

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 239

SENATORS KARNES, BLAIR, FERNS, RUCKER AND WELD,

original sponsors

[Passed April 8, 2017; in effect 90 days from passage]

1 AN ACT to amend and reenact §3-8-12 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §21-1A-4 of said code; and to amend and reenact §21-5-1 and §21-5-3 of
3 said code, all relating to withholding or diverting an employee's wages or salary;
4 prohibiting any person from coercing or intimidating any employee into making a political
5 contribution or engaging in any form of political activity; prohibiting employers and any
6 other persons responsible for the disbursement of wages and salaries from withholding or
7 diverting any portion of an employee's wages or salary for political activities without
8 express, written authorization; providing that the prohibition against withholding or
9 diverting wages for political activities applies to any written or oral contract or agreement
10 entered into, modified, renewed or extended on or after July 1, 2017, and shall not
11 otherwise apply or abrogate a written or oral contract or agreement in effect on or before
12 June 30, 2017; setting forth requirements for employees to provide written authorization
13 for disbursement of wages and salaries by an employer or other person for political
14 activities; defining the term "agency shop fees"; modifying definition of "deductions" to
15 include only those amounts required by law or court order to be withheld and employer-
16 sponsored or employer-provided plan; modifying the definition of "deductions" to exclude
17 amounts for union or club dues, charities and other withholdings that are not employer-
18 sponsored or employer-provided plans; making it an unfair labor practice under the Labor-
19 Management Relations Act for the Private Sector for a labor organization to use agency
20 shop fees paid by nonmembers for political activities, unless expressly authorized by the
21 individual; removing the requirement that an assignment or order be acknowledged by the
22 party making the same before a notary public or other official authorized to take
23 acknowledgments; requiring that an assignment or order shall be in writing; and providing
24 that the changes made to the assignment of wages during the 2017 West Virginia
25 Legislature apply to any written or oral contract or agreement entered into, modified,

26 renewed or extended on or after July 1, 2017, and shall not otherwise apply or abrogate
27 a written or oral contract or agreement in effect on or before June 30, 2017.

Be it enacted by the Legislature of West Virginia:

1 That §3-8-12 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §21-1A-4 of said code be amended and reenacted; and that §21-5-1 and §21-5-
3 3 of said code be amended and reenacted, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

**§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising;
solicitation of contributions; intimidation and coercion of employees; promise of
employment or other benefits; limitations on contributions; public contractors;
penalty.**

1 (a) A person may not publish, issue or circulate, or cause to be published, issued or
2 circulated, any anonymous letter, circular, placard, radio or television advertisement or other
3 publication supporting or aiding the election or defeat of a clearly identified candidate.

4 (b) An owner, publisher, editor or employee of a newspaper or other periodical may not
5 insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which
6 tends to influence the voting at any election, unless directly designating it as a paid advertisement
7 and stating the name of the person authorizing its publication and the candidate in whose behalf
8 it is published.

9 (c) A person may not, in any room or building occupied for the discharge of official duties
10 by any officer or employee of the state or a political subdivision of the state, solicit orally or by
11 written communication delivered within the room or building, or in any other manner, any
12 contribution of money or other thing of value for any party or political purpose, from any
13 postmaster or any other officer or employee of the federal government, or officer or employee of
14 the state, or a political subdivision of the state. An officer, agent, clerk or employee of the federal

15 government, or of this state, or any political subdivision of the state, who may have charge or
16 control of any building, office or room, occupied for any official purpose, may not knowingly permit
17 any person to enter any building, office or room, occupied for any official purpose for the purpose
18 of soliciting or receiving any political assessments from, or delivering or giving written solicitations
19 for, or any notice of, any political assessments to, any officer or employee of the state, or a political
20 subdivision of the state.

21 (d) Except as provided in section eight of this article, a person entering into any contract
22 with the state or its subdivisions, or any department or agency of the state, either for rendition of
23 personal services or furnishing any material, supplies or equipment or selling any land or building
24 to the state, or its subdivisions, or any department or agency of the state, if payment for the
25 performance of the contract or payment for the material, supplies, equipment, land or building is
26 to be made, in whole or in part, from public funds may not, during the period of negotiation for or
27 performance under the contract or furnishing of materials, supplies, equipment, land or buildings,
28 directly or indirectly, make any contribution to any political party, committee or candidate for public
29 office or to any person for political purposes or use; nor may any person or firm solicit any
30 contributions for any purpose during any period.

31 (e) A person may not, directly or indirectly, promise any employment, position, work,
32 compensation or other benefit provided for, or made possible, in whole or in part, by act of the
33 Legislature, to any person as consideration, favor or reward for any political activity for the support
34 of or opposition to any candidate, or any political party in any election.

35 (f) Except as provided in section eight of this article, a person may not, directly or indirectly,
36 make any contribution in excess of the value of \$1,000 in connection with any campaign for
37 nomination or election to or on behalf of any statewide office, in connection with any other
38 campaign for nomination or election to or on behalf of any other elective office in the state or any
39 of its subdivisions, or in connection with or on behalf of any person engaged in furthering,
40 advancing, supporting or aiding the nomination or election of any candidate for any of the offices.

41 (g) A political organization (as defined in Section 527(e)(1) of the Internal Revenue Code
42 of 1986) may not solicit or accept contributions until it has notified the Secretary of State of its
43 existence and of the purposes for which it was formed. During the two-year election cycle, a
44 political organization (as defined in Section 527 (e) (1) of the Internal Revenue Code of 1986)
45 may not accept contributions totaling more than \$1,000 from any one person prior to the primary
46 election and contributions totaling more than \$1,000 from any one person after the primary and
47 before the general election.

48 (h) It is unlawful for any person to create, establish or organize more than one political
49 organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) with the intent
50 to avoid or evade the contribution limitations contained in subsection (g) of this section.

51 (i) Notwithstanding the provisions of subsection (f) of this section to the contrary, a person
52 may not, directly or indirectly, make contributions to a state party executive committee or state
53 party legislative caucus committee which, in the aggregate, exceed the value of \$1,000 in any
54 calendar year.

55 (j) The limitations on contributions contained in this section do not apply to transfers
56 between and among a state party executive committee or a state party's legislative caucus
57 political committee from national committees of the same political party: *Provided*, That transfers
58 permitted by this subsection may not exceed \$50,000 in the aggregate in any calendar year to
59 any state party executive committee or state party legislative caucus political committee:
60 *Provided, however*, That the moneys transferred may only be used for voter registration and
61 get-out-the-vote activities of the state committees.

62 (k) A person may not solicit any contribution, other than contributions to a campaign for or
63 against a county or local government ballot issue, from any nonelective salaried employee of the
64 state government or of any of its subdivisions: *Provided*, That in no event may any person acting
65 in a supervisory role solicit a person who is a subordinate employee for any contribution.

66 (l) A person may not coerce or intimidate any employee into making a contribution. A
67 person may not coerce or intimidate any employee into engaging in any form of political activity.
68 The provisions of this subsection may not be construed to prevent any employee from making a
69 contribution or from engaging in political activity voluntarily without coercion or intimidation.

70 (m) A person may not solicit a contribution from any other person without informing the
71 other person at the time of the solicitation of the amount of any commission, remuneration or other
72 compensation that the solicitor or any other person will receive or expect to receive as a direct
73 result of the contribution being successfully collected. Nothing in this subsection may be
74 construed to apply to solicitations of contributions made by any person serving as an unpaid
75 volunteer.

76 (n) A person may not place any letter, circular, flyer, advertisement, election
77 paraphernalia, solicitation material or other printed or published item tending to influence voting
78 at any election in a roadside receptacle unless it is: (1) Approved for placement into a roadside
79 receptacle by the business or entity owning the receptacle; and (2) contains a written
80 acknowledgment of the approval. This subdivision does not apply to any printed material
81 contained in a newspaper or periodical published or distributed by the owner of the receptacle.
82 The term "roadside receptacle" means any container placed by a newspaper or periodical
83 business or entity to facilitate home or personal delivery of a designated newspaper or periodical
84 to its customers.

85 (o) An employer or any other person or entity responsible for the disbursement of funds in
86 payment of wages or salary may not withhold or divert any portion of an employee's wages or
87 salary for use as contributions to any candidate or political committee or for any other political
88 purposes as defined in section one-a of this article except by a written assignment in accordance
89 with section three, article five, chapter twenty-one of this code. This subsection applies to any
90 written or oral contract or agreement entered into, modified, renewed or extended on or after July
91 1, 2017: *Provided*, That the provisions of this subsection shall not otherwise apply to or abrogate

92 a written or oral contract or agreement or any provisions thereof in effect on or before June 30,
93 2017: *Provided, however,* That a violation of this subsection is not subject to the civil and criminal
94 penalties contained in this section, but any such violation shall be governed by the provisions of
95 article five, chapter twenty-one of this code.

96 (p) Any person violating any provision of this section is guilty of a misdemeanor and, upon
97 conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than one
98 year, or, both fined and confined.

99 (q) The limitations on contributions established by subsection (g) of this section do not
100 apply to contributions made for the purpose of supporting or opposing a ballot issue, including a
101 constitutional amendment.

CHAPTER 21. LABOR.

ARTICLE 1A. LABOR-MANAGEMENT RELATIONS ACT FOR THE PRIVATE SECTOR.

§21-1A-4. Unfair labor practices.

1 (a) It shall be an unfair labor practice for an employer:

2 (1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed
3 in section three of this article;

4 (2) To dominate or interfere with the formation or administration of any labor organization
5 or contribute financial or other support to it: *Provided,* That an employer shall not be prohibited
6 from permitting employees to confer with him or her during working hours without loss of time or
7 pay;

8 (3) By discrimination in regard to hire or tenure of employment or any term or condition of
9 employment, to encourage or discourage membership in any labor organization;

10 (4) To discharge or otherwise discriminate against an employee because he or she has
11 filed charges or given testimony under this article; and

12 (5) To refuse to bargain collectively with the representatives of his or her employees,
13 subject to the provisions of subsection (a), section five of this article.

14 (b) It shall be an unfair labor practice for a labor organization or its agents:

15 (1) To restrain or coerce: (A) Employees in the exercise of the rights guaranteed in section
16 three of this article: *Provided*, That this subdivision shall not impair the right of a labor organization
17 to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B)
18 an employer in the selection of his or her representatives for the purposes of collective bargaining
19 or the adjustment of grievances;

20 (2) To cause or attempt to cause an employer to discriminate against an employee in
21 violation of subdivision (3), subsection (a) of this section or to discriminate against an employee
22 with respect to whom membership in such organization has been denied or terminated on some
23 ground other than his or her failure to tender the periodic dues and the initiation fees uniformly
24 required as a condition of acquiring or retaining membership;

25 (3) To refuse to bargain collectively with an employer, provided it is the representative of
26 his or her employees subject to the provisions of subsection (a), section five of this article;

27 (4) (i) To engage in, or induce or encourage any individual employed by any person to
28 engage in, a strike or a refusal in the course of employment to use, manufacture, process,
29 transport or otherwise handle or work on any goods, articles, materials or commodities or to
30 perform any services; or (ii) to threaten, coerce or restrain any person, where in either case an
31 object thereof is:

32 (A) Forcing or requiring any employer or self-employed person to join any labor or
33 employer organization or to enter into any agreement which is prohibited by subsection (e) of this
34 section;

35 (B) Forcing or requiring any person to cease using, selling, handling, transporting or
36 otherwise dealing in the products of any other producer, processor or manufacturer, or to cease
37 doing business with any other person, or forcing or requiring any other employer to recognize or

38 bargain with a labor organization as the representative of his or her employees unless such labor
39 organization has been certified as the representative of such employees under the provisions of
40 section five of this article: *Provided*, That nothing contained in this paragraph may be construed
41 to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

42 (C) Forcing or requiring any employer to recognize or bargain with a particular labor
43 organization as the representative of his or her employees if another labor organization has been
44 certified as the representative of such employees under the provisions of section five of this article;

45 (D) Forcing or requiring any employer to assign particular work to employees in a particular
46 labor organization or in a particular trade, craft or class rather than to employees in another labor
47 organization or in another trade, craft or class, unless such employer is failing to conform to an
48 order of certification of the board determining the bargaining representative for employees
49 performing such work: *Provided*, That nothing contained in this subsection shall be construed to
50 make unlawful a refusal by any person to enter upon the premises of any employer (other than
51 his or her own employer), if the employees of such employer are engaged in a strike ratified or
52 approved by a representative of such employees whom such employer is required by law to
53 recognize;

54 (5) To require of employees covered by an agreement authorized under subdivision (3),
55 subsection (a) of this section, the payment, as a condition precedent to becoming a member of
56 such organization, of a fee in an amount which the board finds excessive or discriminatory under
57 all the circumstances. In making such a finding, the board shall consider, among other relevant
58 factors, the practices and customs of labor organizations in the particular industry, and the wages
59 currently paid to the employees affected;

60 (6) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver
61 any money or other thing of value, in the nature of an exaction, for services which are not
62 performed or not to be performed; and

63 (7) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any
64 employer where an object thereof is forcing or requiring an employer to recognize or bargain with
65 a labor organization as the representative of his or her employees, or forcing or requiring the
66 employees of an employer to accept or select such labor organization as their collective
67 bargaining representative, unless such labor organization is currently certified as the
68 representative of such employees:

69 (A) Where the employer has lawfully recognized in accordance with this article any other
70 labor organization and a question concerning representation may not appropriately be raised
71 under subsection (c), section five of this article;

72 (B) Where within the preceding twelve months a valid election under subsection (c),
73 section five of this article has been conducted; or

74 (C) Where such picketing has been conducted without a petition under subsection (c),
75 section five of this article being filed within a reasonable period of time not to exceed fifteen days
76 from the commencement of such picketing: *Provided*, That when such a petition has been filed
77 the board shall forthwith, without regard to the provisions of said subsection or the absence of a
78 showing of a substantial interest on the part of the labor organization, direct an election in such
79 unit as the board finds to be appropriate and shall certify the results thereof. Nothing in this
80 subdivision shall be construed to permit any act which would otherwise be an unfair labor practice
81 under this subsection.

82 (c) The expressing of any views, argument or opinion, or the dissemination thereof,
83 whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair
84 labor practice, or be prohibited under this article, if such expression contains no threat of reprisal
85 or force or promise of benefit.

86 (d) For the purposes of this section, to bargain collectively is the performance of the mutual
87 obligation of the employer and the representative of the employees to meet at reasonable times
88 and confer in good faith with respect to wages, hours and other terms and conditions of

89 employment, or the negotiation of an agreement, or any question arising thereunder, and the
90 execution of a written contract incorporating any agreement reached if requested by either party,
91 but such obligation does not compel either party to agree to a proposal or require the making a
92 concession: *Provided*, That where there is in effect a collective bargaining contract covering
93 employees, the duty to bargain collectively shall also mean that no party to such contract shall
94 terminate or modify such contract, unless the party desiring such termination or modification:

95 (1) Gives a written notice to the other party of the proposed termination or modification
96 sixty days prior to the expiration date thereof, or in the event such contract contains no expiration
97 date, sixty days prior to the time it is proposed to make such termination or modification;

98 (2) Offers to meet and confer with the other party for the purpose of negotiating a new
99 contract or a contract containing the proposed modifications;

100 (3) Notifies the Commissioner of Labor of the existence of a dispute;

101 (4) Continues in full force and effect, without resorting to strike or lockout, all the terms
102 and conditions of the existing contract for a period of sixty days after such notice is given or until
103 the expiration date of such contract, whichever occurs later. The duties imposed upon employers,
104 employees and labor organizations by this subdivision and subdivisions (2) and (3) of this
105 subsection shall become inapplicable upon an intervening certification of the board, under which
106 the labor organization or individual, which is a party to the contract, has been superseded as or
107 ceased to be the representative of the employees subject to the provisions of subsection (a),
108 section five of this article, and the duties so imposed shall not be construed as requiring either
109 party to discuss or agree to any modification of the terms and conditions contained in a contract
110 for a fixed period, if such modification is to become effective before such terms and conditions
111 can be reopened under the provisions of the contract. Any employee who engages in a strike
112 within the sixty-day period specified in this subsection shall lose his or her status as an employee
113 of the employer engaged in the particular labor dispute, for the purposes of this section and

114 sections three and five of this article, but such loss of status for such employee shall terminate if
115 and when he or she is reemployed by such employer.

116 (e) It shall be an unfair labor practice for any labor organization and any employer to enter
117 into any contract or agreement, express or implied, whereby such employer ceases or refrains or
118 agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any
119 of the products of any other employer, or to cease doing business with any other person and any
120 such contract or agreement entered into heretofore or hereafter shall be to such extent
121 unenforceable and void.

122 (f) It shall be an unfair labor practice for any labor organization to use agency shop fees
123 paid by an individual who is not a member of the organization to make any contributions or
124 expenditures to influence an election or to operate a political committee, unless affirmatively
125 authorized by the individual. Any such authorization is valid for no more than twelve months from
126 the date it is made by the individual. For purposes of this section, "agency shop fees" shall mean
127 any dues, fees, assessments or other similar charges, however denominated, of any kind or
128 amount to the labor organization: *Provided*, That the provisions of this subsection shall not
129 otherwise apply to or abrogate a written or oral contract or agreement or any provisions thereof
130 in effect on or before June 30, 2017.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-1. Definitions.

1 As used in this article:

2 (a) The term "firm" includes any partnership, association, joint-stock company, trust,
3 division of a corporation, the administrator or executor of the estate of a deceased individual, or
4 the receiver, trustee or successor of any of the same, or officer thereof, employing any person.

5 (b) The term "employee" or "employees" includes any person suffered or permitted to work
6 by a person, firm or corporation.

7 (c) The term “wages” means compensation for labor or services rendered by an employee,
8 whether the amount is determined on a time, task, piece, commission or other basis of calculation.
9 As used in sections four, five, eight-a, ten and twelve of this article, the term “wages” shall also
10 include then accrued fringe benefits capable of calculation and payable directly to an employee:
11 *Provided*, That nothing herein contained shall require fringe benefits to be calculated contrary to
12 any agreement between an employer and his or her employees which does not contradict the
13 provisions of this article.

14 (d) The term “commissioner” means Commissioner of Labor or his or her designated
15 representative.

16 (e) The term “railroad company” includes any firm or corporation engaged primarily in the
17 business of transportation by rail.

18 (f) The term “special agreement” means an arrangement filed with and approved by the
19 commissioner whereby a person, firm or corporation is permitted upon a compelling showing of
20 good cause to establish regular paydays less frequently than once in every two weeks: *Provided*,
21 That in no event shall the employee be paid in full less frequently than once each calendar month
22 on a regularly established schedule.

23 (g) The term “deductions” includes only those amounts required by law or court order to
24 be withheld, and those amounts required by the terms of an employer-sponsored or employer-
25 provided plan or program providing fringe benefits in which the employee is a participant.

26 (h) The term “officer” shall include officers or agents in the management of a corporation
27 or firm who knowingly permit the corporation or firm to violate the provisions of this article.

28 (i) The term “wages due” shall include at least all wages earned up to and including the
29 twelfth day immediately preceding the regular payday.

30 (j) The term “construction” means the furnishing of work in the fulfillment of a contract for
31 the construction, alteration, decoration, painting or improvement of a new or existing building,
32 structure, roadway or pipeline, or any part thereof, or for the alteration, improvement or

33 development of real property: *Provided*, That construction performed for the owner or lessee of a
34 single family dwelling or a family farming enterprise is excluded.

35 (k) The term “minerals” means clay, coal, flagstone, gravel, limestone, manganese, sand,
36 sandstone, shale, iron ore and any other metallurgical ore.

37 (l) The term “fringe benefits” means any benefit provided an employee or group of
38 employees by an employer, or which is required by law, and includes, but is not limited to, benefits
39 provided pursuant to any welfare plan or pension plan, subject to the Employee Retirement
40 Income Security Act of 1974 in which the employee is a participant, including, but not limited to,
41 benefits for medical, surgical or hospital care, sickness, accident, disability or death,
42 unemployment, vacation, holidays, apprenticeship or training, day care, education, prepaid legal
43 services, severance and retirement or post retirement.

44 (m) The term “employer” means any person, firm or corporation employing any employee.

45 (n) The term “doing business in this state” means having employees actively engaged in
46 the intended principal activity of the person, firm or corporation in West Virginia.

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

1 (a) Every person, firm or corporation doing business in this state, except railroad
2 companies as provided in section one of this article, shall settle with its employees at least twice
3 every month and with no more than nineteen days between settlements, unless otherwise
4 provided by special agreement, and pay them the wages due, less authorized deductions and
5 authorized wage assignments, for their work or services.

6 (b) Payment required in subsection (a) of this section shall be made:

7 (1) In lawful money of the United States;

8 (2) By cash order as described and required in section four of this article;

9 (3) By deposit or electronic transfer of immediately available funds into an employee’s
10 payroll card account in a federally insured depository institution. The term “payroll card account”
11 means an account in a federally insured depository institution that is directly or indirectly

12 established through an employer and to which electronic fund transfers of the employee's wages,
13 salary, commissions or other compensation are made on a recurring basis, whether the account
14 is operated or managed by the employer, a third-party payroll processor, a depository institution
15 or another person. "Payroll card" means a card, code or combination thereof or other means of
16 access to an employee's payroll card account, by which the employee may initiate electronic fund
17 transfers or use a payroll card to make purchases or payments. Payment of employee
18 compensation by means of a payroll card must be agreed upon in writing by both the person, firm
19 or corporation paying the compensation and the person being compensated; or

20 (4) By any method of depositing immediately available funds in an employee's demand or
21 time account in a bank, credit union or savings and loan institution that may be agreed upon in
22 writing between the employee and such person, firm or corporation, which agreement shall
23 specifically identify the employee, the financial institution, the type of account and the account
24 number: *Provided*, That nothing herein contained shall be construed in a manner to require any
25 person, firm or corporation to pay employees by depositing funds in a financial institution.

26 (c) If, at any time of payment, any employee shall be absent from his or her regular place
27 of labor and shall not receive his or her wages through a duly authorized representative, he or
28 she shall be entitled to payment at any time thereafter upon demand upon the proper paymaster
29 at the place where his or her wages are usually paid and where the next pay is due.

30 (d) Nothing herein contained shall affect the right of an employee to assign part of his or
31 her claim against his or her employer except as in subsection (e) of this section.

32 (e) No assignment of or order for future wages shall be valid for a period exceeding one
33 year from the date of the assignment or order. An assignment or order shall be in writing and
34 specify thereon the total amount due and collectible by virtue of the same and three fourths of the
35 periodical earnings or wages of the assignor shall at all times be exempt from such assignment
36 or order and no assignment or order shall be valid which does not so state upon its face: *Provided*,
37 That no such order or assignment shall be valid unless the written acceptance of the employer of

38 the assignor to the making thereof is endorsed thereon. The changes to this section which were
39 adopted by the West Virginia Legislature in 2017 in Senate Bill 239 apply to any written or oral
40 contract or agreement entered into, modified, renewed or extended on or after July 1, 2017:
41 *Provided, however* That the provisions of this subsection shall not otherwise apply to or abrogate
42 a written or oral contract or agreement or any provisions thereof in effect on or before June 30,
43 2017.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2017.

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Governor