	3159	3434
16250	1520	2223	2577	2879	3167	3442
16300	1524	2229	2584	2886	3175	3451
16350	1528	2234	2591	2894	3183	3460
16400	1531	2240	2597	2901	3191	3469
16450	1535	2246	2604	2908	3199	3478
16500	1539	2251	2610	2916	3207	3486
16550	1543	2257	2617	2923	3215	3495
16600	1546	2262	2624	2930	3224	3504
16650	1550	2268	2630	2938	3232	3513
16700	1554	2274	2637	2945	3240	3522
16750	1558	2279	2643	2952	3248	3530
16800	1561	2285	2650	2960	3256	3539

16850	1565	2290	2656	2967	3263	3547
16900	1569	2296	2663	2974	3271	3556
16950	1573	2301	2669	2981	3279	3565
17000	1576	2307	2675	2989	3287	3573
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17100	1584	2318	2688	3003	3303	3591
17150	1587	2323	2695	3010	3311	3599
17200	1591	2329	2701	3017	3319	3608
17250	1595	2334	2708	3025	3327	3617
17300	1599	2340	2714	3032	3335	3625
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17400	1606	2351	2727	3046	3351	3643
17450	1610	2356	2734	3054	3359	3651
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17550	1617	2367	2747	3068	3375	3669
17600	1621	2373	2753	3075	3383	3677
17650	1625	2378	2760	3083	3391	3686
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17750	1632	2389	2773	3097	3407	3703
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17900	1641	2401	2785	3111	3422	3719
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18000	1647	2409	2793	3120	3432	3730
18050	1650	2413	2797	3124	3436	3735

18100	1653	2417	2801	3129	3441	3741
18150	1656	2420	2805	3133	3446	3746
18200	1659	2424	2809	3138	3451	3752
18250	1662	2428	2813	3142	3456	3757
18300	1665	2432	2817	3146	3461	3762
18350	1668	2436	2821	3151	3466	3768
18400	1670	2440	2825	3155	3471	3773
18450	1673	2444	2829	3160	3476	3778
18500	1676	2448	2833	3164	3481	3784
18550	1679	2452	2837	3169	3486	3789
18600	1682	2456	2841	3173	3491	3794
18650	1685	2460	2845	3178	3496	3800
18700	1688	2464	2849	3182	3501	3805
18750	1691	2467	2853	3187	3505	3810
18800	1694	2471	2857	3191	3510	3816
18850	1697	2475	2861	3196	3515	3821
18900	1700	2479	2865	3200	3520	3827
18950	1703	2483	2869	3205	3525	3832
19000	1706	2487	2873	3209	3530	3837
19050	1709	2491	2877	3214	3535	3843
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19150	1715	2498	2885	3222	3545	3853
19200	1717	2502	2889	3227	3549	3858
19250	1720	2506	2892	3231	3554	3863
19300	1723	2510	2896	3235	3559	3868

19350	1726	2513	2900	3239	3563	3873
19400	1729	2517	2904	3244	3568	3878
19450	1732	2521	2908	3248	3573	3883
19500	1734	2524	2911	3252	3577	3889
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19900	1757	2554	2942	3286	3615	3929
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20000	1762	2562	2950	3295	3624	3939
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20400	1785	2591	2980	3329	3662	3980
20450	1788	2595	2984	3333	3666	3985
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20750	1805	2617	3007	3358	3694	4016
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20900	1813	2628	3018	3371	3708	4031
20950	1816	2632	3022	3375	3713	4036
21000	1818	2636	3027	3381	3719	4043
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21150	1826	2649	3044	3400	3740	4066
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21400	1838	2670	3073	3432	3776	4104
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21500	1843	2679	3084	3445	3790	4119
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21600	1848	2687	3096	3458	3804	4135
21650	1850	2691	3101	3464	3811	4142
21700	1853	2696	3107	3471	3818	4150
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21800	1858	2704	3119	3483	3832	4165

21850	1860	2708	3124	3490	3839	4173
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21950	1865	2717	3136	3503	3853	4188
22000	1868	2721	3142	3509	3860	4196
22050	1870	2725	3147	3515	3867	4203
22100	1873	2730	3153	3522	3874	4211
22150	1875	2734	3159	3528	3881	4219
22200	1878	2738	3164	3535	3888	4226
22250	1880	2742	3170	3541	3895	4234
22300	1883	2747	3176	3547	3902	4242
22350	1885	2751	3182	3554	3909	4249
22400	1888	2755	3187	3560	3916	4257
22450	1890	2759	3193	3567	3923	4265
22500	1892	2764	3199	3573	3930	4272
22550	1895	2768	3204	3579	3937	4280
22600	1897	2772	3210	3586	3944	4288
22650	1900	2776	3216	3592	3951	4295
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22750	1905	2785	3227	3605	3965	4310
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22850	1910	2793	3239	3618	3979	4326
22900	1912	2798	3245	3624	3987	4333
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23000	1917	2806	3256	3637	4001	4349
23050	1920	2810	3262	3643	4008	4356

23100	1922	2814	3267	3650	4015	4364
23150	1925	2819	3273	3656	4022	4372
23200	1927	2823	3279	3662	4029	4379
23250	1930	2827	3285	3669	4036	4387
23300	1932	2831	3290	3675	4043	4394
23350	1934	2836	3296	3682	4050	4402
23400	1937	2840	3302	3688	4057	4410
23450	1939	2844	3307	3694	4064	4417
23500	1942	2848	3313	3701	4071	4425
23550	1944	2853	3319	3707	4078	4433
23600	1947	2857	3325	3714	4085	4440
23650	1949	2861	3330	3720	4092	4448
23700	1952	2865	3336	3726	4099	4456
23750	1954	2870	3342	3733	4106	4463
23800	1957	2874	3348	3739	4113	4471
23850	1959	2878	3353	3746	4120	4479
23900	1962	2882	3359	3752	4127	4486
23950	1964	2887	3365	3758	4134	4494
24000	1967	2891	3370	3765	4141	4501
24050	1969	2895	3376	3771	4148	4509
24100	1972	2899	3382	3778	4155	4517
24150	1974	2904	3388	3784	4162	4524
24200	1976	2908	3393	3790	4169	4532
24250	1979	2912	3399	3797	4176	4540
24300	1981	2916	3405	3803	4183	4547
24350	1984	2921	3410	3809	4190	4555

24400	1986	2925	3416	3816	4197	4563
24450	1989	2929	3422	3822	4204	4570
24500	1991	2933	3428	3829	4212	4578
24550	1994	2938	3433	3835	4219	4586
24600	1996	2942	3439	3841	4226	4593
24650	1999	2946	3445	3848	4233	4601
24700	2001	2950	3451	3854	4240	4608
24750	2004	2955	3456	3861	4247	4616
24800	2006	2959	3462	3867	4254	4624
24850	2009	2963	3468	3873	4261	4631
24900	2011	2967	3473	3880	4268	4639
24950	2013	2972	3479	3886	4275	4647
25000	2016	2976	3485	3893	4282	4654
25050	2018	2980	3491	3899	4289	4662
25100	2021	2984	3496	3905	4296	4670
25150	2023	2988	3502	3912	4303	4677
25200	2026	2993	3508	3918	4310	4685
25250	2028	2997	3513	3925	4317	4693
25300	2031	3001	3519	3931	4324	4700
25350	2033	3005	3525	3937	4331	4708
25400	2036	3010	3531	3944	4338	4715
25450	2038	3014	3536	3950	4345	4723
25500	2041	3018	3542	3956	4352	4731
25550	2043	3022	3548	3963	4359	4738
25600	2046	3027	3554	3969	4366	4746
25650	2048	3031	3559	3976	4373	4754

25700	2051	3035	3565	3982	4380	4761
25750	2053	3039	3571	3988	4387	4769
25800	2055	3044	3576	3995	4394	4777
25850	2058	3048	3582	4001	4401	4784
25900	2060	3052	3588	4007	4408	4792
25950	2063	3056	3592	4012	4413	4797
26000	2066	3059	3596	4017	4418	4803
26050	2068	3063	3600	4021	4423	4808
26100	2071	3067	3604	4026	4428	4814
26150	2073	3070	3608	4030	4434	4819
26200	2076	3074	3612	4035	4439	4825
26250	2078	3078	3617	4040	4444	4830
26300	2081	3081	3621	4044	4449	4836
26350	2083	3085	3625	4049	4454	4841
26400	2086	3089	3629	4054	4459	4847
26450	2089	3092	3633	4058	4464	4852
26500	2091	3096	3637	4063	4469	4858
26550	2094	3100	3641	4068	4474	4864
26600	2096	3103	3646	4072	4479	4869
26650	2099	3107	3650	4077	4484	4875
26700	2101	3111	3654	4081	4490	4880
26750	2104	3114	3658	4086	4495	4886
26800	2107	3118	3662	4091	4500	4891
26850	2109	3122	3666	4095	4505	4897
26900	2112	3125	3671	4100	4510	4902
26950	2114	3129	3675	4105	4515	4908

27000	2117	3133	3679	4109	4520	4913
27050	2119	3136	3683	4114	4525	4919
27100	2122	3140	3687	4118	4530	4924
27150	2125	3144	3691	4123	4535	4930
27200	2127	3147	3695	4128	4541	4936
27250	2130	3151	3700	4132	4546	4941
27300	2132	3155	3704	4137	4551	4947
27350	2135	3158	3708	4142	4556	4952
27400	2137	3162	3712	4146	4561	4958
27450	2140	3166	3716	4151	4566	4963
27500	2142	3169	3720	4156	4571	4969
27550	2145	3173	3724	4160	4576	4974
27600	2148	3177	3729	4165	4581	4980
27650	2150	3180	3733	4169	4586	4985
27700	2153	3184	3737	4174	4591	4991
27750	2155	3188	3741	4179	4597	4996
27800	2158	3191	3745	4183	4602	5002
27850	2160	3195	3749	4188	4607	5008
27900	2163	3199	3753	4193	4612	5013
27950	2166	3202	3758	4197	4617	5019
28000	2168	3206	3762	4202	4622	5024
28050	2171	3210	3766	4206	4627	5030
28100	2173	3213	3770	4211	4632	5035
28150	2176	3217	3774	4216	4637	5041
28200	2178	3221	3778	4220	4642	5046

28250	2181	3224	3782	4225	4647	5052
28300	2183	3228	3787	4230	4653	5057
28350	2186	3232	3791	4234	4658	5063
28400	2189	3235	3795	4239	4663	5068
28450	2191	3239	3799	4244	4668	5074
28500	2194	3243	3803	4248	4673	5079
28550	2196	3246	3807	4253	4678	5085
28600	2199	3250	3811	4257	4683	5091
28650	2201	3254	3816	4262	4688	5096
28700	2204	3257	3820	4267	4693	5102
28750	2207	3261	3824	4271	4698	5107
28800	2209	3265	3828	4276	4704	5113
28850	2212	3268	3832	4281	4709	5118
28900	2214	3272	3836	4285	4714	5124
28950	2217	3276	3840	4290	4719	5129
29000	2219	3279	3845	4294	4724	5135
29050	2222	3283	3849	4299	4729	5140
29100	2224	3287	3853	4304	4734	5146
29150	2227	3290	3857	4308	4739	5151
29200	2230	3294	3861	4313	4744	5157
29250	2232	3298	3865	4318	4749	5163
29300	2235	3301	3869	4322	4754	5168
29350	2237	3305	3874	4327	4760	5174
29400	2240	3309	3878	4331	4765	5179
29450	2242	3312	3882	4336	4770	5185

29500	2245	3316	3886	4341	4775	5190
29550	2248	3320	3890	4345	4780	5196
29600	2250	3323	3894	4350	4785	5201
29650	2253	3327	3899	4355	4790	5207
29700	2255	3331	3903	4359	4795	5212
29750	2258	3334	3907	4364	4800	5218
29800	2260	3338	3911	4369	4805	5223
29850	2263	3342	3915	4373	4810	5229
29900	2266	3345	3919	4378	4816	5235
29950	2268	3349	3923	4382	4821	5240
30000	2271	3353	3928	4387	4826	5246
30050	2273	3356	3932	4392	4831	5251
30100	2276	3360	3936	4396	4836	5257
30150	2278	3364	3940	4401	4841	5262
30200	2281	3367	3944	4406	4846	5268
30250	2283	3371	3948	4410	4851	5273
30300	2286	3375	3952	4415	4856	5279
30350	2289	3378	3957	4419	4861	5284
30400	2291	3382	3961	4424	4867	5290
30450	2294	3386	3965	4429	4872	5295
30500	2296	3389	3969	4433	4877	5301
30550	2299	3393	3973	4438	4882	5307
30600	2301	3397	3977	4443	4887	5312
30650	2304	3400	3981	4447	4892	5318
30700	2307	3404	3986	4452	4897	5323

30750	2309	3408	3990	4457	4902	5329
30800	2312	3411	3994	4461	4907	5334
30850	2314	3415	3998	4466	4912	5340
30900	2317	3419	4002	4470	4917	5345
30950	2319	3422	4006	4475	4923	5351
31000	2322	3426	4010	4480	4928	5356
31050	2324	3430	4015	4484	4933	5362
31100	2327	3433	4019	4489	4938	5367
31150	2330	3437	4023	4494	4943	5373
31200	2332	3441	4027	4498	4948	5378
31250	2335	3444	4031	4503	4953	5384
31300	2337	3448	4035	4507	4958	5390
31350	2340	3452	4039	4512	4963	5395
31400	2342	3455	4044	4517	4968	5401
31450	2345	3459	4048	4521	4973	5406
31500	2348	3463	4052	4526	4979	5412
31550	2350	3466	4056	4531	4984	5417
31600	2353	3470	4060	4535	4989	5423
31650	2355	3474	4064	4540	4994	5428
31700	2358	3477	4068	4544	4999	5434
31750	2360	3481	4073	4549	5004	5439
31800	2363	3485	4077	4554	5009	5445
31850	2365	3488	4081	4558	5014	5450
31900	2368	3492	4085	4563	5019	5456
31950	2371	3496	4089	4568	5024	5462

32000	2373	3499	4093	4572	5030	5467
32050	2376	3503	4098	4577	5035	5473
32100	2378	3507	4102	4582	5040	5478
32150	2381	3510	4106	4586	5045	5484
32200	2383	3514	4110	4591	5050	5489
32250	2386	3518	4114	4595	5055	5495
32300	2389	3521	4118	4600	5060	5500
32350	2391	3525	4122	4605	5065	5506
32400	2394	3529	4127	4609	5070	5511
32450	2396	3532	4131	4614	5075	5517
32500	2399	3536	4135	4619	5080	5522
32550	2401	3540	4139	4623	5086	5528
32600	2404	3543	4143	4628	5091	5534
32650	2407	3547	4147	4632	5096	5539
32700	2409	3550	4151	4637	5101	5545
32750	2412	3554	4156	4642	5106	5550
32800	2414	3558	4160	4646	5111	5556
32850	2417	3561	4164	4651	5116	5561
32900	2419	3565	4168	4656	5121	5567
32950	2422	3569	4172	4660	5126	5572
33000	2424	3572	4176	4665	5131	5578
33050	2427	3576	4180	4670	5136	5583
33100	2430	3580	4185	4674	5142	5589
33150	2432	3583	4189	4679	5147	5594
33200	2435	3587	4193	4683	5152	5600

33250	2437	3591	4197	4688	5157	5606
33300	2440	3594	4201	4693	5162	5611
33350	2442	3598	4205	4697	5167	5617
33400	2445	3602	4209	4702	5172	5622
33450	2448	3605	4214	4707	5177	5628
33500	2450	3609	4218	4711	5182	5633
33550	2453	3613	4222	4716	5187	5639
33600	2455	3616	4226	4720	5193	5644
33650	2458	3620	4230	4725	5198	5650
33700	2460	3624	4234	4730	5203	5655
33750	2463	3627	4238	4734	5208	5661
33800	2465	3631	4243	4739	5213	5666
33850	2468	3635	4247	4744	5218	5672
33900	2471	3638	4251	4748	5223	5677
33950	2473	3642	4255	4753	5228	5683
34000	2476	3646	4259	4758	5233	5689
34050	2478	3649	4263	4762	5238	5694
34100	2481	3653	4267	4767	5243	5700
34150	2483	3657	4272	4771	5249	5705
34200	2486	3660	4276	4776	5254	5711
34250	2489	3664	4280	4781	5259	5716
34300	2491	3668	4284	4785	5264	5722
34350	2494	3671	4288	4790	5269	5727
34400	2496	3675	4292	4795	5274	5733
34450	2499	3679	4296	4799	5279	5738

34500	2501	3682	4301	4804	5284	5744
34550	2504	3686	4305	4808	5289	5749
34600	2506	3690	4309	4813	5294	5755
34650	2509	3693	4313	4818	5299	5761
34700	2512	3697	4317	4822	5305	5766
34750	2514	3701	4321	4827	5310	5772
34800	2517	3704	4326	4832	5315	5777
34850	2519	3708	4330	4836	5320	5783
34900	2522	3712	4334	4841	5325	5788
34950	2524	3715	4338	4845	5330	5794
35000	2527	3719	4342	4850	5335	5799

PART 4. SUPPORT IN SOLE CUSTODY CASES.

§48-13-403. Worksheet for calculating basic child support obligation in basic shared parenting cases.

Child support for basic shared parenting cases shall be calculated using the following worksheet:

Worksheet A: BASIC SHARED PARENTING

IN THE FAMILY COURT OF _____ COUNTY,
WEST VIRGINIA

CASE NO. _____

Mother: _____ SS No.: _____ Primary
Custodial parent? [] Yes [] No

Father: _____ SS No.: _____ Primary
Custodial parent? [] Yes [] No

Children	SSN	Date of Birth	Children	SSN	Date of Birth
PART I. CHILD SUPPORT ORDER			Mother	Father	Combined
1. MONTHLY GROSS INCOME (Exclusive of overtime compensation)			\$	\$	
a. Minus preexisting child support payment			-	-	
b. Minus maintenance paid			-	-	
c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48-1-228(b)(6)			+	+	
d. Additional dependents deduction			-	-	
e. Minus student loan payment pursuant to W. Va. Code §48-13-202(3)					
2. MONTHLY ADJUSTED GROSS INCOME			\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)			%	%	100%
4. BASIC OBLIGATION (Use Line 2 combined to find amount from schedule.)					\$
5. ADJUSTMENTS (Expenses paid directly by each parent)					

a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)	\$	\$	
b. Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$	
c. Extraordinary Expenses (Agreed to by parents or by order of the court.)	\$	\$	
d. Minus Extraordinary Adjustments (Agreed to by parents or by order of court.)	-	-	
e. Total Adjustments (For each column, add 5a, 5b, and 5c. Subtract Line 5d. Add the parent's totals together for Combined amount.)	\$	\$	\$
6. TOTAL SUPPORT OBLIGATION (Add line 4 and line 5e Combined.)			\$
7. EACH PARENT'S SHARE OF THE TOTAL CHILD SUPPORT OBLIGATION (Line 3 x line 6 for each parent.)	\$	\$	
8. PAYOR PARENT ADJUSTMENT (Enter payor parent's line 5e.)	\$	\$	
9. RECOMMENDED CHILD SUPPORT ORDER (Subtract line 8 from line 7 for the payor parent only. Leave payee parent column blank.)	\$	\$	
PART II. ABILITY TO PAY CALCULATION (Complete if the payor parent's adjusted monthly gross income is below \$2,600.)			
10. Spendable Income (0.80 x line 2 for payor parent only.)			
11. Self Support Reserve	\$997	\$997	
12. Income Available for Support			

(Line 10 - line 11. If less than \$50, then \$50)			
13. Adjusted Child Support Order (Lesser of Line 9 and Line 12.)			
Comments, calculations, or rebuttals to schedule or adjustments if payor parent directly pays extraordinary expenses.			
PREPARED BY:		Date:	

§48-13-404. Additional calculation to be made in basic shared parenting cases.

In cases where the payor parent's adjusted gross income is below \$2,600 per month, an additional calculation in Worksheet A, Part II, §48-13-403 of this code, shall be made. This additional calculation sets the child support order at whichever is lower.

(1) Child support at the amount determined in Worksheet A, Part I, §48-13-403 of this code; or

(2) The difference between 80 percent of the payor parent's adjusted gross income and \$997, or \$50, whichever is more.

PART 5. SUPPORT IN EXTENDED SHARED PARENTING OR SPLIT PHYSICAL CUSTODY CASES.

§48-13-502. Extended shared parenting worksheet.

Child support for extended shared parenting cases shall be calculated using the following worksheet:

Worksheet B: extended shared parenting

IN THE FAMILY COURT OF _____ COUNTY,
WEST VIRGINIA

CASE NO. _____

Mother: _____ SS No.: _____

Father: _____ SS No.: _____

Children	SSN	Date of Birth	Children	SSN	Date of Birth
PART I. BASIC OBLIGATION			Mother	Father	Combined
1. MONTHLY GROSS INCOME (Exclusive of overtime compensation)				\$	
a. Minus preexisting child support payment			-	-	
b. Minus maintenance paid			-	-	
c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48-1-228(b)(6)			+	+	
d. Additional dependent deduction					
e. Minus student loan payment pursuant to W. Va. Code §48-13-202(3)					
2. MONTHLY ADJUSTED GROSS INCOME			\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)			%	%	100%
4. BASIC OBLIGATION (Use line 2 Combined to find amount from Child Support Schedule.)					\$
PART II. SHARED PARENTING ADJUSTMENT					
5. Shared Parenting Basic Obligation (line 4 x 1.6)					\$
6. Each Parent's Share (Line 5 x each parent's line 3)			\$	\$	
7. Overnights with Each Parent (must total 365)					365
8. Percentage with Each Parent (Line 7 divided by 365)			%	%	100%
9. Amount Retained (Line 6 x line 8 for each parent)			\$	\$	
10. Each Parent's Obligation (Line 6 - line 9)			\$	\$	
11. AMOUNT TRANSFERRED FOR BASIC OBLIGATION (Subtract smaller amount on line 10 from larger amount on line 10. Parent with larger amount on line 10 owes the other parent the difference. Enter \$0 for other parent.			\$	\$	

PART III. ADJUSTMENTS FOR ADDITIONAL EXPENSES (Expenses paid directly by each parent.)			
12a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)	\$	\$	
12b. Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$	
12c. Extraordinary Additional Expenses (Agreed to by parents or by order of the court.)	\$	\$	
12d. Minus Extraordinary Adjustments (Agreed to by parents or by order of the court.)	\$	\$	
12e. Total Adjustments (For each column, add 12a, 12b, and 12c. Subtract line 12d. Add the parent's totals together for Combined amount.)	\$	\$	\$
13. Each Parent's Share of Additional Expenses (Line 3 x line 12e Combined.)	\$	\$	
14. Each Parent's Net Share of Additional Direct Expenses (Each parent's line 13-line 12e. If negative number, enter \$0)	\$	\$	
15. AMOUNT TRANSFERRED FOR ADDITIONAL EXPENSES (Subtract smaller amount on line 14 from larger amount on line 14. Parent with larger amount on line 14 owes the other parent the difference. Enter \$0 for other parent.)	\$	\$	
PART IV. RECOMMENDED CHILD SUPPORT ORDER			
16. TOTAL AMOUNT TRANSFERRED (Line 11 + line 15)	\$	\$	
17. RECOMMENDED CHILD SUPPORT ORDER (Subtract smaller amount on line 16 from larger amount on line 16. Parent with larger amount on line 16 owes the other parent the difference.)	\$	\$	
Comments, calculations, or rebuttals to schedule or adjustments			
PREPARED BY:		Date:	



CHAPTER 32

(S. B. 1021 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage]
[Approved by the Governor on August 22, 2023.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §7-5B-1 and §7-5B-2; and to amend and reenact §33-3-33 of said code, all relating to funding certain first responders; creating a special revenue fund administered by the Secretary of Homeland Security for the benefit of fire protection or emergency services in counties with excess levies or dedicated fees related to emergency services; creating a special revenue fund administered by the Secretary of Homeland Security for the benefit of fire protection or emergency services in all counties; granting rulemaking authority; requiring the State Fire Marshal provide certain information to the State Treasurer before distribution of the Fire Protection Fund; and requiring that volunteer fire departments eligible to receive policy surcharge funds implement the State Auditor's West Virginia Checkbook fiscal reporting system.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5B. FUNDS FOR FIRE PROTECTION.

§7-5B-1. Funds for use of fire protection in counties with excess levy or dedicated fee.

(a) There is hereby created in the State Treasury a special revenue fund designated and known as the County Fire Protection Fund which is an interest-and-earnings accumulating account. The fund shall receive legislative appropriations, grants, gifts, devises, and donations from any public or private source. All interest and other returns derived from the deposit and investment of moneys in the County Fire Protection Fund shall be credited to the fund. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided in this section. The fund shall be administered by the Secretary of Homeland Security and distributed by the secretary to certain county commissions and distributed by those county commissions to fire departments in those counties for the exclusive benefit of fire protection or emergency services in the county. Distributions from the fund shall be distributed only to the county commissions of counties which have in place a countywide excess levy, or a countywide fee, dedicated to fire or emergency services. Among those counties, distributions shall be in relative proportion to each county's population's percentage of the aggregate population of all such counties combined.

(b) The Secretary of Homeland Security may propose legislative rules, including emergency rules, for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this section.

§7-5B-2. Funds for use of fire protection in counties.

(a) There is hereby created in the State Treasury a special revenue fund designated and known as the All County Fire Protection Fund which is an interest-and-earnings accumulating account. The fund shall receive legislative appropriations, grants, gifts, devises, and donations from any public or private source. All interest and other returns derived from the deposit and investment of moneys in the All County Fire Protection Fund shall be credited to the fund. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund

and be expended as provided in this section. The fund shall be administered by the Secretary of Homeland Security and distributed by the secretary to county commissions and distributed by those county commissions to fire departments in those counties for the exclusive benefit of fire protection or emergency services in the county. Among those counties, distributions shall be in relative proportion to each county's population's percentage of the aggregate population of all such counties combined.

(b) The Secretary of Homeland Security may propose legislative rules, including emergency rules, for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this section.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part-volunteer fire departments; Public Employees Insurance Agency and municipal pension plans; special fund created; allocation of proceeds; effective date.

(a)(1) For the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments and certain retired teachers and the Teachers Retirement Reserve Fund, there is hereby authorized and imposed on and after July 1, 1992, on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for each such policy. After June 30, 2005, the surcharge shall be imposed as specified in subdivisions (2) and (3) of this subsection.

(2) After June 30, 2005, through December 31, 2005, for the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments and to provide additional revenue to the Public Employees Insurance Agency and

municipal pension plans, there is hereby authorized and imposed on and after July 1, 2005, on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for each such policy.

(3) After December 31, 2005, for the purpose of providing additional revenue for volunteer fire departments and part-volunteer fire departments, there is hereby authorized and imposed on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to fifty-five one hundredths of one percent of the taxable premium for each such policy.

(4) For purposes of this section, casualty insurance may not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy. The policy surcharge may not be subject to premium taxes, agent commissions, or any other assessment against premiums.

(b) The policy surcharge shall be collected and remitted to the commissioner by the insurer, or in the case of surplus lines coverage, by the surplus lines licensee, or if the policy is issued by a risk retention group, by the risk retention group. The amount required to be collected under this section shall be remitted to the commissioner on a quarterly basis on or before the twenty-fifth day of the month succeeding the end of the quarter in which they are collected, except for the fourth quarter for which the surcharge shall be remitted on or before March 1 of the succeeding year.

(c) Any person failing or refusing to collect and remit to the commissioner any policy surcharge and whose surcharge payments are not postmarked by the due dates for quarterly filing is liable for a civil penalty of up to \$100 for each day of delinquency, to be assessed by the commissioner. The commissioner may suspend the

insurer, broker, or risk retention group until all surcharge payments and penalties are remitted in full to the commissioner.

(d)(1) All money from the policy surcharge shall be collected by the Commissioner who shall disburse the money received from the surcharge into a special account in the State Treasury, designated the Fire Protection Fund. The net proceeds of this portion of the tax and the interest thereon, after appropriation by the Legislature, shall be distributed quarterly on the first day of the months of January, April, July, and October to each volunteer fire company or department on an equal share basis by the State Treasurer. After June 30, 2005, the money received from the surcharge shall be distributed as specified in subdivisions (2) and (3) of this subsection.

(2)(A) After June 30, 2005, through December 31, 2005, all money from the policy surcharge shall be collected by the commissioner who shall disburse one half of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subdivision (1) of this subsection.

(B) The remaining portion of moneys collected shall be transferred into the fund in the State Treasury of the Public Employees Insurance Agency into which are deposited the proportionate shares made by agencies of this state of the Public Employees Insurance Agency costs of those agencies, until November 1, 2005. After October 31, 2005, through December 31, 2005, the remain portion shall be transferred to the special account in the state Treasury, known as the Municipal Pensions and Protection Fund.

(3) After December 31, 2005, all money from the policy surcharge shall be collected by the commissioner who shall disburse all of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subdivision (1) of this subsection.

(4) Before each distribution date to volunteer fire companies or departments, the State Fire Marshal shall report to the state Treasurer:

(A) The names and addresses of all volunteer and part-volunteer fire companies and departments within the state which meet the eligibility requirements established in §8-15-8a of this code during the preceding quarter;

(B) The number of volunteer firefighters and the number of full-time paid members providing services to each volunteer and part-volunteer fire company and department during the preceding quarter;

(C) A full accounting of each volunteer and part-volunteer fire company and department eligible to receive a distribution under this section's revenues and expenditures for the last two calendar years; and

(D) A list of each volunteer and part-volunteer fire company and department has implemented the State Auditor's West Virginia Checkbook fiscal reporting system on or before January 1, 2026.

(e) Notwithstanding any other provision of this subsection, each volunteer and part-volunteer fire company and department shall implement the State Auditor's West Virginia Checkbook fiscal reporting system on or before January 1, 2026, in order to remain eligible to receive any funds pursuant to this section.

(f) The allocation, distribution, and use of revenues provided in the Fire Protection Fund are subject to the provisions of §8-15-8a and §8-15-8b of this code.

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CHAPTER 33

(H. B. 144 - By Delegates Hanshaw (Mr. Speaker), Skaff and Howell)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage.]
[Approved by the Governor on August 22, 2023.]

AN ACT to amend and reenact §18B-3D-6 of the Code of West Virginia, 1931, as amended, relating to creating a three-year pilot program to include Potomac State College of West Virginia University as an eligible institution for participation in the "Learn and Earn Program".

Be it enacted by the Legislature of West Virginia:

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-6. Learn and Earn Cooperative Education Program established.

(a) Legislative findings.

(1) The Legislature finds that many West Virginians cannot enroll full-time in a community and technical college technical program because circumstances require them to maintain full-time employment. It is critically important that technical programs leading to high-wage occupations be more accessible and affordable for all West Virginians.

(2) The Legislature further finds that cooperative education programs are successful in providing access to these technical programs while providing students enrolled full-time in a community and technical college with the financial benefits they need to continue their education. These cooperative education

programs provide opportunities for students to work with West Virginia companies while in college, thus increasing the likelihood that they will complete the program, find gainful employment and choose to remain in West Virginia upon graduation. They provide students with hands-on, real world work experience with a salary while they complete a technical program of study and, at the same time, provide employers with a cost-effective tool for recruiting and training.

(b) The purpose of this section is to establish a cooperative education program, under the jurisdiction of the council, as a component of the Workforce Development Initiative Program established pursuant to this article. The program shall be known and may be cited as the "Learn and Earn Program."

(c) The program requires a dollar-for-dollar cash match from participating employers or groups of employers from which the student receives a salary from the employer or employers while participating in the program. Participants may not substitute a match in-kind for the cash match required by this section.

(d) An institution is eligible to apply for a program grant in cooperation with one or more employer partners if it meets the definition of a community and technical college provided in §18B-1-2 of this code: *Provided*, That, as a pilot program beginning at the start of the 2023-2024 academic year and concluding at the end of the 2025-2026 academic year, Potomac State College of West Virginia University is eligible to participate in the "Learn and Earn Program" established by this section in accordance with the rules promulgated pursuant to §18B-3D-5 of this code. At the conclusion of the pilot program, the council shall determine whether Potomac State College of West Virginia University has achieved sufficient results to continue to participate in the Learn and Earn program. The council shall define the application process in the rules required in section five of this article.

(e) The council may expend funds available through the Workforce Development Initiative program to implement the provisions of this section.

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CHAPTER 34

(H. B. 124 - By Delegates Hanshaw (Mr. Speaker), Skaff, Hanna and Tully)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage.]
[Approved by the Governor on August 11, 2023.]

AN ACT to amend §20-1-19 of the Code of West Virginia, 1931, as amended, relating to establishing Summersville Lake State Park.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-19. West Virginia state parks and state forests.

(a) The state parks of West Virginia are:

(1) Audra; (2) Babcock; (3) Beartown; (4) Beech Fork; (5) Berkeley Springs; (6) Blackwater Falls; (7) Blennerhassett Island Historical; (8) Bluestone; (9) Cacapon Resort; (10) Camp Creek; (11) Canaan Valley Resort; (12) Carnifex Ferry Battlefield; (13) Cass Scenic Railroad; (14) Cathedral; (15) Cedar Creek; (16) Chief Logan; (17) Droop Mountain Battlefield; (18) Fairfax Stone Historical Monument; (19) Hawks Nest; (20) Holly River; (21) Little Beaver; (22) Lost River; (23) Moncove Lake; (24) North Bend; (25) Pinnacle Rock; (26) Pipestem Resort; (27) Prickett's Fort; (28) Stonewall Resort; (29) Summersville Lake; (30) Tomlinson Run; (31) Tu-Endie-Wei (Point Pleasant Battle Monument); (32) Twin Falls Resort; (33) Tygart Lake; (34) Valley Falls; (35) Watoga; and (36) Watters Smith Memorial.

(b) The state forests of West Virginia are:

(1) Cabwaylingo; (2) Calvin Price; (3) Camp Creek; (4) Coopers Rock; (5) Greenbrier; (6) Kanawha; (7) Kumbrabow; (8) Panther Forest/WMA, consisting of approximately twenty-six acres containing park facilities; and (9) Seneca.

(c) Neither the director nor any officer, employee or agent of the Division of Natural Resources may close, change the name or the designated use of a state park or state forest without statutory authorization.

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CHAPTER 35

(H. B. 125 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed August 8, 2023; in effect from passage.]
[Approved by the Governor on August 16, 2023.]

AN ACT to amend and reenact §11-13MM-10 of the Code of West Virginia, 1931, as amended to clarify that certain payments paid prior to the effective date of the tax credits for property taxes paid on certain species of property are eligible for the tax credits.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 13MM. WEST VIRGINIA PROPERTY TAX
ADJUSTMENT ACT.**

§11-13MM-10. Effective Date.

This article shall be effective for personal income taxable years beginning on or after January 1, 2024, and for corporation net income tax taxable years beginning on or after January 1, 2024. Subject to the restrictions, limitations and requirements set forth in this article, *ad valorem* property tax timely paid in the personal income tax taxable year, or the corporation net income tax taxable year, as applicable, beginning on or after January 1, 2024, may qualify for the tax credits specified in this article, even where such tax, that is due and owed in calendar year 2024 only, is actually timely paid prior to January 1, 2024.

LEGISLATURE OF WEST VIRGINIA

ACTS

THIRD EXTRAORDINARY SESSION, 2022

CHAPTER 1

**(H. B. 302 - By Delegates Jeffries, Jennings, Dean, Honaker,
G. Ward, Rowan, Worrell, Mallow, Forsht, and Miller)**

[Passed September 13, 2022; in effect from passage.]

[Approved by the Governor on September 16, 2022.]

AN ACT to amend and reenact §9-2-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-2F-9 of said code; to amend and reenact §16-2I-9 of said code; to amend and reenact §16-2M-7 of said code; to amend and reenact §16-2O-1 of said code; to amend and reenact §16-2P-1 of said code; to amend and reenact §16-2Q-1 of said code; to amend said code by adding thereto a new article, designated §16-2R-1, §16-2R-2, §16-2R-3, §16-2R-4, §16-2R-5, 16-2R-6, §16-2R-7, §16-2R-8, and §16-2R-9; to amend and reenact §16-5-22 of said code; to amend and reenact §30-1-26 of said code; to amend and reenact §33-42-8 of said code; and to amend and reenact §61-2-8 of said code, all relating to abortion; clarifying that Medicaid funds may not be used to pay for abortions not authorized by statute; declaring certain provisions of abortion-related code are of no force or effect unless any provision of the Unborn Child Protection Act is judicially determined to be unconstitutional; creating the Unborn Child Protection Act; setting forth legislative findings; defining terms; clarifying effect of definitions in Unborn Child Protection Act; prohibiting abortions generally; providing circumstances in which an abortion may be performed or induced including certain medical conditions, medical

emergency, rape and incest; establishing predicate requirements before abortion based on rape or incest may be performed; requiring reporting of sexual assault or incest against a minor to West Virginia State Police Child Abuse and Neglect Investigations Unit; prohibiting partial birth abortion procedure; limiting where surgical abortions may be performed; requiring that a licensed medical professional have hospital privileges to perform an abortion; clarifying what is not considered an abortion; clarifying that contraceptives are not prohibited; setting forth notice requirements when an abortion is to be performed on an unemancipated minor; authorizing judicially approved waiver of notice to parent, guardian, or custodian; requesting Supreme Court of Appeals to prepare waiver related forms; authorizing appointment of counsel for unemancipated minor and providing for confidentiality of proceedings; setting forth criteria for waiver of notice; authorizing appeal to Supreme Court of Appeals of denial of waiver of authorization for unemancipated minor to proceed with abortion without notification; providing for waiver of filing fees in proceedings seeking waiver of notice to proceed with abortion on unemancipated minor; clarifying that any abortion performed or induced in this state shall comply with vital statistics reporting requirements; declaring that a licensed medical professional who performs an unauthorized abortion is subject to discipline by applicable licensure board; requiring licensed medical professional to take certain actions with respect to child born alive during abortion; declaring that a licensed medical professional who knowingly and willfully violates requirements regarding a child born alive during an abortion is subject to discipline by applicable licensure board; declaring that a person other than a licensed medical professional who knowingly and willfully violates requirements regarding a child born alive during an abortion is guilty of offense of unauthorized practice of medicine and establishing penalties therefor; providing that if any provision of the Unborn Child Protection Act is judicially determined to be unconstitutional, the Unborn Child Protection Act is of no force and effect and provisions relating to parental notification of abortions performed on unemancipated minors, Women's

Right to Know Act, The Pain-Capable Unborn Child Protection Act, The Unborn Child Protection from Dismemberment Abortion Act, Born-Alive Abortion Survivors Protection Act, Unique Child With a Disability Protection and Education Act, and Women's Access to Health Care Act become immediately effective; requiring reporting of all abortions occurring in this state to the section of vital registration of the Department of Health and Human Resources and setting forth information to be collected; requiring the Department of Health and Human Resources provide routine reports detailing abortions performed to certain licensing boards and the Legislative Oversight Commission on Health and Human Resources Accountability; requiring proposed legislative rule regulating telehealth practice by a telehealth practitioner to include a prohibition on prescribing or dispensing an abortifacient via telehealth; establishing the criminal offense of performing or inducing, or attempting to perform or induce, an illegal abortion and creating penalties therefor.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

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

§9-2-11. Limitation on use of funds.

No funds from the Medicaid program accounts may be used to pay for the performance of an abortion unless the abortion is permitted by §16-2R-3 of this code.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON UNEMANCIPATED MINORS.

§16-2F-9. Severability.

Effective from the reenactment of this section during the third extraordinary session of the Legislature, 2022, this article is of no force or effect unless any provision of § 16-2R-1 *et seq.* of this code is judicially determined to be unconstitutional.

ARTICLE 2I. WOMEN’S RIGHT TO KNOW ACT.

§16-2I-9. Severability.

Effective from the reenactment of this section during the third extraordinary session of the Legislature, 2022, this article is of no force or effect unless any provision of § 16-2R-1 *et seq.* of this code is judicially determined to be unconstitutional.

ARTICLE 2M. THE PAIN-CAPABLE UNBORN CHILD PROTECTION ACT.

§16-2M-7. Severability.

Effective from the reenactment of this section during the third extraordinary session of the Legislature, 2022, this article is of no force or effect unless any provision of § 16-2R-1 *et seq.* of this code is judicially determined to be unconstitutional.

ARTICLE 2O. UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION ACT.

§16-2O-1. Unborn Child Protection from Dismemberment Abortion Act.

(a) *Definitions.* — For purposes of this section:

(1) “Abortion” means the same as that term is defined in section two, article two-f, chapter sixteen of this code.

(2) “Attempt to perform an abortion” means the same as that term is defined in section two, article two-m, chapter sixteen of this code.

(3) “Dismemberment abortion” means, with the purpose of causing the death of an unborn child, purposely to dismember a living unborn child and extract him or her one piece at a time from

the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush or grasp a portion of the unborn child's body to cut or rip it off. The term "dismemberment abortion" includes an abortion in which a dismemberment abortion is performed to cause the death of an unborn child but suction is subsequently used to extract fetal parts after the death of the unborn child. The term "dismemberment abortion" does not include an abortion which uses suction to dismember the body of the unborn child by sucking fetal parts into a collection container, an abortion following fetal demise which uses a suction curette, suction curettage or forceps to dismember the body of a dead unborn child, or when forceps are used following an induced fetal demise by other means.

(4) "Medical emergency" means the same as that term is defined in section two, article two-m, chapter sixteen of this code.

(5) "Physician" means the same as that term is defined in section two, article two-m, chapter sixteen of this code.

(6) "Reasonable medical judgement" means the same as that term is defined in section two, article two-M, chapter sixteen of this code.

(7) "Woman" means a female human being whether or not she has reached the age of majority.

(b) *Prohibition.* —

No person may perform, or attempt to perform, a dismemberment abortion as defined in this section, unless in reasonable medical judgment the woman has a condition that, on the basis of reasonable medical judgment, so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition may be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends

to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(c) *Enforcement.* —

(1) Any physician or other licensed medical practitioner who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have acted outside the scope of practice permitted by law or otherwise in breach of the standard of care owed to patients, and is subject to discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice.

(2) Any person, not subject to subdivision (1) of this subsection, who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have engaged in the unauthorized practice of medicine in violation of section thirteen, article three, chapter thirty of this code, and, upon conviction, subject to the penalties contained in that section.

(3) In addition to the penalties set forth in subdivisions (1) and (2) of this section, a patient may seek any remedy otherwise available to such patient by applicable law.

(4) No penalty may be assessed against any patient upon whom an abortion is performed or induced or attempted to be performed or induced.

(d) *Miscellaneous Provisions.* —

(1) This section does not prevent an abortion by any other method for any reason including rape and incest.

(2) Nothing in this section may be construed as creating or recognizing a right to abortion, nor a right to a particular method of abortion.

(e) Effective from the reenactment of this section during the third extraordinary session of the Legislature, 2022, this article is of no force or effect unless any provision of §16-2R-1 *et seq.* of this code is judicially determined to be unconstitutional.

ARTICLE 2P. BORN-ALIVE ABORTION SURVIVORS PROTECTION ACT.**§16-2P-1. Born-Alive Abortion Survivors Protection Act.**

(a) *Definitions.* — For purposes of this section:

(1) “Abortion” has the same meaning as that set forth in §16-2F-2 of this code.

(2) “Attempt to perform an abortion” has the same meaning as that set forth in §16-2M-2 of this code.

(3) “Born alive” means the complete expulsion or extraction from its mother of the fetus, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

(4) “Fetus” has the same meaning as that set forth in §16-2M-2 of this code.

(5) “Licensed Medical Professional” means a person licensed under Chapter 30 of this code practicing within his or her scope of practice.

(6) “Physician” has the same meaning as set forth in §16-2M-2 of this code.

(7) “Reasonable medical judgment” has the same meaning as set forth in §16-2M-2 of this code.

(b) *Prohibition.* —

(1) If a physician performs or attempts to perform an abortion that results in a child being born alive the physician shall:

(A) Exercise the same degree of reasonable medical judgment to preserve the life and health of the child as a physician would render to any other child born alive at the same gestational age; and

(B) Ensure that the child born alive is immediately transported and admitted to a hospital.

(2) A person who has knowledge of a failure to comply with the requirements of this subsection shall report the failure to the applicable licensing board.

(c) *Enforcement.* —

(1) Any physician or other licensed medical professional who knowingly and willingly violates subsection (b) of this section is considered to have breached the standard of care owed to patients, and is subject to discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice.

(2) Any person, not subject to subdivision (1) of this subsection, who knowingly and willfully violates subsection (b) of this section is guilty of the unauthorized practice of medicine in violation of §30-3-13 of this code, and, upon conviction thereof, is subject to the penalties contained in that section.

(3) In addition to the penalties set forth in this section, a patient may seek any remedy otherwise available to the patient by applicable law.

(4) No penalty may be assessed against any patient upon whom an abortion is performed or attempted to be performed.

(d) Effective from the reenactment of this section during the third extraordinary session of the Legislature, 2022, this article is of no force or effect unless any provision of §16-2R-1 *et seq.* of this code is judicially determined to be unconstitutional.

ARTICLE 2Q. UNBORN CHILD WITH A DISABILITY PROTECTION AND EDUCATION ACT.

§16-2Q-1. Abortion may not be performed because of a disability, except in a medical emergency.

(a) As used in this article:

“Abortion” means the same as that term is defined in §16-2F-2 of this code.

“Attempt to perform or induce an abortion” means the same as that term is defined in §16-2M-2 of this code.

“Because of a disability” means on account of the presence or presumed presence of a disability or diagnosis in a fetus including, but not limited to, chromosomal disorders or morphological malformations occurring as the result of atypical gene expressions.

“Commissioner” means the Commissioner of the Bureau for Public Health.

“Licensed medical professional” means a person licensed under Chapter 30 of this code practicing within his or her scope of practice.

“Medical emergency” means the same as that term is defined in §16-2I-1 of this code.

“Nonmedically viable fetus” means the same as that term is defined in §16-2M-2 of this code.

“Reasonable medical judgment” means the same as that term is defined in §16-2M-2 of this code.

(b) Except in a medical emergency or a nonmedically viable fetus, a licensed medical professional may not perform or attempt to perform or induce an abortion, unless the patient acknowledges that the abortion is not being sought because of a disability. The licensed medical professional shall document these facts in the patient’s chart and report such with the commissioner.

(c) Except in a medical emergency or a nonmedically viable fetus, a licensed medical professional may not intentionally perform or attempt to perform or induce an abortion of a fetus, if the abortion is being sought because of a disability.

(d) (1) If a licensed medical professional performs or induces an abortion on a fetus, the licensed medical professional shall,

within 15 days of the procedure, cause to be filed with the commissioner, on a form supplied by the commissioner, a report containing the following information:

(A) Date the abortion was performed;

(B) Specific method of abortion used;

(C) A statement from the patient confirming that the reason for the abortion was not because of a disability;

(D) Probable health consequences of the abortion to the patient;

(E) Whether a medical emergency existed; and

(F) Whether the fetus was a nonmedically viable fetus.

(2) The licensed medical professional shall sign the form as his or her attestation under oath that the information stated is true and correct to the best of his or her knowledge.

(3) Reports required and submitted under this section may not contain the name of the patient upon whom the abortion was performed or any other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who obtained or sought to obtain an abortion.

(g) A licensed medical professional that administers, or causes to be administered, a test for a disability or diagnosis to a fetus shall provide the patient with educational information made available by the bureau as provided in this section, within a reasonable time, if the test result confirms the presence of a disability.

(h) The Bureau for Public Health shall make the following available through the bureau's publicly accessible internet website:

(1) Up-to-date, evidence-based information about any in-utero disability or diagnosis that has been peer reviewed by medical experts and any national disability rights organizations. The information provided shall include the following:

(A) Physical, developmental, educational, and psychosocial outcomes;

(B) Life expectancy;

(C) Clinical course;

(D) Intellectual and functional development;

(E) Treatment options; and

(F) Any other information the bureau deems necessary;

(2) Contact information regarding first call programs and support services, including the following:

(A) Information hotlines specific to any in-utero fetal disabilities or conditions;

(B) Relevant resource centers or clearinghouses;

(C) Information about adoption specific to disabilities;

(D) National and local disability rights organizations; and

(E) Education and support programs.

(i) The information provided in accordance with this section shall conform to the applicable standard or standards provided in the Enhanced National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care as adopted by the United States Department of Health and Human Services and published in the Federal Register on September 24, 2013.

(j) A licensed medical professional who intentionally or recklessly performs or induces an abortion in violation of this section is considered to have acted outside the scope of practice permitted by law or otherwise in breach of the standard of care owed to a patient, and is subject to discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice.

(k) A person, not subject to subsection (f) of this section, who intentionally or recklessly performs or induces an abortion in violation of this article is considered to have engaged in the unauthorized practice of medicine in violation of §30-3-13 of this code, and upon conviction, subject to the penalties contained in that section.

(l) A penalty may not be assessed against any patient upon whom an abortion is performed or induced or attempted to be performed or induced.

(m) Effective from the reenactment of this section during the third extraordinary session of the Legislature, 2022, this article is of no force or effect unless any provision of §16-2R-1 *et seq.* of this code is judicially determined to be unconstitutional.

ARTICLE 2R. UNBORN CHILD PROTECTION ACT.

§16-2R-1. Legislative findings.

The Legislature finds that the State of West Virginia has a legitimate interest in protecting unborn lives and prohibiting abortions in West Virginia except in the circumstances set forth in this article.

§16-2R-2. Definitions.

The definitions set forth in this section are controlling for purposes of this article and of this code, irrespective of terms used in medical coding, notations, or billing documents. For purposes of this article:

“Abortion” means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a patient known to be pregnant and with intent to cause the death and expulsion or removal of an embryo or a fetus. This term does not include the terms “intrauterine fetal demise” or “stillbirth” or “miscarriage” as defined in this section.

"Attempt to perform or induce an abortion" means an act or the omission of an act that, under the circumstances as the person so

acting or omitting to act believes them to be, constitutes a substantial step in a course of conduct intended to culminate in an abortion.

“Born alive” means the complete expulsion or extraction of the fetus, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

“Commissioner” means the Commissioner of the Bureau for Public Health of the West Virginia Department of Health and Human Resources.

“Contraception” or “contraceptive” means the prevention of pregnancy by interfering with the process of ovulation, fertilization, or implantation.

“Ectopic” means a fertilized egg which is developing outside the uterus, or a fertilized egg is developing within parts of the uterus where it cannot be viable, including a cervical, cornual, or cesarean section scar implantations.

“Embryo” means the developing human from the time of fertilization until the end of the eighth week of gestation.

“Fertilization” means the fusion of a human spermatozoon with a human ovum.

“Fetal tissue research” means tissue or cells obtained from a dead embryo or fetus after a miscarriage, abortion, or intrauterine fetal demise.

“Fetus” means the developing human in the postembryonic period from nine weeks after fertilization until birth.

“Licensed medical professional” means a person licensed under §30-3-1 *et seq.*, or §30-14-1 *et seq.*, of this code.

"Implantation" means when a fertilized egg has attached to the lining of the wall of the uterus.

"Intrauterine fetal demise" or "stillbirth" means the unintended or spontaneous loss of a fetus after the 19th week of pregnancy.

"In vitro fertilization" means a procedure or procedures intended to improve fertility or prevent genetic problems and assist with conception.

"Medical emergency" means a condition or circumstance that so complicates the medical condition of a patient as to necessitate an abortion to avert serious risk of the patient's death or serious risk of substantial life-threatening physical impairment of a major bodily function, not including psychological or emotional conditions. This term includes a circumstance in which it is necessary to terminate a pregnancy of one or more fetuses to preserve the life of another fetus or fetuses. A condition is not deemed a medical emergency if based on a claim or diagnosis that the patient intends or may engage in conduct which results in the patient's death or in substantial and irreversible physical impairment of a major bodily function.

"Miscarriage" means the unintended or spontaneous loss of an embryo or a fetus before the 20th week of pregnancy. This term includes the medical terms "spontaneous abortion," "missed abortion," and "incomplete abortion".

"Nonviable" means an embryo or a fetus has a lethal anomaly which renders it incompatible with life outside of the uterus.

"Partial-birth abortion" means an abortion performed on a live fetus after partial vaginal delivery.

"Pregnancy" means the period of gestation after which a fertilized egg has implanted in the wall of a uterus.

"Reasonable medical judgment" means a medical judgment that would be made by a licensed medical professional who is

knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

“Unemancipated minor” means a person younger than 18 years of age who is not, or has not been, married or judicially emancipated.

§16-2R-3. Prohibition to perform an abortion.

(a) An abortion may not be performed or induced or be attempted to be performed or induced unless in the reasonable medical judgment of a licensed medical professional:

- (1) The embryo or fetus is nonviable;
- (2) The pregnancy is ectopic; or
- (3) A medical emergency exists.

(b) The prohibition set forth in subsection (a) of this section shall not apply to an adult within the first 8 weeks of pregnancy if the pregnancy is the result of sexual assault, as defined in §61-8B-1 *et seq.* of this code, or incest, as defined in §61-8-12 of this code, and at least 48 hours prior to the abortion the patient has reported the sexual assault or incest to a law enforcement agency having jurisdiction to investigate the complaint and provided the report to the licensed medical professional performing the abortion.

(c) The prohibition set forth in subsection (a) of this section shall not apply to a minor or an incompetent or incapacitated adult within the first 14 weeks of pregnancy if the pregnancy is the result of sexual assault, as defined in §61-8B-1 *et seq.* of this code, or incest, as defined in §61-8-12 of this code, and at least 48 hours prior to the abortion the patient has:

- (1) A report of the sexual assault or incest has been made to law enforcement having jurisdiction to investigate the complaint; or
- (2) The patient has obtained medical treatment for the sexual assault or incest or any injury related to the sexual assault or incest from a licensed medical professional or in a hospital, as defined in

§16-5B-1 of this code, which is licensed by the Office of Health Facility Licensure and Certification of the West Virginia Department of Health and Human Resources: *Provided*, That the licensed medical professional or hospital, as defined in §16-5B-1 of this code, which is licensed by the Office of Health Facility Licensure and Certification of the West Virginia Department of Health and Human Resources, and which performed or provided such medical treatment may not perform or provide the abortion arising from such sexual assault or incest.

(d) In all cases where a report of sexual assault or incest against a minor is made pursuant this subsection (c), the agency or person to whom the report is made shall report the sexual assault or incest to the Child Abuse and Neglect Investigations Unit of the West Virginia State Police within 48 hours.

(e) An abortion performed pursuant to this section may not use the partial birth abortion procedure.

(f) A surgical abortion performed or induced or attempted to be performed or induced pursuant to this section shall be in a hospital, as defined in §16-5B-1 of this code, which is licensed by the Office of Health Facility Licensure and Certification of the West Virginia Department of Health and Human Resources.

(g) An abortion performed or induced or attempted to be performed or induced shall be performed by a licensed medical professional who has West Virginia hospital privileges.

§16-2R-4. Not considered an abortion.

(a) Abortion does not include:

(1) A miscarriage;

(2) An intrauterine fetal demise or stillbirth;

(3) The use of existing established cell lines derived from aborted human embryos or fetuses;

(4) Medical treatment provided to a patient by a licensed medical professional that results in the accidental or unintentional injury or death of an embryo or a fetus;

(5) In vitro fertilization;

(6) Human fetal tissue research, when performed in accordance with Sections 498A and 498B of the PHS Act (42 U.S.C. 289g-1 and 289g-2) and 45 C.F.R. 46.204 and 46.206; or

(7) The prescription, sale, transfer, or use of contraceptive devices, instruments, medicines, or drugs.

(b) This article does not prevent the prescription, sale, or transfer of intrauterine contraceptive devices, other contraceptive devices, or other generally medically accepted contraceptive devices, instruments, medicines, or drugs for a patient who is not known to be pregnant and for whom the contraceptive devices, instruments, medicines, or drugs are prescribed, sold, or transferred solely for contraceptive purposes and not for the purpose of inducing or causing the termination of a known pregnancy.

§16-2R-5. Requirements when an abortion is performed on an unemancipated minor.

(a) If an abortion is performed on an unemancipated minor under the circumstances set forth in §16-2R-3(a) of this code, the licensed medical professional or his or her agent shall provide notice to the parent, guardian, or custodian of the unemancipated minor within 48 hours after the abortion is performed:

(1) Directly, in person, or by telephone to the parent, guardian, or custodian of the unemancipated minor; or

(2) By certified mail addressed to the parent, guardian, or custodian of the unemancipated minor at their usual place of residence, return receipt requested. The delivery shall be sent restricted delivery assuring that the letter is delivered only to the addressee. Time of delivery shall be deemed occur at 12:00 p.m. on the next day on which regular mail delivery takes place.

(b) If an abortion is performed on an unemancipated minor under the circumstances set forth in §16-2R-3(c) of this code, the licensed medical professional may not perform an abortion until notice of the pending abortion as required by this section is complete.

(1) A licensed medical professional or his or her agent may personally give notice directly, in person, or by telephone to the parent, guardian, or custodian of the unemancipated minor. Upon delivery of the notice, 48 hours shall pass until the abortion may be performed.

(2) A licensed medical professional or his or her agent may provide notice by certified mail addressed to the parent, guardian, or custodian of the unemancipated minor at their usual place of residence, return receipt requested. The delivery shall be sent restricted delivery assuring that the letter is delivered only to the addressee. Time of delivery shall be deemed to occur at 12:00 p.m. on the next day on which regular mail delivery takes place. Forty-eight hours shall pass from the date and time of presumed delivery until the abortion may be performed.

(3) Notice may be waived if the person entitled to notice certifies in writing that he or she has been notified. Notice is waived if the certified mail is refused.

(4) An unemancipated minor who objects to the notice being given to a parent, guardian, or custodian may petition for a waiver of the notice to the circuit court of the county in which the unemancipated minor resides. The petition shall be filed under seal.

(5) The petition is not required to be in any specific form and shall be sufficient if it fairly sets forth the facts and circumstances of the matter, but at a minimum shall contain the following information:

- (A) The age and educational level of the unemancipated minor;
- (B) The county in which the unemancipated minor resides; and

(C) A brief statement of the unemancipated minor's reason or reasons for the desired waiver of notification of the parent, guardian, or custodian of such unemancipated minor.

(6) A petition may not be dismissed nor may any hearing thereon be refused because of any actual or perceived defect in the form of the petition.

(7) The Supreme Court of Appeals is requested to prepare suggested form petitions and accompanying instructions and shall make the same available to the clerks of the circuit courts. The clerks shall make the form petitions and instructions available in the clerk's office.

(8) The proceedings held pursuant to this subsection shall be confidential and the court shall conduct the proceedings in camera. The court shall inform the unemancipated minor of her right to be represented by counsel. If the unemancipated minor desires the services of an attorney, an attorney shall be appointed to represent her, if the unemancipated minor advises the court under oath or affidavit that she is financially unable to retain counsel.

(9) The court shall conduct a hearing upon the petition forthwith, but may not exceed the next succeeding judicial day. The court shall render its decision immediately and enter its written order not later than 24 hours. All testimony, documents, evidence, petition, orders entered thereon and all records relating to the matter shall be sealed by the clerk and shall not be opened to any person except upon order of the court upon a showing of good cause.

(10) Notice as required by this subsection (b) shall be ordered waived by the court if the court finds either:

(A) That the unemancipated minor is sufficiently mature and informed to make the decision to proceed with the abortion independently and without the notification or involvement of her parent, guardian, or custodian; or

(B) That notification to the person or persons to whom notification would otherwise be required would not be in the best interest of the unemancipated minor.

(11) A confidential appeal to the Supreme Court of Appeals shall be available to any unemancipated minor to whom a court denies a petition under this subsection. An order authorizing an abortion without notification is not appealable.

(12) Filing fees are not required in any proceeding under this subsection.

§16-2R-6. Reporting by licensed medical professionals regarding abortion.

Any abortion performed or induced in this state is subject to the reporting requirements of §16-5-22.

§16-2R-7. Licensure action.

A licensed medical professional who knowingly and willfully performs, induces, or attempts to perform or induce an abortion, with the intent to violate the provisions of §16-2R-3 of this code, is subject to disciplinary action by his or her applicable licensing board. If the licensing board finds that the licensed medical professional has knowingly and willfully performed, induced, or attempted to perform or induce an abortion, with the intent to violate the provisions of §16-2R-3 of this code, the licensing board shall revoke medical professional's license.

§16-2R-8. Protection of aborted fetuses born alive.

(a) Whenever a licensed medical professional performs or induces, or attempts to perform or induce an abortion and the child is born alive, the licensed medical professional shall:

(1) Exercise the same degree of reasonable medical judgment to preserve the life and health of the child in the same manner as the licensed medical professional would render to any child alive at birth of the same gestational age;

(2) Ensure that the child is immediately transported and admitted to an appropriate medical facility.

(b) Any licensed medical professional who knowingly and willfully violates subsection (a) of this section shall be considered to have breached the standard of care owed to patients and is subject to discipline from the appropriate licensure board for such conduct, including but not limited to loss of professional license to practice.

(c) Any person, not subject to subsection (a) of this section, who knowingly and willfully violates subsection (a) of this section is guilty of the unauthorized practice of medicine in violation of §30-3-13 of this code and, upon conviction thereof, is subject to the penalties contained in that section: *Provided*, That the provisions of this subsection (c) enacted during the third extraordinary session of the Legislature, 2022, shall be effective 90 days from passage.

(d) In addition to the penalties referenced in this section, a patient may seek any remedy otherwise available to the patient by applicable law.

(e) This section shall not be construed to subject any patient upon whom an abortion is performed or induced or attempted to be performed or induced to a criminal penalty for any violation of this section as a principal, accessory or accomplice, conspirator, or aider and abettor.

§16-2R-9. Severability.

If any provision of §16-2R-1 *et seq.* of this code is judicially determined to be unconstitutional, this entire article shall be of no force and effect and the provisions of §16-2F-1 *et seq.*, §16-2I-1 *et seq.*, §16-2M-1 *et seq.*, §16-2O-1, §16-2P-1, §16-2Q-1, and §33-42-8 of this code shall become immediately effective.

ARTICLE 5. VITAL STATISTICS.

§16-5-22. Reports of abortions.

(a) Each abortion, as defined in §16-2R-2 of this code, which occurs in this state, shall be reported to the section of vital registration no later than the tenth day of the month following the month the procedure was performed by the person in charge of the hospital in which the abortion was performed. The State Registrar shall prepare a form or provide a suitable electronic process for the transmission of the reports from the institution or physician to the section of vital registration. Information to be collected shall include:

- (1) The gestational age of the fetus;
- (2) The state and county of residence of the patient;
- (3) The age of the patient;
- (4) The type of medical or surgical procedure performed;
- (5) The method of payment for the procedure;
- (6) Whether birth defects were known, and if so, what birth defects;
- (7) The date the abortion was performed;
- (8) The exception contained in §16-2R-3 of this code under which the abortion was performed; and
- (9) Related information as required by the commissioner, other applicable sections of this code, or by the legislative rule: *Provided, That:*

(A) No personal identifiers, including, but not limited to, name, street address, city, zip code, or social security number, will be collected; and

(B) Individual records may only be released for research purposes as approved by the state Registrar and may be released in a format designed to further protect the confidentiality of the woman as the state Registrar deems necessary.

(b) An analysis of the compiled information relating to induced terminations of pregnancy shall be included in the annual report of vital statistics.

(c) An electronic report of the compiled information under this section shall be provided to the licensing boards of the licensed medical professionals, as defined in §16-2R-2 of this code, and the Legislative Oversight Commission on Health and Human Resources Accountability on a quarterly basis.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-26. Telehealth practice.

(a) For the purposes of this section:

"Abortifacient" means any chemical or drug prescribed or dispensed with the intent of causing an abortion.

"Established patient" means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

"Health care practitioner" means a person authorized to practice under §30-3-1 *et seq.*, §30-3E-1 *et seq.*, §30-4-1 *et seq.*, §30-5-1 *et seq.*, §30-7-1 *et seq.*, §30-7A-1 *et seq.*, §30-8-1 *et seq.*, §30-10-1 *et seq.*, §30-14-1 *et seq.*, §30-16-1 *et seq.*, §30-20-1 *et seq.*, §30-20A-1 *et seq.*, §30-21-1 *et seq.*, §30-23-1 *et seq.*, §30-26-1 *et seq.*, §30-28-1 *et seq.*, §30-30-1 *et seq.*, §30-31-1 *et seq.*, §30-32-1 *et seq.*, §30-34-1 *et seq.*, §30-35-1 *et seq.*, §30-36-1 *et seq.*, §30-37-1 *et seq.* and any other person licensed under this chapter that provides health care services.

“Interstate telehealth services” means the provision of telehealth services to a patient located in West Virginia by a health care practitioner located in any other state or commonwealth of the United States.

“Registration” means an authorization to practice a health profession regulated by §30-1-1 *et seq.* of this code for the limited purpose of providing interstate telehealth services within the registrant’s scope of practice.

“Telehealth services” means the use of synchronous or asynchronous telecommunications technology or audio only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include internet questionnaires, e-mail messages, or facsimile transmissions.

(b) Unless provided for by statute or legislative rule, a health care board, referred to in §30-1-1 *et seq.* of this code, shall propose an emergency rule for legislative approval in accordance with the provisions of §29A-3-15 *et seq.* of this code to regulate telehealth practice by a telehealth practitioner. The proposed rule shall consist of the following:

(1) The practice of the health care service occurs where the patient is located at the time the telehealth services are provided;

(2) The health care practitioner who practices telehealth shall be:

(A) Licensed in good standing in all states in which he or she is licensed and not currently under investigation or subject to an administrative complaint; and

(B) Registered as an interstate telehealth practitioner with the appropriate board in West Virginia;

(3) When the health care practitioner-patient relationship is established;

(4) The standard of care for the provision of telehealth services. The standard of care shall require that with respect to the established patient, the patient shall visit an in-person health care practitioner within 12 months of using the initial telemedicine service or the telemedicine service shall no longer be available to the patient until an in-person visit is obtained. This requirement may be suspended, in the discretion of the health care practitioner, on a case-by-case basis, and it does not to the following services: acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care;

(5) A prohibition of prescribing any controlled substance listed in Schedule II of the Uniform Controlled Substance Act, unless authorized by another section: *Provided*, That the prescribing limitations contained in this section do not apply to a physician or a member of the same group practice with an established patient;

(6) Establish the conduct of a registrant for which discipline may be imposed by the board of registration;

(7) Establish a fee, not to exceed the amount to be paid by a licensee, to be paid by the interstate telehealth practitioner registered in the state;

(8) A reference to the Board's discipline process; and

(9) A prohibition of prescribing or dispensing an abortifacient.

(c) A registration issued pursuant to the provisions of or the requirements of this section does not authorize a health care professional to practice from a physical location within this state without first obtaining appropriate licensure.

(d) By registering to provide interstate telehealth services to patients in this state, a health care practitioner is subject to:

(1) The laws regarding the profession in this state, including the state judicial system and all professional conduct rules and standards incorporated into the health care practitioner's practice act and the legislative rules of registering board; and

(2) The jurisdiction of the board with which he or she registers to provide interstate telehealth services, including such board's complaint, investigation, and hearing process.

(e) A health care professional who registers to provide interstate telehealth services pursuant to the provisions of or the requirements of this section shall immediately notify the board where he or she is registered in West Virginia and of any restrictions placed on the individual's license to practice in any state or jurisdiction.

(f) A person currently licensed in this state is not subject to registration but shall practice telehealth in accordance with the provisions of this section and the rules promulgated thereunder.

CHAPTER 33. INSURANCE.

ARTICLE 42. WOMEN'S ACCESS TO HEALTH CARE ACT.

§33-42-8. Partial-birth abortions prohibited; criminal penalties; exceptions; hearings by state Board of Medicine.

(a) Any person who knowingly performs a partial-birth abortion and thereby kills a human fetus is guilty of a felony and, shall be fined not less than \$10,000, nor more than \$50,000, or imprisoned not more than two years, or both fined and imprisoned. This section does not apply to a partial-birth abortion that is necessary to save the life of a mother when her life is endangered by a physical disorder, illness or injury.

(b) A physician charged pursuant to this section may seek a hearing before the West Virginia Board of Medicine on the issue

of whether the physician's act was necessary to save the life of a mother pursuant to the provisions of subsection (a) of this section. The findings of the Board of Medicine are admissible on this issue at the trial of the physician. Upon a motion by the defendant, the court shall delay the beginning of trial for not more than thirty days to permit the Board of Medicine hearing to take place.

(c) No woman may be prosecuted under the provisions of this section for having a partial-birth abortion, nor may she be prosecuted for conspiring to violate the provisions of this section.

(d) Effective from the reenactment of this section during the third extraordinary session of the Legislature, 2022, this article is of no force or effect unless any provision of §16-2R-1 *et seq.* of this code is judicially determined to be unconstitutional.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-8. Abortion; penalty.

(a) Any person other than a licensed medical professional, as defined in §16-2R-2 of this code, who knowingly and willfully performs, induces, or attempts to perform or induce an abortion, as defined in §16-2R-2 of this code, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than three nor more than 10 years.

(b) A person who was formerly a licensed medical professional, as defined in §16-2R-2 of this code and whose license has been revoked pursuant to the provisions of §16-2R-7 of this code, and who knowingly and willfully performs, induces, or attempts to perform or induce a subsequent abortion, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than three nor more than 10 years.

(c) This section shall not be construed to subject any pregnant female upon whom an abortion is performed or induced or attempted to be performed or induced to a criminal penalty for any violation of this section as a principal, accessory, accomplice, conspirator, or aider and abettor.

(d) The amendments to this section enacted during the third extraordinary session of the Legislature, 2022, shall be effective 90 days from passage.

LEGISLATURE OF WEST VIRGINIA

ACTS

FOURTH EXTRAORDINARY SESSION, 2022

CHAPTER 1

(S. B. 4002 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed September 12, 2022; in effect from passage]
[Approved by the Governor on September 13, 2022.]

AN ACT making a supplementary appropriation by adding a new item of appropriation and increasing the expenditure of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Transportation, Division of Highways, fund 0620, fiscal year 2023, organization 0803, by supplementing and amending chapter 11, Acts of the Legislature, Regular Session, 2022, known as the budget bill for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 12, 2022, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included an estimate of revenues for the fiscal years 2022 and 2023, less net appropriation balances forwarded and regular appropriations for the fiscal years 2022 and 2023; and

Whereas, The Governor submitted to the Legislature an Executive Message dated September 12, 2022, which included an updated Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2022, and further

included an estimate of revenues for the fiscal year 2023, less net appropriation balances forwarded and regular appropriations for the fiscal year 2023; and

Whereas, It appears from the Executive Message dated September 12, 2022, Statement of the State Fund, General Revenue there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That chapter 11, Acts of the Legislature, Regular Session, 2022, 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

77a – Division of Highways

(WV Code Chapters 17 and 17C)

Fund 0620 FY 2023 Org 0803

	Appropriation	General Revenue Fund
1 Directed Transfer - Surplus	70099	\$ 150,000,000

The above appropriation shall be transferred to the Department of Transportation, Division of Highways, fund 9017.



CHAPTER 2

(S. B. 4003 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed September 12, 2022; in effect from passage]
[Approved by the Governor on September 13, 2022.]

AN ACT supplementing, amending and increasing existing items of appropriation from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2023, organization 0803, for the fiscal year ending June 30, 2023.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 12, 2022, which included a Statement of the State Road Fund, setting forth therein the cash balance as of July 1, 2021, and further included an estimate of revenues for the fiscal years 2022 and 2023, less net appropriation balances forwarded and regular appropriations for the fiscal years 2022 and 2023; and

Whereas, The Governor submitted to the Legislature an Executive Message dated September 12, 2022, which included an updated Statement of the State Road Fund, setting forth therein the cash balance as of July 1, 2022, and further included a revised estimate of revenues for the fiscal year 2023, less net appropriation balances forwarded and regular appropriations for the fiscal year 2023; and

Whereas, It appears from the Executive Message dated September 12, 2022, Statement of the State Road Fund there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2023; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2023, to fund 9017, fiscal year 2023, organization 0803, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

110 – Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2023 Org 0803

	Appro- p-riation	State Road Fund
4 Maintenance.....	23700	125,000,000
6 Equipment Revolving.....	27600	25,000,000



CHAPTER 3

(S. B. 4001 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed September 12, 2022; in effect from passage]
[Approved by the Governor on September 13, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2-21, relating to the establishment of the Certified Industrial Business Expansion Development Program; granting authority to the Department of Economic Development to administer the Certified Industrial Business Expansion Development Program; authorizing rule-making authority; establishing procedures for certifying high impact industrial business development districts; limiting the number of districts that can be certified by the Department of Economic Development; setting forth requirements for providing electric service within a certified high impact industrial business development district; exempting any such projects from Public Service Commission requirements if certain conditions are met; limiting the eligible electric customers able to take advantage of a certified high impact industrial business development district; authorizing the Public Service Commission to approve special rates for a certified high impact industrial business development district in certain circumstances; authorizing the Public Service Commission to approve or establish special rates for a certified high impact industrial business development district in certain circumstances; and setting forth an expiration date for the program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.**§5B-2-21. Certified Industrial Business Expansion Development Program.**

(a) *Program established.* — The Certified Industrial Business Expansion Development Program is hereby created and is to be administered as a program within the Department of Economic Development to encourage the continued development, construction, operation, maintenance, and expansion in West Virginia of high impact industrial plants and facilities, in certain circumstances where the availability of electricity generated from renewable sources is demonstrated to be necessary. In order to effectuate the purposes of this section, the Department of Economic Development or any agency, division, or subdivision thereof, may propose for promulgation of legislative rules, including emergency rules, in accordance with §29A-3-1 *et seq.* of this code.

(b) *District certification.* — The Secretary of the Department of Economic Development may identify and certify high impact industrial business development districts in this state upon a finding that the following requirements are met:

(1) Certification of the high impact industrial business development district and location of new or expanded businesses within the district will have a significant and positive economic impact on the state;

(2) Certification of the high impact industrial business development district is necessary to attract at least two businesses to locate or expand in this state;

(3) The area to be certified as a high impact industrial business development district shall be no greater than 2,250 acres and must be located on land sold or leased by the state, its agencies, or political subdivisions as defined in §29-12A-3(c) of this code with a purpose of creating a high impact industrial business

development district or on land that has been previously used for coal mining operations in the state; and

(4) The electricity generated from renewable sources within the district will be used within the district or delivered to the wholesale market.

The Secretary of the Department of Economic Development may not certify more than two high impact industrial business development districts. A designation made pursuant to this section by the secretary as to the certification of a high impact industrial business development district is final.

(c) *Providing electric service within a certified high impact industrial business development district.* — Within a high impact industrial business development district, any person, firm, corporation, or entity seeking to provide electric service through the generation of renewable sources from within the high impact industrial business development district of electricity to businesses locating within the certified high impact industrial business development district may:

(1) Not be subject to the jurisdiction of the Public Service Commission with respect to rates, obtaining a certificate of convenience and necessity, conditions of service or complaints pursuant to chapter 24 of this code;

(2) Not be subject to the net metering and interconnection standards as set forth in § 24-2F-8 of this code;

(3) Elect to qualify as an exempt wholesale generator under federal law for purposes of furnishing electric service through the generation of renewable sources to a utility or regional transmission organization without being subject to the Public Service Commission's siting certificate requirements as set forth in §24-2-1(d), §24-2-11c, or §24-2-1o of this code;

(4) Provide any such electric service to businesses making a capital investment in a new or expanded industrial facility located within the certified high impact industrial business development district; and

(5) Not provide any such electric service for purposes of encouraging businesses already receiving electric service from a regulated utility in this state to relocate to the certified high impact industrial business development district.

(d) *Eligible electric retail customers.* — In order to take advantage of the provisions of this section, an industrial plant or facility choosing to locate and operate within a high impact industrial business development district must constitute new electric generating load. Any owner or tenant of an industrial plant or facility that has not previously received electric service from a regulated public electric utility located within this state, or who is making a capital investment in a new industrial facility within the district shall be considered eligible new electric generating load. Electric service to any such industrial plant or facility shall be considered new electric generating load so long as any customer making a new capital investment within the district does not decrease the load of an existing facility outside the district in this state in conjunction with the new capital investment within the district, and regardless of whether or not a person or entity previously received service from a public electric utility at or near the same location prior to the certification of the high impact industrial business development district.

An eligible industrial plant or facility choosing to locate and operate within a high impact industrial business development district is not required to connect with and use any public electric utility: *Provided*, That any plant or facility choosing to do so may participate in net metering with a public electric utility without being subject to the net metering and interconnection standards set forth in §24-2F-8 of this code: *Provided, however*, That any such connection with and use of a public electric utility for purposes of the initial construction and development within the high impact industrial business development district shall not impact an industrial plant or facility's status as new electric generating load in order to take advantage of the provisions of this section.

(e) *Special rates.* — In furtherance of the creation of a high impact industrial business development district, the Public Service Commission may approve special electric utility rates for an

eligible electric retail electric customer within the high impact industrial business development district. An eligible retail electric customer seeking to apply for a special rate shall first enter into negotiations with the utility that provides it with electric power, regarding the terms and conditions of a mutually agreeable special rate. If the negotiations result in an agreement between the eligible retail electric customer and the utility, the eligible retail electric customer and the utility shall make a joint filing with the Public Service Commission seeking approval of the proposed special rate. If the negotiations are unsuccessful, the eligible retail electric customer may file a petition with the Public Service Commission to consider establishing a special rate. The Public Service Commission shall have the authority to establish a special rate upon the filing of either a joint filing or a petition pursuant to this section.

(f) The provisions of this section shall expire on June 30, 2028: *Provided*, That the expiration of this section shall not affect any high impact industrial business development district previously approved by the secretary.

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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591 84	647 60	734 167
594 194	649 332	735 120
597 166	661 330	737 260
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DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

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Senate Bills = 1-3 Digits

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7.....678	39.....3517	71.....2835
8.....2024	40.....3518	72.....2845
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DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

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Senate Bills = 1-3 Digits

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193.....	577	224.....	3328	255	613
194.....	594	225.....	3370	256	617
195.....	2540	226.....	83	257	674
196.....	3215	227.....	208	258	679
197.....	3443	228.....	240	259	730
198.....	335	229.....	244	260	737
199.....	345	230.....	247	261	2436
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208.....	146	239.....	3317	270	3306
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211.....	463	242.....	423	273	444
212.....	2310	243.....	449	274	2862
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Senate Bills = 1-3 Digits

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DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

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DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

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1020 29	1032 17	

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

First Extraordinary Session, 2023

House Bills = 3 Digits

Senate Bills = 4 Digits

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DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Third Extraordinary Session, 2022

HOUSE BILLS

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DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Third Extraordinary Session, 2022

House Bills = 3 Digits

<hr/> <hr/>	
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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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