

1 **H. B. 2349**

2
3 (By Delegates Moore, Manypenny, Iaquinta,
4 Manchin and Hatfield)

5
6 [Introduced January 12, 2011; referred to the
7 Committee on Health and Human Resources then Finance.]

8
9
10 A BILL to repeal §18-10K-1, §18-10K-2, §18-10K-3, §18-10K-4, §18-
11 10K-5, and §18-10K-6 of the Code of West Virginia, 1931, as
12 amended; to amend and reenact §7-14E-2 of said code; to amend
13 said code by adding thereto a new article, designated §16-43-
14 1, §16-43-2 and §16-43-3; and to amend and reenact §50-3-2b of
15 said code; and to amend and reenact §59-1-11a of said code,
16 all relating to the creation of programs for the treatment of
17 traumatic brain injury; creating a special revenue fund;
18 assessing fees for specified activities; directing those fees
19 to the fund; authorizing the state Medicaid agency to apply
20 for a home and community based waiver to serve eligible
21 individuals; and authorizing the Bureau of Behavioral Health
22 and Health Facilities to create and administer a state program
23 for eligible individuals.

24 *Be it enacted by the Legislature of West Virginia:*

25 That §18-10K-1, §18-10K-2, §18-10K-3, §18-10K-4, §18-10K-5,

1 and §18-10K-6 of the Code of West Virginia, 1931, as amended, be
 2 repealed; that §7-14E-2 of said code be amended and reenacted, that
 3 said code be amended by adding thereto a new article, designated
 4 §16-43-1, §16-43-2 and §16-43-3; that §50-3-2b of said code be
 5 amended and reenacted; and that §59-1-11a of said code be amended
 6 and reenacted, all to read as follows:

7 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

8 **ARTICLE 14E. ESTABLISHMENT OF CERTAIN FEES; DEDICATION OF FEE TO**
 9 **DEPUTY SHERIFF'S RETIREMENT SYSTEM AND THE**
 10 **TRAUMATIC BRAIN INJURY FUND.**

11 **§7-14E-2. Statewide uniform fees for reports generated by sheriff's**
 12 **offices; dedication of fees.**

13 (a) The county commission of each county in this state shall
 14 set a fee for obtaining certain reports. This fee shall be set at
 15 a minimum of ~~ten dollars~~ \$20 for each report, with a maximum of
 16 ~~twenty dollars~~ \$30 for each report. Ten dollars of the charge for
 17 each report shall be deposited into the Deputy Sheriff Retirement
 18 Fund created in section six, article fourteen-d of this chapter.
 19 Ten dollars of the charge for each report shall be deposited into
 20 the Traumatic Brain Injury Fund created in section two, article
 21 forty-three, chapter sixteen of this code. The reports for which
 22 a charge may be made are traffic accident reports, criminal
 23 investigation reports, incident reports and property reports.

1 (b) All sheriff's offices in this state shall collect a fee of
2 \$5 for performing the following services: Adult private employment
3 fingerprinting; fingerprinting for federal firearm permits; motor
4 vehicle number identification; adult identification cards; and
5 photo-identification cards. Upon collection, these fees shall be
6 deposited into the Deputy Sheriff Retirement Fund created in
7 section six, article fourteen-d of this chapter.

8 (c) All sheriff's offices in this state shall collect a fee of
9 \$5 for each nongovernmental background investigation report. Upon
10 collection, these fees shall be deposited into the Deputy Sheriff
11 Retirement Fund created in section six, article fourteen-d of this
12 chapter.

13 (d) No charge may be made under this section for any report or
14 reports made to governmental agencies.

15 (e) Any county commission which fails to make any payment due
16 the Deputy Sheriff Retirement Fund and the Traumatic Brain Injury
17 Fund by the fifteenth day following the end of each calendar month
18 in which a fee or other contribution is received by the county's
19 sheriff may be required to pay the actuarial rate of interest lost
20 on the total amount owed for each day the payment is delinquent.
21 Accrual of the loss of earnings owed by the delinquent county
22 commission commences after the fifteenth day following the end of
23 the calendar month in which the fee or other contribution is due
24 and continues until receipt of the delinquent amount. Interest

1 compounds daily and the minimum surcharge is \$50.

2 **CHAPTER 16. PUBLIC HEALTH.**

3 **ARTICLE 43. WEST VIRGINIA TRAUMATIC BRAIN INJURY ACT.**

4 **§16-43-1. Traumatic Brain Injury Programs.**

5 (a) The Bureau for Medical Services is hereby authorized to
6 apply to the Centers for Medicare and Medicaid Services for a
7 waiver to administer a home and community based services program
8 for persons with traumatic brain injury who meet the eligibility
9 requirements for those services.

10 (b) There is hereby created within the Bureau for Behavioral
11 Health and Health Facilities, a state program for persons with a
12 traumatic brain injury. The bureau shall develop the eligibility
13 requirements for the state program and develop the appropriate
14 array of services, which may include, but not be limited to, case
15 management; rehabilitative therapies and services; attendant care;
16 home accessibility modifications; and family support services. The
17 array of services may change annually dependent upon the amount of
18 funding available for the program. This program is limited to
19 persons with traumatic brain injury who do not meet the eligibility
20 requirements for the program offered pursuant to subsection (a) of
21 this section.

22 (c) For purposes of this article, "traumatic brain injury" is
23 a nondegenerative, noncongenital insult to the brain caused by an

1 external physical force resulting in total or partial disability
2 and or psycho-social impairment.

3 **§16-43-2. Fund created; administration of fund.**

4 (a) There is created in the State Treasury a special revenue
5 account to be designated the "Traumatic Brain Injury Fund" which
6 shall be an interest-bearing account that may be invested and
7 retain all earnings.

8 (b) All moneys received and deposited into the State Treasury
9 and credited to the Traumatic Brain Injury Fund shall be expended
10 exclusively in accordance with the provisions set forth in this
11 article. Fifty percent of the moneys in the fund shall be
12 transferred to the state Medicaid agency for certification of the
13 state match for the home and community based waiver program as
14 authorized in this article. Fifty percent of the moneys in the
15 fund shall be transferred to the Bureau for Behavioral Health and
16 Health Facilities for the state program to provide services for
17 those persons with traumatic brain injury that are otherwise
18 ineligible for the waiver services.

19 (c) Nothing in this article may be construed to mandate
20 additional funding for the traumatic brain injury programs or to
21 require any additional appropriation by the Legislature.

22 **§16-43-3. Limitations and priorities for use of the state program**
23 **funds.**

24 The Bureau for Behavioral Health and Health Facilities shall

1 establish priorities and criteria for the provision of services in
2 the state program. In all instances, moneys expended for the state
3 program shall be as a payer of last resort and only for citizens of
4 this state. An eligible individual shall use comparable benefits
5 and services that are available prior to the expenditure of moneys
6 available to that individual through the fund.

7 **CHAPTER 50. MAGISTRATE COURTS.**

8 **ARTICLE 3. COSTS, FINES AND RECORDS.**

9 **§50-3-2b. Additional costs in certain criminal proceedings.**

10 (a) In each criminal case before a magistrate court in which
11 the defendant is convicted, whether by plea or at trial, under the
12 provisions of section two, article five, chapter seventeen-c of
13 this code or section eighteen-b, article seven, chapter twenty of
14 this code, there shall be imposed, in addition to other costs,
15 fines, forfeitures or penalties as may be allowed by law, costs in
16 the amount of \$55. A magistrate court shall, on or before the tenth
17 day of the month following the month in which the costs imposed in
18 this section were collected, remit an amount equal to the amount
19 from each of the criminal proceedings in which the costs specified
20 in this section were collected to the magistrate court clerk or, if
21 there is no magistrate court clerk, to the clerk of the circuit,
22 together with information as may be required by the rules of the
23 Supreme Court of Appeals and the rules of the office of chief
24 inspector. At the end of each month, for purposes of further

1 defraying the cost to the county of enforcing the provisions of
2 section two, article five, chapter seventeen-c of this code or
3 section eighteen-b, article seven, chapter twenty of this code and
4 related provisions, these moneys shall be paid to the sheriff of
5 the county and deposited in the General Revenue Fund of the county.
6 The provisions of this section shall be effective after June 30,
7 2004.

8 (b) In addition to the costs imposed in subsection (a) of this
9 section, in each criminal case before a magistrate court in which
10 the defendant is convicted, whether by plea or at trial, under the
11 provisions of section two, article five, chapter seventeen-c of
12 this code or section eighteen-b, article seven, chapter twenty of
13 this code, there shall be imposed costs in the amount of \$50, in
14 addition to other costs, fines, forfeitures or penalties as may be
15 allowed by law. A magistrate court shall, on or before the tenth
16 day of the month following the month in which the costs imposed in
17 this section were collected, remit an amount equal to the amount
18 from each of the criminal proceedings in which the costs specified
19 in this subsection were collected to the magistrate court clerk or,
20 if there is no magistrate court clerk, to the clerk of the circuit,
21 together with information as may be required by the rules of the
22 Supreme Court of Appeals and the rules of the office of chief
23 inspector. At the end of each month, the magistrate court clerk
24 shall deposit the moneys in the State Treasury to the credit of the

1 "Traumatic Brain Injury Fund" as set forth in section two, article
2 forty-three, chapter sixteen.

3 **CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL**

4 **ADVERTISEMENTS.**

5 **§59-1-11a. Additional costs in certain criminal proceedings.**

6 (a) Except as provided in subsections (b), ~~and~~ (c), (d) and
7 (e) of this section, in each criminal case before a circuit court
8 in which the defendant is convicted, whether by plea or at trial,
9 under the provisions of section two, article five, chapter
10 seventeen-c of this code or section eighteen-b, article seven,
11 chapter twenty of this code, there shall be imposed, in addition to
12 other costs, fines, forfeitures or penalties as may be allowed by
13 law, costs in the amount of \$55. For purposes of further defraying
14 the cost to the county of enforcing the provisions of section two,
15 article five, chapter seventeen-c of this code or section eighteen-
16 b, article seven, chapter twenty of this code and related
17 provisions, the clerk of the circuit court shall, on or before the
18 tenth day of the month following the month in which the costs
19 imposed in this section were collected, remit an amount equal to
20 the amount from each of the criminal proceedings in which the costs
21 specified in this subsection were collected to the sheriff of the
22 county who shall deposit the same in the General Revenue Fund of
23 the county.

24 (b) In each criminal case before a circuit court upon appeal

1 from a magistrate court in which the defendant is convicted,
2 whether by plea or at trial in the circuit court, under the
3 provisions of section two, article five, chapter seventeen-c of
4 this code or section eighteen-b, article seven, chapter twenty of
5 this code, there shall be imposed, in addition to other costs,
6 fines, forfeitures or penalties as may be allowed by law, costs in
7 the amount of \$55. For purposes of further defraying the cost to
8 the county of enforcing the provisions of section two, article
9 five, chapter seventeen-c of this code or section eighteen-b,
10 article seven, chapter twenty of this code and related provisions,
11 the clerk of the circuit court shall, on or before the tenth day of
12 the month following the month in which the costs imposed in this
13 section were collected, remit an amount equal to the amount from
14 each of the criminal proceedings in which the costs specified in
15 this subsection were collected to the sheriff of the county who
16 shall deposit the same in the General Revenue Fund of the county.
17 The provisions of this subsection shall not require payment of the
18 costs imposed by this subsection to the circuit court where the
19 costs have been paid in the magistrate court.

20 (c) In addition to the costs imposed in subsection (b) of this
21 section, in each criminal case before a circuit court upon appeal
22 from a magistrate court in which the defendant is convicted,
23 whether by plea or at trial in the circuit court, under the
24 provisions of section two, article five, chapter seventeen-c of

1 this code or section eighteen-b, article seven, chapter twenty of
2 this code, there shall be imposed costs in the amount of \$50, in
3 addition to other costs, fines, forfeitures or penalties as may be
4 allowed by law. The clerk of the circuit court shall, on or before
5 the tenth day of the month following the month in which the costs
6 imposed in this section were collected, remit an amount equal to
7 the amount from each of the criminal proceedings in which the costs
8 specified in this subsection were collected to the State Treasury
9 to the credit of the "Traumatic Brain Injury Fund" as set forth in
10 section two, article forty-three, chapter sixteen of this code.

11 ~~(c)~~ (d) In each criminal case before a circuit court upon
12 appeal from a municipal proceeding in which the defendant is
13 convicted, whether by plea or at trial in the circuit court, under
14 the provisions of a municipal ordinance which has the same elements
15 as an offense described in section two, article five, chapter
16 seventeen-c of this code or section eighteen-b, article seven,
17 chapter twenty of this code, there shall be imposed, in addition to
18 other costs, fines, forfeitures or penalties as may be allowed by
19 law, costs in the amount of \$55. For purposes of further defraying
20 the cost to the municipality of enforcing the provisions of the
21 ordinance or ordinances described in this subsection and related
22 provisions, the clerk of the circuit court shall, on or before the
23 tenth day of the month following the month in which the costs
24 imposed in this section were collected, remit an amount equal to

1 the amount from each of the criminal proceedings in which the costs
2 specified in this subsection were collected to the clerk of the
3 municipal court or other person designated to receive fines and
4 costs for the municipality from which the conviction was appealed
5 who shall deposit these moneys in the General Revenue Fund of the
6 municipality. The provisions of this subsection shall not require
7 payment of the costs imposed by this subsection to the circuit
8 court where the costs have been paid to the clerk of the municipal
9 court or other person designated to receive fines and costs for the
10 municipality.

11 (e) In addition to the costs imposed in subsection (d) of this
12 section, in each criminal case before a circuit court upon appeal
13 from a municipal proceeding in which the defendant is convicted,
14 whether by plea or at trial in the circuit court, under the
15 provisions of a municipal ordinance which has the same elements as
16 an offense described in section two, article five, chapter
17 seventeen-c of this code or section eighteen-b, article seven,
18 chapter twenty of this code, there shall be imposed costs in the
19 amount of \$50, in addition to other costs, fines, forfeitures or
20 penalties as may be allowed by law. The clerk of the circuit court
21 shall, on or before the tenth day of the month following the month
22 in which the costs imposed in this section were collected, remit an
23 amount equal to the amount from each of the criminal proceedings in
24 which the costs specified in this subsection were collected to the

1 State Treasury to the credit of the "Traumatic Brain Injury Fund"
2 as set forth in section two, article forty-three, chapter sixteen.

3 ~~(d) The provisions of this section shall be effective after~~
4 ~~the thirtieth day of June, two thousand four.~~

NOTE: The purpose of this bill is to establish a funding source and programs for persons with traumatic brain injury.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.

§16-43-1, §16-43-2 and §16-43-3 are new; therefore, it has been completely underscored.